EN

Case No IV/M.390 - AKZO / NOBEL INDUSTRIER

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REGULATION (EEC) No 4064/89 MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.01.1994

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

PUBLIC VERSION

To the notifying party

Dear Sirs,

Subject: Case No. IV/M.390 - AKZO / Nobel Industrier
Notification of 29 November 1993 pursuant to Article 4 of Council Regulation No. 4064/89

1. The above-mentioned notification concerns the proposed public bid by Akzo NV ("Akzo"), the Netherlands, for the common share capital of Nobel Industrier AB ("Nobel"), Sweden.

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2. 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.

I. THE PARTIES AND THE OPERATION

3. Akzo is a worldwide industrial group which operates through four principal groups of businesses - chemicals, coatings, pharmaceuticals and fibres.

4. Nobel is also an international industrial group. Its operations are divided into eight principal business areas - pulp and paper chemicals, pharma chemistry, paints and adhesives, industrial coatings, industrial products and surface chemistry.

5. Akzo will make a public offer for the entire issued common share capital of Nobel. Under the offer holders of Nobel common shares will be offered two new Akzo common shares for every 57 Nobel common shares or a full cash alternative. The Board of Nobel is recommending its shareholders to accept the offer. Securum AB ("Securum"), a Swedish state owned company and the majority shareholder in Nobel, has agreed to accept the offer in respect of its entire holding of Nobel common shares. Depending on the level of cash taken up under the terms of the offer it is expected that, following completion, Securum will own in the region of 20% in the company, which will in future be named Akzo Nobel.

   Prior to completion Securum will acquire Nobel's 88% shareholding in Spectra-Physics, Biotechnology and its 10.9% shareholding in Celsius Industrier AB. Accordingly these assets will not be acquired by Akzo.

6. In a transaction concluded earlier in 1993 Nobel agreed to swap its peroxydicarbonate business for Akzo's paper chemicals business. The swap was notified to the competition authorities in Germany and Sweden. The BKA approved the transaction (with regard to paper chemicals) on 20 August 1993 and the Swedish authorities approved the transaction (with regard to the peroxydicarbonate business) on 26 October 1993. The swap has not yet been formally been completed but the businesses are currently being managed by the party which is to acquire it.

II. CONCENTRATION

7. Under the terms of the offer Akzo will acquire control of all parts of Nobel excepting those parts acquired by Securum described in para 4 above. This constitutes a concentration within the meaning of Article 3(1)(b).

III. COMMUNITY DIMENSION

8. The concentration has a Community dimension. The combined aggregate worldwide turnover of Akzo and Nobel (excluding the value of the businesses which will not form part of the concentration) in 1992 exceeded 5,000 million ECU (7,419 and 2,118 million ECU respectively). The aggregate Community-wide turnover of each was more than 250

million ECU [ ][1]. In addition the parties did not achieve more than two thirds of their Community-wide turnover in one and the same Member State.

In accordance with Article 5(2) subparagraph 2, the swap arrangement relating to peroxy-dicarbonates and paper chemicals also falls to be treated as part of the current concentration for the purposes of the Merger Regulation.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. Industrial chemicals

i) Salt for chemical uses

9. Akzo is a fully integrated manufacturer in the production of salt for chemical uses, i.e. chlorine and its derivatives, the subsequent transformation of chlorine into monochloro acetic acid (MCA) and the further processing of MCA into crop protection chemicals (CPC) and Carboxi Methyl Cellulose (CMC). The acquisition of Nobel reinforces Akzo's current position in two steps of the chain: production of chlorine and production of MCA. Nobel has no production of salt, and it purchases [a large proportion] of its salt requirements from Akzo. Therefore, the notified concentration does not have any significant impact with regard to the production of salt. Nobel does not have any business either in the processing of MCA. Therefore, the analysis will be limited to the chlorine and MCA markets, taking into account any vertical effects.

10. Other salt based products, such as caustic soda, soda ash, hydrogen and sodium chlorate, are not affected by the concentration in view of the absence of overlap between Akzo and Nobel or the low combined market share (below 10%)

ii) Chlorine and derivatives.

11. Both Akzo and Nobel produce chlorine and its derivatives by electrolysis of bulk salt. The market in Europe for chlorine is estimated by the parties at 8.6 million tonnes. The capacity of production of the parties would represent less than 10% of the market, and there are over 100 electrolysis plants in Europe. Other producers are large chemical groups such as BASF, Bayer, Solvay and smaller companies such as Huls, Chemie AG, Borregaard, etc..Trade in chlorine and derivatives is rather limited and generally these products are further processed on the manufacturing sites. In any case, they are not marketed a significant distance from the manufacturing plant because of transport restrictions (safety and costs). Consequently, Akzo's sales of these products are restricted to the Netherlands and to Germany, whereas Nobel sales are restricted to Sweden, Norway, and Denmark. Therefore, the notified operation is not susceptible to raising competition concerns in this area irrespective of the geographic market definition adopted.

