

***Case No COMP/M.5243 -
CVC/RAG/EVONIK***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 08/09/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08/09/2008

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.5243 – CVC/ Evonik
Notification of 01.08.2008 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 1 of August 2008 the Commission received a notification of a proposed concentration within the meaning of Article 4 of the Merger Regulation by which Clear Vision Capital Fund Sicav-Fis SA (“CVC”) and RAG-Stiftung (the “Foundation”) acquire joint control over Evonik Industries AG (Evonik) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation but does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I. THE PARTIES

3. RAG-Stiftung (“the Foundation”, Germany) is a German civil law foundation with legal capacity established further to the restructuring of the RAG group (“RAG”, with the abbreviation RAG stemming from *Ruhrkohle AG*), which contains the

¹ OJ L 24, 29.1.2004 p. 1.

coal mining activities in the German states of North-Rhine Westphalia and Saarland. It is the ultimate parent entity of both the RAG group and the Evonik group, holding 100% of the interests in both groups. As a consequence, it is currently active in non-coal mining business (through Evonik) and coal mining business (through RAG).

4. Evonik Industries AG (“Evonik”, Germany) is the holding company of the Foundation’s non-coal mining businesss, active in specialty chemicals business (still known under its previous brand name Degussa), power generation business (known as Steag) and in real estate business. As only the specialty chemicals business of Evonik is relevant, reference is hereafter made to “Evonik Degussa” as the specialty chemicals business of Evonik.
5. Clear Vision Capital Fund SICAV-FIS SA (“CVC”, Luxembourg) consists of entities providing investment advice and/or managing investments. As a consequence, it holds controlling investments in a number of companies (“CVC Portfolio Companies”). These are, amongst others, Flint Group (“Flint”), Taminco N.V. (“Taminco”) and Univar N.V. (“Univar”).

a) Flint is an international group of companies that produces and markets printing inks, printing plates and accessories for the publication and packaging industry.

b) Taminco is a producer of a variety of alkylamines and derivative chemicals produced in four business lines: (i) water treatment and surfactants; (ii) solvents; (iii) feed additives and (iv) crop protection.

c) Univar is active in the distribution of chemical products, in particular commodity chemicals and certain specialty products.

II. THE OPERATION

6. The concentration concerns the acquisition of joint control by CVC² and the Foundation over Evonik, which is currently solely controlled by the Foundation. As a result of the transaction, CVC will own 25.01% of the share capital of Evonik while the Foundation will own 74.99%. However, both shareholders are contractually bound to reach an agreement on major decisions concerning the controlled undertaking and they are required to cooperate with regard to strategic issues³.

III. CONCENTRATION

7. In light of the above, the operation constitutes a concentration under the terms of the Merger Regulation.

IV. COMMUNITY DIMENSION

8. The operation has a Community dimension within the meaning of Article 1 (2) of the Merger Regulation. The parties’ combined aggregate worldwide turnover is

² Through a newly incorporated entity, Gabriel - a wholly owned subsidiary of CVC.

³ [...].

more than EUR 5,000 million and the aggregate Community wide turnover of each party exceeds EUR 250 million⁴. None of the Foundation, Evonik and CVC achieve more than two-thirds of their Community-wide turnover within one and the same Member State.

V. COMPETITIVE ASSESSMENT

i). Relevant product markets

9. The transaction concerns the upstream markets for input materials for print inks, the downstream market for print inks, upstream and downstream markets for various specialty chemicals and the distribution of commodity and specialty chemicals.

Horizontal and Upstream markets

Evonik input products for the manufacture of inks

10. Evonik Degussa manufactures various input materials for the manufacture of printing inks, namely pigment blacks, resins and additives.

a) Pigment Blacks

11. Pigment blacks are used in printing inks, paints, plastics, non-impact printing and for other special applications. Pigment blacks used for the manufacture of printing inks consist mainly of carbon black (99%).⁵ Their role in the manufacture of printing ink is to colour the ink, however they can also provide gloss, abrasiveness and resistance to attack by light, heat and solvents. The most important features of pigment blacks are the size and structure of the particles and their agglomerates. These define coloristic properties such as undertone, optical density, gloss and the rheological effect of the pigment black as well as their dispersibility in the binder. Within the manufacture of printing ink, they are primarily used for the production of coldset inks, which is used in the printing of newspapers.
12. Whereas there is a limited demand side substitutability between pigment blacks and rubber blacks,⁶ there is a greater degree of supply side substitutability. As

⁴ CVC's world-wide turnover is EUR [...] billion in 2007 (Community-wide [...] billion), Evonik's world-wide turnover is EUR 14.4 billion in 2007 (Community-wide [...]), the Foundation's world-wide turnover is EUR [...] billion in 2007 (Community-wide turnover over EUR [...] billion in 2007).

