

***Case No COMP/M.4041 -
BASELL / SOCIÉTÉ DU
CRAQUEUR DE
L'AUBETTE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 22/12/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.2005
SG-Greffe(2005) D/207691

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4041 – Basell/ Société du Craqueur de l’Aubette
Notification of 18/11/2005 pursuant to Article 4 of Council Regulation
No 139/2004¹ (“Merger Regulation”)**

1. On 18/11/2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Basell Holdings B.V. (“Basell”, the Netherlands), belonging to the group Access Industries (“Access”, United States) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Société du Craqueur de l’Aubette S.N.C (“SCA”, France) and a butadiene plant (“Butadiene Plant”, France) and related assets from the group Shell (“Shell”), by way of purchase of shares and assets.
2. After examination of the notification, the Commission has concluded that the notified operation constitutes a concentration that 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 AND THE OPERATION

3. Basell is active in the manufacture and sale polyolefins (polyethylene and polypropylene), polyolefin compounds and other specialty polyolefin products, as well as the development and licensing of technology and the manufacturing and sale of

¹ OJ L 24, 29.1.2004 p. 1.

catalysts used in the production of polyolefins. Basell is also active in the manufacture and sale of butadiene and raffinate-1.

4. Since 1 August 2005², Basell is wholly owned by Access, a group of holding companies ultimately controlled by Mr. Leonard Blavatnik, a US citizen. Access controls a number of companies principally active in the oil, coal, aluminium, power and telecommunication sectors. Access holds minority stakes in TNK-BP and Slavneft, two vertically integrated Russian oil companies.
5. SCA is currently jointly owned as to 50% by Basell and 50% by Shell Pétrochimie Méditerranée (“SPM”). SPM is a company ultimately controlled by Royal Dutch Shell plc (“Royal Dutch Shell”), the holding company of the group Shell. SCA owns a steam cracker in Aubette, France, and principally produces ethylene and propylene, which it solely sells to Basell. In 2004, the turnover of SCA was approximately EUR 380 million, all of which was achieved in France.
6. The Butadiene Plant to be acquired by Basell is a butadiene production facility and is owned by SPM. The plant obtains its feedstock from SCA. In 2004, the turnover of the Butadiene Plant was approximately EUR [...] million, all which was achieved in France.

II. CONCENTRATION

7. Under the proposed transaction, Basell will acquire SPM’s shares in SCA and the ownership of the Butadiene Plant, as well as customer agreements directly related to the Butadiene Plant’s production. Basell will thus acquire sole control over SCA, the Butadiene Plant and the related customer agreements. The proposed transaction constitutes therefore one single concentration within the meaning of the Merger Regulation as the acquirer and the seller of the 50% stake in SCA, the Butadiene Plant and the related customer agreements are the same and these transactions are linked by conditionality.

III. COMMUNITY DIMENSION

8. The combined aggregate worldwide turnover of the undertakings concerned exceeds EUR 5 billion (Access: EUR 9,922 million, acquired businesses: EUR 430 million, in 2004). The aggregate Community-wide turnover of the undertakings concerned exceeds EUR 250 million (Access: EUR 5,049 million, acquired businesses: EUR 430 million, in 2004). The undertakings concerned do not achieve more than two-thirds of their aggregate Community-wide turnover in one and the same Member State. The concentration therefore has a Community dimension according to Article 1(2) of the Merger Regulation.

² See Case COMP/M.3839 Access Industries / Basell

IV. RELEVANT MARKETS

9. The transaction concerns mainly the polyolefins and the butadiene sectors. Polyolefins comprise a group of plastics that are produced by the chemical conversion (polymerisation) of base chemicals (monomers) known as olefins. Polyolefins are used in a number of consumer and industrial goods while butadiene is used in the production of rubber and plastic type polymers.

A. Relevant product markets

10. The notifying party has identified various chemicals as the product markets relevant for the assessment of the proposed transaction (ethylene, propylene, crude C4, pygas, acetylene and butadiene).

