

***Case No COMP/M.4177 -
BASF / DEGUSSA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/05/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24-V-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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 No COMP/M.4177– BASF/ Degussa Construction Chemicals
Notification of 18 April 2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 18/04/2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² by which the undertaking BASF Aktiengesellschaft (“BASF”, Germany) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Degussa AG’s Construction Chemicals business (“DCC” or “DCC business”, Germany) by way of purchase of shares.

I. THE PARTIES

2. **BASF** is the parent company of BASF group. BASF has five separate business lines: chemicals, plastics, performance products, agricultural products & nutrition and oil & gas. BASF has production sites in 41 countries and more than 81,000 employees.
3. **DCC** is one of four reporting segments of Degussa AG. The DCC business comprises Degussa AG’s world-wide activities in the production and distribution of chemical systems and formulations for customers in the construction industry through its various subsidiaries in Europe and worldwide.

¹ OJ L 24, 29.1.2004 p. 1.

² OJ L 24, 29.1.2004 p. 1.

II. THE OPERATION

4. The operation concerns the acquisition by BASF of 100% of the shares of all companies constituting the DCC business within the meaning of Art 3(1)(b) of the Merger Regulation.

III. CONCENTRATION

5. The acquisition of sole control over DCC's Business constitutes the concentration assessed in this case.

IV. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³. Each of them have a Community-wide turnover in excess of EUR 250 million, 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.

V. RELEVANT PRODUCT MARKETS

(i) PRODUCT MARKETS

7. The transaction affects the production and sales of performance polymers including the downstream activity of using these inputs for the production of super-plasticizers, a type of concrete admixture. Furthermore, the operation involves the manufacture of sports floorings and the supply of polyols and isocyanates, relevant input products for sports floorings.
8. For the purposes of the analysis therefore the following relevant product markets have been identified:
 - a. Performance polymers for super-plasticizers,
 - b. Chemical-based concrete admixtures,
 - c. Isocyanates and polyols for PU-based sports floorings,
 - d. Sports floorings.

a) Performance polymers for super-plasticizers

9. The performance of super-plasticizers, a type of concrete admixture, depends on the performance polymer used as input in the formulation. Performance polymers for super-plasticizers, namely polycarboxylate ether polymers ("PCE"), naphthalene sulfonates ("NSF") and melamine sulfonates ("MSF"), produce a water reducing effect increasing the density and stability of the concrete in general. Due to their identical functions and a high degree of demand-side substitutability among these, in the parties' view, PCE, NSF

³ 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). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

and MSF fall within the same relevant product market. Lignosulfonates (“LSF”), another water-reducing polymer with a lower water-reducing quality, is not considered to be a substitute and it is used in plasticizers, a different type of concrete admixture.

10. Furthermore, the parties submit that although PCE, NSF and MSF are available in both liquid (ca 95%) and powder form (ca 5%) the production technology and know-how is not fundamentally different for these products.
11. In previous decisions⁴ the Commission has taken the view that the product market definitions for the same polymers can be left open.
12. The respondents to the market investigation only partly shared the parties’ proposed product market definition. While NSF and MSF were generally considered substitutable, PCE was considered as distinct from both NSF and MSF due to its higher price and performance. However, some respondents but also technical experts were of the opinion that this price/performance difference does not necessarily imply that PCE cannot be substituted by NSF, MSF or vice versa. As the higher price of PCE corresponds with a stronger performance, a substantially smaller amount of PCE is needed to achieve comparable product performance.
13. For the purpose of the present case, it can be left open as to whether each PCE, NSF and MSF constitutes a separate relevant product market. Even if these markets were distinct effective competition would not be significantly impeded on any alternative market definition considered.

b) Chemical-based concrete admixtures

14. Concrete admixtures are ingredients that are added in order to improve the properties of concrete or mortar. Concrete admixtures can either be based on chemicals or minerals, examples of concrete admixtures being super-plasticizers, plasticizers, air entrainers, retarders and accelerators. The chemical inputs in these admixtures added to concrete determine the properties, such as reducing the water content or extending the workability of the concrete. Some of the most important chemical inputs are the so called performance polymers, i.e. PCE, NSF, for super-plasticizers and LSF for plasticizers.
15. According to the parties chemical-based and mineral-based admixtures belong to distinct relevant product markets due to different product characteristics, the important price differences and the lower performance of the latter.
16. Even though there are different types and applications⁵ of concrete admixtures, like air entrainers or super-plasticizers, further product market segmentation is considered to be inappropriate by the parties. In their submission it is argued that customers in any event demand the whole range of concrete admixture product portfolio since these various modifying functions of the admixtures are used subsequently in the construction operations. Moreover, the parties argue that about 80% of all concrete admixtures used

