

***Case No COMP/M.4413 -
APOLLO GROUP / GE
ADVANCED
MATERIALS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 30/11/2006

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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 Where possible the information omitted has been replaced by ranges of figures or a general description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.4413 - Apollo Group/ GE Advanced Materials
Notification of 24 October 2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 24.10.2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the Apollo Group ("Apollo", USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of the whole of GE Advanced Materials ("GEAM", USA) by way of purchase of shares. This comprises the entirety of GE Bayer Silicones ("GEBS", Germany) and GE Toshiba Silicones ("GETOS", Japan and Singapore).

I. THE PARTIES

2. The Apollo Group is a US-based private investment group. Via Hexion Specialty Chemicals Inc. ("Hexion" USA) Apollo is active in the economic sector concerned by the proposed concentration. Hexion manufactures and sells various thermoplastic resins and related products.
3. GEAM manufactures and sells silicones and related products, fused quartz and ceramic materials. GEBS² manufactures and sells silicones and related products mainly in Europe. GETOS manufactures and sells silicones and related products in Asia.

¹ OJ L 24, 29.1.2004 p. 1.

II. THE OPERATION

4. Pursuant to the Share and Asset Purchase Agreement dated 14 September 2006, the Apollo Group will acquire 100% of the shares in GEAM, including all shares in GEBS and GETOS from the General Electric Company (“GE”, USA). In order to acquire all shares in GEBS and GETOS, as an intermediate transaction, GE will acquire the interests in GEBS and GETOS currently held by Bayer and Toshiba respectively.
5. GE presently shares control over GEBS with Bayer and over GETOS with Toshiba. Bayer’s and Toshiba’s respective interests in GEBS and GETOS will be transferred by way of two separate agreements. In line with the Commission’s practice these three transactions represent one concentration for the purposes of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The combined aggregate worldwide turnover of the undertakings concerned is more than € 5,000 million (Apollo €[...] million, GEAM €[...] million). The aggregate Community-wide turnover of each of the undertakings concerned is more than € 250 million (Apollo €[...] million, GEAM [...] million). The undertakings concerned do not achieve two thirds of its turnover in a single Member State. The operation has therefore a Community dimension in the sense of Article 1(2) of the Merger Regulation.

IV. ASSESSMENT

7. The market investigation focused on the market for specialty silicone fluids where a horizontal overlap has been identified and on the market for organosilanes for non-rubber applications where a vertical relationship has been identified.
8. Although Apollo (Hexion) and GEAM are both specialty chemicals companies they are active in fundamentally different chemistries. Hexion’s thermoplastic resins are based on organic chemistries. GEAM’s products are based on inorganic chemistry. Since organic and inorganic chemicals have different properties and involve significantly different equipment and technology, horizontal or vertical relationships between Apollo (Hexion) and GEAM only occur at the margins of both companies businesses.

Horizontal relationship – specialty silicone fluids

Product markets

9. In the silicones industry the following product markets can be distinguished on the basis of different technical product characteristic, intended use and price from the customer’s perspective as well as from different product processes from the suppliers’ point of view: i) Silicone intermediates, ii) Standard silicone fluids, iii) Specialty silicone fluids, iv) Elastomers and v) Sealants. These product markets have been discussed in a previous decision³ and have been confirmed by the market test in this case. In the present case the overlap arises only in the market for specialty silicone fluids. GEAM produces these specialty silicone fluids, Apollo (Hexion) acts as exclusive distributor for these products for the chemical company Rhodia. The distribution agreement between Rhodia and

² see COMP/M.4146 – *GE/Bayer/OSi Europe Business*, para 11

³ COMP/M.4146 – *GE/Bayer/OSi Europe Business*., para 11

Hexion has an exceptional character⁴. Normally the distinction between production and distribution appears not to be relevant since most producers of specialty silicone fluids sell most of their output themselves. In any event, it can finally be left open whether production and distribution constitute separate product markets as in both cases no competition issues arise.

