

***Case No COMP/M.5358 -
ARIZONA CHEMICAL
GMBH / ABIETA
CHEMIE GMBH***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 16/01/2009

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.1.2009
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5358 – Arizona Chemical GmbH/ Abieta Chemie GmbH
Notification of 02.12.2008 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 2 December 2008, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 (the "EC Merger Regulation") by which the undertaking Arizona Chemical GmbH ("Arizona GmbH", Germany) belonging to the Arizona Chemical group ("Arizona", USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Abieta Chemie GmbH ("Abieta", Germany) by way of purchase of shares.

I. THE PARTIES AND THE OPERATION

2. **Arizona GmbH** is a newly formed company established in order to acquire control of Abieta. It is a part of the Arizona Chemical group which is active in refining, processing and sale of oleochemicals. Arizona is one of the world's largest producers of naturally derived specialty resins used, inter alia, in adhesives with manufacturing plants located in the USA and in Europe. It is controlled by private equity funds managed by Rhone Capital III L.P.

¹ OJ L 24, 29.1.2004 p. 1.

3. **Abieta** is a leading European rosin upgrading company, specialised in production and sale of disproportionated rosin and disproportionated rosin soaps used as emulsifiers in emulsion polymerisation. Its manufacturing operations are located in Gersthofen, Germany. Furthermore, Abieta is active in the production and sale of pigments, tackifiers and marine coating resins.
4. Arizona and Abieta together are hereafter referred to as "the Parties".
5. The notified transaction consists in Arizona GmbH's acquisition of all of the issued share capital of Abieta and all of the voting rights in Abieta. Consequently, the proposed transaction will lead to Arizona GmbH acquiring sole control of Abieta.
6. It follows that the operation constitutes a concentration within the meaning of Article 3(1)(b) of the ECMR.

II. COMMUNITY DIMENSION

7. The notified concentration does not meet the turnover thresholds of Articles 1(2) and 1(3) of the Merger Regulation and is capable of being reviewed under the national competition laws of three Member States.²
8. On 16 October 2008, Arizona GmbH informed the Commission by means of a reasoned submission (RS), that the concentration should be examined by the Commission pursuant to Article 4(5) of the Merger Regulation.
9. The RS was transmitted to all Member States. No Member State, competent to examine this concentration under its national competition law, has expressed its disagreement to the proposed referral within 15 working days of receiving the RS.
10. Accordingly, the notified transaction is deemed to have a Community dimension pursuant to Article 4(5) of the Merger Regulation.

III. RELEVANT MARKETS

11. The transaction primarily concerns the markets for manufacturing and sale of rosin emulsifiers for emulsion polymerisation and adhesive tackifier resins, where the Parties' activities overlap horizontally. The Parties are also active in the field of ink and pigment resins as well as some products used in the production of marine coatings. However, there is no overlap between their activities in relation to these products.
12. In addition, the proposed transaction gives rise to a vertically affected market because Arizona is active in the rosin market, which is upstream of the emulsion polymerisation and the adhesive tackifier resin markets.

² Germany, Italy and Spain.

A. Relevant product markets

Emulsion polymerisation emulsifiers

13. Emulsion polymerization emulsifiers can be used for several polymer systems (including SBR-Latex, PVC) and for Polymer Dispersions (e.g. coatings, paints, adhesives). There are three different rosin emulsifiers: emulsifiers based on untreated TOR (Tall Oil Rosin), emulsifiers based on treated (i.e. disproportionated) TOR and gum rosin-based emulsifiers. Rosin emulsifiers can take the form of disprop rosin soap or soap of untreated rosin. Historically, untreated TOR emulsifiers have been used to produce nitrile rubber and chloroprene rubber. Treated gum rosin-based emulsifiers and treated TOR-based emulsifiers are used in the production of emulsion styrene butadiene rubber (E-SBR).
14. The Parties overlap only in the production and supply of TOR-based rosin emulsifiers. Both Arizona and Abieta produce emulsifiers based on treated and untreated TOR. Additionally, Abieta also produces and sells emulsifiers based on disprop gum rosin. Approximately [...] % of the emulsifiers produced by Abieta are TOR-based, and the remaining [...] % are gum rosin-based. All of Arizona's emulsifiers are TOR-based.
15. The Commission has not considered the markets for emulsion polymerisation emulsifiers before.
16. In the Parties' view, emulsifiers used for emulsion polymerisation could be regarded as a part of the market for anionic surfactants (i.e. surfactants that have a negative electrical charge), which had previously been found by the Commission to constitute a separate product market within surfactants.³ This product market definition would be based on the chemical characteristics of the product in question.
17. Alternatively, the Parties submit a narrower product market definition which is based on application, i.e. market for emulsifiers for emulsion polymerisation. Such a market would comprise all rosin emulsifiers (TOR and gum rosin based) as well as fatty acid based emulsifiers as according to the Parties most manufacturers of synthetic rubber and polymers by emulsion polymerisation use a blend of emulsifiers that comprise emulsifiers derived from rosin and emulsifiers derived from fatty acids.
18. The market investigation carried out by the Commission has confirmed that emulsion polymerisation emulsifiers belong to a group of anionic surfactants. However, this group comprises a broad range of surfactants, and several respondents to the market investigation stressed that, while a number of these surfactants can be regarded as substitutes, emulsion polymerisation emulsifiers have specific chemical characteristics which influence, in particular, the stability of the emulsion and its activity in polymerisation. Therefore, from a customer point of view, they cannot be automatically

