

EN

***Case No COMP/M.3578 -
BP / NOVA CHEMICALS
/ JV***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 01/07/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01/07/2005
SG-Greffe(2005)D/202877-202878

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

**Subject: Case No COMP/M.3578 – BP / NOVA
Notification of 27/05/2005 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 27/05/2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) N° 139/2004 by which the undertakings BP p.l.c. (“BP”, United Kingdom) and Nova Chemicals Corporation (“Nova”, Canada) acquire joint control of two newly created undertakings “DutchCo” and “SwissCo” constituting a joint venture (“the JV”).
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 the EEA Agreement.

I. THE PARTIES

3. BP is a multinational oil exploration, petroleum and petrochemical group comprising the four core businesses of oil and gas exploration and production; refining, marketing and transportation; manufacturing and marketing petrochemicals and related products; and developing gas-fired power generating facilities.
4. Nova is a chemical commodity company which carries out its principal activities through two divisions. Through its Olefins/Polyolefins business it produces ethylene,

¹ OJ L 24, 29.1.2004 p. 1.

polyethylene and chemical and energy products while through its Styrenics business it is active in the production of styrene and other polymers.

II. THE CONCENTRATION

5. The proposed concentration consists in the creation of a joint venture by BP and Nova for the production and manufacture of polystyrene (“PS”) and expandable polystyrene (“EPS”) in Europe.

Joint control

6. The JV will be organized through two new private limited liability companies, DutchCo (The Netherlands) and SwissCo (Switzerland). The two parent companies will each hold 50% of the shares in DutchCo and SwissCo and will have equal shareholder voting rights over the conduct of the JV’s business. Through a committee of representatives of both parties and the boards of directors of SwissCo and DutchCo, the parties will exercise joint control of the JV.
7. The two parent companies will contribute all their European PS and EPS businesses to the JV, with the exception of BP’s interests in its French PS and EPS business which [...] on the basis of a letter of good faith intention will be transferred to the JV on 1 January 2007 or soon thereafter. The JV will enter into an agreement with the French business by which the JV supplies feedstock to and purchases and distributes all of the production of the French business during the interim period.

Full-functionality of the joint venture

8. The JV will have the production and distribution facilities, management, resources, technology and personnel to operate the business of manufacturing and selling PS and EPS as an autonomous economic entity for the purposes of Article 3(4) of the Merger regulation. The JV will be established for an indefinite duration, subject to termination rights and usual transfer provisions.
9. The JV will procure a minimum volume of styrene feedstock for five years (70% to 80%) from or via its parent companies. However, this fact does not alter the full function nature of the JV since vertical integration is a feature of the industry. The JV’s most substantial European competitors are also vertically integrated upstream into styrene. Furthermore, the length of the supply arrangements reflects the industry practice and the need to provide the JV with security of supply during an initial period. Finally, the processing of styrene by the JV into PS and EPS adds significant value (of around 30% or more) and cannot therefore be seen as merely passing through the imports of its parent companies.
10. The JV therefore is full function and the transaction therefore constitutes a concentration within the meaning of Art. 3(4) of the Merger Regulation.

III. COMMUNITY DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (EUR 229.9 billion for BP in 2004, EUR 5.1 billion for Nova in

2004)². Each of BP and Nova have a Community-wide turnover in excess of EUR [...] (EUR [...] for BP in 2004, EUR [...] for Nova in 2004), 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

Relevant Product Markets

12. The proposed transaction concerns the production of PS and EPS. These two thermoplastic resins are produced by the polymerisation of styrene. The basic inputs for styrene production are ethylene and benzene.

PS

13. PS is a thermoplastic resin produced by the polymerisation of styrene. Often this is carried out through the use of proprietary polymerisation technology such as the McCurdy stirred tubular reactor technology. The resulting hot viscous melt is purified to remove unreacted styrenes, cooled and cut into easily transportable pellets. PS may then be further processed into specific grades. It is distributed by direct sales to customers (in the case of high volume customers) or through distributors (in the case of customers whose demand is for smaller volumes). PS is converted through extrusion, thermoforming or injection moulding and used for a large number of applications including packaging, casings for appliances/electronics, consumer durables, disposable cups and cutlery.
14. On the demand side, the parties submit that products such as polypropylene, PVC, cardboard, paper and glass, depending on the application, may be substituted for PS. On the supply side, they submit that most manufacturers have the facilities and processes to produce both PS and EPS from the same styrene feedstock.
15. However, in this case it is appropriate, as suggested by the parties, to follow the same approach as the Commission did in its *BP/Hüls* decision³, that is, an assessment of demand and supply-side substitutes is not necessary as no competition concerns arise even if PS is taken as the relevant product market.
16. In addition, there have been no technical or market developments since the *BP/Hüls* decision that would warrant a different market definition.
17. For the purpose of this decision, the definition of the relevant product market can be left open as the transaction will not raise any competition concerns on any of the alternative product market definitions discussed above.