⁵ Carbon Black is virtually pure elemental carbon in the form of colloidal particles that are produced by incomplete combustion or thermal decomposition of gaseous or liquid hydrocarbons under controlled conditions for commercial use primarily in the rubber, painting and printing industries. It is primarily used as reinforcing filler in tyres and conveyor belts. Other uses include pigmentation, UV stabilization and use as a conductive agent in a variety of products, including tyres and industrial rubber products, plastics, electrostatic discharge compounds, coatings, toners and to a lesser extent, printing inks. Sales of carbon blacks to printing ink manufacturers in the EEA account for less than 1% of total sales of carbon blacks in the EEA.

⁶ Rubber Blacks are also made of carbon black. They are mainly used in tyres and industrial rubber products. They reinforce the rubber structure of these products and serve as a UV stabilizer/anti-oxidant, protecting the tyres or rubber products by eliminating free radicals generated by UV radiation.

such, manufacturers of rubber blacks are able to and do produce a range of pigment blacks for lower quality printing inks, such as newspaper inks. This has been confirmed by the market test. The parties submit that the precise definition of the relevant product market can be left open, given that the proposed acquisition does not give rise to competition concerns even on the narrowest product market definition, that for pigment blacks.

13. There is no horizontal overlap between the parties in pigment black, in which only Evonik is active. Evonik's market share is estimated by the Parties to be [30-40] % EEA or [30-40] % worldwide. It is an upstream product to printing inks, in which Flint is active. As such it is a vertically affected market.

b) Thermoplastic Methacrylate and Polyester Resins

14. According to the notification, resins are used in a wide range of applications in various industries. They are mainly used for the manufacture of coatings for marine vessels, containers, metal, plastic, mineral surfaces, automotive, furniture and wood applications. Within each application they are produced in a wide range of qualities or grades.
15. In the context of ink production, resins are primarily binders. They are also used to vary and improve the properties of printing inks such as colour, strength, shade, transparency, gloss, hardness, adhesion, blocking resistance and resistance to solvent or chemicals.
16. The parties submit that the relevant product markets in relation to resins should be defined on the basis of the *type* of resin in question.⁷ The result of the market test has been positive in this respect.
17. The parties submit that thermoplastic methacrylate resins constitute a single relevant product market. Although the precise composition of such resins may vary depending on end application, there is a high degree of supply side substitutability given that these resins can be produced on the same production line. Given their chemical composition, they tend to be less chemically resilient than polyester resins and are not engineered to have the mechanical strength of dispersing agents. This has been confirmed by the market test.
18. Moreover, the parties submit that for the purposes of this notification a product market for polyester resins would be an appropriate frame of reference. This has also been confirmed by the market test.
19. Thermoplastic methacrylate resins are a specialty chemical manufactured for a large number of end applications, including that for printing inks.⁸ The parties' business activities minorly overlap horizontally in this area given that they are manufactured both by Evonik Degussa ([20-30]% worldwide, which the parties

⁷ In Case M.4071 Apollo/Akzo Nobel IAR, paras 41-42, the Commission considered a distinction between alkyd resins for ink applications and alkyd resins for coating applications to be not appropriate.

⁸ Such applications include heat seal lacquers, PVC finishes, concrete coatings, marine and container paints, low odour interior paints, metal coatings, *printing inks*, exterior paints, ceramic transfer lacquers and halogen free plastisols.

submit and as confirmed by the market test is the relevant market) and by Flint ([0-5]% worldwide).⁹ As such it is a horizontally affected market.