³ Case No. COMP/M.2231 – Huntsman International/Albright & Wilson Surfactants Europe; case No. COMP/M.4179 – Huntsman / Ciba TE Business.

replaced by other anionic surfactants. Furthermore, from a supplier point of view significant adjustments are needed to switch production between different anionic surfactants.

19. The market investigation has not confirmed the Parties' contention that all rosin based as well as fatty acid based emulsifiers are easily substitutable. Whereas in certain applications rosin and fatty acid based emulsifiers can be regarded as interchangeable, in general this does not seem to be common. Some emulsion polymerisation emulsifiers are utilised as an intermediate product and their function is limited to the polymer building process, whereas others form a final product. Therefore, emulsion polymerisation emulsifiers may differ significantly in terms of quality and functionality requirements. Furthermore, the market investigation has indicated that even the two types of rosin based emulsifiers, i.e. TOR based and gum rosin based, can only be considered as substitutes to a certain extent. While there are no significant technical constraints to switching between TOR and gum rosin based emulsifiers from either supplier or customer perspective, customers frequently have specifications or approval requirements that limit reformulation and hinder switching in individual cases.
20. Ultimately, the question as to whether the product market should be defined as comprising (i) anionic surfactants or (ii) rosin based and fatty acid based emulsifiers or (iii) only dispropyl rosin emulsifiers (i.e. the narrowest segment where the Parties' activities overlap) can be left open since for the purpose of this case as the transaction does not raise competition concerns under any of these three possible product market definitions.

Adhesive tackifier resins

21. Tackifier resins used in production of adhesives enable manufacturers to alter one or more characteristics of their adhesives, e.g. flexibility, heat resistance, tack, etc. Tackifier resins are most commonly low molecular weight polymers, although they may also be oligomers and, in the case of rosin, a mixture of monomeric compounds. Tackifier resins take the form of liquids or solids that melt at a low temperature. There are two general categories of tackifier resins: (i) synthetic materials which are usually derived from petroleum and include hydrocarbon resins;⁴ and (ii) natural products which originate mainly from trees. These include polyterpenes and rosin derivatives. Petroleum hydrocarbon resins include aliphatic C5 resins, cycloaliphatic dicyclopentadiene resins, and aromatic C9 resins, as well as hybrid aliphatic/aromatic materials (known as C5/C9 resins) and hydrogenated versions of both C5s and C9s.
22. The Parties submit, in line with a previous Commission decision⁵, that crude tall oil (CTO) based and gum rosin based tackifiers belong to the same relevant product market for adhesive tackifier resins. The Commission left open whether the market for adhesive

⁴ *i.e.* aromatic, aliphatic and cycloaliphatic resins.

⁵ Case No. IV/M.1391 – International Paper/Union Camp.

tackifier resins could also comprise C5/C9 and terpenes. The Parties consider that a wider product market definition is appropriate in the present case as switches between different tackifier resins do not require significant changes in the adhesive formulation or in the manufacturing equipment, they can be performed in a matter of hours and they do not result in any significant performance change in the resulting adhesive. Moreover, the Parties claim that prices for these different tackifier resins are comparable and closely related in their movements.

