

***Case No COMP/M.3125 -
HUNTSMAN /
MATLINPATTERSON /
VANTICO***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/06/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19/06/2003

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.3125 – Huntsman/MatlinPatterson/Vantico
Notification of 15-05-2003 pursuant to Article 4 of Council Regulation
No 4064/89¹**

I. INTRODUCTION

1. On 15 May 2003, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking Huntsman Holdings, LLC (“Huntsman”, United States) jointly controlled by MatlinPatterson Global Opportunities Partners L.P. (“MatlinPatterson”, United States) and a private investor, acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Vantico Group S.A. (“Vantico”, Luxembourg) by way of exchange of debts for shares.
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.

II. THE PARTIES

3. Huntsman is active in the production and distribution world-wide of chemicals, both basic commodity products and higher value-added specialty intermediate chemicals. It supplies third parties in a variety of sectors, including chemicals, plastics, health care, textiles, detergent and personal care. In 2002, Huntsman’s debt was reorganised. As a result MatlinPatterson, one of Huntsman’s main debt holders, acquired a jointly

¹ 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).

controlling interests along with Mr.J.M.Huntsman, the founder of the company. This transaction was cleared by German, French and Italian authorities.

4. MatlinPatterson is an investment fund which invests globally in the discounted securities and obligations of companies in financial difficulties, with the objective of acquiring corporate control and subsequently directing the reorganisation process.
5. Vantico (which is currently under sole control of Morgan Grenfell Private Equity Limited, a company affiliated with Deutsche Bank AG) develops and produces polymer specialty products (coatings, structural composites, insulations) adhesives, tooling and optronics products for a variety of industries including the automotive, electronic and aerospace industries.

III. THE OPERATION

6. The transaction is part of a consensual out-of court restructuring of Vantico's debt, intended to avoid bankruptcy proceedings. The mechanics of the deal are extremely complex and are largely driven by fiscal considerations and securities regulations. Briefly, MatlinPatterson will exchange its debt in Vantico for equity and will become the majority and controlling shareholder with an indirect shareholding of between [$>50\%$]². MatlinPatterson will then contribute the Vantico equity to Huntsman (which is in turn jointly controlled by Matlin Patterson).
7. The parties signed a binding Framework agreement on April 17, 2003. Closing is scheduled by end of June19, 2003, due to the necessary compliance with Luxembourg Stock Exchange requirement to launch a public offer for Vantico's Senior Notes (the financial Instrument relating to Vantico's debt).

IV. CONCENTRATION

8. Following the various steps of the transaction Huntsman will acquire control of Vantico. Consequently, the proposed transaction constitutes a concentration within the meaning of Article 3 of Regulation 4064/89.

V. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ (Huntsman: € [...] billion; Vantico: € 1 billion) Each of the undertakings concerned have a Community-wide turnover in excess of EUR 250 million (Huntsman: € [...]; Vantico: € [...]) 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.

² [...]

³ 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).

VI. COMPETITIVE ASSESSMENT

A. THE RELEVANT PRODUCT MARKETS

10. As a preliminary remark, it has to be underlined that the parties have very large product ranges. Only for a certain number of products some form of relationship occurs between the two companies. The information submitted to the Commission with the notification regarded those products (out of the full product ranges of both Huntsman and Vantico) for which a relationship occurs. Information on other products was provided in the course of the investigation upon request by the Commission.
11. On this basis, the following are the products which formed part of the investigation.
12. For Vantico: Tooling solutions; Polyaminoamide (PAA); Electrical Insulation Material; Liquid Coatings Systems; Structural Adhesives; Polyamidoimides; Industrial Structural Composite Formulations.
13. For Huntsman: Diamine-based Epoxy Curing Agents; Ethyleneamines (all types); Diglycolamine Agent (DGA); Methylenediphenyldiisocyanate (MDI); Titanium Dioxide; Dimethylaminopropylamine (DMAPA); Polyether polyols; Liquid Epoxy System Catalysts; Amine-based Urethane Catalysts.
14. The parties submit that all the relevant products constitute separate markets. For some (e.g. Electrical Insulation Materials and Liquid Coatings) it is also argued that the market can be further delineated according to the final application and specific final use. The parties have analysed each market on the basis of the most restrictive market definition. The market investigation has largely confirmed the submission by the parties regarding product market definitions. At any rate, for the purpose of this decision, the precise market definitions can be left open as no serious doubt arises from the operation.

