

***Case No COMP/M.3024 -  
BAIN CAPITAL /  
RHODIA***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 19/12/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19/12/2002

SG (2002) D/233396

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying party**

Dear Sirs,

**Subject: Case No COMP/M.3024 – BAIN CAPITAL / RHODIA  
Notification of 20.11.2002 pursuant to Article 4 of Council Regulation  
No 4064/89<sup>1</sup>**

1. On 20.11.2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the US-based undertaking Bain Capital Fund VII-E Limited Partnership (“Bain Capital”) acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of three special purpose companies to which the French undertaking Rhodia S.A. (“Rhodia”) will have contributed its Phenol, Soda Products and Hydrochloric acid (“HCl”) businesses.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

**I. THE PARTIES**

3. Bain Capital is a limited partnership investment fund whose ultimate general partner is Bain Capital Investors. The Bain Capital Investors group is a world-wide fund management group that manages private equity, venture capital, hedge and high yield funds. It is dedicated to global investment opportunities in such sectors as retail and consumer products, communications, and information technology.

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<sup>1</sup> OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

4. Rhodia is the French parent company of an international group active in numerous fields, including fine organics (used in the pharmaceuticals, agrochemicals, food and fragrances industry), manufacturing additives, high performance industrial specialties, polyamide products and polyesters.

## **II. THE OPERATION AND THE CONCENTRATION**

5. On 31.10.2002, Rhodia and Bain Capital signed a Stock Purchase Agreement according to which, Rhodia will transfer all of the assets, properties and rights used or held for use in the Phenol, HCl and Soda Products businesses respectively to the companies Rhod K, Rhod L and Rhod M. Subject to the satisfaction of the conditions set forth in the Stock Purchase Agreement, the Buyer, named French HoldCo 3, a special purpose French company, will then acquire 100% of the issued share capital of each of the three companies. The Buyer will be controlled by the Bain Capital, through a series of Luxembourg and French special purpose holding companies.
6. In the ultimate top-level Luxembourg company ("Luxco"), Bain Capital will hold an 81.8% interest in the issued share capital. The remaining 18.2% interest in the issued share capital of Luxco will be held by Rhodia Intermédiaires, a subsidiary of Rhodia S.A.. In consideration of the Luxco shareholders agreement, the rights granted to Rhodia Intermédiaires do not go beyond the veto rights normally granted to minority shareholders. Therefore, Rhodia Intermédiaires will have no right to veto decisions that are essential for the strategic commercial behaviour of Luxco and as a result the strategic behaviour of Rhod K, Rhod L and Rhod M, the sole control of which will reside ultimately with Bain Capital.
7. Consequently, the proposed transaction constitutes a concentration within the meaning of Article 3 of Regulation 4064/89.

## **III. COMMUNITY DIMENSION**

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>2</sup> (Bain Capital € [...] million; Rhod K, Rhod L and Rhod M € [...] million). Each of them has a Community-wide turnover in excess of EUR 250 million (Bain Capital € [...] million; Rhod K, Rhod L and Rhod M € [...] million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

## **IV. COMPETITIVE ASSESSMENT**

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<sup>2</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

## **A. Relevant Product Markets**

9. The notifying party states that the transaction does not give rise to any affected market, since there is no overlap in activities between Rhod K, Rhod L and Rhod M and the portfolio companies controlled by funds for which Bain Capital serves as the ultimate general partner. Nevertheless it submits that the relevant markets, in which are active the target companies are: the soda ash market, the sodium bicarbonate market, the phenol market, the acetone market, and the hydrochloric acid (HCl) trading market.

### *Soda ash*

10. Rhodia manufactures soda ash from salt using brine technology and from limestone. Two-thirds of its production is used in the glass industry, the remainder is used for the production of chemicals, such as phosphates, silicates and silica. It is the opinion of the notifying party that the characteristics and properties of soda ash, which can not be duplicated by other products, implies that its production is a distinct relevant product market.

### *Sodium bicarbonate*

11. Sodium bicarbonate derives from soda ash and is used, depending on the size of the particles, in animal feed, human nutrition, pharmaceuticals, and gas, surface and water treatment. As it can not be replaced at an economical cost by other products, the notifying party suggests that sodium bicarbonate is a distinct relevant product market.