20. There is also a vertical relationship between Evonik and Flint for this product given that thermoplastic methacrylate resins are an upstream input used in the manufacture of printing inks, in which Flint is active. Given that Evonik has a market share of less than 25% on the relevant upstream worldwide market, this is not a vertically affected market.
21. Evonik also manufactures polyester resins. Polyester resins improve the adhesion of printing inks to metallic, mineral and plastic substrates. They also improve gloss and flexibility and are resistant to light and weathering. Polyester resins are used in a wide range of applications, in particular, can coatings, coil coatings, printing inks, automotive OEM finishes, industrial coatings and lacquers for corrosion protection.
22. CVC has no portfolio company active in the manufacture or sale of polyester resins and therefore there is no horizontal overlap between the parties for this product. Whilst polyester resins are an upstream input for printing inks manufactured by Flint, Evonik's market share for polyester resins on either the EEA or worldwide market is less than 25% and therefore not affected.

c) Additives

23. Evonik supplies Flint with different additives, namely, [...].¹⁰ Additives are chemical products which are added in small amounts to coatings and printing inks to give the end product specific properties. They are used for coatings, plastics and printing inks for various end-applications.
24. The parties agree with the Commission's prior decisional practice according to which different product markets for additives may be defined according to the function of the additive.¹¹ They submit therefore that it would be reasonable to define wetting agents, matting agents, dispersing agents, defoamers, waxes, surfactants, adhesion promoters, extenders and rheology modifiers as separate and distinct product markets given their different functionalities. This approach has been confirmed by the market test although a number of competitors indicated that from the supply side they considered that various additives could form part of the same product market. In any case, for the purpose of this decision it can be left open whether the above mentioned additives each form a separate relevant product market, since in no alternative product market the proposed operation will raise serious doubts as to its compatibility with the common market.
25. Whereas Evonik is active in the additives mentioned above, CVC has no portfolio company active in additives and there is therefore no horizontal overlap between the companies in this area. There is a vertical relationship between Evonik and

⁹ Flint's total external sales of thermoplastic metacrylate resins amounted to [...] in 2007.

¹⁰ [...].

¹¹ Case IV/M.310 – Harrisons & Crosfield/Akzo, Case IV/M.1467 – Rohm and Haas/Morton

Flint however given that Evonik supplies Flint with the additives in question. On the upstream market Evonik holds less than 25% [10-20] % on either an EEA or worldwide basis for each of the relevant additive markets. As such additives are not an affected market.

Evonik input products for the manufacture of DMAPA

26. Evonik Degussa supplies Taminco (CVC) with a nickel catalyst used for the production of Dimethylaminopropylamine (“DMAPA”).

d) Nickel Catalyst

27. The nickel catalyst produced by Evonik Degussa and required for the purpose of producing DMAPA is used in identical form for hundreds of hydrogenation applications in which they cannot always be replaced by other catalysts. The parties therefore submit that all nickel catalysts form a single distinct product market. The market test for this is positive.
28. Whereas Evonik is active in nickel catalyst, CVC has no portfolio company active in this product and there is therefore no horizontal overlap between the companies in this area. There is a vertical relationship between Evonik and Taminco however given that Evonik supplies Taminco with nickel catalyst for the downstream manufacture of DMAPA. On the upstream market Evonik holds [30-40] % on the EEA market but less than 25% on the worldwide market, which the parties claim is the market of reference. As the market test is positive in relation to a worldwide market, nickel catalyst is not regarded as an affected market for this decision.

e) Evonik Specialty Chemicals for distribution

29. Evonik Degussa manufactures a number of chemicals, some of which are distributed by Univar¹² (CVC). As CVC has no company, which is also active in the manufacture of these chemicals, there is no horizontal overlap between the parties in this area. On the other hand the relationship between the parties in distribution of chemicals is vertical. On the downstream market for distribution of commodity and specialty chemicals, Univar holds a market share of less than 25% on either a national or EEA wide basis.
30. The parties submit that the definition of relevant product markets for the numerous products manufactured upstream by Evonik Degussa that are or could be distributed by Univar would be unnecessary and disproportionate for the purposes of the notification given that the relevant vertical relationships do not give rise to any competitive concerns, given the lack of horizontal effects and the limited market position of Univar. The definition of the relevant product markets can be left open as on any definition considered the transaction does not give rise to competition concerns.

Taminco (CVC) input products

¹² [...].