B. THE RELEVANT GEOGRAPHIC MARKETS

15. The parties submit that all relevant markets are world-wide or at least EEA-wide, due to the lack of regulatory and customs barriers, low transportation costs and no or marginal price differentials based on the location of customers. This is in line with previous Commission decisions dealing with the relevant product markets. The market investigation has largely confirmed the submission by the parties as regards the geographical market definition.

C. Competitive assessment

a) Horizontal overlaps

16. The parties submit that the two companies' portfolios of products are largely complementary and that there are no horizontal overlaps stemming from the operation. Therefore the party submit that there are no horizontally affected markets⁴.

⁴ Moreover the parties submit that Matlin Patterson has no controlling interest in chemical activities other than in Huntsman.

17. The market investigation has largely confirmed the parties' submission. However, a number of respondents indicated that, as a matter of fact, a horizontal overlap would stem from Vantico's alleged activities related to Diamine-based Epoxy Curing Agents⁵. In order to clarify this issue the Commission carried out further investigation, both with the parties and with third parties.
18. On the basis of this further investigation the Commission concluded that the horizontal overlap, if any, is of extremely marginal importance and raises no competition concern.
19. The value chain of diamine-based epoxy curing agents is constituted by various steps/players/products:
 - (i) producers of pure diamine-based epoxy curing agents, chemical molecules called ether diamine or polyetheramine which constitute the raw material used by the downstream manufacturers, i.e. the epoxy curing agents suppliers;
 - (ii) epoxy curing agents suppliers, who purchase the raw material and process it in order to meet specific customer requirements (system formulators);
 - (iii) system formulators combine the epoxy curing agents with epoxy resins, pigments, solvents, etc. into so-called "systems". Systems, which usually contain (at least) a resin and an epoxy curing agent, are sold as a whole⁶;
 - (iv) end users, who purchase epoxy systems in the form of coatings, adhesives or for other applications. The system components mentioned in (iii) are usually mixed ("reacted") and applied by the end users.
20. According to this classification/value chain Huntsman is a producer of pure diamine-based epoxy curing agents (i). They constitute one of Huntsman main products, for which it holds a [30-40]% market share in the EEA. Huntsman sells these on the merchant market, including to Vantico. These vertical relations are described below in this decision.
21. Pure diamine-based epoxy curing agents are used as input materials by Vantico for a number of systems, namely in: liquid coatings systems formulations for construction and civil engineering applications, industrial structural composites formulations, electrical insulation materials for light electrical components applications, structural adhesives and

5 Curing agents are reactive agents added to chemicals in order to change their properties. Epoxy curing agents are chemically formulated to "cure" epoxy resins, thereby irreversibly changing their properties through a chemical reaction. Within the broad epoxy curing agents market, there is a market segment named amine-based curing agents which includes cycloaliphatic diamines, aromatic diamines and aliphatic diamines (which includes polyetheramines and ether diamines). Within this market segment there is still a narrower segment of diamines formed by only ether diamines, cycloaliphatic diamines and aromatic diamines which are functionally similar and for which there is a high degree of substitutability from the demand side. This is the segment, hereafter "diamine-based epoxy curing agents", in which Huntsman is active.

