

***Case No COMP/M.5854 -
TOTAL GROUP/ HIPS &
GPPS business of
POLIMERI***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 30/06/2010

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EUROPEAN COMMISSION

Brussels, 30.06.2010

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5854 – Total Group/ HIPS & GPPS business of Polimeri
Notification of 26.05.2010 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 26.05.2010, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation and following a pre-notification referral pursuant to Article 4(5) of the Merger Regulation by which Total Petrochemicals Feluy S.A. ("TPF", Belgium) belonging to the Total Group ("Total", France) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of part of Polimeri Europa Benelux S.A. ("Polimeri", Belgium) consisting of Polimeri's polystyrene production lines (and related HIPS and GPPS business) at Feluy, Belgium by way of purchase of assets.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the internal market and the EEA Agreement.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

I. THE PARTIES AND THE OPERATION

3. TPF is a manufacturer of commodity polymers (polyethylene, polypropylene, polystyrene). Total, TPF's ultimately controlling parent, has chemical activities that can be grouped in two main businesses: (i) base chemicals and commodity polymers, such as olefins, simple aromatics, polyethylene, styrene and polystyrene and (ii) specialty chemicals (resins, adhesives and electroplating chemicals).
4. Polimeri is a petrochemical company active in two businesses: (i) basic chemicals (olefins, aromatics, phenol and derivatives) and commodity polymers (polyethylene and styrenics) and (ii) specialty chemicals (elastomers).
5. The transaction relates to three production lines of polystyrene located in Feluy, Belgium: (i) high impact polystyrene ("HIPS"), (ii) general purpose polystyrene ("GPPS") and (iii) expanded polystyrene ("EPS"). The production lines are physically located on TPF's site. While Polimeri prior to the transaction owns the assets and sells the polystyrene on the market, the production itself is carried out by TPF under a long term Operating and Management Agreement.
6. TPF intends to acquire from Polimeri the facilities (including land, plant, equipment) associated with the production of HIPS, GPPS and EPS in Feluy and the HIPS and GPPS businesses. TPF does not acquire Polimeri's EPS business.² The transferred assets and business are hereinafter referred to as the "Target".
7. The proposed transaction will take place in two phases:
 - Phase 1: transfer of the ownership of the assets (land, plant, equipment). As of 1 October 2011, TPF can freely use in their entirety the HIPS and GPPS production lines (TPF will continue to produce HIPS and GPPS on Polimeri's behalf until 30 September 2011).
 - Phase 2: transfer of the Target's list of Benelux customers for HIPS and GPPS.
8. Consequently, the proposed transaction would constitute a concentration within the meaning of Art. 3(1)(b) Merger Regulation.

II. EU DIMENSION

9. The notified concentration does not have a EU dimension within the meaning of Article 1 of the Merger Regulation. However, on 09.04.2010, the notifying party informed the Commission in a reasoned submission pursuant to Article 4(5) of the Merger Regulation that the concentration was capable of being reviewed under the national competition laws of at least three Member States, namely [...] and requested the Commission to examine it. None of the Member States competent to examine the

² Therefore, TPF will not have the right to use the EPS reactors, which will be stopped, secured and later dismantled by TPF. The other pieces of equipment and assets from the EPS production line would be freely used by TPF, for instance as spare parts on other lines or other sites.

concentration indicated its disagreement with the request for referral within the period laid down by the Merger Regulation.

10. Therefore the concentration is deemed to have a EU dimension pursuant to Article 4(5) of the Merger Regulation.

III. COMPETITIVE ASSESSMENT

A. Relevant product markets

11. The activities of the Parties overlap with respect to the manufacture and sell of polystyrene, and more particularly two types of polystyrene: general purpose polystyrene ("GPPS") and high impact polystyrene ("HIPS").
12. Total is also active on the upstream market for styrene, which is the main input for production of polystyrene.

(i) Styrene

13. Styrene is an intermediate chemical product used as monomer for the production of polystyrene and a number of plastics and synthetic rubbers. The notifying Party submitted in accordance with previous Commission decisions³ that styrene is a separate product market. The market investigation in the present case has confirmed this finding.

(ii) Polystyrene

14. Polystyrene is a thermoplastic resin produced by the polymerisation of styrene. Often this is carried out through the use of proprietary polymerisation. The resulting hot viscous melt is purified to remove unreacted styrenes, cooled and cut into easily transportable pellets. Polystyrene may then be further processed into specific grades, by different process conditions (temperature, pressure) and/or the use of other chemicals (initiators, additives, synthetic rubber).
15. The different grades of polystyrene are grouped into two types of polystyrene: (i) GPPS which is rigid and transparent and (ii) HIPS which is flexible, impact-resistant, both consequently referred to as PS. A third family of polystyrene is EPS, which is produced by the suspension polymerisation of styrene together with a blowing agent, pentane.
16. In case COMP/M. 3578-BP/NOVA, the Commission assessed EPS separately from the PS.⁴ The market investigation in the present case has confirmed this finding. Moreover, Total does not currently produce EPS and is only acquiring the HIPS and GPPS businesses. Therefore, EPS would not be addressed in the present decision.

