

EN

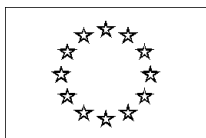
*Case No IV/M.612 -
RWE-DEA / AUGUSTA*

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 27/07/1995

Also available in the CELEX database
Document No 395M0612



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.07.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b)DECISION

To the notifying party

Dear Sirs,

Subject : Case No IV/M.612 - RWE-DEA/Enichem Augusta.

Notification of a concentration pursuant to Article 4 of Council Regulation No 4064/89

1. On 23.06.1995, the German undertaking RWE-DEA Aktiengesellschaft für Mineralöl und Chemie (controlled by RWE AG), submitted to the Commission, on the re-notification of a proposed concentration pursuant to Article 4 of a Council Regulation (EC) No 4064/89⁽¹⁾ by which it acquires within the meaning of Article 3(1)b of the Council Regulation control of the whole of Enichem-Augusta by way of purchase of shares, which had originally been notified on 19.05.1995 and subsequently withdrawn.
2. This case concerns the acquisition of a controlling interest in Enichem Augusta S.p.A ("Augusta") by RWE-DEA, belonging to the German RWE energy and technology group. Enichem Augusta S.p.A is an Italian company listed on the Italian electronic trade system, controlled by Enichem, which is part of the state-owned Eni group. Enichem publicly offered its shareholding in Augusta as part of its reorganization and restructuring program. Pursuant to the share purchase agreement, RWE-DEA will, on the closing day, purchase 70% of the capital of Augusta. The 14.25% of Augusta's share capital which will remain in the hands of Enichem after the closing date is the object of a call option in favour of RWE-DEA(which may be exercised within seven years of the closing date). RWE-DEA will launch a tender offer in respect of the floating portion of Augusta's share capital as required by Italian law No. 149/92.

⁽¹⁾ OJ No L 395 of 30.12.1989; Corrigendum: OJ No L 257 of 21.09.1990, p. 13.

3. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. COMMUNITY DIMENSION.

4. The combined worldwide turnover of the two undertakings exceeds 5000 million Ecu and the aggregate Community-wide turnover of at least two of the undertakings exceeds 250 million Ecu. Consequently, the proposed concentration has a Community dimension within the meaning of Article 1 of the Merger Regulation.

II. CONCENTRATION

5. The acquisition of 70% of the share capital of Augusta will give RWE - DEA sole control of it. The minority shareholders will not retain any particular rights which will allow them to veto decisions which are essential for the strategic commercial behaviour of Augusta, such as the budget, the business plan, major investments or the appointment of senior management. The operation constitutes a concentration within the meaning of article 3(1) (b) of the merger regulation.

III. COMPATIBILITY WITH THE COMMON MARKET

product market definition

6.

Products manufactured by Augusta and RWE-DEA	
AUGUSTA	RWE-DEA
- n-paraffins in the range C10-C13 (light paraffins) and n-paraffins in the range C14-C20 (heavy paraffins) in Augusta (Sicily) and in Sarroch (Sardinia)	
- n-olefins in Augusta;	
- linear alkybenzenes (LAB) in Augusta, Porto Torres (Sardinia) and Mantova;	- linear alkybenzenes (LAB) exclusively in the United States, through its subsidiary Vista;
- LAB sulfonic acid (LAS) in Dubai;	
	- linear fatty alcohols in the C4 to C22 range (in Europe directly by itself and in the United States by its subsidiary Vista);
- oxo-alcohols in the C11-C15 range in Augusta;	
- oxo-alcohols ethoxilates in Gela (Sicily) and Novaky (Slovak Republic)	- ethoxilation of both linear fatty alcohols and oxo-alcohols.
- internal polyolefins (PIO) in Sarroch;	
- heavy monoalkylates (HMA) in Porto Torres;	
- detergent builders (zeolites) in Crotone (Calabria) and Oostende (Belgium).	

n-paraffins

7. N-paraffins are derived from the de-paraffination of kerosene and for this reason are generally manufactured in plants located in, and integrated with, crude oil refineries in which kerosene is produced. Augusta's de-paraffination plants in Augusta and Sarroch are located near, and integrated with, Agip Petroli's and other local refineries. Light paraffins in the range C₁₀-C₁₃ are the key raw material for the production of LAB and heavy paraffins in the range C₁₄-C₂₀ via conversion to n-olefins are the key raw material for the production of oxo-alcohols. About 85% of Augusta's production of light paraffins and 70% of its total production of n-paraffins are used for its own production of LAB and oxo-alcohols. Heavy paraffins are sold to third parties for different applications. It is not necessary to decide upon a precise product market definition for n-paraffins because RWE-DEA does not manufacture this product.