6 The "systems" sold by Vantico include several components, namely an epoxy resin, an epoxy hardener (or curing agent), an epoxy system catalyst (sometimes also called an accelerator) and, depending on the specific performance requirements of the customer, additional additives (e.g., flexibilizers or demoulding agents, or for structural adhesives: fillers, colorants, fire-retardants).

tooling solutions. Most of Vantico's downstream products are sold as "systems" which need to be reacted by the end-consumers⁷.

22. As mentioned, Vantico produces the epoxy resins internally but does not produce diamine-based epoxy curing agents or ethyleneamines, which it therefore purchases from various suppliers (including Huntsman). These purchased products are only processed by Vantico and made part of "systems".
23. The parties do acknowledge that Vantico carries out some further processing on the diamine-based epoxy curing agents to add value, so that the system can better respond to customers' specific requirements. However they stress that this by no means can be considered to amount to independent full production of diamine-based epoxy curing agents. Moreover the parties stress that Vantico uses the diamine-based epoxy curing agents it processes for its internal consumption (i.e. for the production of "systems") and does not sell these products to third parties, other than as part of systems to end-users.
24. The parties have stressed that Vantico is in the business of selling complete/ integrated value-added systems, and it is not in the business of simply reselling individual input products such as diamine-based epoxy curing agents which it has purchased from suppliers such as Huntsman⁸. Vantico's own commercial interest is to sell complete systems with a greater added value. At the same time, customers do not buy "off the shelf" diamine-based epoxy curing agents individually from Vantico but, instead, go directly to producers of these agents such as Huntsman, BASF, Degussa, Dow, etc.
25. It should be noted that some of Vantico's customers are distributors and the products that they may purchase from Vantico may include some of these bought-in diamine-based epoxy curing agents. Although distributors have a similar commercial interest as Vantico to sell value-added integrated systems rather than bought-in products which are merely being resold, the parties admittedly could not exclude the possibility that certain customers might in fact purchase from Vantico's distributors some diamine-based epoxy curing agents which were bought in and merely resold by Vantico.
26. It thus appears that the claim by some third parties that there is an alleged overlap between Huntsman and Vantico with respect to diamine-based epoxy curing agents stems from a misperception due to the fact that Vantico offers complete systems which therefore necessarily incorporate diamine-based epoxy curing agents, and that it cannot be excluded that Vantico's distributors offering Vantico's complete systems may in fact also realize some limited sales of diamine-based epoxy curing agents which were in fact previously bought in by Vantico.

7 Systems are not pre-reacted, which means that the final chemical reaction takes place only when the product is used or applied. The reason for this is that the shelf-life of a system is at least six months and typically one year or more. Conversely, once the different components of the system have been reacted by the client, the "pot-life" is at best a couple of days and in some cases only a couple of minutes. This means that the customer will mix and react the different components of the system only at the time of usage or application of the product.

8 [...]

27. However, in view of the fact that Vantico does not produce these diamine-based epoxy curing agents (which it buys in from third parties, among which Huntsman) and it is not a competitor in the sale of such input products (but, rather of the downstream complete systems that incorporate these input products), the Commission has concluded that no competition concerns arise with respect to the market for Diamine-based Epoxy Curing Agents.

b) Vertical relationships

28. The parties activities give rise to a number of vertical relationships. Whilst Huntsman does not purchase any products from Vantico, it sells a variety of input products to Vantico for its final production.

29. In the vast majority of cases Huntsman has market shares below 25% for the input products and Vantico market shares below 25% for the downstream products. Therefore these vertical relationships do not legally constitute affected markets within the meaning of the Merger Regulation. These vertical relationships have not been examined by the Commission in the course of the investigation and will therefore not be discussed in the framework of this decision.