f) DMF, DMAPA, AAA

31. Taminco supplies Evonik Degussa with DMF, DMAPA and two types of AAA, namely DMEA and MDEA.
32. Dimethylformamide (“DMF”) is a clear colourless liquid used as a solvent in many types of chemical reactions. It is used to make a polyimide solution, which is used in the manufacture of acrylic fibres, polyurethane textile coatings, acetylene, butadiene, acid gases, inorganic salts and certain constituents of petroleum. It is also used as a reaction medium in the manufacture of various products including dyes, resins and pharmaceuticals.
33. In line with a 2004 UK Competition Commission decision¹³, the parties submit that the relevant product market is that for DMF, as there is no supply-side substitution and although there is some potential for demand side substitution, this is too weak to provide an effective constraint in pricing.¹⁴ This has also been confirmed by the market test.
34. Whereas Taminco is active in DMF, Evonik is not active in this product and there is therefore no horizontal overlap between the companies in this area. There is a vertical relationship between Taminco and Evonik however given that Taminco supplies Evonik with DMF for the downstream manufacture of polyimides, which are primarily used for the manufacture of fibres for high temperature applications.
35. On the upstream market Taminco holds [40-50] % on the EEA market but less than 25% [5-10] % on the worldwide market. The market investigation has provided support for the conclusion reached by the UK Competition Authority in the Taminco/Air Products case¹⁵, namely that the relevant market is worldwide.¹⁶ On this basis DMF is not an affected market.
36. **DMAPA** is a colourless liquid used as an intermediate commodity chemical in the manufacture of, *inter alia*, surfactants. The parties submit that the relevant product market is the market for DMAPA.¹⁷ This has been confirmed by the market test.
37. Whereas Taminco is active in DMAPA, Evonik is not active in this product and there is therefore no horizontal overlap between the companies in this area. There is a vertical relationship between Taminco and Evonik however given that Taminco supplies Evonik with DMAPA for the downstream manufacture of amphoteric surfactants. On the upstream market for DMAPA, Taminco has market

13 Taminco/Air Products and Chemicals, published at http://www.competition-commission.org.uk/rep_pub/reports/2004/fulltext/495.pdf.

14 The Commission has already used this case as a reference in Case M.4836 – CVC/Univar of 2007.

15 Air Products and Chemicals, published at http://www.competition-commission.org.uk/rep_pub/reports/2004/fulltext/495.pdf.

16 Case M.4836 - CVC/Univar

17 In Case M.2231-Huntsman International/Albright & Wilson Surfactants Europe, the Commission found that although DMAPA is generally considered to be a separate product market, the precise market definition could be left open.

shares of less than 25% on either the EEA or worldwide markets. As such DMAPA is not an affected market.

38. **MDEA** is a class of Alkylalkonolamines (“AAA”). **MDEA** is a clear hygroscopic liquid with an amine-like odour. It is used as an extraction solvent for gas sweetening applications and as a precursor for fabric softeners and detergents. Acidic compounds such as H₂S, COS and CO₂ can be extracted using MDEA. These compounds can then be used in refineries, ammonia plants and natural gas plants.
39. The parties refer to the UK Competition Commission, which has analysed the substitutability of three classes of AAA (DMEA, MDEA, MMEA) and found that although there are demand side substitutes for some applications of these chemicals, these would provide only a weak constraint on pricing and do not indicate that the product market was wider than the relevant AAAs. However they found that the production processes gave scope for supply side substitution between these products and therefore concluded that there is one product market for the relevant AAAs.¹⁸
40. Whereas Taminco is active in AAA, Evonik is not active in this product and there is therefore no horizontal overlap between the companies in this area. There is a vertical relationship between Taminco and Evonik however given that Taminco supplies Evonik with AAA for the downstream manufacture of cationic surfactants.
41. On the upstream market Taminco holds [40-50] % on the EEA market but less than 25% on the worldwide market. The market investigation supports the conclusion reached by the UK Competition Authority in the Taminco/Air Products¹⁹case, namely that the relevant market is worldwide. On this basis, AAA is not an affected market.

¹⁸ UK Competition Commission decision referred to in footnote 13, para 4.36.

¹⁹ Air Products and Chemicals, published at http://www.competition-commission.org.uk/rep_pub/reports/2004/fulltext/495.pdf.