Ethylene, Propylene and other by-products

11. Basell and SCA are active in the production of ethylene and propylene, the monomers from which respectively polyethylene and polypropylene are produced. In line with the Commission's previous decisions³, the notifying party considers that the supply of ethylene and propylene constitute distinct relevant product markets in view of the absence of substitutability with other monomers for the production of polyethylene and polypropylene respectively.
12. As a by-product of the production of ethylene and propylene, Basell and SCA produce Crude C4, which is used to produce butadiene, pyrolysis gasoline ("pygas"), and acetylene. The notifying party considers that the supply of Crude C4 and acetylene constitute distinct relevant product markets in view of the absence of substitutability with other chemical products.
13. With respect to pygas, the notifying party has indicated that two types of products may be distinguished: (i) untreated pygas (pygas as produced in the cracker by distillation), which is a very reactive material that tends to rapidly form "gum" (precipitation), and (ii) pygas which is treated in order to stop the further gum formation. For the treatment step a specialized plant (the pygas-treater) and large amounts of hydrogen are required. As it is difficult and unattractive for companies to purchase untreated pygas, Basell estimates that there is hardly any market for untreated pygas. Despite this possible segmentation of pygas, the parties submit that only one relevant product market (pygas as a whole) should be considered.
14. While respondents to the Commission's market investigation have broadly supported the delineation of the relevant product markets proposed by the notifying party as regards the above-mentioned chemicals, it is not necessary to further define the precise relevant product markets for the purposes of the present decision as, under the narrowest possible definition (each of ethylene, propylene, Crude C4, acetylene, untreated pygas and treated pygas considered as separate relevant product markets), the proposed transaction does not raise competition concerns.

³ See Case COMP/M.2389 Shell / DEA

Butadiene

15. Basell and the Butadiene Plant produce butadiene, a chemical mainly used in the production of “rubber type” polymers (used in tyres, hoses, conveyor belts, footwear, flooring, additives, gloves, etc.) and “plastic type” polymers (used in consumer and industry electronics, automotive parts, etc.). In line with the Commission’s previous decisions⁴, the notifying party considers that the supply of butadiene constitutes a relevant product market due to its physical characteristics and the absence of substitutes for its specific uses.
16. The Commission’s market investigation has confirmed that there exists only one grade of butadiene and has supported the arguments of the parties as regards the product market definition. However, the question of whether butadiene constitutes one single product market can however be left open for the purposes of the present decision as, under the narrowest product market definition (butadiene as a single relevant product market), the proposed transaction does not raise competition concerns.

Raffinate-1

17. Basell and the Butadiene Plant also produce raffinate-1 as a by-product of the production of butadiene. The notifying party considers that the supply of raffinate-1 also constitutes a relevant product market. The question of whether raffinate-1 constitutes one single product market can however be left open for the purposes of the present decision as, under the narrowest product market definition (raffinate-1 considered as a single relevant product market), the proposed transaction does not raise competition concerns.

B. Relevant geographic markets

Ethylene, Propylene and other by-products

18. In line with the Commission’s previous decisions, the notifying party considers that all the relevant product markets for the supply of propylene, Crude C4 and pygas are at least Western European⁵ in scope, as they deal with the supply of commodity chemical products traded on a Western European basis.
19. The precise geographic scope of the above mentioned relevant product markets can be left open for the purposes of the present decision as the proposed transaction does not raise competition concerns in the EEA either at Western European level or at national level.
20. As regards ethylene, the notifying party considers that the relevant geographic market is determined by the relevant pipeline network, which is in line with previous decisions⁶. Therefore, for the purposes of this decision, the relevant geographic market for ethylene is the relevant pipeline network.

⁴ See Case COMP/M.2345 Deutsche BP / Erdölchemie

⁵ Western Europe includes EEA member states prior to the accession of new EU Member States in 2004.

