

***Case No COMP/M.4401 -
BASELL /
MÜNCHSMÜNSTER
CRACKER AND
ASSOCIATED ASSETS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/12/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.12.2006

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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. 4401 - Basell / Münchsmünster Cracker and associated assets

1. On 20 November 2006, the Commission received a notification of a proposed concentration by which the undertaking Basell Polyolefine GmbH ("Basell", Germany) owned by BI International S.à.r.l. (Luxembourg) a member of the Access Industries group ("Access", USA), acquires control of a cracker facility based in Münchsmünster ("Münchsmünster Cracker"), Germany, together with certain other associated assets by way of purchase of assets.

I. THE PARTIES AND THE CONCENTRATION

2. Basell is active in the manufacture and sale of polyolefins (polyethylene, polypropylene), polyolefin compounds and other specialty polyolefin products, as well as the development and licensing of technology and the manufacturing and sale of catalysts used in the production of polyolefins. Basell also produces ethylene and propylene, which are the primary raw materials for the production of polyethylene and polypropylene respectively. Since 1 August 2005, Basell is a wholly owned subsidiary of Access¹.

¹ Case No COMP/M.3839 Access Industries/Basell. The formation of Basell in 2000 was approved by the European Commission in its decision Shell/BASF/JV – Project Nicole, Case No COMP/M.1751.

3. Access is a group of holding companies ultimately controlled by Mr. Leonard Blavatnik, a US citizen². Access controls (jointly or solely) a number of companies that are active principally in the oil, petrochemicals, coal, aluminium, power, real estate, and telecommunications sectors. Basell submits that the only relevant companies to this transaction are TNK-BP (over which Access has joint control³ and [...]) and Slavneft (in which TNK-BP has a 50% interest). Both TNK-BP and Slavneft are active in the exploration, production, refining, and marketing of oil and gas, principally in Russia and the Ukraine.
4. The Münchsmünster Cracker is a steam cracking facility located in Münchsmünster, Bavaria, producing olefins such as ethylene and propylene, which are used as feedstocks for the petrochemical industry. Münchsmünster Cracker produces also a limited number of by-products: pyrolysis gasoline (pygas), semi treated benzene concentrate, and surplus heating gas.
5. The Münchsmünster cracker is sold together with certain other associated assets and interests (together the "Target business") listed below:
 - a) Ownership of six dedicated pipelines and usage of another dedicated pipeline (the "Pipelines"), which connect the Münchsmünster Cracker to oil refineries located at Neustadt and Vohburg;
 - b) a 49% interest in Industriepark Münchsmünster GmbH & Co KG and a 62% share in Industriepark Münchsmünster Verwaltungsgesellschaft mbH, which are related to the land on which the Münchsmünster Cracker is situated;
 - c) a 20% interest in a consortium engaged in the construction of Ethylene Pipeline South (the "EPS Interest"), an ethylene pipeline linking the isolated Bavarian ethylene market to the ARG + pipeline;
 - d) a 0.000363% share in GSB-Sonderabfallungsentsorgung Bayern GmbH, a Bavarian company engaged in securing the safe disposal of hazardous waste also produced by the Münchsmünster Cracker;
 - e) Supply and sales contracts currently held by Deutsche BP AG ("DBP") in respect of the Münchsmünster Cracker ; and
 - f) Feedstocks, semi-finished and finished products owned by the Münchsmünster Cracker at the date of completion of the Proposed Transaction.
6. With the exception of item (f), the Target Business is currently owned by Ruhr Oel GmbH ("ROG") which is a joint venture between DBP and PdVSA (Petróleos de Venezuela Europa B.V.). Title to the items listed at (f) above is held by DBP, which is ultimately a wholly-owned subsidiary of British Petroleum plc.
7. The parties signed a term sheet on 19 July 2006 which was accepted by Basell on 24 July 2006 and are negotiating a binding Asset Purchase Agreement by which Basell will acquire 100% of the Target Business' assets. Following the transaction, Basell will have sole

² The parties submit that to the extent that Leonard Blavatnik has interests outside Access, they are not relevant to the assessment of the proposed concentration.

³ See Case No COMP/M.3119 BP/Alfa Group/Access/Renova/TNK-BP, 27/07/2003.

control over the Target Business. Therefore the transaction constitutes a concentration under the Merger Regulation.