23. Some respondents to the Commission's market investigation supported a wider product market definition comprising all rosin-based tackifier resins, i.e. CTO and gum rosin based, as well as C5/C9 since for some application rosin-based tackifiers and hydrocarbon resins and terpenes are used interchangeably. However, several respondents also pointed to significant differences in characteristics between rosin based tackifiers on the one hand and C5/C9 on the other hand and even between CTO and gum rosin based tackifier resins.
24. Nevertheless, for the purposes of the present case a precise scope of the product market with regard to adhesive tackifier resins can be left open as the transaction does not raise any concerns as to its compatibility with the common market under any reasonable product market definition.

Pigment resins and ink resins

25. Pigment resins consist of rosin adhering to the pigment surface by physical adhesion to enable the pigments to be dispersed more easily.
26. In contrast, ink resins act as a binder for inks, gluing the pigments in the ink to the surface of the substrate and cross-linking to become a dry and durable print. They result from a reaction of phenol and rosins to make a resin.
27. Arizona sells ink resins to ink manufacturers for use as binding agents in printing inks whereas Abieta sells pigment resins to pigment manufacturers who use them in pigment powders. According to the Parties, due to the different characteristics of pigment and ink resins there is no functional overlap between Arizona's and Abieta' activities in this field. Therefore, in their view, the transaction does not lead to a horizontal overlap with respect to these resins.
28. In a previous decision the Commission found that all rosin resins for printing inks belong to the same relevant product market but left open the question whether rosin resins for all end-applications belong to the same relevant product market.⁶
29. The market investigation has confirmed the Parties' contention that pigment resins and ink resins cannot be regarded as substitutes from a customer point of view due to their different functions described above. Moreover, switching production between these two

⁶ Case No. COMP/M.4071 – Apollo/Akzo Nobel IAR.

products cannot in general be carried out easily even though in some cases pigment resins can be produced using ink resin reactors.

30. Therefore, the transaction does not lead to an overlap of the Parties with respect to pigment and ink resins.

Coatings resins and curing agents

31. Coatings resins are used in various types of coatings to hold the coating together and cause the coating to adhere to the substrate on which it is applied. A particular type of coatings resins are anti-fouling coatings used in the marine coatings segment. Gum rosin is suitable for marine coatings due to its water solubility. Anti-fouling coatings are applied on top of the base coating to prevent algae from growing on the surface of a vessel. Thus, anti-fouling coatings are regarded as an additive component, i.e. a material which modifies the overall properties of the coating to make it fit for a particular application.
32. In contrast, curing agents are used as a base coating in certain marine coatings formulations. Curing agents in particular provide adhesion, flexibility and water and corrosion resistance.
33. The Parties submit that there is no functional overlap between Arizona's and Abieta's activities in this segment of the market. While Abieta only produces coatings resins which are used as anti-fouling coatings in marine coatings, Arizona's only sales with regard to marine coatings relate to curing agents.
34. The market investigation has confirmed the Parties' contention. According to the respondents, the functions as well as chemical properties of coatings resins and curing agents are completely different. Therefore, these two products cannot be regarded as substitutes and consequently there is no horizontal overlap of the Parties with respect to coatings resins and curing agents.

Rosins

35. Three types of rosins must be distinguished: tall oil rosin ("TOR"), gum rosin and wood rosin.
36. In the EEA, TOR and gum rosin are used in a wide range of applications, whereas wood rosin's use is limited due to scarcity of the raw material required for its production, i.e. tree stumps. Gum rosin can be sold in a pastillised form, in bulk (i.e. in molten form) or in drums (i.e. packed in steel drums and allowed to cool and solidify)⁷.

⁷ The form in which rosin is purchased depends on the customers' scale of use. For bulk rosin, bulk handling facilities and heated storage tanks are required; for pastilles, a melting or dissolving facility is required; and for drummed rosin, a drum breaking and melting or dissolving facility is needed.

37. According to the Commission's practice TOR and gum rosin belong to the same product market, i.e. the rosin market.⁸
38. The market investigation has also confirmed this view.

B. Relevant geographic markets

39. The Parties submit that the markets for the above-mentioned products are at least EEA-wide as all these products are transported freely throughout the EEA. This is in line with a previous decision of the Commission with respect to rosin and its derivatives⁹.
40. The market investigation has confirmed this view. The respondents confirmed that products manufactured in a particular production plant located in the EEA are normally exported throughout the EEA and transport costs do not play a significant role in a final product. Moreover, the respondents confirmed that price differences between countries are small, at least at the EEA level, and regulatory barriers are low due to the common regulatory environment within the EU (REACH).
41. Thus, the relevant markets can be regarded as at least EEA-wide in scope.