30. In a more limited number of cases either Huntsman has market share above 25% for the input products but Vantico has less than 25% of the downstream products, or vice versa. These relationships are the following: a) Tooling Solutions-tooling board (Vantico's market share of [20-30]%) and MDI (Huntsman's market share of [20-30]%); b) Tooling Solutions-wet tooling (Vantico's market share of [20-30]%) and MDI, Titanium Dioxide and Polyether Polyols (Huntsman's market shares of respectively [20-30]%, [20-30]% and [0-10]%); c) PAA (Vantico's market share of [20-30]%) and DGA and TEPA (Huntsman's market shares respectively of [30-40]% and [30-40]%); d) Electrical Insulation (Vantico's market share of [20-30]% and Epoxy Curing Agents (Huntsman's market share of [30-40]%); e) Liquid Coatings-construction and civil engineering (Vantico's market share of [10-20]%) and Epoxy Curing Agents (Huntsman's market share of [30-40]%); f) Structural Adhesives (Vantico's market share of [10-20]%) and Epoxy Curing Agents (Huntsman's market share of [30-40]%); g) Industrial Structural Composite Formulations (Vantico's market share of [10-20]%) and Epoxy Curing Agents (Huntsman's market share of [30-40]%). All these relationships technically give rise to affected markets within the meaning of the Merger Regulation.

31. The parties submit that no upstream or downstream foreclosure effects will arise from the transaction with respect to the above markets. The main reasons adduced in support of this claim are: a) the existence of relatively large numbers of third parties active in both upstream and downstream markets; b) high degree of overcapacity in most products markets; c) absence of significant entry barriers; d) the relatively low "weight" of Huntsman's input in the overall value of each single Vantico's downstream production.

32. The market investigation has not brought to the attention of the Commission any element regarding any of the above relationships which could have impaired the validity of the parties' claim. Therefore the Commission has concluded that the above vertical relationships between the parties do not engender any risk of foreclosure and thus do not give rise to competition concerns.

33. There exist a limited number of vertical relationships for which both parties hold more than 25% of their respective upstream and downstream markets. These are:
- (1) *Supply* of diamine-based epoxy curing agents, with Huntsman's market share of [30-40]% and *supply* of Tooling Solutions (wet tooling) with Vantico's market share of approximately [20-30]%;
 - (2) *Supply* of Ethyleneamines (in particular of TEPA) with Huntsman's market share of approximately [30-40]% and *supply* of Tooling Solutions (wet tooling) with Vantico's market share of [20-30]%
 - (3) Moreover, for its production of PAA Vantico uses Ethyleneamines (in particular TETA and TEPA) and DGA as inputs purchased from Huntsman, which holds for all three products markets shares above 25 % (respectively [30-40]%, [30-40]% and [30-40]%). While Vantico holds a market share below 25% for the supply of PAA, it represents more than 25% of total demand of TETA in the EEA. The PAA/TETA vertical relationship was consequently examined by the Commission.
34. Relationships (1) and (2) have been examined jointly, as they both relate to the same downstream market, that is Vantico's Tooling Solutions-wet tooling.
- 1 and 2) Tooling Solutions-wet tooling*
35. Wet tooling systems are liquid formulations based on epoxy, polyurethane or acrylic chemistries which are used to make casts or molds for parts, such as the plastic bodies of cellular phones. Different wet tooling systems are chosen by customers based on exact intended usage, ease of use, size of the mold/part, performance and cost.
36. The market investigation has largely confirmed the parties' submission that no competition concerns arise from the vertical relationships relating to the affected market. However a limited number of respondents have contested the parties' submission and have raised a number of issues as regards the supply of input products by Huntsman to Vantico and the resulting alleged strengthening of Vantico's dominant position in the Tooling Solutions-wet tooling market.
37. In order to clarify the issues raised by third parties the Commission carried out further investigation, both with the parties and with third parties. On the basis of this further investigation the Commission has concluded that the operation does not give rise to any competition concerns in the Tooling Solutions-wet tooling market.
38. First and foremost, Vantico's share in wet tooling systems is approximately [20-30]% in the EEA and [20-30]% on a worldwide basis. These market shares are not such as to allow a presumption of dominance as they are only just above the threshold for vertically affected markets, and well below the higher shares usually associated with the concept of dominance.
39. In addition, the parties submit that the market for tooling solutions is a competitive market with several important European and international players such as Axson, Sika, Ebalta, Obo, Nercuron and others. Furthermore barriers to entry and expansion for the production of tooling solutions are relatively low as the production of tooling solutions

requires only relatively simple mixing technology and equipment, and know how. Third parties have not submitted evidence to the contrary.

