EN

Case No COMP/M.5638 -
HUNTSMAN/ TRONOX
ASSETS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 18/12/2009

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir,

Subject: Case No COMP/M.5638 – HUNTSMAN/ TRONOX ASSETS
Notification of 16/11/2009 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 16/11/2009 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 ("EC Merger Regulation") by which Huntsman Corporation ("Huntsman", USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of certain assets, to which a turnover can be attributed, of Tronox Inc ("Tronox", USA), such parts hereafter referred to collectively as "Tronox Assets", by way of purchase of these assets.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the EC Merger Regulation but does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. Huntsman is a global supplier of speciality and intermediate chemicals. Huntsman operates in five product segments: (i) Pigments, including titanium dioxide pigment ("TiO2"), a white pigment used in a wide range of products; (ii) Performance Products, including amines, surfactants, carbonates, ethylene glycols, linear alkyl benzene, and maleic anhydride; (iii) Polyurethanes; (iv) Advanced Materials, including epoxy resins and related chemicals as well as formulated systems based on

1 OJ L 24, 29.1.2004 p. 1.

both epoxy and non-epoxy chemistries; and (v) Textile Effects, that is, textile dyes and textile chemicals.

4. Tronox, a Delaware corporation, was formed on 17/05/ 2005, and after an initial public offering ("IPO"), became a publicly traded company in November 2005. Prior to the IPO, Tronox Inc. was a wholly owned subsidiary of Kerr-McGee Corporation ("Kerr-McGee") comprising of Kerr-McGee's chemical business. Tronox business comprises TiO2 and electrolytic and specialty chemicals[2]. TiO2 represents more than 90% of its sales.

5. Tronox and certain of its subsidiaries filed voluntary petitions for reorganization under Chapter 11 of the U.S. Bankruptcy Code on 12/01/2009.

6. Huntsman proposes to acquire, from Tronox, TiO2 manufacturing facilities in the USA and the Netherlands (excluding Savannah, Georgia, USA), as well as a 50% share of a titanium ore mining and TiO2 manufacturing joint venture facility in Australia (the other 50% will continue to be owned by Exxaro, a South African mining company), electrolytic production facilities in the United States; and intellectual property and production assets related to the operation of the TiO2 chloride process.

7. Huntsman will not acquire a Tronox TiO2 manufacturing facility which is located in Uerdingen in Germany and which accounts for around [5-10]% of EEA TiO2 sales.

8. On 28/08/2009, Huntsman signed and executed a binding “stalking horse” asset and equity purchase agreement (the AEPA), with Huntsman as the "stalking horse bidder", pursuant to which Huntsman's wholly-owned subsidiary Huntsman Pigments LLC has agreed to acquire the Tronox Assets under Section 363 of Chapter 11 of the U.S. Bankruptcy Code[3].

9. The Bankruptcy Court has approved bid protections issued by Tronox. The bid protections, including but not limited to a break-up fee and expense reimbursement, to compensate the stalking horse bidder for providing a binding bid for the assets and bidding procedures, are to compensate Huntsman in case the transaction will not be consummated, e.g. the Bankruptcy Court approves a higher bid.

II. COMMUNITY DIMENSION

10. The transaction lacks Community dimension. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[4], Huntsman alone having a worldwide turnover of EUR 10,215 billion. It also has a Community-wide turnover in excess of EUR 250 million (EUR […] billion). However, Tronox Assets generated a Community-wide turnover of only EUR […] million in 2008, nor did it

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2 Electrolytic manganese dioxide, sodium chlorate, boron-based and other specialty chemicals.

3 A "stalking horse" bid is a binding proposal for any and/or all assets of a bankrupt company. The stalking horse bidder is an interested buyer chosen by the bankrupt company. The binding offer is subjected to a higher offer in an auction process under the supervision and subject to the approval of the bankruptcy court.

4 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p.1).

meet the alternative criteria for jurisdiction, that is, turnover exceeding EUR 25 million in three different Member States.

11. However, given the multiple filing requirements in at least three Member States[5] and the cross-border nature of the transaction, the case was referred to the Commission under Article 4(5) of the EC Merger Regulation for the purpose of its competitive assessment. No Member State opposed the referral.

III. RELEVANT MARKETS

A. Relevant product markets

12. Both parties produce TiO2, which is a large-volume, mature chemical, essentially used to opacify and whiten products; it does not have a bleaching effect, but "hides" colours. In 2008, approximately 1,198 Kt where sold in the EEA for a value of EUR 2 billion. The Commission made a detailed analysis of TiO2 in a previous case[6]: There are three main categories of applications for TiO2 : paints/coatings, plastics, and various speciality products.