[1] All figures placed between [ ] have been deleted for business secret reasons

iii) Mono chloro acetic acid.

Product market.

12. MCA is a chemical intermediate used for the synthesis of other chemical products. It is produced from chlorine and acetic acid. For most of the end products, MCA cannot be replaced by other chemicals although in certain applications, the same end products can be made by different chemical routes (for instance glycine). However MCA may be considered as a separate product market in its main applications, i.e. certain crop protection products and Carboxi Methyl Cellulose, where it has no substitutes.

Geographic market

13. The parties consider the geographic market to be global. Exports are said to be significant to the US, Asia and Australia, due to the massive overcapacity in EC. However, imports into the Community come basically from Nobel's plants in Sweden; Nobel accounts for [the vast majority] of all imports into the EC. Capacity in the US is small by comparison to Europe (35.000, by Dow, Aqualon and Niaced), as well as in Japan (39.000 tonnes, of which 23.000 are produced by Denak, a joint venture between Akzo and Denka). In the absence of imports, in view of the limited capacity in the US and Japan, and the relatively high concentrated supply in Western Europe, an analysis of the Western European market is warranted.

Assessment.

14. Production capacities of MCA in Western Europe amount to 233.000 tonnes and are broken down as follows:

Hoechst	95.000	Nobel	35.000
Atochem	40.000	Akzo	48.000
Metsa Serla	15.000		

15. Consumption in the EC is estimated by the parties at 90.000 tonnes (valued at 89 million ECU). Part of MCA production is captive and accurate market shares are difficult to calculate. The parties' own estimates are that Akzo/Nobel will have a share of [between 25-40] behind Hoechst [between 35-50] and ahead of Atochem with [below 25%]. In their calculations, the parties seem to have underestimated slightly the production and sales of their competitors. In any case, and taking into account that Metsa Serla does not sell MCA to third parties, the three main producers in the EC account for roughly 90% of the market. Nobel is regarded as the low price supplier of MCA, and it has more than doubled its sales in volume in the EC and its market share between 1990 [less than 10%] and 1992 [less than 10%]. Nobel is moreover the only supplier of MCA with no downstream business.

16. With the removal of Nobel, the three remaining suppliers of MCA could profit of their strong position and adopt an strategy of increasing prices for MCA in order to gain market share in the downstream markets at the expense of the non-vertically integrated firms. These firms are currently dependent on Akzo/Nobel, Hoechst and Atochem for

their supplies of MCA and at the same time compete with them in the downstream markets (CMC and CPC). Some of these non-vertically integrated firms have expressed a certain concern about the merger.

17. Akzo/Nobel on its own cannot possibly have a single dominant position on the market of MCA, since Hoechst has both a larger capacity and a larger market share, and Atochem could as well expand its production if prices, for instance, were to raise. The question therefore is whether the three producers would enjoy a position of oligopolistic dominance.

18. Several factors indicate that the structure of the market of MCA does not facilitate the development of an anticompetitive parallel behaviour by the three remaining producers, even if the removal of Nobel as an independent supplier is significant in qualitative terms.

    The three remaining producers have significant spare capacity and any of them could expand its production in the short term. Capacities and market shares are unevenly distributed among the three suppliers, so the views of each firm in respect of the level of output and their respective price preferences might be quite different. In addition, their degree of downstream integration is different and affects different markets (Hoechst is present in the CMC market, but not in the herbicides market; whereas Akzo is present in both CMC and CPC. Atochem's stated policy is to sell as much MCA as possible, since this represents an outlet for chlorine, which is inevitably produced from the electrolysis of salt to manufacture caustic soda).

    Typical customers for MCA are other chemical companies with expertise and resources. Contracts with customers are negotiated individually and the market lacks the necessary transparency for suppliers to be able to monitor each other.

    Finally, there is a significant capacity installed in the CIS, Hungary and Poland (over 66.000 tonnes). This alternative has been used only to a limited extent in the past.

    For these reasons, it is considered that the notified operation does not create or reinforce a dominant position in the market of MCA, nor is it likely to create in itself a foreclosure effect in the downstream markets.

iv) Ethylene diamine and its homologues (EDAS).

19. EDAS are functional chemicals mainly used as raw materials in chemical compounds for subsequent use in the areas of lubricant additives, fungicides and oil drilling chemicals. Nobel produces EDAs and Akzo produces them in a joint venture with Tosoh.

