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***Case No COMP/M.5760 - Lotte Group/ Artenius UK***

Only the English text is available and authentic.

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

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Article 7(3)  
Date: 08/02/2010



EUROPEAN COMMISSION

Brussels, 08/02/2010  
C(2010) 897

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 7(3) DECISION

**To the notifying party:**

Dear Sir/Madam,

**Subject: Case No COMP/M.5760 - Lotte Group/ Artenius UK**

Request for a derogation pursuant to Article 7 (3) of Council Regulation (EC) No 139/2004

1. We refer to your application of 21 January 2010 for a derogation from the suspension obligation provided for in Article 7(1) of Council Regulation (EC) No 139/2004 ("the EC Merger Regulation") with regard to the proposed acquisition by KP Chemicals Corporation ("KP Chemical", Korea), controlled by The Lotte Group (Korea) of sole control over Artenius UK Limited ("Artenius", United Kingdom) submitted pursuant to Article 7(3) of the EC Merger Regulation (KP Chemicals and Artenius are together referred to as "the Parties").

**I. THE PARTIES AND THE OPERATION**

2. KP Chemical specialises in the production of petrochemicals products, including PET and PTA products. KP Chemical is based in Korea and manufactures products for sale in the domestic Korean market and for export.
3. Lotte Group, a parent company of KP Chemical, is a diversified holding of companies based in Korea. The Lotte Group has interests in foods (particularly confectionery), retail, hotels, chemicals, construction and finance. The Lotte Group's principal business operations are in Korea, but it also has operations in a number of other countries including Japan, Russia, China, India and the USA. The Lotte Group is ultimately controlled by Mr Gyuk-ho Shin. Mr Gyuk-ho Shin does not control any companies other than companies affiliated to the Lotte Group.

4. Artenius is a UK based producer of purified terephthalic acid (PTA) and polyethylene terephthalate (PET) products. On 27 July 2009, Artenius was placed into administration.

## **II. COMMUNITY DIMENSION**

5. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million [KP Chemical<sup>1</sup> EUR 21,8 billion, Artenius EUR 0,392 billion]. Each of them has a Community-wide turnover in excess of EUR 250 million [KP Chemical EUR 343 million, Artenius EUR 383 million], and they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The proposed Transaction therefore has a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation.

## **III. THE APPLICATION FOR DEROGATION**

6. On 21 January 2010 KP Chemical applied for a derogation from the suspension obligation provided by Article 7(1) of the EC Merger Regulation in order to close the transaction as soon as possible.
7. The Parties submit that any delay in completing the Transaction would cause significant harm to the prospects for the successful completion of the Transaction and the return to viability of Artenius.

## **IV. THE CONDITIONS FOR DEROGATION PURSUANT TO ARTICLE 7(3) OF THE EC MERGER REGULATION**

8. Pursuant to Article 7(1) of the EC Merger Regulation, a concentration falling under that Regulation shall not be implemented either before its notification or until it has been declared compatible with the common market. Pursuant to Article 7(3) of the EC Merger Regulation, the Commission may, on reasoned request, grant derogation from the obligation imposed in Article 7(1).
9. Derogation from the obligation to suspend concentrations is granted only exceptionally, normally in circumstances where the suspension provided for in the EC Merger Regulation would cause serious damage to the undertakings concerned by a concentration, or to a third party.
10. In deciding on the request, the Commission must take into account, *inter alia*, the effects of the suspension on one or more undertakings concerned by the concentration or on a third party and the threat to competition posed by the concentration.

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<sup>1</sup> Lotte Group

**A. THE OPERATION FALLS UNDER THE SUSPENSION OBLIGATION PURSUANT TO ARTICLE 7(1) OF THE EC MERGER REGULATION**

11. The proposed transaction constitutes a concentration within the meaning of Article 3 of the EC Merger Regulation and has a Community dimension according to Article 1 thereof. Hence the operation falls under the suspension obligation laid down in Article 7(1) of the EC Merger Regulation.

**B. THE EFFECTS OF THE SUSPENSION ON THE UNDERTAKINGS CONCERNED AND THIRD PARTIES**

12. On 27 July 2009, Artenius was placed into administration. Since being placed in administration, Artenius has ceased operations. Actually, its PTA plant had already closed in February 2009 because of a poor cash flow situation.
13. The delay which would be caused by the need to wait for the Commission to complete its assessment of the Transaction under the normal timetable prescribed by the EC Merger Regulation is likely to cause significant problems for the business, which are potentially critical to its long-term viability. In particular, it will cause damage to the business's customer base, to its supplier relationships, and to its workforce. Over and above these factors, which may not be unexpected in a business in severe financial distress, there are specific timing reasons relating to the need to re-start the PTA plant shortly so that there is sufficient time to be back in the market for the crucial Spring and Summer periods when the main demand for the products occurs. The ongoing costs of administration are also significant. These factors are explained in more detail below, based on the information provided by the parties.
14. Demand in the EEA market for PET resin and PTA products is seasonal; soft drink consumption is highest in the summer. Demand begins to build in the spring from around March up to a peak in July following which it declines. Customers for PET resin and PTA therefore need to ensure that they have their contracts in place with producers such as Artenius early in the year in order to guarantee their supplies for the peak summer period. This means that customers are looking to sign supply contracts in February to secure supply for the peak period (April to August). This five month period typically accounts for approximately 60% of the annual sales of both products.
15. Operation of a PET resin/PTA plant requires skilled and experienced staff. Since the Artenius plant was closed, a number of the ex-employees and residual continuing staff have moved to new jobs. More will do so as time passes. It is therefore crucial for KP Chemical as new owners to be able to recruit, re-recruit and retain as many of these skilled staff as possible. There is thus a considerable challenge in terms of obtaining an effective workforce for the PTA factory and, unless a significant number of experienced staff can be brought on board quickly, it will be difficult to re-open the plant in time to satisfy demand for the 2010 peak season. A company in administration cannot recruit effectively as it cannot do so without exposing the company's creditors and remaining staff to an unacceptable degree of financial and operational risk.
16. It is therefore necessary that the Transaction is closed as soon as possible to allow production to restart in March after a 8-10 week re-commissioning programme.