Linear alkybenzenes (LAB) and LAB sulphonic acid (LAS)

8. LAB is a surfactant raw material, i.e. a component of detergents for household and industrial applications. LAB is produced from a key raw material which is light n-paraffins in the range C₁₀-C₁₃. About 85% of Augusta's production of light n-paraffins is used for its own production of LAB. The LAB manufactured by RWE-DEA, through its subsidiary Vista in the United States and imported into Europe, has essentially the same characteristics as that manufactured by Augusta.
For use in detergents, LAB has to be transformed into LAS. This transformation, through the process of sulfonation (cf under § 10-iii), is normally carried out by detergent producers/big soapers, independent transformers exist as well.
9. Although there exists a close inter-relation between LAB and LAS, notwithstanding the fact that nearly the entire worldwide production of LAB is converted into LAS for use in the manufacture of household and industrial detergents and that the final consumers of LAB and LAS are mostly the same (soapers), the Commission considers that LAB and LAS do, in fact, constitute two separate product markets.
10. This is due to the following reasons:
 - i) the producers of the LAB and LAS markets are not the same. In fact the transformation of LAB into LAS is carried out by LAB producers only in a limited way, and there are many independent transformers (who can be mere transformers or soapers), with a large sulphonation overcapacity. Furthermore, all big soapers, who constitute a large part of these transformers, have their own capacity to transform LAB into LAS. In particular, in 1994, according to the notifying party, 50% of the total European LAB consumption was transformed into LAS directly by the soapers (Procter&Gamble, Lever, Henkel, Benckiser etc);
 - ii) the manufacture of LAB is very capital intensive and requires huge investments (approximately ten times the size of those needed for the production of LAS) : a standard LAB plant of a capacity of 72,000 metric tons a year, including n-paraffin extraction requires investments of approximately US\$ 225-275 million, while for a plant for the transformation of the same quantity of LAB into LAS an investment of only US\$ 25 million is needed;

iii) the transformation of LAB into LAS is a very simple and low cost process. It involves only the addition of sulphur trioxide produced by sulphonators and the total transformation cost is approximately 0.1 ECU/Kilo compared to a market price of LAS of 0.6 ECU/Kilo during the 1992-1994 period. Additionally, it appears that if LAS production costs depend on LAB prices, nonetheless LAS prices are not automatically correlated with those of LAB, due to overcapacity in sulfonation and to fluctuation in exchange rates.

iv) LAS is less easily transported by sea than LAB and therefore European soapers do not purchase LAS from suppliers outside Europe.

11. For the above reasons, the Commission considers that LAB and LAS constitute two separate product markets.

oxo-alcohols

12. Oxo-alcohols are intermediates for the production of household and industrial detergents. For use in detergents they have to be transformed into derivatives with surface active properties which are mainly ethoxilates. The transformation of oxo-alcohols into ethoxilates is carried out firstly by the producers of alcohols, secondly by the producers of the finished products (soapers) via tolling agreements and lastly by independent transformers. Augusta sells its oxo-alcohols primarily to soapers and in more limited quantities to independent transformers. It also transforms part of its oxo-alcohols into ethoxilates in its Gela plant.

Linear fatty alcohols

13. Amongst linear fatty alcohols in the range C_4 to C_{22} , manufactured by RWE-DEA, only the ones in the C_{12} - C_{18} range could be used for surfactant applications; in practice they are largely used for a variety of different non-detergent applications. According to the notifying party, the alcohols which could be used for surfactant applications manufactured by RWE-DEA have different chemical structures from the oxo-alcohols produced by Augusta. The two types of alcohols have different price levels (in 1994 approximately ECU 1.04/kg for RWE-DEA's and ECU 0.83 kg for Augusta's). Moreover, RWE-DEA's linear fatty alcohols are used largely for higher value added applications (e.g. care products, antioxidants for plastics, lube oil additives); Augusta's oxo-alcohols are used mainly for surfactant in household and industrial detergents.

