

***Case No COMP/M.4744 -
INEOS / BOREALIS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/08/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24/08/2007

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4744 - INEOS/Borealis
Notification of 19.07.2007 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 19.07.2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking INEOS Group Limited ("INEOS", United Kingdom), belonging to the INEOS Group, acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Borealis AS ("Borealis", Norway), belonging to the Borealis Group, by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 139/2004 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. INEOS is active in the production, distribution, sales and marketing of intermediate and specialty chemicals on a global level. Amongst various other products, INEOS also produces polyolefins, i.e.: polyethylene and polypropylene² and related by-products.

¹ OJ L 24, 29.1.2004 p. 1.

² INEOS currently plans to purchase Kerling ASA (Norway), which is also active in the processing of polyolefins. The case was notified to the Commission on 19 July 2007 (Case No. COMP/M.4734 - INEOS/Kerling). However the transactions are not linked by terms of conditionality and INEOS stated

4. Borealis is currently part of the Borealis Group, and is active in the production of polyolefin, i.e. polyethylene and polypropylene in Norway. As part of polyolefin production, it also produces the upstream products ethylene and propylene, and the by-products pygas and C4, all of which are to a large extent used captively.

II. THE OPERATION AND THE CONCENTRATION

5. On June 4, 2007, the Borealis Group entered into a Sale and Purchase Agreement for the sale of Borealis to INEOS. Borealis includes a plant at Bamble (Norway), which produces polyethylene and polypropylene, and a 50% shareholding in Noretyl AS, which runs a cracker in Norway ('the Noretyl cracker')³. The cracker produces the olefins needed for the production of polyethylene and polypropylene: ethylene and propylene, and the by-products crude C4 and pygas. Borealis Group will keep two crackers in Sweden and Finland.
6. The proposed transaction involves the acquisition of 100% of the share capital of Borealis by INEOS. Thus, as a result of the transaction, INEOS acquires sole control over Borealis within the meaning of Article 3(1)(b) of the Council Regulation.

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover in excess of EUR 5,000 million⁴ (INEOS [...] million, Borealis [...] million) and each have a Community-wide turnover in excess of EUR 250 million (INEOS [...] million, Borealis [...] million). The undertakings concerned do not each 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 pursuant to Article 1(2) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

A. *Relevant Product Markets*

8. The parties' activities overlap in the production of ethylene, low density polyethylene, propylene, polypropylene, crude C4 and pygas. In the parties' view, the following relevant product markets can be considered:

Ethylene

9. Ethylene is a basic chemical, which belongs to the olefin group. It is mostly produced from naphtha, liquid petroleum gas and/or ethane and used for the production of polyethylene. The Commission has previously assessed the ethylene market and has

that it would go through with either of the transactions if the other one fails. The planned purchase of Kerling ASA will thus be assessed on its own merits, taking into account the acquisition of Borealis by INEOS which is the subject of this decision.

³ By acquiring Kerling, INEOS would also acquire control of the other 50% of the Noretyl cracker.

⁴ 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, p.25).

considered it as a separate relevant product market⁵. This has been confirmed by the market investigation.

Polyethylene

10. Polyethylene is derived from ethylene through the process of polymerisation in which monomers react with one another to produce polymers. It is used in a wide array of applications, including films, coatings, packaging, bags, plastic pipes, bottles and various moulded plastic products.
11. Polyethylene can be further segmented into high density polyethylene ("HDPE"), low density polyethylene ("LDPE") or linear low density polyethylene ("LLDPE"). The parties' activities only overlap in LDPE, since Borealis is not active in the production of LLDPE and its HDPE production unit was shut down in 2006. LDPE is a category of polyethylene with relatively weak intermolecular forces widely used to produce relatively soft and flexible plastic products, such as films and coating applications.
12. The Commission has previously assessed the LDPE market but has left open whether LDPE constitutes a separate market from other types of polyethylene⁶. For the case at hand, the exact market definition can be left open as even under the narrower product market definition (LDPE) the notified transaction does not lead to serious doubts as to its compatibility with the common market or the EEA Agreement.

Propylene

13. Propylene is principally produced from naphtha, liquid petroleum gas and/or ethane. It is used for the production of polypropylene, propylene oxide, acrylonitrile, cumene and other chemicals. In line with the previous Commission decisions⁷, the notifying party considers that propylene constitutes a relevant product market due to its physical characteristics and the absence of substitutes for its specific uses. This has been confirmed by the market investigation.

Polypropylene

14. Polypropylene is derived from propylene and is one of the main kinds of plastics used worldwide. In the past the Commission has considered polypropylene as a separate market⁸, but also considered a further distinction between polypropylene resins on the one hand and polypropylene compounds on the other hand⁹. Among polypropylene resins, the Commission has also distinguished between (i) homopolymers ("HPP") and random copolymers ("RCP") on the one hand, and (ii) impact (block) copolymers¹⁰ on

⁵ Case No COMP/M.2533 - BP/E.ON.

⁶ Case COMP/M.2806 – SABIC/DSM Petrochemicals

⁷ COMP/M.4041 Basell/Craqueur de l'Aubette

⁸ Case No.IV/M.361 – Neste/Statoil

⁹ COMP/M.2806 SABIC/CSM Petrochemicals

¹⁰ COMP/M.1751 Shell/BASF/Project Nicole

the other hand. However, the final definition was left open. The parties' activities only overlap in the production of HPP and RCP. In any case the exact market definition can be left open as the notified transaction does not lead to serious doubts as to its compatibility with the common market or the EEA Agreement under any alternative product market definition.

