

***Case No COMP/M.4102 -
BASF / ENGELHARD***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 23/02/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES



Brussels, 23.02.2006

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 COMP/M.4102 – BASF / Engelhard
Notification of 19/01/2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 19 January 2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (“European Merger Regulation”) by which the undertaking BASF Aktiengesellschaft (“BASF”, Germany), parent of the BASF Group, acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Engelhard Corporation (“Engelhard”, USA) by way of public bid announced on 9 January 2006.
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I. THE PARTIES

3. BASF is a German company active in most areas of the chemical industry including specialty chemicals as catalysts. Furthermore, BASF is active in agricultural products, nutrition, plastics, performance products, biotechnology, oil and gas.
4. Engelhard is a US company worldwide active in specialty chemicals including catalysts. Engelhard is listed on the New York Stock Exchange.

II. THE OPERATION AND CONCENTRATION

¹ OJ L 24, 29.1.2004 p. 1.

5. On 9 January 2006 BASF made an unsolicited tender offer for all of Engelhard's shares of common stock. Pursuant to the transaction BASF will own 100% of Engelhard's outstanding shares. Therefore, the envisaged transaction concerns the acquisition of sole control according to Article 3 (1) of the European Merger Regulation by BASF of Engelhard by way of public bid.

III. COMMUNITY DIMENSION

6. The parties have a combined world-wide turnover of more than € 5 000 million (BASF: 37,537 million Euro; Engelhard: 3,349 million Euro). The aggregate Community-wide turnover of each of at least two of the undertakings exceeds € 250 million. Neither BASF nor Engelhard have achieved more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. Therefore, the concentration has a Community dimension.

IV. COMPETITIVE ASSESSMENT

7. The transaction will result in the following affected markets: the worldwide market for catalysts for hydrogenation and the submarket for olefin purification/saturation, the EEA-wide market for complex inorganic coloured pigments (CICPs) and the worldwide market for pearlescent pigments.

A. Catalysts

1. Product market

8. A catalyst is a substance that promotes a chemical reaction, but does not itself enter into the reaction. There is a multitude of different chemical compositions of catalysts. Therefore the notifying party groups catalysts according to applications such as catalysts for refining, petrochemicals, polymerization, environmental technologies and others.² These groups could be further subdivided. The notifying party argues that from the demand side there is little substitutability as most consumers want a particular catalyst which cannot be substituted by any other catalyst. The party submits that there may be a separate market for catalysts used for olefin purification/saturation. Olefin purification/saturation is a subgroup of hydrogenation, which again is a subgroup of petrochemicals.
9. In previous cases the Commission has also considered markets for catalysts with regard to a certain application of the catalyst. For example in Huntsman/Matlinpatterson/Vaticano³ the Commission stated that the market investigation confirmed that liquid epoxy system catalysts and amine-based urethane catalysts constitute separate product markets although it was not necessary to ultimately define the product market.
10. In the present case the exact product market definition may also be left open as no competition concerns arise under any product market definition considered.

² The party follows the organization set out in: The Catalyst Group Resources: Intelligence Report Business Shifts in the Global Catalytic Process Industries 2003-2009, 10th Biannual Edition.

³ See COMP/M.3125 Huntsman/Matlinpatterson/Vaticano, paras 10-15.

2. Geographic market

11. The notifying party submits that the geographic market definition for the relevant catalysts markets is global in scope. The major competitors are active at a global level and the same catalysts can be and are used worldwide. The industry is characterised by significant cross-border trade. BASF estimates that [40-60]% of the catalysts sold in the EU are imported. Furthermore, catalysts are usually transported by ship and transport costs represent less than 2% of the catalyst price (for olefin purification/saturation less than [5]%).
12. In previous cases the market investigation largely confirmed that markets for catalysts were global, although it was not necessary to define the geographic market⁴. In the present case the exact geographic market definition can also be left open as competition concerns would also not arise on the basis of an EEA-wide market.