ethoxilates derivatives

14. The process of ethoxilation consists in the transformation of both linear fatty alcohols and oxo-alcohols into derivatives with surface active properties. RWE-DEA and Augusta are both involved in the processing of ethoxilation. However, the notifying party argues that the ethoxilates derivatives produced by RWE-DEA and those produced by Augusta are not interchangeable, because they are derived from different starting materials, the former from linear fatty alcohols and the latter from oxo-alcohols. Therefore, they have different properties and applications in line with the situation described with regard to the linear fatty alcohols (§ 9).
15. On the other hand, according to the notifying party, ethoxilates belong to the same market as that of the alcohols from which they are derived because, in economic terms, from the

perspective of the customers, the alcohols and their ethoxilates derivatives are largely interchangeable. The transformation of alcohols into ethoxilates is a low value transformation and capacity for ethoxilation is freely available for alcohol producers and for soapers (presently there exists idle capacity for ethoxilation in Europe amounting to about 70% of demand).

16. However as regards the three above products (i.e. oxo-alcohols, linear fatty alcohols, and ethoxilates derivatives), it is not necessary to decide on a precise market definition since, whatever the definition (separate product markets or a single market), the future entity will not hold a dominant position.

Internal polyolefins and heavy monoalkylates

17. These are used in lubricants. Zeolites are organic detergent builders reducing water hardness which are unrelated to the active surfactant ingredients (i.e. LAS and oxo-alcohols derivatives).

Geographical reference market

i) LAB

18. According to the notifying party, the market for LAB is a world-wide market. This opinion is generally confirmed by competitors' and consumers' replies to the article 11 questionnaire sent by the Commission. The geographical market for LAB is characterised by the following elements :

On the supply side

19. In 1994, LAB imports into West-Europe represented about 27% of the total sales, while the exports outside West-Europe were 42% of the total West-European production. Excluding Vista's imports from USA (RWE-DEA's subsidiary), which represented []⁽²⁾ of the imports into West-Europe, the 20% remaining imports came mainly from five different producers : Reliance and TPL from India, ISU from S.Korea, Deten from Brazil. Exports outside West-Europe were achieved by Augusta towards every part of the world (i.e. East Europe, Africa, Middle East, North America and Mexico, India and China) and by Petresa (Africa, Middle East). There are no quotas on the import of LAB into EEA. From January, 1, 1995, LAB is subject to an approximately 4.4% import duty and there are no applicable non-tariff barriers.

LAB is easily transported by sea, its transportation costs are low : between EC locations 0.030-0.040 ECU/kg, Northern America to EC and Brazil to EC 0.040-0.050 ECU/kg (i.e. 6% of the average price of LAB in the Community)

On the demand side

⁽²⁾ Deleted business secret. Between 5 and 10%.

20. LAB customers are global soaper companies (Procter & Gamble, Unilever) or big regional companies (Hüls, Allbright & Wilson, Hencker). There are no long term supply contracts with users, purchases are made world-wide on the basis of tender systems, quarterly negotiations and spot contracts.

On the basis of the above characteristics, the Commission considers that the relevant geographic market for LAB is world-wide.

ii) LAS

21. The notifying party, competitors and consumers, all argue that LAS is an EU market. LAS is less easily transported by sea than LAB. Both the excess in the sulfonation capacity (sulfonation is the process of transformation of LAB into LAS) in Europe (where all end-users are integrated as regards sulphonation plants) and the world-wide availability of LAB capacity lead soapers to buy LAB to transform it locally into LAS. There are no imports to EU and exports outside EU are relatively marginal. For these reasons, the Commission considers that the geographical reference market for LAS is Community-wide.

iii) n-paraffins, oxo-alcohols, ethoxilates derivatives, Internal polyolefins and heavy monoalkylates

22. The relevant geographic market for each of these products is at least the whole of EEA. They are easily transported across Europe and transport costs are relatively low. There are no quotas or customs duties or non-tariff barriers on the import of these products. All competitors and customers contacted by the Commission stated that the geographical reference market for these products is at least Community wide. However, it is not necessary to decide upon the exact geographic market definition because, even with the narrowest product market, the future entity will not hold a dominant position .