### *Phenol*

12. Phenol, which is mainly produced from benzene and propylene, is a chemical product with four main different applications: production of bisphenol and resins, production of alkyl phenols and production of fibres such as nylon. Except in the production of nylon (which represents only 6% of the use of phenol), there is currently no substitute to phenol for the other uses. Therefore the parties contend that phenol constitutes a separate market. In its previous decision in the case M.442 *Elf Atochem/Ruetgers*, the Commission, even if it left the question open, gave indications of the possible existence of a distinct phenol market.

### *Acetone*

13. Acetone is a by-product of phenol and is used in the production of plastic materials and the manufacturing of solvents. According to the parties and in line with the approach suggested by the Commission in a previous case<sup>3</sup>, acetone constitutes a distinct market.

### *Hydrochloric acid trading*

14. Hydrochloric acid is a by-product of numerous processes in the chemical industry and has applications in various industries including food and water treatment. The recent growth of the demand of sales to third parties has led the parties to consider the trading of hydrochloric acid as a distinct relevant market.

### *General conclusion on product markets*

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<sup>3</sup> Commission decision 27.05.1994, case No IV/M.439, *Hüls/Phenolchimie*

15. However, for the purposes of this decision, since the notified operation, even in the case of the narrowest market definition, would not give rise to any competition concern, the relevant product markets can be left open.

## **B. The relevant geographic markets**

### *Soda Ash*

16. The party contends that the soda ash market, mainly due to the high transportation costs that it entails, can be seen as national, even if the Commission has in some of its former decisions reserved the possibility of widening the relevant geographic market for soda.

### *Sodium bicarbonate*

17. Due to the lower transport costs of sodium bicarbonate in comparison to soda ash, the notifying party estimates that the relevant geographical market is at least European.

### *Phenol*

18. The notifying party recognises the high transportation costs of phenol, but nevertheless contend that the geographical market should be seen as at least EC wide, due to the swap agreements between competitors, which allow the producers to reach customers in an extended area. The Commission in a former decision supports this contention<sup>4</sup>.

### *Acetone*

19. The party contends that the same considerations should apply to the acetone market, which is a phenol-related market and that therefore the relevant market for acetone should be regarded as EC wide in scope.

### *Hydrochloric Acid Trading*

20. It is accepted by the notifying party that the transportation costs of hydrochloric acid are high enough to consider the geographical market to be national in scope. In addition it is submitted in support of the latter finding that Rhodia realises [a large part] of its sales of hydrochloric acid in France and that there is, in Europe, a wide variation in prices. The Commission in a past decision<sup>5</sup> has stated that “...*the geographical market for HCl is national at the narrowest and probably regional*”.

### *General conclusion on geographic markets*

21. For the purposes of this decision, the exact definition of the relevant geographic markets can be left open, since the notified operation, even in the case of the narrowest geographic market definition would not give rise to any competition concern.

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<sup>4</sup> Commission decision 29.07.1994, case No IV/M.442, *Elf Atochem/Ruetgers*, para.34.

<sup>5</sup> Commission decision 13.07.1999, case No. IV/M.1517, *Rhodia/Donau Chimie/Albright & Wilson*

### C. ASSESSEMENT

22. Based on the information provided by the notifying party, the transaction does not give rise to any horizontal or vertical overlap in any of the relevant markets as the acquiring party does not hold any interest in companies active in one of the relevant or related markets.
23. On the basis of the parties' figures, the hydrochloric acid trading is the only market where the parties would have a significant market share. On the other markets described above, the parties' market shares would be less than 10%, whatever the market definition, with the exception of the soda ash market in France where the parties would have a market share of approximately [20-30]%. No further assessment of these markets is necessary.

#### *Hydrochloric acid trading*

24. Rhodia is currently one of the two largest players on the hydrochloric acid merchant market in Europe, behind Bayer, the leader. On a national market basis, the new combined entity has a substantial market share in one Member State, France, where the parties would have a [45-55]% market share (Rhodia: [45-55]%; Bain Capital: 0%).
25. However it is unlikely that the change of ownership will strengthen the competition position of Rhodia on the hydrochloric acid market as Bain Capital has no interest in chemicals. Any possible dominant position of Rhodia on the hydrochloric acid market in France has not been created or strengthened by the concentration.
26. It can be concluded that the operation does not raise serious doubts as to its compatibility with the common market. There is no risk that the operation will create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

### V. CONCLUSION

27. For the above reasons, the Commission has decided 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

Signed by Mario MONTI  
Member of the Commission