4 Case COMP M.2854 RAG/Degussa, 18 November 2002, para 21

5 Like mortar and grout applications admixtures are in the parties’ view included in the general product market for concrete admixtures.

in the EEA are plasticizers and super-plasticizers driving the overall demand for all types of admixtures.

17. The respondents to the market investigation support these arguments. As to whether chemical-based and mineral-based admixtures belong to distinct relevant product markets the parties' view was confirmed. Mineral and chemical admixtures differ significantly in price, performance and characteristics. The technology that is involved using the admixtures is different as is the quality.
18. As to the habit that customers usually buy the full product range of chemical concrete admixtures, almost all respondents to the Commission's market investigation confirmed the parties' view. It was stated that if not all, regularly many types of admixtures are needed for one given concrete application since all serve different purposes. Respondents state that they prefer to purchase from one single supplier because the admixtures need to be compatible with each other to achieve the desired performance in the final product and that liability in case of damage is more clear. Although customers are not obliged to buy from a single supplier, they commonly do so. While it is theoretically possible to mix products from different suppliers in one concrete mix, however, most customers rarely follow such possibility. Hence, a further distinction different from the one proposed by the parties does not seem appropriate.

c) Isocyanates and polyols for PU-based sports floorings

19. Vertical overlaps arise with regard to input products manufactured by BASF and used by DCC such as isocyanates (MDI and TDI), polyols (PESOL and PEOL) in the production of PU-based sports floorings, as well as inputs used in industrial flooring coatings & facades and building systems business segments.
20. According to the notifying parties, the supply volumes of MDI, TDI, PEOL and PESOL are negligible given the very small quantities of these products purchased by DCC compared to BASF's total sales for each of these products.
21. For the purpose of the present case, it can be left open as to whether each MDI, TDI, PEOL and PESOL constitutes a separate relevant product market. Even if these markets were distinct effective competition would not be significantly impeded on any alternative market definition considered.

d) Sports floorings

22. Sports floorings are made of a variety of materials. Indoor sports floorings are usually made of wood, PVC, polyurethane ("PU"), linoleum or rubber, while outdoor sports floorings are only produced of PU and natural or synthetic rubber. Due to the different input materials and know-how, supplied mostly by different producers, the parties submit that there are separate relevant product markets for indoor and outdoor sports floorings.
23. According to the parties, it would be inappropriate to further distinguish within the indoor and outdoor sports floorings according to the various materials they are made of, since the customers themselves switch and select these products from their suppliers based on a combination of features not exclusively restrained to the material of the flooring. For example, the parties argue that PU and rubber made floorings compete

with each other in tenders for outdoor floorings and the same occurs for indoor sports floorings, where wood, PVC, PU, linoleum and rubber made materials are invited for the same tender.

24. However, it is not necessary to further delineate the relevant product market as any alternative market definition would not give rise to competition concerns.

(II) GEOGRAPHIC MARKETS

a) Performance polymers for super-plasticizers

25. The parties submit that the geographic scope of the market for performance polymers for super-plasticizers is EEA-wide due to the high level of cross-border trade⁶ and low transportation costs. With regard to PCE in liquid form and PCE, MSF and NSF in powder form, the parties submit that trade occurs globally so that the geographic market for these products may be even wider than EEA.
26. In its previous decision⁷ the Commission left open the geographic market definition arguing that plants in reasonable proximity to Degussa create enough competition pressure.
27. The market investigation found that NSF and MSF can be economically shipped within a radius of 500 km to 1000 km from a plant. Respondents estimated the geographic market to be wider than national or EEA-wide. Moreover, sales from DCC and BASF production sites in Germany are made to any EEA country⁸. No such restrictions seem to exist for PCE. Two major performance polymer producers, Mapei and Dalton, export [25-50]% of their PCE production outside the EEA, the necessity of a local PCE plant was widely denied and the potential of PCE producers outside the EEA importing into the common market was confirmed.
28. It is not necessary to determine the exact scope of the geographic market in the present case because the proposed operation gives no rise to competition concerns.