Foreclosures

40. Besides, there will be no upstream foreclosure of Huntsman's competitors from an important source of demand, and no downstream foreclosure of Vantico's competitors from an important source of supply as there are significant other sources of demand (for the purchase of these input products) and of supply (for the sale of these input products).
41. Huntsman's market shares for these input products are: Diamine-based epoxy curing agents: about [30-40]% in the EEA, and approximately [20-30]% worldwide) Ethyleneamines - TEPA: about [30-40]% worldwide (about [20-30]% in the EEA)
42. Some of Vantico's competitors have expressed the concern that Huntsman might attempt, pursuant to the operation, to favour its subsidiary (Vantico) either by implementing a sustained anti-competitive price increase with respect to one or more of these products, or by restricting output available to these competitors. Moreover, the same respondents have indicated that some of the specific products within these markets are allegedly in short supply.
43. However, the evidence submitted by the parties indicate that Huntsman does not have, in any of these upstream markets, the market power required to be able to foreclose Vantico's downstream competitors from purchasing the relevant input products. Furthermore, the supply of none of the relevant products has been confirmed to be limited and particularly concentrated.
44. In particular, with respect to diamine-based epoxy curing agents, the parties have indicated that the other main worldwide diamine-based epoxy curing agents suppliers are large international groups such as BASF, Degussa, Mitsubishi Gas Chemicals, Air Products, Celanese, Akzo, Dow and AtoFina.⁹
45. Moreover these competitors have excess production capacity, no significant cost-disadvantage and the ability to opportunistically increase their output of diamine-based epoxy curing agents in the short term. Competitors such as BASF, Akzo, Dow, UCB and Air Products operate large multipurpose production plants, the capacity of which can easily be "swung" among products.
46. The parties also stress that this market is extremely dynamic and competitive. Diamine-based epoxy curing agents are still a relatively small and growing segment of the broader amines market. The parties estimate that the EEA market size is a relatively modest [...] but that the diamine-based epoxy curing agents market is growing at 7-8% per annum in Europe. It is argued that the small size of this market may have in the past acted as a disincentive to entry, but this growth level, especially in tight economic times, will attract further entry as well as expansion by existing competitors, who can easily and rapidly increase their output and sales of diamine-based epoxy curing agents in Europe.

⁹ Besides, there are other is a smaller supplier like Arch Chemicals which are able to opportunistically supply additional quantities of diamine-based epoxy curing agents in the EEA market.