Crude C 4

15. Crude C4 is a by-product of the production of ethylene and propylene, and it is used in the production of butadiene and raffinate. In line with previous Commission practice¹¹ the notifying parties consider that Crude C4 is a distinct product market due to its physical characteristics and the absence of substitutes for its specific uses. This view has been confirmed by the market investigation.

Pygas

16. Pygas is a by-product of the production of ethylene and propylene and is used in the production of benzene and toluene. In line with previous Commission practice¹² the parties suggest that there is a separate market for pygas. The market investigation has confirmed this view.

B. Relevant geographic markets

Polyethylene, LDPE, propylene, polypropylene, crude C 4 and pygas

17. With regard to polyethylene (in particular LDPE), propylene, polypropylene (HPP and RCP), crude C 4 and pygas the notifying parties consider that the relevant geographic market is each time either EEA- or Western European-wide in scope (i.e. EU-15 and the three EFTA States), which is in line with previous Commission decisions¹³. For the purposes of the case at hand it can be left open whether the geographic market definitions comprise just Western Europe or the whole of the EEA since the transaction does not raise serious doubts as to its compatibility with the common market or the EEA Agreement regardless of the definition retained.

Ethylene

18. As regards ethylene, due to its difficult physical properties, it is mostly transported by pipeline as a high pressure gas or by specialised ships as very cold liquid. In its previous decisions¹⁴ the Commission left open the question whether the geographic market for ethylene is EEA-wide or whether it is restricted to the area covered by the relevant pipeline networks (by that being regional or national). The parties submit that the geographic market is EEA-wide. Nevertheless they concede that Northern Europe

¹¹ COMP/M.2806 – SABIC/DSM Petrochemicals; COMP/M.4041 – Basell / Société du Craqueur de l'Aubette

¹² COMP/M.4041 – Basell / Société du Craqueur de l'Aubette

¹³ COMP/M.4426 - SABIC / HUNTSMAN UK ; COMP/M.4041 – Basell / Société du Craqueur de l'Aubette ; COMP/M. M. 2297 – BP/Solvay - (PP); COMP/M.1671 – Dow Chemical/Union Carbide.

¹⁴ COMP/M.2533 - BP/E.ON; COMP/M.1628 – Totalfina/Elf; IV/M.361 – Nestlé/Statoil;

(Norway, Denmark, Sweden and Finland) could be considered as a market of its own since all transports in this region are made by ship. However, the exact definition of the geographic market can be left open since the transaction does not lead to serious doubts as to its compatibility with the common market or the EEA Agreement regardless of the definition retained.

C. Impact on competition

LDPE, propylene, HPP and RCP, crude C 4 and pygas

19. With regard to LDPE, propylene, HPP and RCP, crude C 4 and pygas, according to the information provided by the parties the combined market shares in all those markets stay well below 15%, both in the EEA and in Western Europe. The parties would also face strong competition from other producers such as (i) for LDPE: Dow, Polimeri or ExxonMobil, (ii) for propylene: Polimeri, Dow or Ruhr Oel (iii) for HPP and RCP: Basell, Borealis Group, SABIC (iv) for crude C 4: Fina Antwerp Olefins, BPRP or Borealis Group and for (v) pygas: Basell, Polimeri or Repsol. Also the market investigation did not indicate any substantial concerns with regard to the concentration by either competitors or customers.
20. Based on the above, the Commission considers that the concentration does not raise serious doubts as to its compatibility with the common market or the EEA Agreement.

Ethylene

21. With regard to ethylene at EEA level the market share of the combined entity would be below [5-10]% thus not raising serious doubts as to its compatibility with the common market.
22. Should the market be considered as northern European-wide (i.e. Norway, Denmark, Sweden and Finland) the transaction would in fact increase the number of players on the market. In the past, INEOS was not active in Northern Europe and Borealis Group had a share of [80-90]% in terms of production (derived from its two crackers in Finland and Sweden and its 50% share in the Noretyl cracker, which is now being acquired by INEOS). Currently, Kerling is the second player, through its share in the Noretyl cracker, with the remaining share of [10-20]%. After this transaction, the shares would be INEOS [10-20]%, Kerling [10-20]% and Borealis Group [60-70]%. Thus the transaction increases the number of players in Northern Europe and effectively reduces the market share of the Borealis Group in the region from [80-90]% to [60-70]% in terms of production¹⁵.
23. Furthermore, the market investigation showed that there is already considerable trade of ethylene from the UK, The Netherlands, Germany and Poland to Northern Europe. This can be explained by the fact that ethylene is transported by ship in this region and that the plants are well equipped to receive ethylene cargo by ship. Also the market investigation did not indicate any substantial concerns with regard to the concentration by either competitors or customers.

¹⁵ If INEOS purchases Kerling ASA (Norway) the shares in a Northern European market would be INEOS 36% and Borealis Group 64%, thus still reducing the market concentration in Northern Europe as compared to the present situation.

24. Based on the above, the concentration does not raise serious doubts as to its compatibility with the common market or the EEA Agreement with respect to the ethylene market.

V. CONCLUSION

25. 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,
Viviane REDING
Member of the Commission