⁶ Case No COMP/M.2389 – Shell / DEA.

Butadiene

21. With respect to the market for the supply of butadiene, the notifying party takes the view that the market is Western European in scope and that the Czech Republic and Poland also belong to the relevant geographic market. The notifying party considers that butadiene is traded on a large scale in Western Europe, the Czech Republic and Poland (“Western Europe+”) and its trade is affected neither by non-tariff barriers nor by high transportation costs. Furthermore, the notifying party estimates that prices and competitive conditions do not differ significantly across Western Europe +.
22. The Commission’s market investigation has confirmed that butadiene is a chemical traded at least at the Western European+ level and that the market for the supply of butadiene is at least Western European+ in scope. In previous decisions⁷ the Commission took the view that the market was at least Western European. The precise geographic scope of the market for the supply of butadiene can however be left open for the purposes of the present decision as the proposed transaction does not raise competition concerns under any relevant alternative definitions.

Raffinate-1

23. Similarly, the notifying party considers that the supply of raffinate-1 is at least Western European in scope and has provided figures also for Western Europe+. The precise geographic scope of the market for the supply of raffinate-1 can however be left open for the purposes of the present decision as the proposed transaction does not raise competition concerns under any alternative definition.

V. COMPETITIVE ASSESSMENT

24. Except Basell, TNK-BP and Slavneft, no other company controlled by Access is active in the same markets, nor in vertically related or neighbouring markets to those in which SCA and the Butadiene Plant are active. SCA and the Butadiene Plant only have sales in France and therefore the only overlaps created by the proposed transaction relate to sales in Western Europe.
25. The proposed transaction gives rise to several horizontal and vertical overlaps, which are presented below. However, due to the parties’ limited market shares in most relevant markets and the presence of alternative suppliers, the transaction is not likely to significantly impede effective competition in the common market or a substantial part of it.

A. Horizontal overlaps

Ethylene, Propylene and other by-products

26. Basell and SCA both produce ethylene, propylene⁸, crude C4 and pygas. Most of these products are used (or will be used after the transaction) captively and therefore do not

⁷ Case COMP/M.2345 Deutsche BP / Erdölchemie

⁸ TNK BP and Slavneft also produce minimal quantities of propylene.

give rise to horizontal overlaps. Only pygas, which is currently sold by SCA to Shell will be sold to third parties post-transaction.

27. As regards ethylene and propylene, the transaction will not have any impact on the market as SCA already sells its entire ethylene and propylene production to Basell. In addition, Basell's and SCA's combined share of Western European ethylene production capacity is less than [5-10]% and Basell has minimal sales of ethylene on the merchant market. As regards propylene, Basell's and SCA's combined share of Western European production capacity is about [2-5]% and Basell has minimal sales of propylene on the merchant market.
28. With respect to Crude C4, neither Basell nor SCA are active on the merchant market as both consume internally all their Crude C4 production. Moreover, the parties will have a limited combined share of about [5-10]% of the Western European Crude C4 production capacity.
29. With respect to pygas as a whole, Basell and SCA currently sell all their pygas production to Shell and therefore these sales will become merchant sales after the transaction. However, their combined share in terms of production capacity will account for about [5-10]% at Western European level. At national level, there are no overlaps since SCA sells all its pygas in The Netherlands while Basell does it in Germany. If narrower product markets are considered, there is no overlap since Basell only produces untreated pygas in Germany, which is distributed by pipeline to a Shell's plant located nearby, while SCA produces treated pygas.
30. There is not horizontal overlap with respect to acetylene as Basell does not produce any acetylene.