47. In addition, the parties have indicated that diamine-based epoxy curing agents are subject to competitive pressure from other types of epoxy curing agents/hardeners that can be substituted for diamine-based epoxy curing agents. Although substitutability admittedly appears to be imperfect, the ability of customers to reformulate their downstream products represents an important and constant competitive constraint.
48. Finally, if Huntsman hypothetically were to attempt to restrict the supply of diamine-based epoxy curing agents to Vantico's competitors, these competitors would have the incentive and ability to switch their requirements to BASF, Arch, Degussa and other competitors. Even if all diamine-based epoxy curing agents suppliers were capacity constrained and even if Huntsman were to choose to supply a greater proportion of Vantico's diamine-based epoxy curing agents requirements (Huntsman currently supplies about [...] % of Vantico's diamine-based epoxy curing agents requirements), this would not result in vertical foreclosure of Vantico's competitors. On the contrary, Huntsman would merely displace some of Vantico's existing suppliers of diamine-based epoxy curing agents (such as BASF), who would in turn then have additional diamine-based epoxy curing agents output to sell on the merchant market, while diamine-based epoxy curing agents customers previously supplied by Huntsman would in turn become available as a source of demand for these competing suppliers of diamine-based epoxy curing agents. Thus, the proposed concentration will, at most, lead to a mere re-organization of existing supply links, rather than any reduction in supply of any ether diamines or any other diamine-based epoxy curing agents.
49. In light of the above, it can be concluded that there will be no upstream foreclosure of Huntsman's competitors from an important source of demand for diamine-based epoxy curing agents, and no downstream foreclosure of Vantico's competitors from an important source of supply of diamine-based epoxy curing agents.
50. It has also to be underlined that all relevant input products, produced by Huntsman and which Vantico incorporates into its tooling solutions, represent a very modest percentage of the total cost of production of Vantico's tooling systems, in particular about [...] % for Diamine-Based Epoxy Curing Agent and less than [...] % for Ethyleneamines-TEPA¹⁰.
51. Finally, with respect to upstream foreclosure of Huntsman's competitors from an important source of demand, no such foreclosure will occur as Vantico represents only a relatively modest share of EEA demand for the input products produced by Huntsman which are incorporated into tooling, namely [$<25\%$] for Diamine-based Epoxy Curing Agents and approximately [$<25\%$] for TEPA.
52. In view of all the above, the Commission has concluded that the proposed transaction will not raise any competition concern with respect to the Tooling Solutions-wet tooling market.

10 Moreover these percentages are cumulative for both wet tooling and tooling board.

3) PAA/TETA

53. Vantico produces polyaminoamide (PAA). PAA is used as a hardener for coatings applications, in printing inks, adhesives and in hot melt formulations. Several input products produced by Huntsman are incorporated into PAA, namely: DGA and ethyleneamines (EDA, DETA, TETA, TEPA, piperazine and E-100).
54. Vantico estimates that its share of the EEA market for PAA is about [20-30]%, and its share of the worldwide market is approximately [10-20]%. However, the parties indicated that Vantico may represent more than 25% of Western European demand on the merchant market for TETA (within the group ethyleneamines). Huntsman estimates that about [>50]% of TETA is consumed by the epoxy resins industry. Dow, Resolution and Vantico are the main Western European producers of epoxy resins, along with Leuna and Bakelite. The only product into which Vantico incorporates TETA is PAA. Vantico's purchases of approximately [...] tons of TETA in 2002 represents approximately [>25]% of the Western European merchant sales of TETA.
55. Nevertheless, the parties have submitted that the proposed transaction will not lead Huntsman's competitors to being foreclosed from an important source of demand for ethyleneamines–TETA.
56. Firstly, it was indicated that this figure of [>25]% does not take into account the significant internal consumption of TETA by Dow. Dow is a strong producer of both ethyleneamines (TETA market share (2002) of approximately [30-40]% worldwide, and [30-40]% in the EEA on the merchant market) and of epoxy resins (approximately [30-40]%). The parties therefore believe that Vantico accounts for less than 25% of total EEA consumption of TETA.
57. Secondly, in 2002, Huntsman supplied only approximately [<10]% of Vantico's EEA requirements of TETA. Huntsman's total EEA sales of TETA in 2002 amounted to [...] tons, i.e., [...] Vantico's requirements of [...] tons. It appears very unlikely that Huntsman could be able to meet all of Vantico's TETA requirements.
58. Finally, even if Huntsman were to ultimately internalize a greater proportion of Vantico's TETA requirements, this would likely occur by displacing some existing Huntsman TETA customers, who would in turn become available as a source of demand for competing suppliers of TETA.
59. The market investigation has not brought to the attention of the Commission any element regarding the above relationships which could have impaired the validity of the parties' claims. In light of above, the Commission has concluded that no competition concerns arise from the operation with regard to the PAA/TETA vertical relationship between the parties.

VII. CONCLUSION

60. 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