20. Sales of EDAs in the EC are estimated at 164 million ECU in 1992. Akzo's EC sales were in that year [ ] million ECU and Nobel's [ ] million ECU, with a combined market share of [between 25-40%]. Other competitors with sales in the EC are BASF [less than 25%], Dow [less than 25%], Union Carbide [less than 25%] and Bayer [less than 25%]. Total European capacity is of about 117.000 tonnes for a production of 85.000 tonnes.

Akzo and Nobel would have a combined capacity of 51.000 (43%). The parties argue that the geographic market is global, and led by Union Carbide and Dow Chemical, with [between 25-40%] market share each at world level. Prices in this market are quoted in dollars and individual clients currently purchase up to 40% of their needs from the US.

On this basis the proposed operation will not lead to the creation or reinforcement of a dominant position on this market.

v) Detergent Surfactants.

21. The parties have overlapping activities in the area of cationic surfactants and its precursor, fatty amines. Traditionally, the main application of cationic surfactants has been their usage as fabric softeners in detergents (so called "traditional quats"). Other applications include road chemicals (asphalt emulsifiers), ore flotation, foam stabilisers, etc...Traditional quats are considered to cause environmental concerns because of their toxicity and their lack of biodegradability. Major detergent companies have undertaken to replace them with new less toxic, biodegradable quats. Therefore, the market for traditional quats has progressively been contracting, from a value of 78 million ECU in 1990 in Europe to 56 million ECU in 1991 and 38 million ECU in 1992. The market is expected to disappear by 1994, and this tendency has been confirmed by individual large customers.

22. Akzo/Nobel remains the market leader in traditional quats in Europe, with a current share of [over 50%]. Hoechts [below 25%], KAO [below 25%] and Atochem [below 25%] are the main competitors, and smaller companies account for the remaining 8%.

23. As regards new quats, Hoechst has taken the lead in the conversion, with a current share of [over 50%]. Akzo has small sales of new quats [less than 10%] behind KAO with [less than 10%]. Atochem does not currently sell new quats. On the other hand, companies that did not previously produce the traditional quats have invested and entered the growing market for the new "quats". Confirmed examples are Stepan from the US with a plant in France, and Witco, with a plant in Germany. Furthermore, traditional quat plants can only be used for the last step in the production of new quats (i.e. quaternization with methyl chloride).

Even if the market is considerably concentrated, the structural change that production of quats for fabric softeners is undergoing, the overcapacity that will be created in this market, and the opportunities for entry associated with the development of a new market would hinder, prima facie, the creation or reinforcement of a single or joint dominant position as a result of the proposed operation.

vi) Silicates.

24. The parties are both active in this market which is a downstream market from soda ash (Akzo through a joint venture with the US firm PQ Corporation). Their combined market share in the two main products, waterglass and silicasol would be below 25% in both cases. Moreover, Nobel's activities are marginal in this area (market share below 1%).

vii) Peroxydicarbonates

Product market

25. Peroxydicarbonates are organic peroxides which are used in the polymer industry. Their main applications are as initiators for the polymerisation of vinyl monomers (eg in the production of PVC, LdPE and polysterene), curing agents for unsaturated polyester resins and cross-linking agents for ethylene/propylene and synthetic silicone rubber.

Akzo manufactures a broad range of organic peroxides. Nobel by contrast manufactures only one class - Dicetyl-peroxydicarbonate - a solid peroxydarbonate, which belongs to the broader family of peroxydicarbonates and is used as an initiator in the production of PVC. Dicetyl peroxydicarbonate can be replaced in the PVC process by other solid peroxydicarbonates, certain liquid peroxydicarbonates and peresters. From a demand perspective therefore these products constitute the relevant product market.

Geographic market

26. The parties consider the relevant geographic market to be at least Europe wide. Competitors and customers have confirmed this fact. The high activity of organic peroxides necessitates strict safety measures for their tansportation and storage but does not hinder cross border activity. Imports from outside Europe however are minimal except when currency movements make such sales attractive.

Assessment

27. The parties estimate their share of the European market for Dicetyl-peroxydicarbonate and other substitutable products to be [between 40-60%], based on a total market value of 47 million ECU (which represents less than 20% of organic peroxides in total). This market share probably overestimates their position to some extent. Competitors on this market include Laporte, which like Akzo produces a broad range of organic peroxides, Atochem, and also to a certain extent Enichem. In addition, a more recent entrant is Pergan GmbH, a subsidiary of Witco of the US, the other major manufacturer of organic peroxides in the world[2]. Pergan began its own production of certain organic peroxides in 1992 and is generally acknowledged as a serious competitor.

