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***Case No IV/M.361 -
NESTE / STATOIL***

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

Article 6(1)(b) NON-OPPOSITION
Date: 17.02.1994

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.02.1994

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

Registered with advice of delivery

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.361 - Neste/Statoil

Notification of 14.01.1994 pursuant to Article 4 of Council Regulation No 4064/89

1. On 14 January 1994 Neste Oy (Neste) and Den norske stat oljeselskap as (Statoil) notified a proposed concentration by which the two companies will merge their petrochemicals business into the new 50/50 owned joint venture Borealis.

After examination of the notification the Commission has concluded that the proposed operation falls within the scope of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I. The parties

2. Neste is an international oil and chemical company owned by the Finnish state. Statoil, an integrated oil company with activities in petrochemicals and plastics, is owned by the Norwegian state.

II. The operation

3. The proposed concentration involves Neste and Statoil's petrochemicals business, focusing in particular on their olefins and polyolefins activities which the parties will transfer to the new joint venture.
4. The parties' shareholdings in olefin- and polyolefin- related joint ventures - Neste's 35% in FinaNeste (Petrofina) and Statoil's 49% in Noretyl (Norsk Hydro) and 50% in North Sea Petrochemicals (Himont) - will be transferred to Borealis. []⁽¹⁾
5. Neste has a 10% shareholding in each of two joint ventures outside Europe: Ibn Zahr, located in Saudi Arabia, and Malaysia Polypropylene (producing polypropylene with a capacity of 80.000 tons). Malaysia Polypropylene will be transferred to the joint venture. Ibn Zahr - operating a MTBE plant (MTBE is an octane booster used in motor gasoline) and a polypropylene plant - will not be transferred to Borealis because - according to the parties - it has proved impossible to put the PP plant into a separate company. Ibn Zahr has a nameplate capacity of 200.000 tons polypropylene and Neste has an off taking agreement for []⁽¹⁾ tons.
6. In addition, Neste Chemicals Trading (NCT), a trading company, will not be contributed to Borealis. NCT is engaged in the purchasing and selling of chemicals (from and to third parties) including polyethylene, polypropylene, PVC and polystyrene all over the world. NCT was purchased in 1986 to operate at arms length from Neste in trading channels of plastic raw materials, especially off-specification materials that do not meet the specifications aimed at. The vast majority of NCT's traded products are off-specification materials, whose sales price, on average, is approximately 20% below the corresponding price for on-specification grades. These off-specification items are not products that the joint venture has an interest in selling on its own. Such off-specification products are typically sold by trading companies such as NCT that are distinct from the producer, which cannot itself sell them without harming its quality reputation. In view of NCT's small turnover and the small proportion of its sales accounted for by on-specification products, its presence on the market is insignificant.

Pursuant to the non-compete agreement (which is limited in duration until, at the latest, the end of 2000) []⁽¹⁾ Although this agreement imposes a restriction on sales, it is a necessary condition to ensure the successful start-up of the joint venture. []⁽²⁾ according to the parties, NCT will not compete with Borealis, whose business objective is to sell on-specification grades.
7. Neste and Statoil contribute all their shareholdings in businesses downstream of polyolefins to Borealis (except for Neste's shareholding in Uponor - a plastic pipe manufacturer), including Neste's Sinex Oy and Statoil Europarts; both being producers of certain automotive components mostly in different non-competing product lines. In 1992 EuroParts turnover amounted to 125 million ecus (20% in EU) and Sinex's turnover amounted to 1,6 million ecus.

(1) Deleted business secret.

(2) Deleted business secret. Read "limits will be imposed on NCT's rights to make sale".

III. Concentration

Joint control

8. Each party holds a 50% share and corresponding voting rights. In addition, the joint venture agreement provides that major decisions must be approved by both parties. These include: business plan and budget; strategy plans; substantial reductions or expansions of Borealis business; other matters of large substance, such as strategy, alliances, major reorganisation.