13. The TiO2 production process consists of two stages. In the first stage TiO2 is produced in crystal form from mined titanium ore, by crushing, and treatment with either chloride (continuous process) - or sulphate (batch process) -based chemical agents. TiO2 in crystal form is not commercially traded, but, in the second production stage, is "finished" in batches, each batch being processed – coated - to produce the grade of TiO2 appropriate to a particular end-use. The "quality" of the resulting TiO2 depends on crystal size and purity while coating largely affects the end-use.

14. The notifying party submits that TiO2 is a single market composed of differentiated products. As stated above, the essential functions of TiO2 is to opacify and whiten products. Due to the wide range of uses, TiO2 manufacturers differentiate their products by varying the particle size of the TiO2, or by altering the coatings placed onto the particles, to satisfy customer preferences, which may depend on customers' product performance or the efficiency of the customer's own production process.

15. From a demand-side perspective, the notifying party submits that, whilst TiO_2 producers manufacture different grades of TiO_2, many of the grades are suitable for use in many end-use applications. The Commission found in the previous case mentioned above that "although certain grades or group of grades may not be substituted for certain specific productions, there is always an effect of chain substitution between grades. One grade is generally used for a large range of uses and several grades of several suppliers compete within each category of application."[7]

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5 The transaction would have been notifiable in the following Member States: Austria, Bulgaria, Germany, Greece and Poland.

6 IV/M.984 DUPONT / ICI.

7 Ibid.

16. The Commission also found that the same applied to supply-side substitution. With regard to supply-side substitutability there was no need to consider TiO2 grades as an appropriate basis for a further delineation of the relevant product markets[8].

17. In their responses to the Commission's investigation in the current case, TiO2 customers emphasized the multiple uses of TiO2, and the need for a corresponding multiplicity of grades, which will determine such factors as the durability, dispersability, and whiteness of the end-product. Some customers stated that Tio2 grades produced by the chloride process are in general purer and whiter than grades produced by the sulphate process, and as a result only the former are suitable for some speciality applications.

18. From a supply-side perspective, in their responses to the Commission's investigation in the present case, competitors confirmed that switching between sulphate and chloride processes using the same equipment is not possible. However, there exists a significant degree of supply substitutability between the different grades of TiO2, insofar as switching from the production of one grade to another within the same chemical process does not imply significant technical difficulties. […]A switch from one grade to another merely requires an interruption of the production process for a very short period of time in order to clean up the equipment, thus preventing contamination between batches of different grades. By way of example, the downtime in production entailed by this clean-up is about 5-10 hours for a switch from one plastics grade to another plastics grade and 10-15 hours for a switch from a plastics grade to a coatings grade.

19. The precise product market definition can be left open in the present case, since the proposed transaction will not give rise to competition problems on any reasonable definition (see below).

B. Relevant geographic markets

20. The notifying party submits that the market for TiO2 is global, and in particular emphasizes the existence of significant intercontinental trade flows to support its assertion. The notifying party points out, for example, that Dupont, a major producer of TiO2, imports all the TiO2 that it sells in Europe from its USA-based manufacturing facilities, and that TiO2 capacity in China is growing, and increasingly exported worldwide. In the past, the Commission itself has considered

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8 The Commission reasoned as follows in the aforementioned decision with respect to substitutability between TiO2 grades :
"*On the supply side, all suppliers can relatively easily switch production from one grade to another. The downtime in production during grade changes is typically no longer than a few hours. Moreover, suppliers active on the EEA market offer a full range of grades, presenting varying performances and characteristics. The same grades normally cover a large number of end-use applications. As to the differences in manufacturing processes, it is noted that chloride or sulphate-produced TiO_2 can be used interchangeably for around 80% of all applications. Therefore, the only significant exception to demand-side substitutability regards those sulphate TiO_2 grades for speciality applications, which cannot be substituted by chloride grades.*"
The Commission left open the question whether sulphate TiO2 grades for speciality applications, which cannot be substituted by chloride grades, constitute a separate market, because there was no overlap between the notifying parties in relation to these grades.

the TiO2 market as at least Community wide. The Commission has also noted that some elements suggest that the relevant market is larger than the EEA[9].

21. In their responses to the Commission's investigation in the current case, TiO2 customers stated that they source TiO2 from suppliers located in Member States other than the country in which their own manufacturing plant is located. For example, one Nordic customer sources TiO2 from Germany, the UK, Netherlands and Belgium. Several EEA customers use TiO2 imported from plants located in the USA. From the supply side, TiO2 manufacturers with plants located in eastern European EU Member States have said that they supply customers worldwide, and another manufacturer supplies EEA countries from plants located in Japan and Singapore.