Butadiene

31. Basell produces butadiene in Wesseling, Germany ([...] KT production capacity) and sells [20-30]% of its production to third parties located in Germany ([names of the customers]) and [60-70]% in France ([names of the customers]). The Butadiene Plant is located in Berre, France ([...] KT production capacity) and has only two local customers in France, [...], to which it sells 100% of its production.
32. According to the notifying party, the transaction will not have a significant impact on competition in the market for the supply of butadiene as (i) there are several large companies producing butadiene in Western Europe+ (see paragraph 34 below), (ii) installed capacity exceeds demand (production facilities utilization rate is around 85%) and (iii) the demand-side is concentrated with very few large customers in Western Europe+.
33. The Western Europe+ butadiene merchant market size is estimated by the notifying party at around [1,000-2,000] KT in 2004 and it is stable, while the butadiene production capacity is estimated at around [2,000-3,000] KT. Following the transaction Basell and the Butadiene Plant will have a combined market share in Western Europe+ of approximately [15-20]% in 2004 (merchant sales).
34. According to the notifying party, the major butadiene suppliers in Western Europe + in 2004 were Innovene ([15-20]% market share), Oxeno ([10-15]%), Basell ([10-15]%) and Repsol ([5-10]%), the combined market share of Basell and the Butadiene facility would be [15-20]%. The major butadiene producers, in terms of capacity, in Western

Europe + in 2004 were Polimeri ([15-20]% of installed capacity), Innovene ([10-15]%), DOW ([10-15]%) and Oxeno ([5-10]%). The parties would have a combined capacity share of [5-10]% (Basell [5-10]% and the Butadiene facility [2-5]%). Differences between the ranking of suppliers and producers are related to the degree of vertical integration of butadiene producers (i.e. captive use).

35. The market investigation has confirmed that the transaction is not likely to raise competition concerns in the market for the supply of butadiene in either Western Europe+ or the EEA. The absence of significant impact from the transaction on competition in the supply of butadiene has largely been confirmed by respondents to the Commission's market investigation.
36. Under narrower alternative geographic market definitions, the combined market share of Basell and the Butadiene Plant reaches [15-20]% in Western Europe (without Czech Republic and Poland) and, at national level, [20-30]% in France (the only country where there is an overlap). Therefore, also under these narrower alternative geographic market definitions, the transaction is not likely to raise competition concerns.

Raffinate-1

37. The transaction also gives rise to a horizontal overlap for the supply of raffinate-1, a by-product of the butadiene production. According to the notifying party, the raffinate-1 merchant market is about identical to raffinate-1 production levels in Western Europe. Given that the proportion between the production of butadiene and raffinate-1 is fairly constant (1.2 Tonnes of raffinate-1 are produced per tonne of butadiene) the new entity's market share for the supply of raffinate-1 is thus equal to its share of the raffinate-1 production and thus similar to its share of butadiene production (around [10-15]% in Western Europe +). Hence, the market for the supply of raffinate-1 is not an affected market under the meaning of the Merger Regulation. The market investigation has confirmed that the proposed transaction is not likely to meaningfully affect competition on the market for the supply of raffinate-1.
38. If national geographic markets are considered, the transaction does not give rise to any overlap as the Butadiene Plant sells its entire raffinate-1 production in France while Basell sells its production only in Germany, Belgium and the Netherlands.

B. Vertical relationships

39. The transaction gives rise to various vertical relationships. None of this vertical relationship however relates to product markets where the parties have a market share in excess of the 25% threshold.
40. TNK-BP and Slavneft produce a number of feedstock that are used for the production of ethylene and propylene (in particular naphtha), where Basell and SCA are active. The quantities produced by TNK-BP and Slavneft are however negligible [...] on a EU level.
41. SCA produces ethylene and propylene that are used in the production of polyethylene and polypropylene, where Basell is active. SCA's share in Western European capacity is however negligible (below [0-2]%) and the entire production is already sold to Basell. Therefore the transaction does not introduce any significant change with respect to this current vertical relationship.

C. Result

42. In light of the above, it can be concluded that the concentration will not significantly impede effective competition in the common market or in a significant part of it, in particular as a result of the creation or strengthening of a dominant position.

VI. CONCLUSION

43. 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