b) Chemical-based concrete admixtures

29. The parties suggest that the market for concrete admixtures is EEA-wide in scope, in fact is composed of large overlapping circles (with radii of 500 km to 1000 km) around production sites⁹ across all of the EEA. They furthermore indicate that there is significant cross-border trade.
30. Some competitors responded to the market investigation that they would draw a radius of around 500 to 1000 km from a production plant within the EEA. Although some

6 Approximately [70-90]% of BASF's production is sold outside Germany.

7 Case COMP M.2854 RAG/Degussa, 18 November 2002, para 35 & 38

8 DCC ships for instance NSF from its production site in Trostberg (Germany) and Treviso (Italy) to Spain, Finland, Sweden and Greece; BASF from Ludwigshafen (Germany) to Portugal, Spain and Finland respectively.

9 There are more than 100 production sites for concrete admixture within the EEA.

claimed that concrete admixtures may have to meet national requirements, they conceded that the European Standard EN 934-2 for polymer-based concrete product applies. Neither the parties nor third parties were able to provide market share information on the basis of sales made in the overlapping circles. They estimated that these figures would be similar to the shares provided for the EEA-wide level.

31. For the purpose of the present case, it is not necessary to decide as to whether the geographic market for chemical-based concrete admixtures is comprised of neighbouring overlapping circles with radii of 500 km to 1000 km or is EEA-wide since in both alternative definitions the proposed operation gives no rise to competition concerns.

c) Isocyanates and polyols for PU-based sports floorings

32. The parties submit that the relevant geographic market for these input products is at least EEA-wide in scope. In its previous decision, the Commission has taken the same view with respect to isocyanates¹⁰.
33. It is, however, not necessary to further delineate the relevant geographic markets as in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of it.

d) Sports floorings

34. The parties distinguish between indoor and outdoor sports floorings. In their view the relevant geographic market for outdoor sports floorings is world-wide in scope where the suppliers compete at a global level and the standards are set by the International Association of Athletics Federations world-wide.
35. The geographic scope of the market for indoor sports floorings is somewhat narrower, according to the parties, but is at least EEA-wide in scope. In indoor sports floorings the public procurement rules support the staying up of an EEA-wide competition.
36. It is, however, not necessary to further delineate the relevant geographic markets as in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of it.

VI. COMPETITIVE ASSESSMENT

a) Performance polymers for super-plasticizers

37. Both BASF and DCC manufacture performance polymers for super-plasticizers. Overlaps occur for PCE and NSF, since BASF has no activities in MSF. Based on an EEA-wide market for PCE, NSF and MSF, their combined market share would amount to approximately [20-30]%¹¹ (BASF: [10-20]%; DCC [10-20]%). Competitors are

¹⁰ COMP/M.2355 – DOW/Enichem Polyurethanes

¹¹ All market shares are provided on the basis of turnover.

Bozzetto ([10-20]% market share), Huntsman ([<10]%), Kao ([<10]%), Perstorp ([<10]%) and Mapei ([<10]%).

38. If considered separate, the market share of the combined entity for NSF would amount to approximately [10-20]% in the EEA. For PCE alone it would amount to approximately [30-40]% (BASF: approximately [10-20]%; DCC: approximately [10-20]%).
39. In PCE, the combined entity faces strong competitors like Kao Chemicals with a market share of approximately [20-30]% and Mapei with approximately [10-20]%. Further, there are smaller players such as Bozzetto with a market share of approximately [<10]%, Lyondell with approximately [<10]% and others that represent a market share of approximately [10-20]%.
40. In the above market share of the combined entity included are substantial sales of BASF's PCE production to [...]. This supply agreement between BASF and [...] will end on [...] In consequence the sales to [...] which amount to [a significant part] of BASF's sales in the EEA, representing a market share of approximately [<10]%, will have to be subtracted from BASF's market share previously included for the combined entity. On that basis, the parties' combined market share would amount to approximately [30-40]%.
41. Despite the strength of closest competitors, the market for performance polymers is characterized by over-capacities with an average of approximately [20-40]% in the EEA¹². Moreover, a number of PCE producing companies from outside the EEA have recently expanded their commercial activities into the EEA, either by setting up production plants or sales offices.¹³
42. In view of the above, the Commission concludes that the proposed transaction will not lead to a significant impediment on competition.