To the extent that competitors operate multi-purpose plants for their production of organic peroxides there is potential from those that do not currently produce products within the relevant market described above to switch production relatively easily to at least some of them. Customers are the main PVC producers, some of whom also purchase a broader range of organic peroxides for other activities.

For these reasons, and given the fact that Nobel is not considered a major player in organic peroxides in general, the proposed transaction is not likely to lead to a significant change on the market such as to create or reinforce a dominant position on the market.

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[2] *Corrigendum*. Subsequent to the adoption of this decision, the Commission was informed that Pergan is not, in fact, part of Witco, but is an independent company.

viii) Pulp and paper chemicals

28. Nobel produces a number pulp chemicals. However since Akzo is not present on this market the proposed operation will not affect the structure of the market for pulp chemicals.

29. Paper chemicals comprise a variety of different product categories which are used in many application areas in paper production. The only overlap products which both Akzo and Nobel produce within the sector are "wet end chemicals" comprising sizing agents, retention chemicals and wet strength resins. (The fourth wet end chemical, flocculants, is produced by Akzo alone.)

30. The parties state that the principal markets for paper chemicals are North America and Europe. The major producers operate in both markets but have separate manufacturing plants in each.

31. Combined market shares of significance are achieved by the parties in Europe only in sizing agents (valued at around 160 million ECU), where the parties' estimated share is [between 25-40%]. The market leader however remains Hercules [between 25-40%] and BASF [less than 25%] also operates on this market. In addition competitors and customers have confirmed that several other suppliers exist and that a number of new competitors have entered the market within the last five years. Moreover the need for high service levels also allows many small local resellers to operate on this market.

In the light of these factors the proposed concentration will not lead to the creation or strengthening of a dominant position in the common market in relation to sizing agents.

B. Fibres.

32. Since Nobel has no fibre business, the proposed concentration does not have any horizontal or vertical effect. The only exception is that Nobel produces ethylene glycol, a raw material used in the production of polyester, but it has no sales in the EC.

C. Pharmaceuticals.

33. Akzo has sales worth 1.430 million ECU in pharmaceuticals. Nobel's sales amount to 72 mecus. Akzo's main products are in the area of oral contraceptives, gynaecological drugs and CNS and cardiovascular products. It sells a limited amount of active ingredients to third parties.

34. Nobel does not market drugs as such; its pharmaceutical sales are limited to active ingredients. The only horizontal overlap between Akzo and Nobel is hydrocortisone sodium phosphate, Akzo's sales being practically confined to Japan.

Akzo's representatives have confirmed that, to their knowledge, Nobel does not sell active ingredients to any competitor of Akzo.

D. Coatings

35. The total coatings market in the EC was valued at around 11 billion ECU in 1992. The industry draws a distinction between three different kinds of coatings: decorative coatings, car refinishes and industrial coatings. Decorative coatings are normally used on-site during the construction or refurbishment of architectural structures, i.e. to decorate internal or external walls, doors etc. They are supplied through wholesale and retail channels to professional decorators and DIY (do-it-yourself) users. Car refinishes are used by car repair shops, i.e. to repaint car wings, bodies etc. They are supplied through specialist wholesale channels. Industrial coatings are used for applications to the surface of manufactured products. They are supplied direct by the coatings manufacturers to their industrial customers. Manufacturers have to develop coatings to precise formulations or specifications required by their customers.

i) car refinishes

36. Only Akzo is involved in car refinishes. This market is not affected by the proposed operation.

ii) industrial coatings

37. Both parties are involved in industrial coatings. The total European market is valued at around 4.6 billion ECU of which the parties estimate they will have an [less than 20%] market share. Other major competitors on the market are Hoechst, BASF, PPG and Courtaulds, each with between [less than 10%] of the market.

If this market is divided according to application the only area where both parties are active and where the proposed operation will lead to market shares in excess of 10% is in coatings for plastics, valued at around 175 million ECU. In this segment, however, since Nobel's market position is less than 5% [ ] the aggregation of market shares is very small and in any event the parties will still have less than 20% of the market [ ]. Other competitors on the market include Hoechst [less than 20%], PPG [less than 10%] and BASF [less than 10%].

On this basis it is considered that the proposed operation will not lead to the creation or reinforcement of a dominant position on the common market.

iii) decorative coatings

Product market

38. From the demand side there can be drawn a distinction between different groups of decorative coatings, for example enamel paints, primers, wall paints (internal and external), wood preservation etc.

