

***Case No COMP/M.4682 -
INEOS / LANXESS'
ENGINEERING
THERMOPLASTIC
RESINS BUSINESS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 08/08/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08-08-2007

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4682 - Ineos / Lanxess' engineering thermoplastic resins business
Notification of 06.07.2007 pursuant to Article 4 of Council Regulation No 139/2004¹**

1. On 06/07/07, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (Merger Regulation) by which the undertaking INEOS ("INEOS", United Kingdom) acquire(s) within the meaning of Article 3(1) (b) of the Merger Regulation sole control of Lanxess' worldwide engineering thermoplastic resins business (the "Business") by way of purchase of shares.

I. THE PARTIES

2. **INEOS** is a leading global manufacturer of petrochemicals, specialty chemicals and oil products.
3. **Lanxess** is headquartered in Germany and has operations around the world. The Business produces ABS, an important grade of engineering thermoplastic resin.

¹ OJ L 24, 29.1.2004 p. 1.

II. THE OPERATION

4. The notified concentration consists of the acquisition by INEOS of Lanxess' worldwide engineering thermoplastic resins business

III. CONCENTRATION

5. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (INEOS EUR [...]; the Business EUR [...])². Each of them have a Community-wide turnover in excess of EUR 250 million (INEOS EUR [...] million; the Business EUR [...]), 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. COMPETITIVE ASSESSMENT

A. Product and geographic market definitions

7. INEOS does not produce ABS (a kind of thermoplastic engineering resin) which is produced by the Business. It does, however, produce two other thermoplastic resins, polypropylene and PVC. Therefore, the parties' activities overlap only on a wider market including different grades or types of thermoplastic resins. Some vertically related markets, discussed below, will arise from the proposed transaction.

Horizontal aspects

i) Engineering thermoplastic resins (the downstream market)

8. Engineering thermoplastic resins are tough, high impact resistant resins that are used in different sectors as automotive, business machines, appliances, extrusion, utilities and toys. The Business produces only ABS in Europe³. ABS is a hard, tough material with good resistance to impact even at low temperatures and a high gloss finish. It may also be used in blends with other materials, such as polycarbonate, extending its range of use.
9. In previous cases⁴, the Commission considered different markets for the different thermoplastic resins. According to the parties, from the demand side, ABS may be substituted with other engineering thermoplastic resins and in particular by modified polypropylene resins. However, the parties have provided the relevant data on all the reasonable definitions of the relevant product markets: ie. the narrowest segment (ABS) on an intermediate segment (including ABS and modified polypropylene resins) and on a

² 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).

³ The business produces and sells outside Europe another type of resins: ASN. However INEOS is not active in this segment either. The business market share on the world-wide market for ASN is around 13%.

⁴ COMP M. 3578 BP/Nova Chemicals/JV

wider segment (including ABS, high impact general purpose polystyrene resins, modified polypropylene resins, PVC resins and polycarbonate resins).

10. The parties submit that the relevant geographic market for ABS may be global as ABS is readily transportable (it is actively traded across Europe, Asia and America) and there are few barriers to imports.
11. For the purpose of the present case, it is not necessary to define the ultimate scope of the relevant product and geographic markets, since, as further explained below, the transaction will not give rise to any competition concerns irrespective of the product market definition retained.

Vertically related markets (Upstream of engineering thermoplastic resins)

i) Acrylonitrile (“ACN”)

12. ACN is used to make a variety of downstream products, including mainly acrylic fibre, engineering thermoplastic resins, acrylonitrile butadiene rubber (NBR) and Nylon 66. The parties consider⁵ that ACN constitutes a separate product and submit that the geographic dimension of this market would be world-wide. The Commission in a previous decision⁶ has considered whether the relevant geographic market for ACN is world-wide or Western European, but left the ultimate definition of the market open.
13. For the purpose of the present case, it is not necessary to define the ultimate scope of the relevant product and geographic markets, since, as further explained below, the transaction will not give rise to any competition concerns irrespective of the product market definition retained.

ii) Butadiene (“C4”)

14. According to the parties' estimates, around 50% of the butadiene produced globally is used in the production of different types of rubber and only round 10% of the butadiene produced globally is used in the production of ABS (a thermoplastic resin produced by the Business).
15. In previous cases, the Commission has considered that the supply of butadiene constitutes a separate product market due to its physical characteristics and the absence of substitutes for its specific uses.⁷
16. In previous cases, the Commission has taken the view that the relevant geographic market for butadiene is Western European.⁸ The parties submit that that the relevant geographic market for butadiene may be world-wide, given that butadiene is considered stable enough to be transported, it is traded globally and that there are no significant barriers to trade.