Downstream Markets

g) Printing Inks

42. Downstream to the markets for pigment blacks, thermoplastic resins, polyester resins and additives, Flint manufactures printing inks.
43. The parties submit that printing inks form one overall product market, in particular with a view to a high degree of demand side and supply side substitutability between the different types of inks. The result of the market test for this is inconclusive however, with a slight majority of competitors who answered in favour and a slight majority of customers who answered not in favour.
44. In previous cases²⁰ the Commission has considered that on the demand side, inks can be divided into publication and packaging inks and that on the supply side, a distinction between paste and liquid inks can be made on the basis of the inks' physical characteristics. In Case M.3886 *Aster 2/Flint Ink*, the Commission found that paste and liquid inks appear to constitute separate product markets.²¹ It found that paste inks can be segmented into heatset ink, coldset ink and sheetfed inks, whereas liquid inks can be segmented into gravure and flexographic inks.
45. In any event, the question as to whether inks form one overall product market or distinct markets can be left open for the purpose of the present decision.
46. Whereas Flint is active in printing inks²², Evonik is not active in this product and there is therefore no horizontal overlap between the companies in this area. There is a vertical relationship between Flint and Evonik however given that Evonik supplies Flint with pigment blacks, thermoplastic and polyester resins and certain additives for the downstream manufacture of the various kinds of ink. Of these upstream markets, only pigment blacks is affected.
47. On the downstream market/s for print ink and sub-markets, Flint holds a market share in excess of 25% for printing inks as a whole ([20-30]% EEA), paste inks ([30-40]% EEA), heatset inks ([40-50]% EEA), coldset inks ([40-50]% EEA), sheetfed inks ([20-30]% EEA), publication gravure [30-40]% and publication inks [30-40]%. As such these are vertically affected downstream markets.

h) Polyimides/ Fibres for high temperature applications

48. Evonik Degussa uses DMF supplied by Taminco for the production of a polyimide solution which, in turn, is primarily used for the manufacture of fibres for high temperature applications.

²⁰ Case No COMP/M.3564 – CVC/ANI Printing Inks, Case No COMP/M.1742 – Sun Chemical/TotalFina/Coates.

²¹ The market investigation found that there is very limited substitutability from the demand side between paste and liquid inks. Seen from the supply side, different facilities and equipment are required to manufacture paste inks and liquid inks.

²² Paste inks, heatset, coldset, sheetfed, liquid inks, publication gravure, flexographic inks, publication inks and packaging inks.

49. The parties submit that for the purposes of this transaction it is not necessary to define relevant product markets in relation to polyimides or fibres for high temperature applications as even on the narrowest possible market, the transaction will not lead to competition concerns.
50. Whereas Evonik is active in polyimides and fibres for high temperature applications, Taminco is not active in this product and there is therefore no horizontal overlap between the companies in this area. There is a vertical relationship between Evonik and Taminco however given that Taminco supplies Evonik with DMF for the downstream manufacture of the polyimides and fibres. Downstream Evonik holds less than 25% on the EEA or worldwide markets for polyimides and fibres for high temperature applications. As such these are vertically non-affected markets.

i) Amphoteric and Cationic Surfactants

51. Evonik Degussa uses the DMAPA sourced from Taminco for the production of amphoteric surfactants. It uses the MDEA (AAA) sourced from Taminco to produce cationic surfactants.
52. Surfactants are substances which reduce the surface tension of a solution so that it can spread and wet surfaces more efficiently. They are employed in the consumer goods sector as components of detergents and in the industrial sector as processing aids. In Case M.4179 – *Huntsman/Ciba Te Business*, the Commission found that surfactants can be subdivided into four relevant product markets based on the ionic properties in water of the different segments, i.e. anionic surfactants, non-ionic surfactants, cationic surfactants and amphoteric surfactants. The parties agree with this product market definition. The relevant surfactant markets for this transaction are therefore amphoteric surfactants and cationic surfactants.
53. Whereas Evonik is active in both amphoteric and cationic surfactants, Taminco is not active in these products and there is therefore no horizontal overlap between the companies in this area. There is a vertical relationship between Evonik and Taminco, however, given that Taminco supplies Evonik with both DMAPA and AAA for the downstream manufacture of the relevant surfactants. On the downstream markets Evonik holds less than 25% on the EEA or worldwide markets for cationic surfactants. As such this is a vertically non-affected market. However, it holds more than 25% [30-40] % on the EEA market for amphoteric surfactants. This is therefore a vertically affected market.

j) Chemicals Distribution

54. Univar distributes various chemicals manufactured by Evonik Degussa. Within chemicals distribution, the Commission has previously distinguished three relevant product markets:²³ the market for the bulk chemical business (trading), the market for the distribution of commodity chemicals (commodities) and the market for the distribution of specialty chemicals (specialties).
55. Univar operates on the commodity and specialty markets. Evonik is not active on these distribution markets. There is therefore no horizontal overlap between the parties.