Joint venture performing on a lasting basis all the functions of an autonomous economic entity

9. The joint venture will have all the assets and resources necessary to enable it to perform all the functions of an autonomous economic entity, including production, marketing, and the necessary patents, know-how and trademarks.

Absence of coordination of competitive behaviour

10. The parties transfer all their olefins and polyolefins activities to the joint venture except - as mentioned above - Neste's 10% share in the Ibn Zahr joint venture (Saudi Arabia) and Neste Chemical Trading (NCT). According to the parties, their shareholdings in olefin and polyolefin related joint ventures will be transferred to Borealis.
11. **Conclusion:** The operation is a concentration within the meaning of Article 3 of the Merger Regulation, because the joint venture between Neste and Statoil will perform on a lasting basis all functions of an autonomous economic entity and there is no scope for coordination of the competitive behaviour of the parents between themselves and with the joint venture.

IV. Community/EEA dimension

12. The concentration has a Community dimension. The combined aggregate worldwide turnover of Neste and Statoil in 1992 exceeded 5.000 million ecus (Neste 9.035 and Statoil 9.469 million ecus respectively). The aggregate Community-wide turnover of each was more than 250 million ecus (1.270 and 3.924 million ecus for Neste and Statoil, respectively). In addition the parties did not achieve more than two-thirds of their Community-wide turnover in one and the same Member State.
13. The concentration is an EEA "cooperation" case. The turnover of the undertakings in the EFTA States to which the agreement applies is at least 25% of their total EEA turnover, and Neste and Statoil have at least 250 million ecus turnover each in EFTA.

V. Compatibility with the common market and the EEA Agreement

A. Relevant product market

In the field of olefins

14. Olefins are base chemicals obtained through the cracking of hydrocarbon feedstocks or the dehydrogenation of propane or butanes. The main olefins are ethylene, propylene and butylenes. The new joint venture will produce both ethylene and propylene.

In Western Europe most ethylene crackers are naphtha crackers, and in this process propylene is produced as a co-product. Propylene is also produced from propane by a dehydrogenation process, which generates very few co-products, and thus its yield is almost entirely propylene.

15. According to the parties, around 75% of the production of ethylene is consumed captive. The parties estimate that the 1992 total ethylene non-captive sales in Western Europe amount to about 4.3 million tons. As to propylene, approximately 60% of the production is consumed captive, and non-captive sales are estimated to amount to about 4 million tons.

In the field of polyolefins

16. The olefins ethylene and propylene serve as feedstock for the polyolefin sector. Polyolefins are thermoplastics derived from olefins through polymerisation. Polyolefins account for more than 47% (11,2 million tons) of Western Europe's total consumption (24,1 million tons) of plastic each year.

The most important polyolefins are polyethylene (57% of ethylene use in Western Europe) and polypropylene (47% of propylene use in Western Europe). Among polyethylenes a further product distinction is made between low density polyethylene (LDPE) and high density polyethylene (HDPE). Although there are some applications for which both LDPE and HDPE can be used, the characteristics of these two types of polyethylene are different, and as a result, their intended end uses are different. Because of these differences it appears that LDPE's and HDPE's should be considered to be separate relevant markets.

17. In the late seventies, a new polymer was introduced, called linear low density polyethylene (LLDPE). The basic properties and end uses of LLDPE are similar to those of LDPE and, due to this demand side substitutability between these products, it appears that LDPE/LLDPE constitute a single market.

Conclusion

18. Based on the above, it appears that the relevant product markets are ethylene, propylene, HDPE, LDPE/LLDPE and polypropylene. However, the definition of product markets can be left open, because even on the narrowest markets, it appears that the joint venture will not lead to dominance.

B. Geographic market

In the field of olefins

19. Largely dictated by the difficulty of transporting olefins (particularly ethylene), which are highly flammable reactive gases forming explosive mixtures with air, a large part of the Western European olefin production is used captive in integrated production complexes.