3. Competitive Analysis

13. On the worldwide market for catalysts for olefin purification/saturation in 2004 the parties would have a combined market share of [10-20]% (BASF: [1-10]%; Engelhard: [1-10]%⁵). In this market the parties face competition from the market leader Südchemie (30-40%). In addition other competitors are active as e.g. J-M Synetix and Univation and Axens, with significant market shares. On the basis of an EEA-wide market the combined market share of the parties would only be [10-20]% (BASF: [1-10]%; Engelhard [1-10]%⁶).
14. If a broader product market for catalysts for hydrogenation (including the segments edible oils, inedible oils, olefin purification, purified terephthalic acid, cyclohexane and others) was defined the increment in market shares on such a worldwide market would be small with [<5]% by BASF (combined [30-40]%) and in the EEA the increment would be minimal with less than [5]% (combined [10-20]%). It has to be emphasized that as regards the market for catalysts for hydrogenation BASF is only active in the segment of olefin purification/saturation and not in any other segments. However, competitors such as JM and to a certain degree, Südchemie, are active in all hydrogenation catalysts segments. Additionally there are other strong competitors in the market for catalysts for edible and inedible oils and fats, such as Nikki Chemical and Unilever.
15. If an even broader market for catalysts for petrochemicals (including aromatics, organic synthesis, oxidation, gas, hydrogenation and dehydrogenation) was defined the combined market share would not exceed [10-20]% worldwide and in the EEA respectively.

⁴ See e.g. COMP/M.3213 Unicom/OMG Precious Metals, paras 40-42; COMP/M.3125 Huntsman/Matlinpatterson/Vaticano, paras 10-15.

⁵ This market share of Engelhard includes the market share of Almatix AC (i.e. [1-10]%) which was acquired by Engelhard in September 2005.

⁶ This market share of Engelhard includes the market share of Almatix AC (i.e. [1-10]%) which was acquired by Engelhard in September 2005.

16. Moreover it has to be taken into account that customers are in general large industrial groups like Total, BP, and EXXON Mobil who adopt normally a multi-supply strategy. Furthermore orders for this type of catalysts are normally awarded through bidding processes.
17. Therefore, with regard to the market for catalysts for hydrogenation and its submarket for catalysts for olefin purification/saturation, the transaction does not raise serious doubts as to its compatibility with the common market.

B. Pigments

1. Product market

18. A pigment is a dry colorant⁷ used in the colouring of paint, ink, plastic, fabric and other materials. The party submits that there are separate markets for organic pigments, inorganic pigments, pigments dispersions (mixture of organic and inorganic pigments and a solvent) and effect pigments.
19. In a previous decision the Commission has identified a separate market for organic pigments. The Commission emphasized that one could not further subdivide the market since there are no “key pigments” and basic pigments are generally interchangeable with respect to their further applications⁸. BASF submits that the same holds true for inorganic colour pigments and for effect pigments respectively. However, since the transaction does not raise competition concerns even under a narrower product market definition, here in particular the market for CICPs as a submarket for inorganic colour pigments, the exact product market definition may be left open.

2. Geographic market

20. The notifying party submits that the market for inorganic colour pigments including its submarkets and the market for effect pigments are at least EEA-wide or even worldwide in scope since all main suppliers are active on a worldwide level and transportation costs between regions are never exceeding [1-10]% of the value of the finished products. Moreover there are no trade barriers due to the existence of different standards.
21. However, the exact scope of the geographic market definition may be left open, as no competition concerns would arise both on an EEA-wide or worldwide market.

⁷ Black and white pigments are not included.

⁸ Case No IV/M.911 Clariant/Hoechst, paras 17-19.