39. According to the parties the market for decorative coatings can be divided into two separate markets: The trade market (wholesalers, who primarily sell to professional decorators and traditional retailers) and the retail market (retailers, who primarily sell to end-customers - DIY). The two markets can be different in relation to products, sale and

service, and the importance of each of the markets can vary from Member State to Member State.

40. From the production side decorative coatings can be seen as one product market. In principle the same equipment can be used to make all the different types of paint, and technically it is easy to swich the production from one product to another. Manufacturers generally aim to supply a full range of paint products, and the wholesalers and the retailers expect that the manufacturers supply them with a full range of paint products.

The precise product market definition can be left open because it does not materially affect the assessment of dominance in the present case.

Geographic market

41. Traditionally, coatings have been supplied by relatively small manufacturers selling basically within their own Member State. On the demand side, distributors remain basically national and the role of brands could further suggest that competition in decorative coatings has a relatively important natinal dimension. However, this national dimension does not seem sufficient to conclude that each Member State constitutes a separate, isolated geographic market. Competitive interactions between neighbouring Member States cannot be excluded for different reasons: there are no major barriers to crossborder trade in coatings, and shipments across national boundaries are not unusual. There are several large producers of coatings with a presence in various Member States, such as the parties themselves, ICI, Sigma (group Petrofina), Total, Desowag (group Solvay), S. Dyrup, etc... Some of these companies belong to large groups with the required ressources to expand their activities into a given Member State if economic conditions would justify it. Moreover, certain large multiple stores are able to purchase outside their own country.

42. The issue of the relevant geographic market however can be left open because in any event, as discussed below, the proposed operation would not lead to the creation or strengthening of a dominant position on the narrower market.

Assessment

43. Within the EC as a whole the transaction will lead to combined market shares for the parties of around [less than 20%]. The major competitiors are Sigma (Petrofina), ICI and Total [less than 10%] of EC sales respecively). On this basis the concentration will not give rise to competition concerns.

44. In the individual Member States the parties' combined market shares (in value) in Belgium/Luxemburg, Ireland and UK will be [between 35-50%], [between 25-40%] and [between 25-40%] respectively. In Netherlands, Greece and Denmark they have combined market shares of [between 25-40%], [between 25-40%] and [between 25-40%] respectively. Their combined shares in each of the remaining Member States is [less than 20%].

45. On this basis the concentration will only lead to a strong position in Belgium/Luxemburg and in UK/Ireland (in the following UK and Ireland will be considered together since all the main UK competitiors are present in Ireland selling the same brands as in UK).

46. In the UK Akzo Nobel will be the leading supplier with [between 25-40%] of the market for decorative coatings. The main competitors will be ICI [between 25-40%], Kalon [less than 20%] and Manders [less than 10%]. Sales in the UK are divided 50/50 between trade and retail, and some 70% of the retail sector are supplied through the large DIY multiples i.e. B&Q, Texas, Do it All etc and through high street multiples. In the retail sector private labels have been an important factor, and today 42% of the total retail sale are private labels. ICI's premium brand Dulux has a market share of [between 25-40%] in the retail sector while Nobels premium brand Crown has a market share of [less than 20%].

47. In the UK trade sector there is a trend for manufacturers create their own distribution outlets. One-third of ICI's trade with professionals are through own outlets, but also Nobel, Akzo Kalon and Manders have merchant chains of their own. The independent wholesalers trade normally several different brands.

48. In Belgium/Luxemburg Akzo Nobel will be the leading supplier with [between 35-50%] of sales of decorative coatings. The main competitors will be Sigma [less than 20%], GB [less than 10%] and Matthys [less than 10%]. In Belgium also the major multiples are becoming a significant force. Sales through these outlets are estimated to account for around 40% of all retail sales of which 30% are private labels.

49. Sigma (a subsidiary of Petrofina) is a relatively new competitor in Belgium for decorative coatings. Sigma has no plants in Belgium and supplies it from its plants in the Netherlands. In a number of years Sigma has managed to establish its own distribution network in Belgium. Neither Akzo nor Nobel have own distribution outlets in Belgium. Herbol (BASF) of Germany has recently started sales of decorative coatings in Belgium, where it now has about a [less than 10%] share in the professional segment, and in the DIY sector ICI sells its Dulux brand through GB, a major retailer. GB manufactures itself coatings for sale under its own private label.

50. In view of the above, the proposed concentration does not lead to the creation or reinforcement of a dominant position for decorative coatings, taking into account that even if markets were to be of a national dimension, they would still be subject to competitive constraints arising in neighbouring Member States.

V. CONCLUSION

51. For the above reasons the Commission has decided not to oppose the notified operation and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of Council Regulation 4064/89.

For the Commission