The principal means of transportation of ethylene is pipelines and special ships for liquefied gases. For propylene, which is slightly less problematic than ethylene, pipelines, special ships, barges, rail and road are all used to varying degrees.

20. There are three separate pipeline systems for ethylene in Western Europe: the large pipeline network of ARG (Aethylen-Rohrleitungs-Gesellschaft) and associated lines covering Benelux countries and the Western parts of Germany, and two smaller pipeline networks in Northern UK and Southern France.
21. There are non-captive markets for ethylene transported by the pipeline systems where some of the undertakings linked to the pipelines are net suppliers and some net customers. In addition there are coastal terminals linked to the pipeline system. According to the parties the scope of the activities of such terminals is limited; the spot market is mainly used for export and import.
22. The only pipeline system for propylene in Western Europe, located in the Benelux area, is local in scope and according to the parties only used for captive use. The propylene non-captive markets differs from that of ethylene due to a larger percentage of inland transport by barges rather than pipelines. Despite the relative ease of transport of propylene, most propylene production is still used captive.

In the field of polyolefins

23. The parties consider the markets for LDPE/LLDPE, HDPE and polypropylene as at least Western Europe. Based on figures provided in the notification and information given by competitors it appears, that the main Western European producers of polyolefins transport and sell their products on a Western European scale. Furthermore many customers purchase polyolefins from several sources located in different Member States and EFTA States.
24. Imports of polyolefins amount to about 10% of total volume for LDPE/LLDPE and HDPE and about 2% of total market volume for polypropylene. Polyolefins imported into the EU (excluding imports from the EFTA States and from developing countries including the Gulf States) are subject to a customs tariff of 12,5%.

Conclusion

25. Although the parties regard the markets for ethylene and propylene as at least Western Europe, the market for free sales of ethylene appears to be narrower than that, because the vast majority of ethylene customers are located in geographic areas served by existing pipelines. As to propylene the geographic market may be considered to be Western Europe because customers may be served more readily by transport modes other than pipelines. Nonetheless, it is not necessary to define the relevant geographic markets for

these products since, even on the narrowest markets, the joint venture will not create or strengthen a dominant position in the markets discussed.

For polyolefins the geographic market can be considered to be Western Europe.

C. Assessment of the operation

26. To the extent that the market data discussed below are based on year-end capacity shares of the firms, it should be noted that capacity utilisation in the industry is generally even and, consequently, the capacity shares fairly reflect the market shares based on total sales of the firms.

In the field of olefins

27. As to ethylene the joint venture will have a Western European capacity of 1,5 million tons representing approximately 8% of total Western Europe capacity (about 18 million tons). In the EU, the joint venture's share of capacity is approximately 4% (Statoil has no EU capacity). On the basis of capacity the joint venture will have a Western European share of approximately 8%, ranking number six for ethylene. Enichem, BP and Shell have shares of approximately 12 to 9% of capacity, respectively.

According to industry estimates the Western Europe free market (non-captive) sales for ethylene amount to 4,3 million tons, of which the joint venture's sales will account for []⁽¹⁾.

28. While Neste is connected to one of the European ethylene pipeline systems, with facilities located on the pipeline network of ARG, Statoil has no facilities served by this or other pipeline systems. The ARG pipeline, with a transport capacity of 2 million tons of ethylene annually (approximately 11% of Western European capacity), is the largest source for free sales of ethylene in Europe.
29. In the ARG pipeline, the net suppliers are Veba, RWE-DEA, DSM Dow, Shell, Petrofina, Neste and Erdölchemie; and the net customers are Hoechst, Solvay, LVM and Ethyl. Of the total capacity connected to this pipeline, Neste accounts for approximately []⁽²⁾.