IV COMPETITIVE ASSESSMENT

A. Horizontal effects

23. It appears that the only product markets in which both RWE-DEA and Augusta are undoubtedly manufacturers are LAB and LAS.

As regards light n-paraffins, because RWE-DEA is not active in this market, there is no overlap.

Concerning oxo-alcohols, linear fatty alcohols and alcohols derivatives, depending on these products are considered as one single product market or separate product markets, in the first case the market will be an affected market, in the second case there is no overlap.

i) LAB

LAB MARKET SHARES (sales volume (Ktons), 1994, World wide)

	World wide %
RWE-DEA	[] ¹
AUGUSTA	[] ¹
RWE-DEA+AUGUSTA	[] ²
HUNTSMAN (USA)	[] ³
PETRESA	[...]
ISU (S.KOREA)	[] ³
DETEN (BRAZIL)	[] ³
RELIANCE (INDIA)	[] ³

[...] Deleted business secret.

¹ Deleted business secret. Between 10 and 15%

² Deleted business secret. Between 20 and 30%

³ Deleted business secret. Between 5 and 10%

24. The above table shows that the future entity will hold the leading global position in the LAB product market with a market share of about []⁽³⁾. Petresa, a Spanish company which has recently established a new production plant in Canada, which has a current capacity of 45 Ktons and a ultimate capacity of 75 Ktons, consequently will held the second global position with [...] of share.
25. In 1994, the LAB world-wide capacity was 2384 Ktons. Augusta's capacity amounted to 250 Ktons and that of RWE-DEA was 200 Ktons. The future entity will have the first global capacity with 450Ktons (but of which []⁽⁴⁾ Kt are reserved for Hüls), it will be followed by Petresa (275 Ktons), the American company Huntsman (150Ktons), the Brazilian company Deten (140 Ktons). The LAB global market is characterised by a relative high over-capacity, in 1994 the production was about 1935 Ktons for 2384 Ktons of capacity.
26. The market for LAB is extremely price sensitive, the current main purchasers of both Augusta and RWE-DEA are the following : Procter & Gamble, Henkel, Unilever, Ungert Fabrikker A.S., S.A. Camp, Albright and Wilson, Benckiser. They enjoy large purchasing power since there are no long term contracts, purchases are made on the basis of tender systems, quarterly negotiations and spots contracts. Moreover the investigation has shown that customers diversify their purchases.
27. However, even if, after the operation, the future entity will hold the first position in the global LAB market and will intend to exploit it by increasing prices, the Commission

⁽³⁾ Deleted business secret. Between 20 and 30%.

⁽⁴⁾ Deleted business secret.

considers that viable competitive alternatives exist with significant capacities in the world, and thus, for these reasons, the proposed operation does not lead to the creation or the strengthening of a dominant position.

ii) LAS

28. There are four types of operators in the LAS market : integrated operators (such as RWE-DEA, Petresa), indirectly integrated operators (such as Augusta who transforms LAB into LAS by tolling through Italian converters, DAC and SISA in 1994) independent transformers (such as Hüls), and soapers who have their own sulfonation capacity to transform LAB into LAS (such as Procter & Gamble, LEVER, Henckel, Benckiser, Albright & Wilson).

LAS MARKET SHARES (sales volume, 1994, EEA and EC)

	EU (Ktons)%
RWE-DEA	[] ¹
AUGUSTA	[] ¹
RWE-DEA+AUGUSTA	[] ²
HÜLS	[...]
ALBRIGHT & WILSON	[] ³
PETRESA	[...]
other producers	[] ⁴

[...] Deleted business secret.

¹ Deleted business secret. Between 5 and 10%

² Deleted business secret. Between 10 and 20%

³ Deleted business secret. Between 20 and 30%

⁴ Deleted business secret. Between 30 and 40%

29. After the proposed operation the future entity will be the third largest competitor in the EU LAS market with a market share of about []⁽⁵⁾. The first operator, in this market, is the German company Hüls with [...] of share. This LAS competitor stopped, for technical reasons, its production of LAB in 1994 and, since then, it is supplied by Augusta for its needs in LAB under a "supply agreement", which provides that Augusta undertakes to sell []⁽⁶⁾ Ktons/year to Hüls, at a price established on a quarterly basis and correlated to the []⁽⁶⁾. This agreement is taken for five years []⁽⁶⁾, subsequently it will be automatically extended for periods of one year, unless one or other party wants to terminate it. Because of this agreement, Hüls is to a certain extent dependent on Augusta, and thus for the

⁽⁵⁾ Deleted business secret. Between 10 and 20%.