II. COMMUNITY DIMENSION

8. The parties have a combined worldwide turnover of more than EUR 5 billion (Access €[...] billion; Target Business €[...] million). The individual Community-wide turnover for each of at least two of the undertakings concerned exceeds EUR 250 million (Access €[...] billion; Target Business €[...] million). In 2005 Access and the Target Business have not each achieved two-thirds of their aggregate Community-wide turnover within one and the same Member State⁴. The concentration therefore has a Community dimension.

III. THE RELEVANT MARKETS

9. Both Basell and the Münchsmünster Cracker are active on the upstream market for ethylene. Downstream from ethylene is polyethylene, where only Basell is active. Also, the parties' activities overlap horizontally on an upstream market for propylene. Technically vertically affected markets downstream from propylene are polypropylene resins, where only Basell is active. Both parties produce pyrolysis gasoline (pygas), semi treated benzene concentrate which are by-products of their crackers' main production.

Ethylene and downstream products

Ethylene

10. Ethylene is produced by steam cracking of gases such as natural gas or refinery gases, including propane and butane. It is used as a raw material for ethylene derivatives such as polyethylene, PVC and ethylene oxide. In previous decisions⁵ the Commission found that ethylene constitutes a distinct product market because the same product specification is suitable for all derivative uses and ethylene cannot be replaced by another product in these applications. Basell agrees with this relevant product market definition.
11. As ethylene is an hazardous gas which is highly flammable, it is distributed either in a compressed form by pipeline or in liquid form via refrigerated ships to an import terminal. In previous decisions⁶ the Commission concluded that the relevant geographic market should be defined on the basis of the extent of the available pipeline network in view of the limited amount of ethylene which is imported via terminals. However, in a more recent case⁷, the geographic market definition was left open and it was not decided whether the geographic market is the EEA or the geographic area covered by the pipeline network.
12. In the current transaction, Basell submits that the relevant geographic market should be defined on the basis of the extent of the available pipeline network as ethylene is difficult to liquefy and consequently is usually transported by pipeline. However, for the case at

⁴ [...]

⁵ See: Case No COMP/M.2389 Shell/DEA, Commission Decision of 20/12/2001, Case No COMP/M.2345 – DEUTSCHE BP / ERDÖLCHEMIE, 26/04/2001, Case No COMP/M.4094 – INEOS/BP DORMAGEN, 10/08/06.

⁶ Case No COMP/M.2389 Shell/DEA, Commission Decision of 20/12/2000, Case No COMP / M.2761 - BP/Veba, 1/07/2002.

⁷ Case No COMP/M.4094 – INEOS/BP DORMAGEN, 10/08/06.

hand, the precise geographic market definition can be left open as the notified transaction will not lead to competition concerns under any alternative geographic market definition.

Polyethylene

13. Polyethylene ("PE") is a polyolefin that, along with polypropylene, is one of the most widely used plastics. PE is derived from ethylene through the process of polymerisation. PE is used in a wide array of applications, including films, coatings, packaging, bags, plastic pipes, bottles and various moulded plastic products. The three main categories of PE are: (i) high density PE (HDPE), (ii) low density PE (LDPE) and (iii) linear low density PE (LLDPE). There are three main types of LLDPE, categorised according to the comonomer used in the manufacturing process: C4 LLDPE, C6 LLDPE and C8 LLDPE.
14. Accordingly, in previous Commission decisions, the following markets were considered: (i) overall market for all types of PE, (ii) separately HDPE, (iii) together LDPE, C4 and C6 LLDPE, (iv) together C4 and C6 LLDPE, (v) LDPE individually and (vi) C8 LLDPE individually. Basell considers that there is a high degree of demand-side substitutability between LDPE, C4 LLDPE, and C6 LLDPE, and that accordingly these three types of polyethylene together form a single relevant product market. However, in this case, the relevant product market definition can be left open as the transaction does not give rise to competition concerns irrespective of the product market definition.
15. The Commission has concluded in previous decisions that the relevant geographic market for polyethylene generally, as well as for potential separate sub-markets, is Western Europe⁸. Basell submits that polyethylene resins are easily transported, and transport costs are relatively low and hence the geographical market for polyethylene resins is at least as wide as Western Europe. In view of the parties' very limited sales in the 10 new Member States, it is not necessary to decide if the geographic dimension should be extended to the current EEA. Accordingly, the precise geographic market definition can be left open as the notified transaction will not lead to competition concern under any alternative geographic market definition.