Potential customers will also have the assurance that the plant will be in a position to supply them with products in summer 2010.

17. The costs of maintaining Artenius in administration are significant and will ultimately be deducted from the amount that is returned to the company's creditors. Waiting for the Commission to complete its normal review of the Transaction is expected to add an additional 6 to 8 weeks to the administration process. The cost of maintaining the company in administration are [...].

### **C. THE THREAT TO COMPETITION POSED BY THE CONCENTRATION**

18. Artenius produced PTA and PET. KP also manufactures these products. PTA is used primarily to produce PET which is itself largely used to manufacture bottles for carbonated soft drinks, water and other soft drinks and for household and beauty products. The Commission has considered PTA in the past and left open the question of whether it constituted a relevant product market or should be considered part of a market including di-methyl terephthalate<sup>2</sup>. PET has not been considered by the Commission but the OFT considered it to be a relevant product market<sup>3</sup>.
19. It seems likely that the relevant geographic markets for PTA and PTE are at least EEA wide. In the Dupont/ICI<sup>4</sup> case the Commission noted that the relevant geographic market for PTA appeared to be EEA wide but did not reach a firm view. The OFT has considered the relevant market to be EU wide<sup>5</sup>. As far a PET is concerned, only the OFT has considered the situation and concluded that the EU was the relevant geographic market<sup>6</sup>
20. KP Chemicals has no EEA-based production capacity and its EEA sales are realised by imports. The parties' combined market share on the EEA PTA markets is modest: approximately [10-20]% with an increment of only [0-5]%. For PET resin the combined share is [10-20]% (KP,[0-10]; Artenius, [0-10]%).
21. Therefore, the transaction is unlikely to raise competition concerns. The parties believe that the Transaction will have pro-competitive effects; not only will it return Artenius and its capacity as a EEA-based competitor into the PET resin and PTA markets, it will also separate Artenius from the wider La Seda de Barcelona group which owned Artenius prior to it going into administration in favour of a purchaser that has no EEA-based production capacity, ensuring an independent competitive existence.

### ***Conclusion***

22. Therefore, on the basis of the information provided by the Parties, the Transaction is not likely, *prima facie*, to significantly impede effective competition within the EEA.

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<sup>2</sup> IV/M.984 –Dupont/ICI

<sup>3</sup> OFT decision of 04/10/2007 La Seda/Amcor PET Packaging Europe

<sup>4</sup> IV/M984 –Dupont/ICI

<sup>5</sup> OFT decision of 04/10/2007 La Seda/Amcor PET Packaging Europe

<sup>6</sup> OFT decision of 04/10/2007 La Seda/Amcor PET Packaging Europe

#### **D. BALANCE OF INTERESTS**

23. Based on the above, it appears that the suspension obligation could cause significant harm to the prospects for the successful re-commissioning of the two Artenius plants and the company's ability to compete. The maintenance of Artenius as a viable competitor is in the interests of both its customers and suppliers. On the basis of the currently available information there appears to be no threat to competition arising from the proposed operation. Finally delay would have an adverse effect on Artenius's creditors as the means available to meet their demands would be reduced. As the granting of a derogation, in this case, does not appear to have adverse effects on one or more of the Parties or on any third party the Commission considers that a derogation can be granted in accordance with the application and to the extent specified below.

#### **V. TERMS AND CONDITIONS**

24. According to Article 7 (3), 4th sentence, of the EC Merger Regulation, a derogation from the suspension obligation laid down by Article 7 (1) thereof may be made subject to conditions and obligations in order to ensure effective competition.
25. Based on the preceding considerations, the Commission has decided to grant a derogation from the suspension obligation with regard to the proposed concentration subject to the following condition: KP Chemicals shall endeavour to submit a complete notification to the Commission as early as possible and in any case no later than 5 days following the adoption of this decision in order to allow the assessment of the compatibility of the proposed concentration with the common market.

#### **VI. CONCLUSION**

26. Based on the above considerations and in accordance with Article 7(3) of the EC Merger Regulation, KP Chemical is granted a derogation from the obligations imposed by Article 7(1) of the EC Merger Regulation subject to the condition set out in paragraph 25 above until the Transaction has been declared compatible or incompatible with the common market.

*For the Commission  
(signed)  
Neelie KROES  
Member of the Commission*