b) Chemical-based concrete admixtures

43. While both BASF and DCC are present upstream in the manufacture of performance polymers, only DCC is active on the market for concrete admixtures. DCC's market share on an EEA-wide level amounts to approximately [30-40]%. DCC faces competition from internationally active companies like Sika (with a market share of approximately [10-20]%), W.R. Grace (approximately [<10]%) and Mapei (approximately [<10]%). The remainder of the market is very fragmented, e.g. medium-sized players like MC Bauchemie or Chryso. Moreover, the parties state that DCC is already vertically integrated in Degussa and has not sourced its requirements of PCE, NSF and MSF from the merchant market.

¹² Over-capacities range between 10% and more than 60%. Figures were generally confirmed by third parties.

¹³ Kao Chemicals opened a plant in Germany. LG Chemicals started importing into the EEA. Imports of PCE amount to approximately up to [<10]% in liquid form and up [10-20]% in powder form.

44. The market investigation concluded that concrete admixture producers face significant buyer power. The main concrete admixture customers are large multinational cement and construction companies, for example Cemex, Lafarge, Holcim, CRH, Promsa and Calcestruzzi/Italcementi. Furthermore, foreclosure effects seem unlikely since Degussa's production of performance polymers is not only captive. It also supplies its main competitors on the chemical-based concrete admixture market with substantial amounts of performance polymers.
45. In view of the aforementioned and the existence of effective competitors the proposed transaction gives no rise to concerns as to whether it will be compatible with the common market.

c) Isocyanates and polyols for PU-based sports floorings

46. BASF is a producer of isocyanates and polyols. For MDI, the market share of BASF amounts to approximately [10-20]% in the EEA (world-wide: approximately [10-20]%), for TDI approximately [10-20]% (world-wide: approximately [10-20]%), for PEOL approximately [10-20]% (world-wide: approximately [10-20]%) and for PESOL approximately [10-20]% (world-wide: approximately [<10]%). Main competitors producing MDI are DOW ([20-30]% market share on an EEA-wide level; [10-20]% on a world-wide basis), Bayer ([20-30]% EEA-wide; [20-30]% world-wide) and Huntsman ([20-30]% EEA-wide; [20-30]% world-wide). With respect to TDI, main competitors are DOW ([10-20]% EEA-wide; [10-20]% world-wide), Bayer ([20-30]% EEA-wide; [20-30]% world-wide) and Lyondell ([10-20]% EEA-wide; [10-20]% world-wide). As to PEOL, main competitors are DOW ([20-30]% EEA-wide; [20-30]% world-wide), Bayer ([20-30]% EEA-wide; [10-20]% world-wide) and Shell ([10-20]% EEA-wide; [<10]% world-wide). For PESOL, main competitors are Bayer ([10-20]% EEA-wide; [<10]% world-wide), Crompton ([<10]% EEA-wide; [<10]% world-wide) and COIM ([<10]% EEA-wide; [<10]% world-wide). According to the parties, these input materials are freely available on the merchant market and a large number of alternative suppliers can satisfy the access for competitors to these products.
47. The number of effective competitors and their respective market shares considered the proposed transaction does not give rise to concerns as to whether it may be compatible with the common market.

d) Sports floorings

48. Only DCC manufactures sports floorings. On a EEA-wide basis, DCC's market share amounts to approximately [<10]% if considered for all sports floorings. EEA-wide sales of PU-based indoor sports floorings, which is the main business of DCC, represents a market share of approximately [20-30]%. The main competitor is Descol enjoying a market share of [60-70]%. Others have an aggregate market share of approximately [10-20]%. With respect to outdoor sports floorings, DCC has a market share of approximately [10-20]% world-wide. Competitors are Stockmaier with a market share of [10-20]%, Polytan with [10-20]%, Mondo with [<10]%, and others with a share of [30-40]% of the market. These competitors continue to be able to compete in tenders for large-scale sports floorings on a world-wide level since they dispose of the necessary resources required.
49. Competitors and customers largely confirmed the parties' assessment and they see no risk or negative impact for their business following the merger.

50. In the light of the above, it can be concluded that for the market of sports floorings, the proposed transaction would not significantly impede competition.

VII. CONCLUSION

51. In the light of the above, 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