22. The precise geographic market definition can be left open in the present case, since the proposed transaction will not give rise to serious doubts on any reasonable definition (see below).

IV. COMPETITIVE ASSESSMENT

A. Horizontal effects

23. On the basis of an overall EEA TiO2 market (2008), Huntsman has a [10-20]% share and Tronox Assets a [5-10]% share, to give [20-30]% combined. Globally the corresponding market shares are [10-20]% and [5-10]%. Several other market participants have significant market shares in the EEA : Kronos [10-20]%, Cristal [10-20]%, Dupont [10-20]%, and Kemira and Tronox Uerdingen (not part of Tronox Assets, see para 4 above) with around [5-10]% each.

24. If, despite the significant evidence of widespread supply-side substitutability (see above), the effects of the proposed transaction were to be analysed by TiO2 end-use, then again combined market shares would not be such as to indicate competition problems. Huntsman and Tronox Assets TiO2 supplies overlap only within the coatings (decorative and industrial) and plastics (polyolefin, PVC, and engineering plastics) sectors. On an EEA basis, the merged entity and major competitors would have the following shares (supplied by the notifying party, 2008 basis):

- decorative coatings : [30-40]% (Huntsman [20-30]% + Tronox Assets [5-10]%), Cristal [10-20]%, Kronos [10-20]%

- industrial coatings : [20-30]% (Huntsman [10-20]% + Tronox Assets [10-20]%), Kronos [20-30]%, Dupont [10-20]%, Cristal [10-20]%, Tronox Uerdingen [10-20]%

- polyolefin plastics : [20-30] % (Huntsman [20-30]% + Tronox Assets [5-10]%), Kronos [10-20]%, Cristal [10-20]%, Dupont [10-20]%, Tronox Uerdingen [5-10]%

- PVC plastics : [10-20]% (Huntsman [5-10]% + Tronox Assets [5-10]%), Kronos [20-30]%, cristal [10-20]%, Dupont [10-20]%, Tronox Uerdingen [10-20]%

9 Ibid.

- engineering plastics : [20-30]% (Huntsman [10-20]% + Tronox Assets [10-20]%), Kronos [30-40]%, Dupont [10-20]%

25. On the basis of global TiO2 manufacturing capacity, the merged entity would have [10-20]%, DuPont [20-30]%, Cristal [10-20]% and Kronos [10-20]%. There is considerable overcapacity in the market today, which should normally lead to stronger competition, especially pricing competition. Due to the fact that switching production between grades is easy, and the wide substitutability of the grades produced by either technique (i.e. sulphite or chloride) in most end-uses, the over-capacity situation applies across the different end-uses.

26. Moreover, as a result of the recent global economic slowdown, consumption of TiO2 has fallen by around 5%, both globally and in the EEA, over the period 2007-2008. The market reduction was even more marked during the first semester of 2009 with global demand year-to-date declining by 15% versus the same period in 2008, and demand in Europe declining by more than 25% versus the same period in 2008. This significant reduction in demand has further exacerbated the over-supply of TiO2 in the market and has created strong price competition. This has been further enhanced by the recent US dollar weakness against the Euro, which makes dollar-denominated imports of TiO2 from the US to Europe more price competitive.

27. During its market investigation the Commission received no complaints concerning the proposed transaction from either customers or competitors, the majority of whom foresee little or no impact on competitive conditions in the relevant markets for the foreseeable future.

B. Vertical effects

28. The only vertical link created by the proposed transaction is that of upstream titanium ore and downstream TiO2 crystals in the Australian joint venture (see above, paragraph 6). This is an existing Australian JV of which all ore produced, around [5-10]% of global consumption, is used captively to manufacture TiO2 by the JV. The acquisition by Huntsman of Tronox's 50% interest will not give Huntsman the ability nor create incentives for Huntsman to restrict TiO2 supplies to other customers, nor will the JV's own TiO2 manufacturing facilities withdraw custom from alternative suppliers of titanium ore, since these facilities are entirely supplied from the JV's own ore mining operations.

29. Furthermore, Huntsman is not active in the supply of titanium ore, and its incentives with regard to its supply do not change with the merger. The Tronox JV partner Exxaro will continue to sell limited amounts of excess ore the JV does not use to the merchant market. According to a mineral sands marketing agreement between Tronox and Exxaro, Tronox and/or Huntsman do not have any control or influence in the marketing and sales of the excess ore. Any effort to restrict such sales (which is not possible) would only amount to foregoing extra revenues. The possibility of any and all foreclosure effects can therefore be excluded.

30. In conclusion the proposed transaction does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement.

V. CONCLUSION

31. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the internal 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