⁽⁶⁾ Deleted business secret.

future, on RWE-DEA. Nonetheless its competitive pressure does not seem to be affected. Hüls itself, contacted by the Commission, taking into account the content of its supply agreement with Augusta, judges that its position in the LAS market will not be out of balance because of the proposed operation.

30. Western Europe LAS producers are relatively numerous and the sulfonation capacity is significant, i.e. 202.8 t/h, i.e. 1622 Kton/year of LAS, of which 784 Kton/year operated by soapers, while the LAS sales in 1994 amounted about 218.7 Kton.
31. Considering the future entity's relative low market share and the above reasons, the Commission considers that the proposed operation does not lead to the creation or the strengthening of a dominant position in the LAS market.

iii) oxo-alcohols, linear fatty alcohols and alcohols derivatives

32. As regards the demand side, the customers, who were questioned by the Commission answered that oxo-alcohols, linear fatty alcohols and alcohols derivatives constitute separate product markets. If it is considered that, owing to the absence of overlap between the activities of both RWE-DEA and Augusta, the proposed operation does not lead to the creation or strengthening of a dominant position.

33. Were these products considered as a single product market, the future entity would hold an EC market share of about []⁽⁷⁾. In this market, supply side and demand side are well-balanced; the competitors are numerous and well-established (Shell, Exxon, BASF, Henkel, Hüls); the customers are big companies, such as Hoescht, Ciba-Geigy, L'Oréal, Procter & Gamble.

As regards linear fatty alcohols, there are three major manufacturers from South East Asia, i.e. Salim (Indonesia), Kao (Malaysia) and the alliance between Procter and Gamble and Hüls essentially based on Malaysian fatty oils. In 1994 imports into EU represented about 12% of the EU market.

As regards oxo-alcohols imports in 1994 amounted to about 8% of the EU market.

34. Through the proposed merger, the future entity would be the only player in this market with a full range of products covering both petrochemical (Augusta) and oleochemical based alcohols (RWE-DEA) and at the same time would be a significant player in alcohol derivatives.

However, for the above reasons, the Commission does not consider that the likely further strengthening of the future entity's competitive position will lead to the creation of a dominant position

B Vertical effects

35. Augusta manufactures n-paraffins in the range C₁₀-C₁₄ (so called light paraffins); n-paraffins in the range C₁₀-C₁₃ are the key raw material for the production of LAB and n-paraffins in the range C₁₀-C₁₄, via conversion to n-olefins are the key raw material for the production of oxo-alcohols. About 85% of Augusta's production of light paraffins and 70%

⁽⁷⁾ Deleted business secret. Between 20 and 30%.

of its total production of n-paraffins is used for its own production of LAB and oxo-alcohols. Excluding its internal consumption, Augusta had in 1994 a EU light n-paraffins market share of []⁽⁸⁾. RWE-DEA does not manufacture this product. Taking into account such a market share, the Commission considers that, as regards light n-paraffins and LAB, the operation does not result in vertical relationships.

V. ANCILLARY RESTRAINTS

36. The notifying party has requested that several clauses of the agreements be considered as ancillary to the notified transaction.
37. In the shareholders' agreement (article 11.05), Enichem undertakes (for five years) not to compete with the future entity in respect of the products manufactured by Augusta and its subsidiaries. This clause reflects the purchaser's protection from a decision of Enichem to continue the activity of Augusta, thereby decreasing the value of the purchased company and consequently guarantees the transfer to the buyer of the full value of the assets transferred. The Commission therefore considers it as ancillary to the concentration.
38. Augusta will enter into a seven-year kerosene supply agreement with Agip Petroli s.p.a. (a member of the ENI group) and its subsidiary Praoil. Agip Petroli undertakes to supply to Augusta its entire production of the kerosene manufactured by it from Agip s.p.a.'s 50% share of the crude oil from the Bu-Attifel Libyan oil concession, up to a maximum of []⁽⁹⁾ tons per year of kerosene (with a guaranteed minimum of []⁽⁹⁾ tons per year for the first three years) and up to a maximum of []⁽⁹⁾ tons per year of paraffinic gasoil type GAL. A. In addition this clause gives to Augusta a right to request the extension for a further three years upon one year's notice.