EPS

18. EPS is produced by the suspension polymerisation of styrene together with the blowing agent, pentane. On completion of polymerisation, the resulting hot suspension is

² 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).

³ Case COMP/M. 1078, *BP/Hüls* [1998], paras 7-8.

cooled and subjected to a separation process which removes the EPS beads from their suspension medium (water). EPS is used for construction/insulation, packaging and as a lightweight aggregate.

19. On the demand side, the parties submit that, depending on the application, mineral wool and other insulating materials are substitutes for EPS in the construction/insulation sector and cardboard, moulded paper, pulp and wood wool are substitutes for EPS in the packaging sector. On the supply side, they submit that most manufacturers have the facilities and processes to produce both PS and EPS from the same styrene feedstock.
20. However, in this case, it is appropriate, as suggested by the parties, to follow the same approach as the Commission did in its *BP/Hüls* decision⁴, that is, an assessment of demand and supply-side substitutes is not necessary as no competition concerns arise even if EPS is taken as the relevant product market.
21. In the framework of the Commission's market investigation a number of customers mentioned a specific grade of EPS, called "lamda product". Lamda⁵ is a measure of thermal conductivity. Since EPS supplied to the constructing sector as an insulating material, the effectiveness of EPS' insulating properties is indicated by its lamda measurement. The lower the lamda measurement, the better the insulating quality of the product. All EPS construction grades (i.e. the grades used for insulation in the construction industry) have a low lamda measurement, i.e. they achieve the same insulation performance as standard EPS but require considerably less material.
22. For the purpose of this decision it can be left open whether very low lamda EPS constitutes a separate product market as the transaction will not raise any competition concerns on the narrow low lamda product market.
23. In addition, there have been no technical or market developments since the *BP/Hüls* decision that would warrant a different market definition.
24. For the purpose of this decision, the definition of the relevant product market can be left open as the transaction will not raise any competition concerns on any of the alternative product market definitions discussed above.

PS and EPS technology

25. Both PS and EPS process technology can be licensed independently as a package of intellectual property and know-how to third parties to allow the development of production facilities based on that technology. Licensing comprises a bundle of technology and supporting services provided either by the licensor or its contractor to the developer of the new installation. Given the different processes used in the production of PS and EPS, there are separate relevant product markets for the licensing of the two technologies.

⁴ Case COMP/M. 1078, *BP/Hüls* [1998], paras 7-8.

⁵ The lamda of a material is measured in watts per meter per degree Kelvin, W/mK, and represents the quantity of heat that passes through a meter thickness per square meter per time unit with one degree difference in temperature between the faces.

Relevant Geographic Markets

PS

26. The parties submit that the geographic market for PS is at least EEA-wide. According to the parties, transport costs and tariffs are not a barrier to supply. There are substantial trade flows between the European countries and prices in each of the major European countries where PS is sold are very similar and show a very strong price correlation over time. The parties submit that the relevant geographic market may even extend beyond Europe to include Turkey and the Middle East.
27. Responses to the Commission's market investigation from both customers and competitors indicate that the relevant geographic market is at least EEA wide. However, as the transaction will not raise any competition concerns on the EEA or on the global market, the geographic market definition may be left open.

EPS

28. The parties submit that the geographic market for EPS is at least EEA-wide. According to the parties, EPS moves extensively within Europe and there is also import by non-EU producers. Prices in each of the major European countries where EPS is sold are very similar and show a very strong price correlation over time.
29. This has been confirmed by the Commission's market investigation where the vast majority of the customers and all the competitors considered the relevant geographic market to be at least EEA wide. However, as the transaction will not raise any competition concerns on the EEA or on the global market, the geographic market definition may be left open.

Assessment

PS

30. On a global market for PS, the parties' combined market share would be [$<10\%$]. On the basis of an EEA wide market definition for PS, their combined market share for the period 2002 to 2004 would be 25% (BP [10-20%], Nova [10-20%]).
31. The JV will face strong competition from the remaining players in the PS market. Further major competitors on the EEA market include Dow ([15-25%]), BASF ([15-25%]), Total ([15-25%]) and Polimeri ([10-20%]). Furthermore, there is significant excess capacity and pressure on suppliers to achieve high sales volumes, as this allows them to optimise plant utilisation. According to the parties, the current average capacity utilisation rate is 76%. This has been broadly confirmed by major competitors (their estimates vary between 64% and 89% and average around 80%). Many customers are sophisticated purchasers who use competitive tendering and multiple suppliers sourcing to exercise considerable buying power. Furthermore, there is competition from other materials for the majority of PS applications acting as an additional constraint on suppliers.
32. In view of the above, it can be concluded, with regard to PS, that the proposed operation would not significantly impede effective competition, in particular as a result

of creating or strengthening a dominant position in the EEA or any substantial part of it.