IV. COMPETITIVE ASSESSMENT

A. Horizontal effects

Emulsion polymerisation emulsifiers

42. The transaction does not raise competition concerns with regard to emulsion polymerisation emulsifiers.
43. If all anionic surfactants are regarded as a relevant product market, the combined market shares of the Parties in the EEA are negligible, i.e. below [0-5]%, and the notified transaction is therefore unlikely to lead to competition concerns.
44. If a narrower market for emulsion polymerisation emulsifiers (comprising dispro rosin emulsifiers as well as fatty acid based emulsifiers) is considered, the market shares of Abieta and Arizona in the EEA are [30-40]% and [5-10]% respectively (combined [30-40]%). Competitors are Hexion ([10-20]%), DRT ([5-10]%) and fatty acid producers (like Croda and Huntsman) altogether comprising [30-40]% of the market.
45. If the market was sub-segmented further and a separate market for dispro rosin emulsifiers was considered, i.e. excluding fatty acid based emulsifiers, the EEA market

⁸ Case No IV/M.1391 – International Paper/Union Camp.

⁹ Case No. IV/M.1391 – International Paper/Union Camp.

shares of Abieta and Arizona would be higher, namely [50-60]% and [10-20]% respectively (combined [60-70]%). Main competitors are Hexion ([20-30]%) and DRT ([10-20]%).

46. The Parties' combined worldwide market shares under all alternative product market definitions are comparable or lower than their corresponding EEA-wide market shares and are therefore not discussed further.
47. The Parties claim that, even when considering the two possible latter markets (emulsion polymerisation emulsifiers or rosin emulsifiers), the notified transaction is unlikely to give rise to competition concerns. They notably submit that (i) there are several other significant competitors, most notably Hexion and DRT, including increasingly competitive Asian suppliers, (ii) there is a significant spare production capacity in this industry, and (iii) customers can easily switch producers and have a countervailing buying power.

Dispro rosin emulsifiers

48. Despite the significant combined market share of the Parties when the narrowest product market definition is considered, the notified transaction is unlikely to lead to competition concerns in the EEA for the following reasons.
49. Firstly the market investigation has confirmed significant excess production capacity for dispro rosin emulsifiers, due to relatively low average capacity utilisation rate (between 50% and 80%). This allows the Parties' competitors to increase production of emulsifier rosin anytime and without incurring significant costs. Some respondents indicated that the existence of excess capacity exercises a significant pressure on margins which already today tend to be low.
50. Both Hexion and DRT have larger market shares for dispro rosin emulsifiers than Arizona. Furthermore given their current capacity utilisation levels they can, without additional investment, supply at least as much additional dispro rosin emulsifiers as Arizona currently supplies to the market. These competitors would therefore be able to counter any attempted price increase by the merged entity.
51. Secondly, customers have a significant bargaining power vis-à-vis their suppliers. Many customers are major multinational chemical companies who have detailed knowledge of feedstock prices. They are price-driven and renegotiate prices of emulsifiers on a quarterly basis. Commonly, they partly or fully switch a supplier in case a competitor offers more competitive prices. Indeed, according to the data provided by the Parties, several customers have regularly switched from Abieta or Arizona to other suppliers over the past years. Moreover, some customers have indicated that they would even consider internalising production of emulsifiers in case of price increase.
52. Furthermore, customers have a multiple sourcing strategy. On average, they rely on two to three suppliers and believe to have a sufficient number of alternative suppliers in case the merged entity decides to increase prices.

53. Besides, the Parties' consumer bases are relatively concentrated with [less than 10] customers comprising over 90% of their combined sales of emulsifiers in Europe, which indicates that post-transaction the Parties will still have strong incentives to offer competitive prices in order to retain these customers.
54. Thirdly, the possible market for rosin emulsifiers in the EEA appears as a competitive market, as shown by a recent study on rosin markets.¹⁰ Several respondents to the market investigation confirmed the Parties' contention that there is an increasing competitive pressure from Asian suppliers. Moreover, several respondents to the market investigation mentioned that this market in Europe is in fact declining, in particular due to the shift of the labour intensive rosin production and the production of car tires - for which emulsifiers are an input - to China, and due to the shift from an emulsion to a solvent process in production of rubber in Europe.
55. Lastly, the market investigation has indeed shown that fatty acid based emulsifiers exercise a certain degree of competitive pressure on the dispro rosin emulsifiers.
56. In light of a significant excess in production capacity in the market, as well as strong customers' bargaining power and sufficient alternative supply sources for customers, the proposed transaction does not raise competition concerns with regard the potential market for dispro rosin emulsifiers.