Neste's non-captive sales connected to this pipeline account for []⁽³⁾ tons, representing []⁽⁴⁾ of the non-captive ARG sales ([]⁽⁵⁾ million tons of ethylene). In view of Neste's small share of sales of products through this pipeline and the fact that Statoil is not present on the ARG pipeline, it appears that the competitive impact of this joint venture in ethylene will be minimal.

30. As to propylene the parties have a Western European capacity of about 960.000 tons representing about 8% of total Western Europe capacity of approximately 12 million tons.

⁽³⁾ more than 10 %
⁽⁴⁾ less than 7 %
⁽⁵⁾ between 75 000 and 125 000
⁽⁶⁾ less than 10 %
⁽⁷⁾ between 1.1 and 1.7

Shell and Enichem each have shares of about 9.5% while Elf Atochem and BP have shares of approximately 8% of capacity - the same as Borealis.

31. According to industry estimates, the Western Europe free market (non-captive) sales for propylene amount to 4 million tons, of which the joint venture's sales will account for []⁽⁸⁾.
32. Propylene may be distributed by barges and rail in addition to pipeline systems. Consequently, it appears that it is possible for propylene customers to be served by suppliers located throughout Western Europe (rather than relying solely on suppliers who are located on pipeline systems).

In the field of polyolefins

33. As to polyolefins (LLPE/LLDPE, HDPE and polypropylene) the parties' combined market shares within Western Europe will be below 15% in each of these markets, with the total sales in these markets valued at []⁽⁹⁾ billion ecus.

Although the markets for polyolefins are considered to be Western European, it is noted that the transaction in certain countries will result in relatively high market shares.

34. In the various polyolefin products within the individual EU Member States the joint venture will have the following market shares: in Denmark []⁽¹⁰⁾ and in Portugal []⁽¹¹⁾ (total market value 173 mio ecus and 133 mio ecus respectively). In the various polyolefin products within the other Member States market shares are []⁽¹²⁾.

In addition, the combination of two major Nordic producers will lead to substantial market shares []⁽¹³⁾ in the EFTA States (Norway, Finland and Sweden). Because the market is Western European in scope, local high market shares do not necessarily translate into market power.

35. Despite high market shares in certain States, there are many producers of polyolefins in Western Europe including large and financially strong companies. Customers reported in questionnaires that they saw a number of alternative suppliers to whom they could turn if necessary, and they did not raise concerns regarding the likely competitive impact of this transaction.
36. According to industry estimates, the most important competitor on the market for LDPE/LLDPE is Enichem with a market share (based on capacity) of []⁽¹⁴⁾, followed by the new joint venture and three other companies, each with more than 10% in terms of Western European capacity.

⁽⁸⁾ less than 8 %

⁽⁹⁾ between 7-8

⁽¹⁰⁾ more than 30 %

⁽¹¹⁾ more than 45 %

⁽¹²⁾ less than 15 %

⁽¹³⁾ more than 40 %

⁽¹⁴⁾ less than 20 %

37. On the Western European market for HDPE, Hoechst is the leader with approximately 15-20% of total European capacity. Next comes Borealis and three other companies, each with approximately 10-15%.
38. As to the polypropylene market Himont will - according to industry estimates - be the leader with approximately 15-20% of Western European capacity in 1993, followed by Borealis, Shell and Hoechst, each with shares below 15%.

VI. Conclusion

39. In view of the fact that the parties' market shares on any of the affected markets will not exceed 15%, and taking into account the fact that the parties will face competition from several large producers of olefins and polyolefins, the transaction does not raise doubts as to its compatibility with the common market and the EEA Agreement.

VII. Ancillary restrictions

40. The parties have entered a non-compete agreement that, until termination of the Shareholders Agreement establishing the joint venture or December 2000 (whichever occurs first), they will not compete with the joint venture to produce or market the affected products. These provisions appear to be reasonable and consistent with the provisions of the joint venture agreement, and as such are ancillary to the concentration.

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For the above reasons, the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market and the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No. 4064/89 and Article 57 of the EEA Agreement.

For the Commission,