Propylene and downstream products

Propylene

16. Propylene is principally produced from naphtha in steam-cracking equipment and used for the production of polypropylene, propylene oxide, acrylonitrile, cumene and other chemicals. These chemicals are used in the manufacture of a broad range of consumer products, such as batteries, automobile interior parts, carpeting, clothing and other textiles. The Commission has previously determined that, as propylene is generally not substitutable for other products, propylene is a separate relevant product market⁹. Basell agrees with this definition of the relevant product market.

⁸ Case No. COMP/M.3733 - Dow/DDE; Case No. IV/M.2345 - Deutsche BP/Erdölchemie; Case No. IV/M.2806 - SABIC/DSM Petrochemicals; Case COMP/M.1671 - Dow Chemical/Union Carbide; Case No. IV/M.1163-Borealis/IPIC/OMV/PDC; Case No. IV/M.708 - Exxon/DSM; and Case No. IV/M.550 - Union Carbide/Enichem. Western Europe is defined as EEA prior to the accession of the new EU Members in 2004.

⁹ Case no COMP/M.2345 Deutsche BP/Erdölchemie, 26/04/2004.

17. The European Commission has previously determined that the relevant geographic market for propylene is (at least) Western Europe¹⁰. In line with this, Basell submits that the geographic scope of the propylene market is Western Europe. As the parties do not sell propylene in the EEA outside of Western Europe, for the case at hand, the precise geographic market definition can be left open as the notified transaction will not lead to competition concerns under any alternative geographic market definition.

Polypropylene

18. Polypropylene (PP) is derived from propylene and is one of the main kinds of plastics used worldwide. In the past the Commission has distinguished between PP resins, on the one hand, and PP compounds on the other hand¹¹. PP compounds are products involving a mixture of PP resins and other materials. Basell agrees with this approach.
19. Among PP resins, the Commission has also distinguished between (i) homopolymers, (ii) random copolymers and (iii) impact (block) copolymers¹². Basell considers that all PP resins constitute a single product market. However, for the case at hand, the precise product market definition can be left open as the notified transaction will not lead to competition concerns under any alternative product market definition.
20. In line with previous decisions¹³, Basell submits that relevant product markets are Western European in scope, which at the time of taking these decisions did not include the 10 new MSs. In view of the parties' very limited sales in the 10 new Member States, it is not necessary to decide if the geographic dimension should be extended to the current EEA. Accordingly, the precise geographic market definition can be left open as the notified transaction will not lead to competition concerns under any alternative geographic market definition.

By-products

Pygas

21. Pygas is produced as a by-product of the cracking process. In a previous decision the Commission has left open the question whether there are two separate markets: (i) untreated pygas and (ii) treated pygas¹⁴. Basell submits that untreated pygas (pygas as produced in the cracker by distillation) is a very reactive material and hence rarely sold and usually converted by the same producer into treated pygas. Treated pygas is a mixture of aromatics (toluene, xylenes, and C-9 aromatics) together with some non-aromatic components. It is typically used as a blending component for motor gasoline, and also as a blending component for industrial gasoil. Basell submits that untreated and treated pygas are in separate relevant product markets. However, for the purpose of this case, the final

¹⁰ Case no COMP/M. 4041 Basell/ Société du Craqueur de l'Aubette, 22/12/2005, Case No. IV/M.3110 - OMV/BP (Southern Germany Package); Case No. IV/M.2806 - SABIC/DSM Petrochemicals; Case No. Comp/M.2345 - Deutsche BP/Erdolchemie; Case COMP/M.2092 - Repsol Quimica/Borealis; and Case IV/M.361 - Neste/Statoil. However, it has to be noted that in the most recent case after the last enlargement, Western Europe was defined as the EEA prior to the accession of the new EU Members in 2004.

¹¹ Case COMP/M. 2806 SABIC/DSM Petrochemicals.

¹² Case COMP/M. 1751 Shell/BASF/Project Nicole.

¹³ Case No. IV/M.2806 - SABIC/DSM Petrochemicals; Case No. COMP/M.2297 - BP Chemicals/Solvay (PP); Case No. COMP/1751 - Shell/BASF/JV Project Nicole. These decisions were taken before the last enlargement, hence the geographic dimension of discussed market was limited to Western Europe.

¹⁴ Case no COMP/M. 4041 Basell/ Société du Craqueur de l'Aubette, 22/12/2005.

market definition can be left open as the transaction does not give rise to competition concerns irrespective of product market definition.