²³ Case M.3344 – Bain Capital/Interfer/Brenntag

Whilst there is a vertical relationship between the parties, given that Univar distributes certain commodity and specialty chemicals on behalf of Evonik, Univar does not have more than 25% of either the commodities or the specialties markets under any reasonable geographic definition. These are therefore vertically non-affected markets.

ii). Relevant geographic markets

56. The parties submit that the relevant market for **Pigment Blacks** is at least EEA-wide in scope. Pigment blacks are generally identical throughout the EEA. Moreover all main suppliers are active on an EEA-wide level, production processes are essentially the same across all Member States and transportation costs for pigment blacks are negligible. Technical standards for pigment blacks are the same across the EEA and prices for the different types of pigment blacks are very similar across all Member States. This has been confirmed by the market test.
57. The parties submit that the geographic scope of the market for both **Thermoplastic Methacrylate resins** and Polyester Resins is worldwide, in particular in light of the international tendering process through which the ink manufacturers source their input materials and cross border trade that takes place. Given that transportation costs do not account for a significant portion of the final price (less than 5%) of these resins, ink manufacturers increasingly purchase on a global scale. This has been confirmed by the results of the market test.
58. The parties submit that the markets for the relevant **additive** markets are at least EEA-wide. For all the relevant products, prices are broadly the same across the whole of the EEA and transport costs are less than 5% of overall production costs. This is in line with various Commission precedents²⁴ and has been confirmed by the results of the market test.
59. As is the case for other catalysts, the parties submit that the relevant geographic market for **Nickel Catalysts** is worldwide.²⁵ This is, the parties submit, evidenced by significant levels of international trade. For example, Johnson Matthey Inc. and Grace, two US-based companies account for 30% of the nickel catalyst inputs into EU production of DMAPA.²⁶ At least two thirds of Evonik Degussa's annual production of nickel catalyst, which is manufactured in Germany, is sold to customers in Asia. Given that the main producers and customers are active on a global scale, the parties submit that imports and prices elsewhere in the world exert a significant competitive constraint on prices in the EEA.
60. This is confirmed by the results of the market test. It is also in line with the treatment of various nickel products in Case M.4476 – Norilsk Nickel/OMG where the supply of nickel for stainless steel, standard melting applications other than stainless steel and super alloy production, and specialty end applications was considered to be global for the purpose of that decision, whilst the other nickel product markets were left open.

²⁴ Case M.1467-Rohm+Haas/Morton, M.310 – Harrisons& Crosfield/AKZO

²⁵ Referring to case M.3213 Umicore/OMG Precious Metal Group of 2003 which concerned automotive catalysts (para.42: leaving open whether the market for automotive catalysts is EEA-wide or world-wide)

²⁶ Form CO, at p. 62.

For the purposes of this decision the relevant geographic market for nickel catalysts is considered to be worldwide.

61. The parties submit that the relevant geographic market for **DMF** is worldwide. The main suppliers and customers are active on a global level and DMF is widely traded.²⁷ Technical standards for DMF solvents do not differ. The threat of imports acts as an effective constraint on prices charged by local producers. This is in line with the above-mentioned UK Competition Commission decision in *Taminco/Air Products*.
62. As regards **DMPA**, the parties submit that the relevant product market is at least EEA-wide. In Case M.2231 *Huntsman International/Albright & Wilson*, the parties submitted that the relevant market was worldwide and this was generally confirmed by the Commission's market investigation, although all third parties stated that the relevant market was *at least* Western Europe wide, if not larger. The proposal that the market is at least EEA wide has been confirmed by the market test.
63. The parties submit, in line with the UK Competition Commission's finding in the *Taminco/Air Products* case that due to high levels of international trade and the scope for such trade, the relevant geographic market for **AAA** is worldwide.
64. As regards **printing inks**, the parties agree with the Commission's finding in case M.3008 *Aster 2/Flint Ink* that the ink markets are EEA-wide.
65. In relation to **Polymides/Fibres for high temperature applications**, the parties submit that the relevant geographic market is worldwide. Suppliers are active on a worldwide level and transportation costs are insignificant. Evonik Degussa for example has a single production facility for both polymides and fibres in Austria, which ships [...] to Asia. The market test in this respect however is inconclusive. However, the definition of the geographic scope of the relevant markets can be left open as this does not change the final assessment.
66. The parties submit that the relevant geographic market for **surfactants** is EEA-wide. However, in Case M.4179 *Huntsman/Ciba TE Business*, the market investigation indicated that the market for surfactants was likely to be worldwide.²⁸
67. In previous decisions, the Commission has found the market for the **distribution of commodity and specialty chemicals** to be at least national in scope.²⁹ In any case, Univar's market share does not exceed 25% under any possible geographic market definition.
68. The definition of the geographic scope of the relevant markets can be left open as this does not change the final assessment.