The party's arguments to justify this clause are the following:

- This kerosene is specific (high paraffin content, approximately []⁽⁹⁾) and, therefore, it is the ideal raw material for the production of n-paraffins;
- Augusta's de-paraffination plants in Augusta (Sicily) and in Sarroch (Sardinia) are contiguous and connected, through pipelines, to the plants where Agip Petroli produces kerosene from the Bu-attifel crude;
- Augusta's n-paraffin production is currently 400,000 tons per year in Augusta and 200,000 in Sarroch. To obtain these quantities by using Agip petroli's kerosene Augusta needs to process respectively []⁽⁹⁾ and []⁽⁹⁾ tons of kerosene per year. Were Augusta to cease to have the availability of kerosene from the Bu-attifel crude, it would have to process much larger quantities of kerosene to obtain the same quantity of n-paraffin. It is argued that Augusta's plants in Augusta and Sarroch do not have the capacity to process the amounts of kerosene that would be involved if it were to switch to the use of another type of kerosene with a lower content in n-paraffin.

⁽⁸⁾ Deleted business secret. Between 10 and 20%.

⁽⁹⁾ Deleted business secret.

39. The contract also foresees the resale of the de-paraffined kerosene and gasoil by Augusta to Agip for the same period as the kerosene supply agreement (i.e. seven years). After the de-paraffination, this clause is justified by the fact that Augusta has up to now been vertically integrated within the Eni group (cf § 41) and it would take some time for an other outlet to be found for this product. The kerosene de-paraffined can only be used in normal kerosene application, i.e. jet fuel, and Augusta is not active in the trading of it.
40. According to the Commission's practice, supply agreements are regarded as ancillary restraints within the meaning of article 8 (2) of the Merger Regulation, in cases where they are necessary in order to ensure the continuity in the supply of products required for the activities taken over, for a transitional period following the acquisition.
41. As stated above the Bu-Attifel kerosene supplied by Agip is necessary for the requirement of Augusta which could not replace that kerosene with other available crudes, at least in the short term, due to the high paraffin content of it. Furthermore all n-paraffin production of Augusta is integrated with Agip Petroli's refineries producing kerosene, since the deparaffinated kerosene (raffinate) is returned to the refinery system.
42. As regards the duration of the supply agreement, the following factors should be taken into account in determining the length of time for which this agreement can qualify as ancillary to the concentration: (i) the time-lag in finding or creating other sources of kerosene supply; and (ii) the effect of the agreement on the kerosene needs of third parties.
43. With regard to (i) above it is noted that, were Augusta to have to use a different type of kerosene which is available on the market, due to the larger quantities of kerosene to be processed, it would have to construct a new plant and new infrastructure. This would require a long time for the new plant to become operative -i.e. approximately five years- and a huge investment of the same order of magnitude as the purchase price to be paid by RWE-DEA .
44. With regard to (ii) above, it has to be considered that the other European n-paraffin producer Petresa, which is vertically integrated, uses other sources of supply and for that reason it is not likely that it will become a customer for Agip's kerosene in the short term. It is also unlikely that any other undertaking would be ready to incur the investments necessary to create the deparaffination capacity needed to absorb Agip's production of kerosene.
45. In the light of the above-mentioned considerations, the Commission considers that in the present case there are exceptional reasons justifying a duration of more than five years for the kerosene supply and the resale of de-paraffined kerosene agreement. It has therefore come to the conclusion that this agreement should be considered as ancillary to the concentration for the initial period of 7 years and up to a maximum of []⁽¹⁰⁾ tons per year of kerosene and up to a maximum of []⁽¹⁰⁾ tons per year of paraffinic gasoil. On the other hand because of the reasons mentioned above, the Commission considers that the right of Augusta to request the extension of a further three years upon the seven year period is not ancillary.

⁽¹⁰⁾ Deleted business secret.