22. Basell submits that the relevant geographic market is Western Europe¹⁵. In a previous decision, the Commission has left open the precise geographic market definition for pygas¹⁶. For the case at hand, the precise geographic market definition can also be left open as the notified transaction will not lead to competition concerns under any alternative geographic market definition.

Benzene concentrate

23. Both parties produce and sell benzene concentrate, however they do not produce benzene. Benzene concentrate is produced by hydrotreating untreated pygas and then concentrating the benzene-rich stream through distillation, which results in a stream very rich in benzene. Benzene concentrate is used for the extraction of pure benzene for chemical use. The Commission has not defined the relevant product market for benzene concentrate in its previous decisions. Basell considers that benzene concentrate and benzene are part of the same relevant product market, as they are essentially the same product. In previous decisions the Commission has found that benzene constitutes a distinct product market¹⁷. However, for the purpose of this case, the final product market definition can be left open as the transaction does not give rise to competition problems irrespective of product market definition.
24. Basell considers that the geographic market for benzene concentrate/benzene is at least Western European¹⁸, on the basis that benzene is relatively easy to transport. There also appears to be a significant amount of cross-border trade in benzene, which is shipped on a large scale around the world. Given the large extent of international trade in benzene, the geographic market may even be global. Basell's submission appears to be in line with the Commission's decision-making practice, where the Commission argued that benzene is at least a Western European market¹⁹. However, for the case at hand, the precise geographic market definition can be left open as the notified transaction will not lead to competition concerns under any alternative geographic market definition.

IV. ASSESSMENT

By-products

25. With respect to by-products, even for the narrowest possible relevant product markets (treated pygas, untreated pygas, benzene concentrate) the parties' aggregated production market shares do not exceed [5-15]% (for pygas they are below [0-10]%). Also, Basell submits that if sales figures were considered the situation would be similar. Hence, no competition concerns arise.

¹⁵ The parties do not sell pygas in the EEA outside Western Europe.

¹⁶ See Commission Decision COMP/M.4041 Basell/Société de Craqueur de l'Aubette, 22 December 2005.

¹⁷ Case COMP/M.2806 – SABIC / DSM Petrochemicals.

¹⁸ The parties do not sell benzene concentrate in the EEA outside Western Europe.

¹⁹ Case COMP/M.2806 – SABIC / DSM Petrochemicals.

Ethylene and downstream products

Horizontal aspects

26. Both parties produce and sell ethylene. However, as they operate on different pipeline networks which are not connected, no overlaps arise. The Basell production facilities at Wesseling are connected to the Northern European pipeline and to the ARG area²⁰. Basell's current share of ethylene capacity in the ARG area is less than [5-10]% but all its ethylene production is consumed internally and consequently Basell has no sales of ethylene on the ARG+ pipeline. Basell's cracker facility at Aubette is connected to a separate pipeline network in France, where Basell's market share in terms of sales is around [0-10]%. The Münchsmünster Cracker supplies ethylene into a third pipeline (the "Bavaria Pipeline") where it competes with only one cracker (in Burghausen, owned by OMV) and hence its market share in terms of total sales in the Bavarian region is high (estimated by Basell as [40-50]% in volume).
27. It is also worth noting that in the near future the Bavaria Pipeline and the ARG area will be linked by an ethylene pipeline between Münchsmünster and Ludwigshafen²¹ ("EPS pipeline"). It is intended that construction of the new pipeline will commence in 2007, and that the pipeline will be completed and operational by the end of 2008. The Münchsmünster Cracker would represent around [0-5]% of total capacity of the planned enlarged pipeline network and the combined market shares of Basell and the Münchsmünster Cracker would therefore be around [5-15]% of the total capacity on this pipeline network.
28. If the geographic market for ethylene were to be EEA in scope rather than the extent of the relevant pipeline, Basell's and the Münchsmünster Cracker's combined share in total production of ethylene in Western Europe²² would be less than [5-15]% (Basell representing under [0-10]%, the Münchsmünster Cracker around [0-5]%). Basell's and the Münchsmünster Cracker's combined share of the Western European merchant market for ethylene is around [0-5]%. Moreover, Basell is a net purchaser on this market as it purchases more ethylene in the Western European merchant market than it actually sells. Basell estimates that its share in demand for ethylene in Western Europe is approximately [5-15]%.
29. In the light of the above, the notified transaction does not raise competition concerns.