⁵ COMP M. 2345 Deutsche BP/Erdoelchemie

⁶ COMP M. 2345 Deutsche BP/Erdoelchemie

⁷ SABIC / Huntsman Petrochemicals UK Case No COMP/M.4426 (2004) and Basell / Societe Du Craqueur de L'Aubette Case No COMP/M.4041 (2005)

⁸ COMP/M.4041 Basell / Societe Du Craqueur de L'Aubette

17. For the purpose of the present case, it is not necessary to define the ultimate scope of the relevant product and geographic markets, since, as further explained below, the transaction will not give rise to any competition concerns irrespective of the product market definition retained.

iii) Styrene

18. Styrene is predominantly used downstream in the production of polystyrene, expandable polystyrene and, to a more limited extent, certain engineering thermoplastic resins (e.g. ABS).

19. In previous cases, the Commission has considered Styrene as a market on itself “⁹ with a global or EEA wide dimension¹⁰. The parties consider the market to be worldwide for the following reasons: i) styrene is very stable commodity product and is actively traded across Europe, Asia and America; ii) there are few barriers to import (logistics are thought to be a modest incremental cost and competitive prices often outweigh any such considerations); iii) worldwide prices are set in line with the prevailing price of styrene’s raw materials (ethylene and benzene) which are published by industry sources.

20. For the purpose of the present case, it is not necessary to define the ultimate scope of the geographic markets, since, as further explained below, the transaction will not give rise to any competition concerns irrespective of the product market definition retained.

B. COMPETITIVE ASSESSMENT

Horizontal aspects

i) Engineering thermoplastic resins

21. Only the Business is active on the possible narrower ABS market with a [5-10] % market share in terms of both capacity and sales at world-wide level. Its share of the possible EEA-wide market for ABS is [20-25] % on a capacity basis and [20-25] % on a volume of sales basis.

22. The parties' combined share in terms of both production capacity and sales volumes will not exceed 15% either on the larger segment, including ABS and modified polypropylene resins, or on the widest possible market, including ABS, high impact general purpose polystyrene resins, modified polypropylene resins, PVC resins and polycarbonate resins at both EEA and world-wide level. Therefore, none of these possible markets is affected by the present transaction.

Vertical aspects

i) ACN

23. Only INEOS is active on the market for ACN with shares of [15-20] % and [30-40] % in terms of production and [20-25] % and [40-50] % in terms of merchant sales at world-wide and EEA level respectively. The other competitors active on the EEA merchant

⁹ *BP / Nova Chemicals / JV* Case No COMP/M.3578 (2004); *SABIC / DSM Petrochemicals* Case No COMP/M.2806 (2002);

¹⁰ *BP / Nova Chemicals / JV* Case No COMP/M.3578

market are DSM and Repsol. Furthermore there is significant spare capacity in both the European and world-wide market for ACN. Such spare capacity would allow competitors such as DSM and Repsol to satisfy the Business' competitors' relatively small demand in case INEOS were to increase the prices of ACN given that a) the business would not account for more than [20-25] % for any definition of the ABS resin market at either global or EEA-wide level and b) the engineering thermoplastic market represents only [20-30] % of the demand for ACN.

24. In light of the above the transaction is not likely to create any risk of input foreclosure.

ii) Butadiene ("C4")

25. INEOS' share of the EEA merchant butadiene market is [20-30] %. On the world-size market it would have a market share of around [0-10] %. However given that: a) a number of competitors such as BasellSabic; Oxeno Repsol Shell will remain active on this market post transaction at both EEA-wide and world-wide level; b) imports will exercise a competitive constraint on European producers any risk for input foreclosure for companies active downstream may be excluded.

iii) Styrene

26. The fact that INEOS' share of production capacity, production and merchant sales will be below 15% at both EEA and world-wide level on this market and the presence of a number of other competitors such as BASF, DOW and TOTAL render unlikely any risk of input foreclosure on this market.

iv) Customer foreclosure

27. Given that i) the parties will not have a significant market share in any of the possible downstream markets for engineering thermoplastic resins and ii) engineering thermoplastic resins account only for a limited portion of the sales of styrene, ACN and butadiene access to the Business is not essential for any upstream suppliers.

VI. CONCLUSION

28. On the basis of the above analysis it can be concluded that the proposed concentration does not raise serious doubts as to its compatibility with the common market or the EEA Agreement.

29. 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)
Janez Potočnik
Member of the Commission