10. Specialty silicone fluids are used in a wide range of industries either as an ingredient in an end-product as well as a processing aid. Typical applications include additives in paints, fuels, coatings for paper or plastics or additives for textile processing. The various specialty silicone fluids differ significantly as regards their field of application. However, from the supply side, producers of specialty silicon fluids are able to switch easily production from one specialty silicone fluid to another.
11. The relevant product market may eventually be further narrowed according to the field of application. The overlap between the parties' activities would then occur in the specialty silicone fluids market segment of silicone emulsion resins for concrete façade paint. However, the definition of the relevant product market can be left open, since, regardless of the precise market definition, the transaction will not give rise to competition concerns.

Geographic market

12. The market for specialty silicone fluids and the potential sub-product market are considered to be at least EEA-wide⁵. Although some respondents suggested that the market could be even global, the others argued that the imports from outside the EEA entail logistic problems (delivery delays) and higher costs linked to import duties and currency risk.

Assessment

13. GEAM's market share in the EEA market for specialty silicone fluids is estimated by the parties at [10-20]% by value and [10-20]% by volume. Apollo's (Hexion's) market share is estimated around [0-10]% by value and volume. The increase in market share is therefore minor. The parties will face significant competitive constraint from other competitors such as Dow Corning (market leader), Wacker, Degussa and Shin Etsu.
14. In the market segment of silicone emulsion resins for concrete façade paint GEAM's market share is estimated at [0-10]% by value and volume. Apollo's (Hexion's) market share is estimated at [0-10]% both by value and volume.
15. In view of the foregoing, it appears unlikely that the proposed concentration will cause any competition concerns in the field of specialty silicone fluids or the segment of silicone emulsion resins for concrete façade paint.

⁴ Hexion inherited the distribution contract through its acquisition of one of Rhodia's divisions.

⁵ COMP/M.4146 – *GE/Bayer/OSi Europe Business*, para. 21

Vertical relationship – organosilanes – foundry resins

16. GEAM produces organosilanes which are adhesion promoters between organic and inorganic chemicals. They are used in a wide variety of applications, including foundry resins, a product which is manufactured by Hexion. There is therefore a vertical link between the parties to the transaction.
17. In the past the Commission distinguished three separate markets in organosilanes which are those for rubber applications, non-rubber applications and alkyl silanes⁶. In previous decisions the Commission considered the geographic market to be at least EEA-wide⁷.
18. GEAM's EEA market share is estimated by the parties as [40-50]% by value and [30-40]% by volume in the EEA-wide market for organosilanes for non-rubber applications. GEAM's most important competitors are Degussa (market share estimated at around [40-50]%), Wacker ([10-20]% estimated market share) and Shin Etsu ([0-10]% market share).
19. Foundry resins (downstream product to organosilanes for non-rubber applications) are formaldehyde based resins used to bind sand to form moulds and cores used to cast metal parts. In *Apollo/Bakelite*⁸ the Commission considered whether the market for foundry resins should be further subdivided depending on the different foundry processes. In the present, any further distinction is not relevant as the same organosilanes are used for a range of foundry resins so the seller cannot determine the specific type of foundry resin for which the purchaser will use the organosilane. The geographic market in previous decisions has been defined as at least national⁹.
20. Regardless of geographic or product market definition for foundry resins, the proposed concentration creates no risk of foreclosure. Hexion's competitors have other credible supply alternatives with spare capacity, such as Degussa, Shin Etsu and Wacker. Moreover most of foundry resin producers multi-source their organosilanes already. Therefore the combined entity will have no possibility to foreclose access to inputs. Apollo/GEAM will not have a possibility to foreclose access to downstream markets either since foundry resin producers purchase only a tiny fraction of all the organosilanes produced¹⁰. Moreover foundry resins producers are often served through distributors, and thus the combined entity would not have the ability to identify which foundry resins producers purchase their organosilanes or the quantities they purchase.

⁶ Case IV/M. 942 – *Veba / Degussa* para 25-27

⁷ Case IV/M. 942 – *Veba / Degussa* para.36

⁸ Case COMP/M. 3593- *Apollo/Bakelite*. para.81

⁹ Case COMP/M. 3593- *Apollo/Bakelite.*, para.83

¹⁰ Hexion accounts for less than [0-10]% of purchases of organosilanes

V.CONCLUSION

21. 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