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Case No COMP/M.2628 - KOCH / KOSA

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 12/11/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12/11/2001

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Dear Sirs,

Subject: Case No COMP/M.2628 – Koch/Kosa
Notification of 08.10.2001 pursuant to Article 4 of Council Regulation N/ 4064/89

1. On 08.10.2001, Koch Industries, Inc. ("Koch") notified the proposed acquisition of sole control of KoSa B.V ("KoSa"), a Dutch holding company jointly controlled by certain affiliates of Koch and IMASAB S.A de C.V. ("Saba"). KoSa was established in 1998 after a clearance decision by the Commission (see Case IV/M.1337 Koch/Saba/Hoechst).

I. THE PARTIES

2. Koch Industries, Inc. ("Koch"), is a privately held US corporation engaged worldwide in the businesses of refined products, chemicals, gas liquids, crude oil services, mineral services, energy services, capital services, road and construction materials, and chemical technology.

3. KoSa manufactures commodity and specialty polyester products and other specialty products as part of five global businesses: packaging resins, textile fibers (including staple and filament), technical fibers, intermediates and polymers.

II. THE OPERATION

4. The notification concerns the acquisition by Koch of sole control over KoSa by means of a share deal whereby Saba (through its wholly-owned subsidiary IMASAB Dutch B.V) transfers its 50% interest in KoSa to Koch. After the transaction, Koch will indirectly own 100% of the equity interests and voting rights in KoSa.

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5. The proposed transaction will result in an acquisition of sole control within the meaning of Article 3(1)(b) of Council Regulation (EEC) No 4064/89.

III. COMMUNITY DIMENSION

6. The combined aggregate worldwide turnover of the undertakings concerned exceeds 5.000 million ECU (Koch […] million EURO, KoSa […] million EURO). Both the acquiring party and the target have a Community-wide turnover well in excess of 250 million EURO, no party to the merger achieves more than two thirds of its aggregate Community-wide turnover in one and the same Member State. Therefore, the operation has a Community dimension. It does not constitute a co-operation case under the EEA-Agreement, pursuant to Article 57 of that Agreement.

IV COMPETITIVE ASSESSMENT

7. Koch and the KoSa have no overlapping activities. Therefore, there is no horizontal overlap, and thus no addition of market shares as a result of the transaction. However, there is a vertical relationship between Koch and the KoSa resulting in one affected market.

<u>Relevant product markets</u>

8. This transaction concerns the market for polyester products and the intermediate products in the production process of polyester. The base chemical for the production of polyester is paraxylene ("PX"). Through an oxidation process, PX is transformed into one of two forms of terephthalic acid: pure terephthalic acid ("PTA") or di-methyl terephthalate ("DMT"). An amorphous polyester polymer ("APP") is then created by reacting either PTA or DMT with a di-functional alcohol, most often mono-ethylene glycol ("MEG"). APP is used to generate a variety of products, which can be segmented into six general categories of polyester polymer (« PP »): polyester packaging resin ("PPR"), industrial fibres, textile fibres, non-wovens, PET film, and engineering plastics. The base chemical PX and the intermediate product APP are relevant to this transaction.

9. Koch claims that the market for polyester polymer (PP) should be the relevant market since there are indications that intermediate products like APP are rather product segments and part of the overall PP market.

10. However, the Commission concluded in M.1337 Koch/Saba/Hoechst that intermediate products sold to third parties such as APP might be considered as separate markets. Nevertheless, the precise market definition can be left open in this case because even on such a narrower market definition no competition problem arises.

<u>Relevant geographic markets</u>

11. In accordance with previous decisions (M.984 Dupont/ICI) the Commission has confirmed that the geographic market for the relevant products are at least as broad as Western Europe and probably world wide.

Assessment

12. As Koch is not active in KoSa's fields of business, there is no horizontal overlap, and thus no addition of market share as a result of the transaction. However, the transaction results in a vertical relationship between Koch and KoSa, since Koch is supplying the base chemical PX to KoSa. Therefore, if APP is considered a separate market, it becomes an affected market.

13. In 2000, Koch sold […] KT of PX into Western Europe, accounting for approximately [10-20%] of Western European merchant sales. Koch's relatively high Western European market share is based on the fact that Koch supplies 100% of KoSa's PX requirement in Europe ([…] KT of the […] KT total western European sales of Koch were made to KoSa). After the transaction will have taken place roughly […] of Koch's present market share of paraxylene will be considered as inter- company sales thereby reducing Koch's merchant market share to about [0-10%]. Other competitors present are Exxon (22%), BP Amoco (18%) and Enichem (10%). Therefore, no foreclosure effects are deemed to arise from the transaction with regard to PX.

14. In 2000, KoSa's Western European merchant market share for APP accounted for [50-60%]. Other competitors are Montefibre (10%), Trevira (8%) and TWD (7%). KoSa's market share in this market was only [20-30%] in 1997, when KoSa was still part of Hoechst. Due to the divestment of Hoechst's polyester and related chemicals businesses including KoSa in 1998,[1] what were previously internal sales became merchant market sales almost doubling the market share for merchant sales to [50-60%] by the end of 1998.

15. Although [50-60%] is a relatively high market share of the parties in the downstream market of APP, given that there is no horizontal overlap between the parties, and that there will be no foreclosure effects resulting from the transaction because Koch has a limited merchant market share of [0-10%] on the upstream market for PX, the Commission considers that the operation does not raise competition concerns. Moreover, customers can easily switch to suppliers other than the parties, since there is sufficient spare capacity in the market. Producers other than the merged entity had spare capacities accounting for approximately 20% of demand in 2000.

16. Consequently, in view of this market structure, the transaction will not lead to a foreclosure effect or other vertical concern leading to the creation, or reinforcement of a dominant position. Since there are no horizontal overlaps either, the proposed transaction will not give rise to any creation or strengthening of a dominant position as a result of which effective competition could be significantly impeded in the EEA.

[1] See Case IV/M.1337 Koch/Saba/Hoechst, Commission decision of 24 November 1998, at para.18

VI. CONCLUSION

17. For the above reasons, the Commission decides not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No. 4064/89.

For the Commission,
Mario Monti
Member of the Commission
(signed)