Emulsion polymerisation emulsifiers

57. The notified transaction is also unlikely to lead to competition concerns on a broader market for emulsion polymerisation emulsifiers in the EEA.
58. Emulsion polymerisation emulsifiers consist of dispro rosin emulsifiers and fatty acid based emulsifiers. While the parties do not produce fatty acid based emulsifiers, the market investigation has shown that the broader market for emulsion polymerisation emulsifiers shares the same features as dispro rosin emulsifiers in terms of spare production capacity, customers' bargaining power and competition from producers outside the EEA.
59. In view of the above, the transaction does not lead to any competition concerns with regard the wider market for emulsion polymerisation emulsifiers.

Adhesive tackifier resins

60. With respect to the market of adhesive tackifiers, i.e. including rosin-based, terpene-based as well as C5/C9 adhesive tackifiers, the market shares of Arizona and Abieta are [10-20]% and [0-5]% respectively in the EEA. The notified transaction would give rise to an insignificant increment and the new entity would still face several other

¹⁰ See for instance page 18 of the "2008 study of international rosin markets, published by International development associates, Inc".

competitors, some of which with similar or higher market shares (Eastman ([20-30]%), Exxon ([20-30]%), Cray Valley ([10-20]%)

61. If a narrower market definition is considered, i.e. comprising rosin-based adhesive tackifiers only, market shares of Arizona and Abieta in the EEA are [30-40]% and [0-5]% respectively in the EEA.
62. The Parties' combined worldwide market shares under any alternative product market definition are comparable or lower than their corresponding EEA-wide market shares and are therefore not discussed further.
63. Despite a relatively high combined market share of the Parties in the possible market comprising rosin-based adhesive tackifiers only, the notified transaction does not raise any competition concerns for the following reasons.
64. Firstly, the increment of the market share is negligible ([0-5]%).
65. Secondly, there are several other producers such as DRT and Eastman (market share of [10-20]% each in the EEA), Hexion ([5-10]% in the EEA), EuroYser ([5-10]% in the EEA) and La Union Resinera ([5-10]% in the EEA).
66. The market investigation has shown that there are a sufficient number of competitors present in the EEA who would be capable of providing alternative sources of supply to the Parties' customers.
67. In addition, it is worth noting that the market shares estimated by the Parties do not include imports from outside the EEA, while imports from China exercise a significant competitive pressure since they represent about [10-20]% of rosin-based adhesive tackifiers produced and sold in the EEA.
68. Thirdly, customers exert purchasing power while in general relying on several supply sources.
69. Finally, no respondent to the market investigation expressed concerns with regard to this possible market.
70. It follows that the proposed transaction does not raise any competition concerns with respect to adhesive tackifier resins.

B. Vertical effects

71. The transaction gives rise to a vertically related rosin market. Arizona is active in the merchant market for rosin, whereas Abieta purchases rosin as an input in its manufacturing of the emulsion polymerisation emulsifiers and the adhesive tackifier resins.
72. Arizona's market share of the rosins merchant market in the EEA is below [0-5]%. With regard to TOR only, Arizona estimates that its market share in the EEA is approximately [5-10]%. Moreover, rosin can be sourced from outside Europe. Indeed,

an overwhelming majority of gum rosin volumes sold in the EEA is imported from outside the EEA, essentially from China.¹¹ Abieta's demand for TOR amounts to approximately [5-10]% of total TOR merchant market demand in the EEA with other important purchasers of TOR being present in the market, e.g. Hexion, EKA, Hercules, Siegwerk and Synthos.

73. Against this background, the transaction does not involve any risk of foreclosure.

V. CONCLUSION

74. 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 the EC Merger Regulation.

For the Commission,
(signed)
Siim KALLAS
Member of the Commission

¹¹ In 2007, [...] metric tons of gum rosin was produced in the EEA, whereas [...] metric tons were imported into the EEA (source: 2008 – Study of international rosin markets, by D.F. Stauffer).