EPS

33. On a global market for EPS, the parties' combined market share would be [5-15%]. On the basis of an EEA wide market definition for EPS, their combined market share for the period 2002 to 2004 would be [20-30%] (BP[10-20%], Nova[10-20%]).
34. The JV will face strong competition from the remaining players in the EPS market. Further major competitors on the EEA market include BASF ([15-25%]), Styrochem ([5-15%]), Polimeri ([5-15%]) and Kaucuk ([5-15%]). Furthermore, there is significant excess capacity and pressure on suppliers to achieve high sales volumes, as this allows them to optimise plant utilisation. According to the parties, the current average capacity utilisation rate is 71%. This has been broadly confirmed by major competitors. Many customers are described as sophisticated purchasers who use competitive tendering and multiple suppliers sourcing to exercise considerable buying power. Furthermore, there is competition from other materials for the majority of EPS applications acting as an additional constraint on suppliers.
35. On a narrower market for very low lamda EPS, Nova's EEA market share in 2004 is [5-15%] while BP is not active in this market segment. It was not successful in developing EPS grades with an improved lamda value. On the market for very low lamda EPS, Nova faces competition by the market leader BASF ([70-80%] of the EEA market) and Sunpor ([15-25%] of the EEA market). Since there is no horizontal overlap between the notifying parties and the competitors are particularly strong, no competition concerns arise on a possible separate market for low lamda EPS.
36. In view of the above, it can be concluded, with regard to EPS, that the proposed operation would not significantly impede effective competition, in particular as a result of creating or strengthening a dominant position in the EEA or any substantial part of it.

PS and EPS technology

37. BP has three PS technology licensees: Shanghai SECCO Chemical Company, Formosa Chemicals and Fibre Corporation and Salavatnefteorgsintez, representing approximately [10-20%] of worldwide PS technology demand. It faces competition from at least seven other active licensors (Polimeri, Mitsui, Cheil, GE, Chevron-Phillips and Atofina) in addition to potential competition from other PS producers in respect of their captive technologies. Nova does not license PS technology.
38. BP has one EPS technology licensee, China Petro-Chemical International Company, representing approximately [<5%] of worldwide PS technology demand. It faces competition from at least four other active licensors (Polimeri, Loyal, Shin-A and Sunde/Sunpor) in addition to potential competition from other EPS producers in respect of their captive technologies. Nova does not license PS technology.
39. In view of BP's low market shares on both the PS and the EPS technology market, the strength of competition on these markets and the fact that Nova does not license PS or EPS technology, it can be concluded, with regard to these markets, that the proposed operation would not significantly impede effective competition, in particular as a result

of creating or strengthening a dominant position in the EEA or any substantial part of it.

Vertical issues

40. Styrene is an intermediate chemical product and has no end-use in itself. It is used as a base material for the production of PS and of EPS and as a co-monomer in the production of a number of plastics and synthetic rubbers. There exists no product that can be substituted for styrene in the production of PS and EPS.⁶
41. The parties submit that styrene is a commodity product that can easily be transported over long distances and consider the relevant geographic market to be Europe-wide or global. Furthermore, only BP has production sites for styrene in Europe. For the purpose of this decision, it can be left open whether the relevant geographic market for styrene is global or EEA wide.
42. On the basis of an EEA wide market definition for styrene, the parties' combined market share in 2003 would have been [<10%] (BP [<10%], Nova[<10%]). On a global market, their combined market share would have been[<10%]. Further major competitors on the EEA market include Shell/Elba [25-35%], Repsol ([20-30%]), BASF/Elba ([10-20%]) and Dow ([5-15%]).
43. In view of their relatively low market shares, in the market for styrene, and the competition from other strong market players, the proposed operation would not allow the parties to foreclose their competitors or to co-ordinate their behaviour on the upstream market
44. Therefore the operation will not significantly impede effective competition, in particular as a result of creating or strengthening a dominant position in the EEA or any substantial part of it.

V. CONCLUSION

45. 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 (EC) No 139/2004.

For the Commission, signed,
Neelie KROES
Member of the Commission

⁶ Case COMP/M. 1078, *BP/Hüls* [1998], paras 7-8.