Vertical aspects

30. Only Basell produces polyethylene, which is a downstream market from ethylene, and its share of the Western European production of polyethylene is approximately [10-20]% in volume. On any of the relevant polyethylene resins markets Basell's market shares in Western Europe in terms of sales do not exceed [20-30]% (HDPE – [15-25]%; LDPE –

²⁰ The pipeline network owned and operated by Aethylenrohrleitungsgesellschaft mbH & Co. KG together with its associated pipelines, which links various ethylene consumers in Belgium, The Netherlands and Western Germany.

²¹ This planned ethylene pipeline will benefit from state aid as to 29.9% of the total project cost. This was approved by the European Commission by decision of 12 October 2006 (case number C/11/2005, see Commission press release IP/06/1365).

²² The parties submitted data for Western Europe defined as the 15 Member States of the European Union on 30 April 2004, as well as the three EFTA states. The parties confirmed that they have no activities in the 10 new MSs.

[10-20]%, C4 LLDPE + C6 LLDPE – [0-5]%, C4 LLDPE – [0-5]%, C6 LLDPE – [0-5]%). Basell submits that it has only limited sales in the 10 new MSs, and hence the competitive assessment at the EEA-level would not be different.

31. In 2005 the Münchsmünster Cracker was supplying [...] customers: [...] and Basell ([30-40]%). However in December 2005 Basell's high density polyethylene plant located at the Münchsmünster Industrial Park (Basell HDPE Plant) had an explosion and the plant has been closed since.
32. It is worth noting that at present, the Münchsmünster Cracker sells all of its ethylene output to CPO, a reseller who in turn sells the ethylene to [...], and, prior to December 2005, Basell. However, this arrangement will cease [...], when the Münchsmünster Cracker will itself contract with the end users of its ethylene. DBP, which holds supply and sales contracts in respect of the Münchsmünster Cracker²³, has already concluded such agreements [...], which have a minimum term of [...] years commencing January 2008, with a minimum notice period of three years thereafter²⁴. Therefore, even if Basell wished to cease supplying ethylene to the other existing customers of the Münchsmünster Cracker, it would not be able to achieve this for [...] years following the Proposed Transaction.
33. Basell considers that the reopening of the Basell HDPE Plant will not change the current situation as under the present contractual arrangements the Münchsmünster Cracker will sell ethylene to Basell once the Basell HDPE plant reopens. [...] Hence, the planned reopening of the Basell HDPE Plant will not result in an overall increase in Basell's market share for polyethylene.
34. Moreover, Basell estimates that after construction of the EPS pipeline, [...] of the ethylene produced by the Münchsmünster Cracker will be used internally by Basell and the rest sold to third parties. This is consistent with the amounts previously bought by Basell's HDPE plant.
35. In the light of the above and due to the limited presence of the parties upstream, the notified transaction does not give rise to competition concerns.

Propylene and downstream products

Horizontal aspects

36. Both Basell and the Münchsmünster Cracker are active in the production of propylene. Basell estimates that the combined market share of the Western European propylene capacity is less than [5-15] (Basell – [0-10]%, the Münchsmünster Cracker – [0-5]%). The parties' combined share of the Western European merchant market is below [0-5]%. The parties do not sell propylene in the EEA outside of Western Europe. Moreover, Basell is a net purchaser of propylene. Basell estimates that its share of purchases in the Western European merchant market is approximately [15-25]%

²³ As already mentioned these contracts are part of the Target Business.

²⁴ According to the agreements provided by Basell, their termination cannot take effect [...].

37. In the light of the above, the notified transaction does not raise competition concerns.

Vertical aspects

38. Only Basell is active in the production of polypropylene, which is produced from propylene. Basell's share in Western European production of polypropylene is approximately [20-30]%. Basell estimates that both its share of the Western European production and its sales of PP compounds are around [25-35]%. Other big producers include: Borealis, Exxon, and Sabic. Basell estimates its Western European market shares for PP resins (both in terms of production and sales) to be around [20-30]%. Basell's market shares of the Western European production for homopolymers, random copolymers and impact copolymers are respectively [20-30]%, [20-30]%, and [20-30]%. Basell submits that it has limited sales in the 10 new MSs, and hence the competitive assessment at the EEA-level would not be different from the assessment for the Western European market.
39. Although the Münchsmünster Cracker produces propylene, the feedstock required to produce polypropylene, the amount of propylene produced by the Münchsmünster Cracker represents only [0-5]% of total Western European production capacity.
40. In the light of the above and due to the limited presence of the parties upstream, the notified transaction does not raise competition concerns.

V. CONCLUSION

41. 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
Ján FIGEL'
Member of the Commission