²⁷ Taminco estimates that about two-thirds of total EEA production of DMF is exported.

²⁸ A more recent market investigation in Case M.4972 – Permira/Arysta confirmed this.

²⁹ Case M.3344 Bain Capital/Interfer/Brenntag, Case M.2244 Royal Vopak/Ellis & Everard.

iii). Impact on Competition

Horizontal Overlaps

69. The parties' activities overlap horizontally in **thermoplastic methacrylate resins**. On the worldwide market, which the market test has confirmed to be the relevant market, the transaction will lead to a combined market share of [20-30] % with a minor increment of [0-5] %.
70. Worldwide the parties' estimate their most important competitors to be Mitsubishi [10-20] %, Rohm & Haas [10-20] %, DSM [5-10] % and Lucite [5-10] %. In addition some other smaller competitors exist. As a result of the market investigation however it has come to light that the parties have probably underestimated the size of their competitors market shares. As such, whilst it has not been possible to reconstruct the market, it is possible that the parties combined market share on the worldwide market is actually less than [20-30] %.
71. In any case, given a market share of [20-30]% and an increment of only [0-5]% the transaction does not lead to a significant change of the structure of the market due to the limited additional market share of Flint [0-5]% and the weak competitive constraint exercised by Flint pre-transaction. The transaction does not therefore raise concerns for competition on the relevant market.

Vertical relationships

72. With respect to vertical relationships, potentially affected markets concern: a) pigment blacks/printing inks, b) thermoplastic methacrylate resins/printing inks, c) printing inks/additives, d) amphoteric surfactants/DMAPA and e) chemical manufacture/distribution.

Pigment blacks/Printing inks – No Input/Customer Foreclosure

73. Evonik Degussa has an EEA market share in pigment blacks of [30-40] % or [30-40] % worldwide and a HHI of above 2000³⁰. However input foreclosure is unlikely given that the Parties face competition from multinational competitors Cabot (39% EEA, 34% worldwide), Columbian (23% EEA, 19% worldwide) and Mitsubishi (1% EEA, 6% worldwide). In addition competitors have excess capacity which would allow them to increase production in a short space of time. They would therefore be able to react to any hypothetical input foreclosure strategy by increasing their supplies to downstream printing ink manufacturers.
74. Furthermore, as confirmed by the market investigation pigment blacks for newspaper ink can and are also produced by manufacturers of rubber blacks. In addition, the Commission's market investigation in the *Aster 2/Flint* case confirmed that the ink markets are characterised by strong buyer power.
75. The parties are therefore unlikely to be in a position to raise costs of downstream competitors in the printing ink market by means of input foreclosure.

³⁰ The Herfindahl-Hirschmann Index ('HHI') in the EEA-market for Pigment Blacks is [less than 3500].

76. Furthermore, the parties would not as a result of the transaction have the ability to foreclose access by pigment black manufacturers to downstream customer markets. Pigment blacks are used not only for printing inks but also for paints, plastics, non-impact printing and for other special applications. There are therefore various alternative customers on the downstream markets available to actual or potential competitors of Evonik on the upstream market for pigment blacks. In relation to the print inks sector, however, Flint in any case competes with Sun Chemical, Huber, Siegwirk, Epple and some other smaller competitors, all of which will continue to source pigment blacks as an input for manufacturing ink.

Table 1 Printing Inks EEA 2007

Printing Inks	Flint [30-40]%	Sun Chemical 33%	Huber 9%	Siegwerk 14%	Epple 1%	Others [10-20]%
Paste Inks	Flint [30-40]%	Sun Chemical 32%	Huber 17%	Siegwerk 5%	Epple 2%	Others [5-10]%
Heatset Inks	Flint [40-50]%	Sun Chemical 40%	Huber 10%	Siegwerk 5%	Epple 0%	Others [5-10]%
Coldset Inks	Flint [40-50]%	Sun Chemical 30%	Huber 20%	Siegwerk 7%	Epple 0%	Others [0-5]%
Sheetfed Inks	Flint [20-30]%	Sun Chemical 26%	Huber 23%	Siegwerk 4%	Epple 7%	Others [10-20]%
Publication Gravure	Flint [30-40]%	Sun Chemical 30%	Huber 0%	Siegwerk 30%	Epple 0%	Others [5-10]%
Publication Inks	Flint [30-40]%	Sun Chemical 33%	Huber 13%	Siegwerk 10%	Epple 1%	Others [5-10]%

77. Furthermore, Flint is unlikely to enjoy higher price levels on downstream markets for printing inks resulting from a customer foreclosure strategy due to the strong countervailing buyer power of customers of ink manufacturers.³¹

Resins/Printing Inks – No Input/Customer Foreclosure

78. In relation to Resins, Evonik does not have a market share in excess of 25% on the relevant worldwide market for either Thermoplastic Metacrylate resins or polyester resins.