³ See for example Case COMP IV/M.1078 BP/Hüls.

⁴ See Case COMP/M.3578 BP/Nova Chemicals JV.

17. The notifying Party submitted that the relevant product market should only comprise HIPS and GPPS. Moreover, it has been submitted that a narrower market definition (i.e. distinguishing separate product markets for HIPS and GPPS) is not appropriate. The notifying Party's main arguments are the following: (i) from the supply-side, most manufacturers have the facilities and processes to produce all grades of HIPS and GPPS from the same styrene feedstock; (ii) from the demand-side, HIPS as well as GPPS could, depending on the application, be substituted by other products, such as polypropylene. However, according to the notifying Party, the extent of substitution varies from one application to another.
18. In previous decisions, the Commission has considered the PS market, although the product market definition was ultimately left open.⁵
19. The market investigation in the present case generally supported the notifying Party's submission, although a segmentation of the market by type of PS cannot be excluded (i.e. distinguishing separate product markets for HIPS and GPPS). On the demand-side, for example, some customers considered that there may be differences in the use of HIPS and GPPS. As to the supply-side, the market investigation has shown that switching from one production to another may not be as easy as indicated by the notifying Party.
20. With respect to the possibility of HIPS and GPPS being substitute, depending on the application, by other products, the market investigation did not bring a clear cut result. Some respondents, for example, indicated that other products such as Polypropylene, Polyethylene or PET may substitute the PS products for some of the applications. Therefore, for the purpose of the present decision, the assessment will only deal with HIPS and GPPS, although the precise market definition can be left open since the competitive assessment would not change regardless of the product market definition.

B. Relevant geographical market

21. The notifying Party submits that the markets for styrene and PS are at least EEA-wide if not wider. Previous Commission investigations of the styrene and PS markets have not found it necessary to delineate the precise geographic market definition but have suggested that the markets were either EEA or worldwide.⁶
22. The large majority of the responses to the Commission's market investigation from both customers and competitors indicate that the relevant geographic market for styrene and for PS is at least EEA wide. Based on the above, for the purpose of the present decision, the affected markets will be analyzed on an EEA-wide basis.

⁵ See Case COMP IV/M.1078 BP/Hüls; Case COMP/M.3578 BP/Nova Chemicals JV.

⁶ See Case COMP IV/M.1078 BP/Hüls; Case COMP/M.3578 BP/Nova Chemicals JV.

C. Competitive assessment

(i) Horizontal relationships

23. In the EEA, the combined entity's share of the market for polystyrene (i.e. HIPS and GPPS) would be approximately [20-30]% ([20-30]% for Total and [5-10]% for the Target). Under the narrower product market definition (i.e. separate product markets for HIPS and GPPS), the combined entity's share would be the same.
24. Post-transaction, the combined entity will hold a relatively low market share - below 30% (approximately [20-30]%) - and would continue to experience sufficient competition from established players such as Ineos-Nova ([10-20]% of market share), BASF ([10-20]% of market share), Dow Europe ([10-20] % of market share), Polimeri Europa ([10-20]% of market share) and Synthos ([5-10]% of market share). The situation would not change should HIPS and GPPS be considered as two separate product markets.
25. Some respondents to the market investigation indicated that new entry of suppliers is possible by producers building plants in Egypt and the Middle East, as well as from producers located in Russia, Croatia and Asia. Moreover, during the market investigation no substantiated concerns were submitted to the Commission.

(ii) Vertical relationships

26. In the upstream market for the manufacture of styrene, Total holds a market share of [5-10]% on an EEA-wide basis and faces competition from companies with significant market shares such as Shell ([30-40]% of market share), Repsol ([20-30]% of market share), Bayer ([10-20]% of market share) and Lyondell ([10-20] % of market share).
27. As mentioned above (see para 23), the combined entity will hold a relatively low market share on the downstream market for the manufacture of PS, approximately [20-30]%, and will continue to face competition from companies as Ineos-Nova, BASF and Dow Europe. Currently, the Target's share of styrene purchases only represents [0-5]% on an EEA-wide basis.
28. Therefore, input and customers' foreclosure can be excluded.

(iii) Conclusion

29. In light of the above, the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement.

IV. CONCLUSION

30. For the above reasons, the European 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 the Merger Regulation.

For the Commission,
(*signed*) Joaquín ALMUNIA
Vice-President of the European
Commission