46. Enichem undertakes to continue to supply to Augusta an annual quantity between 57,000 and 63,000 of benzene, a raw material for the production of LAB, for a five year period. Augusta is free to buy from other sources. The contract provides for an obligation on Enichem to supply at market prices the major part (around 75%) of the quantities of benzene that Augusta requires yearly for its LAB production in the Augusta, Porto Torres and Mantova plants. The above-mentioned quantity of the supply of Enichem is allocated approximately as follows: around []⁽¹¹⁾ for the Porto Torres plant, around []⁽¹¹⁾ for the Mantova plant, around []⁽¹¹⁾ for the Augusta plant. The advantages for Augusta are particularly for the benzene supplied to Augusta's plants in Mantova and Porto Torres, due to the integration of these plants with Enichem's local benzene production plants. This allows reductions in transport costs and avoids the need for Augusta to create its own infrastructure for the transport and stocking of benzene, which would have to be built with considerable costs and with the risk of not granting the authorizations in the case in which the benzene supplied by Enichem were to become unavailable. Moreover Augusta remains free to be supplied of benzene from outside sources. This contract can be considered as ancillary for the period of five years because it ensures Augusta a secure source of supply of raw materials for a transitional period.
47. Enichem undertakes to continue to supply to Augusta chlorine and caustic soda through a five year-contract. and to repurchase the hydrochloric acid manufactured by Augusta. These raw materials are required by Augusta to manufacture LAB. The Share Purchase Agreement provides that in the event of failure by Enichem to renew the contract for a further five years, Enichem will pay to Augusta a penalty of Lit. []⁽¹¹⁾ per year. The notifying party argues that the manufacture of chlorine, caustic soda and hydrochloric acid are very interdependent, that the plants of Augusta and Enichem are contiguous, that these products, mainly chlorine and hydrochloric, are highly dangerous and corrosive substances which cannot be transported by sea. Therefore Enichem is the only source of supply for Augusta and in the absence of this supply Augusta would be forced either to shut down or to convert its plants to use a different raw material, at the cost of a high investment. In view of the above-mentioned factors, the Commission concludes that this agreement can be considered as ancillary for the initial period of five years because it ensures Augusta for a transitional period a secure source of supply of raw materials which are essential for its activity. On the other hand, the Commission considers that the penalty clause mentioned above is not ancillary.
48. Enichem undertakes to supply to Augusta ethylene oxide, a raw material for the production of ethoxilates, for a five year period and at a price level []⁽¹¹⁾ charged by Enichem to its customers or, failing such a price, the price paid by RWE-DEA for purchases of comparable amounts in Italy. The contract does not oblige Augusta to buy exclusively from Enichem. With regard to the necessity, it has to be considered that Enichem is in any case at least in the medium term the sole source of supply of ethylene oxide for the Gela plant because Augusta has no storage facilities for this substance. In fact Enichem's ethylene oxide plant is integrated with Augusta's only ethoxilates plant for which Enichem also provides storage facilities for the ethylene oxide. Furthermore the construction of new storage capacity is restricted due to safety reasons and would require in any case considerable investments.

⁽¹¹⁾ Deleted business secret.

For the above-mentioned reasons the Commission considers that this agreement can be considered as ancillary for a five year period because it ensures Augusta, for a transitional period, a secure source of supply of raw materials which are essential for its activity.

49. A five-year toll manufacturing agreement pursuant to which Enichem undertakes to produce ethoxilates on behalf of Augusta in a plant in Gela which is owned by Augusta but which, being a small plant integrated into a larger production facility of Enichem, can be more efficiently operated by Enichem and has therefore been given in commodatum to the latter. To the extent that this agreement constitutes a restriction of competition, the Commission considers it as ancillary to the concentration.
50. An undertaking by Enichem to continue to supply to Augusta and to its subsidiaries certain services and utilities (e.g. electricity, steam, water, security, cafeterias, waste water treatment, pipelines, streets and yards) in the industrial sites of Porto Torres and Sarroch (in Sardinia) and Mantova where Augusta's plants are within larger production facilities of Enichem. Augusta retains the right to withdraw from the contract at the end of each year giving to Enichem a notice. To the extent that this agreement constitutes a restriction of competition, the Commission considers it as ancillary to the concentration.

VI CONCLUSION

51. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,