79. Flint with market shares in excess of 25%³² in inks on the EEA would not be able to substantially foreclose access by competing manufacturers of Thermoplastic Methacrylate Resins to downstream customers. The resins are used for the most part

³¹ Case M.3886 – Aster 2/Flint Ink, paragraph 26.

³² [20-30]% print inks, paste inks [30-40]%, heatset ink [40-50]%, coldset [40-50]%, sheetfed [20-30]%, publication gravure [30-40]% and publication inks [30-40]% EEA.

for the production of coatings for various applications and only on a less significant scale for the production of printing inks.

Printing Inks/Additives – No Input/Customer Foreclosure

80. Evonik Degussa estimates its market share upstream for all relevant additives mentioned above is less than 15% on either an EEA-wide or worldwide market.
81. The parties would lack the ability to foreclose access by competing suppliers of the relevant additives to downstream customers. Printing ink manufacturers, such as Flint represent only a moderate part of the customer base of the additives in question, which are used for coating, plastics and printing ink applications in various industries.

DMAPA/Amphoteric Surfactants-- No Input/Customer Foreclosure

82. Taminco has a market share of substantially less than 25% on the upstream market for DMAPA at either EEA or worldwide level.
83. Downstream Evonik has a market share in excess of 25% [30-40] %³³ in the EEA market for Amphoteric Surfactants. As mentioned above however in Case M.4179 *Huntsman/Ciba TE Business*, the market investigation indicated that the market for surfactants was more likely to be worldwide. On a worldwide market Evonik has a market share of less than 25% [10-20] % where it competes with Cognis (25-30%), Sasol (15-20%) Rhodia (10-15%), McIntyre (10-15%) and others (0-18%). As such it is not in a strong position to foreclose upstream competitors of Taminco in the market for DMAPA to a customer base in amphoteric surfactants.

Chemical Manufacture/Distribution

84. Evonik manufactures specialty chemicals, a limited number of which are distributed by Univar in the EEA.³⁴ As mentioned above, the parties submit that given the numerous products manufactured by Evonik which are or could be distributed by Univar, it would be disproportionate to define the relevant chemical product markets for the purposes of the notification given that the relevant vertical relationship does not give rise to competitive concerns.
85. Evonik sells the vast majority of its products to large industrial end users through its own sales offices.³⁵ The parties argue that there would be no economic rationale for Evonik to change its business model and start making its sales largely or even exclusively through Univar. For Evonik there is a clear commercial benefit in staying close to the end customer.

³³ The Herfindahl-Hirschmann Index ('HHI') in the EEA-market for Amphoteric Surfactants is [less than 2400].

³⁴ Hydroxy Tempo B11, Ionol CP, BHT, Isophorone, TriphenylEthyl, Decahydronaphtalene, potassium carbonate, surfactants personal care, persulfate, potassium bicarbonate, glycine, the total value of which is less than EUR [...] million.

³⁵ Evonik Degussa currently distributes [...] of its total portfolio of around 3500 chemicals via Univar, which amounts to only [0-5] % of Evonik Degussa's total sales via distributors in 2007.

86. Downstream Univar operates on the Commodities and Specialties Chemical Distribution markets. Univar's market share in these markets does not exceed 25% under any possible market definition (EEA or national). Univar competes within the EEA with Ruhr-Petrol, TRK, Jurgen Schmidt, Brenntag and Vitol. The parties argue that there is no economic incentive for Univar to source exclusively from Evonik. Evonik's competitors produce a wide range of products and could react by applying less favourable terms and conditions on Univar for other products.
87. For CVC as a shareholder, there is little incentive to pursue an exclusive supply arrangement between Evonik and Univar. If Evonik would exclusively supply end customers via Univar, Univar would be competing directly with the parallel direct distribution from suppliers. As such there would be a negative trade off between lost and gained profits.
88. There are no further vertical relationships between the parties. Neither party is engaged in business activities in a product market, which is upstream or downstream of a product market in which any other party to the concentration is engaged and in which any of their individual or combined market shares at either level is 25% or more.

VI. CONCLUSION

89. 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