3. Competitive Analysis

CICPs

22. On the basis of a worldwide market for CICPs the combined market share would be only approximately [1-10]% (BASF: [1-10]%; Engelhard: around [1-10]%).
23. On the basis of an EEA-wide market for CICPs the combined market share of the parties would be only approximately [10-20]% in 2004 and the overlap would be less than [5]% (BASF [10-20]%; Engelhard: less than [5]%). The parties face competition from one stronger competitor in this market (Ferro Corporation: 25%) and two other competitors with substantial market shares (Rockwood Holdings Inc.: 15%; Heubach GmbH: 10%).
24. Therefore, with regard to the market for CICPs, the transaction does not raise serious doubts as to its compatibility with the common market.

Pearlescent pigments

25. On a horizontally affected market for pearlescent pigments the combined market share of the parties would be worldwide [20-30]% in 2004 with a minimal increment in market shares by BASF with below 1%. In the EEA the combined market share would only be [1-10]% with an overlap by BASF with less than 1%. The main competitor of the parties is Merck KGaA with a market share of [70-80]% in the EEA and [60-70]% worldwide.
26. [BASF argued that it would cease production at its own plant]. Therefore the product activities of BASF and Engelhard would no longer overlap.
27. The market for pearlescent pigments is also a vertically affected market with regard to the downstream market of masterbatches where BASF is active. A masterbatch is a product in which pigments (organic, inorganic or effect pigments including pearlescent pigments) and/or additives are optimally dispersed in a carrier material that is compatible with the main plastic in which it will be let down and is supplied in either granule or pill form.
28. According to a previous Commission decision⁹ masterbatches constitute a separate product market and no further segmentation of the market was considered appropriate. The geographic scope was considered to be at least EEA-wide (with the exception of small volumes below 50 kg).
29. According to BASF fewer than approximately [1-10]% of the pigments that are used as input for the production of masterbatches are pearlescent pigments. In addition there are strong competitors in the market for pearlescent pigments including the market leader Merck. Therefore, it can be excluded that the transaction will lead to any input foreclosure effects. Given that BASF's market share in the EEA market for masterbatches is [1-10]% (worldwide [1-10]%) the transaction will also not lead to any customer foreclosure.

⁹ Case IV/M.911 Clariant/Hoechst paras 20-23.

30. Furthermore, the market for pearlescent pigments is vertically affected as regards the downstream markets of coatings where BASF is active. Coatings are manufactured for automotive and other industrial applications. They are produced by using the same four principal ingredients, i.e. pigments, resins, solvents and additives.
31. Each coating product used by OEMs to coat vehicle bodies, i.e. electrocoat, primer-surfacer, basecoat and clearcoat constitute a separate product market and coatings supplied to the after-market also constitute different relevant product markets¹⁰. In the EEA the market shares of BASF (Engelhard is not active in coatings) are the following: electrocoat ([20-30]%), primer-surfacer ([20-30]%), basecoat ([30-40]%), clearcoat ([30-40]%), OEM coatings for plastic components ([10-20]%), coatings for after-market (AM) applications ([20-30]%) and for industrial coatings (less than 5%).
32. Foreclosure effects are unlikely to occur in any of these vertically related markets since BASF's competitors in the coatings markets would be able to purchase pearlescent pigments for all possible applications from alternative sources including the market leader Merck.
33. Furthermore, BASF's activities in coatings are unlikely to affect the parties' competitors on the upstream market for pearlescent pigments. BASF sources [a significant part of] its total needs in pearlescent pigments for coatings from Engelhard, the rest being sourced from the market leader Merck. Moreover, on the downstream market for coatings, BASF's competitors such as PGG and DuPont would have the possibility to be supplied by producers other than Engelhard, notably Merck, Altana or Ciba Specialty Chemicals.
34. Therefore, with regard to the market for pearlescent pigments and its vertically affected markets the transaction does not raise serious doubts as to its compatibility with the common market.

V. CONCLUSION

35. 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

¹⁰ See Case IV/M.1363 DuPont/Hoechst/Herberts, paras 7-18.