EN

Case No COMP/M.6264 - RHONE CAPITAL / TRITON / EVONIK CARBON BLACK BUSINESS

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties:

Dear Sir/Madam,

Subject: Case No COMP/M.6264 – RHÔNE CAPITAL / TRITON / EVONIK CARBON BLACK BUSINESS
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

1. On 14 June 2011, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings Rhône Capital (‘Rhône Capital’, USA) and Triton Managers III Limited and TFF III Limited (‘Triton’, Jersey) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the carbon black business of Evonik Industries AG (‘Evonik carbon black business’, Germany) by way of purchase of shares. (Rhône Capital and Triton are designated hereinafter as the "notifying parties" or "parties to the proposed transaction" whilst Evonik carbon black business is referred to as "the Target").

I. THE PARTIES

2. Rhône Capital and Triton are private equity firms.

3. The Target consists of the carbon black business of the German specialty chemicals group Evonik Industries ('Evonik'). Carbon black is used mainly as a reinforcing filler in the rubber industry (for tyres and industrial rubber goods) and as a pigment in, for example, plastics, specialty coatings and colorants.

[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.

II. THE OPERATION

4. The proposed transaction is the culmination of a process begun by the Evonik board in 2009 to consider various options for the carbon black business. As part of this process, the carbon black business was carved out from Evonik's other operations into a separate business on 1 July 2010. Evonik subsequently announced in September of the same year that it intended to divest the business.[2]

5. On 11 April 2011, Rhône Capital and Triton, which were the last bidders in the sales process, each submitted their final offer for the Target. Rhône Capital was selected as the purchaser and a Sale and Purchase Agreement ('SPA') was signed on 16 April 2011 between Evonik Degussa (a direct subsidiary of Evonik and the parent company of the Target) and Kinove German Bidco GmbH, an acquisition vehicle established by Rhône Capital for the purposes of the transaction.[3]

6. Although Triton is not a party to the SPA, it will acquire a 50% interest in the Target under the terms of a Co-Investment Agreement concluded with Rhône Capital on 5 May 2011.[4] Pursuant to a Shareholders' Agreement to be entered into at or prior to closing of the transaction, Rhône Capital and Triton will have veto rights over certain decisions relating to the Target including its budget, business plan and top management.[5]

III. CONCENTRATION

7. The proposed transaction will result in Rhône Capital and Triton acquiring joint control over the Target. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

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2 See press release of 20 September 2010 on Evonik's website at http://corporate.evonik.com/en/media/search/Pages/news-details.aspx?newsid=14586

3 Although the proposed transaction relates to the acquisition of all of Evonik's carbon black business, the acquisition of Evonik's interest in its Chinese subsidiary, Qingdao Evonik Chemical Co., Ltd. is subject to a separate agreement. Notwithstanding this fact, the notifying parties have requested that the acquisition of the shareholding in Qingdao Evonik Chemical Co., Ltd be examined by the Commission at the same time as it considers the remainder of the proposed transaction.

In this regard, the notifying parties note that it is intended that the acquisition of the interest in the Chinese company will occur within two years of the completion of the remainder of the transaction which is covered by the SPA of 16 April 2011. At the same time, the agreement relating to Qingdao Evonik Chemical Co., Ltd. has been concluded between the same undertakings (Kinove German Bidco GmbH and Degussa Evonik Degussa GmbH as Purchaser and Seller respectively) as the SPA. It is therefore considered that the two transactions should be treated as one and the same concentration pursuant to the second paragraph of Article 5(2) of the Merger Regulation.

4 Under the Co-Investment Agreement, Rhône Capital and Triton will indirectly each acquire a shareholding of 50% in Kinove Luxembourg Holdings 1 S.à,r.l. which indirectly owns 100% of the equity and voting rights in Kinove German Bidco GmbH.

5 See Section III (Corporate Governance) and in particular the list of Reserved Matters set out in the Term Sheet of Shareholders Agreement contained in Annex 5.1 to the Co-Investment Agreement Relating to the Acquisition of Evonik's Carbon Black Business dated 5 May 2011.

IV. EU DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[6] (Rhône Capital EUR […], Triton EUR […], the Target EUR […]). Each of them has an EU-wide turnover in excess of EUR 250 million (Rhône Capital EUR […], Triton EUR […], the Target EUR […]) but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.[7] The notified operation therefore has an EU dimension.

V. COMPETITIVE ASSESSMENT

9. The proposed transaction does not give rise to any horizontal overlap between the activities of the undertakings concerned as the notifying parties are not active in the same business area as the Target, that is to say the manufacture and supply of carbon black. There is, however, an existing vertical relationship between Rütgers, a company controlled by one of Triton's other investment funds and the Target for the supply of a particular type of carbon black oil (derived from the distillation of coal tar) which is the feedstock used in the production of carbon black. The competitive assessment of the case therefore focuses on whether the proposed transaction is likely to result in anticompetitive foreclosure effects.

I. Relevant product markets

Upstream market – carbon black oil (CBO)

10. The main raw material used to produce carbon black is an oil based feedstock known as carbon black oil ("CBO"). CBO comes from three main sources: (i) fluid catalytic cracking bottoms (FCC), a by-product of the catalytic cracking of petroleum; (ii) steam cracker tar (SCT), a by-product of the steam cracking of ethylene and (iii) as one of the distillate fractions obtained by the distillation of coal tar (CTD[8]) which is the type of CBO supplied by Rütgers.[9]

11. According to the notifying parties, FCC, SCT and CTD are fully interchangeable feedstock for the production of carbon black using the furnace black process. The furnace black process is the most widely employed production process in the carbon black industry accounting for some 98% of all carbon black production worldwide. The notifying parties submit that the decision to use a certain type of CBO or combination of CBO is driven principally by their respective conditions of supply.

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6 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

7 Rhône Capital achieves more than two-thirds of its aggregate EU-wide turnover in Italy.

8 Coal tar is a by-product of the manufacturing of coke. The principal suppliers of coal tar are therefore major steel manufacturers which manufacture coke for use in their steel plants.

9 Rütgers also operates two small SCT distillation facilities: one in Belgium and one in Germany. The SCT produced by these facilities is however used captively by Rütgers.

12. In addition to the furnace black process, relatively minor quantities of carbon black are produced via a number of alternative production processes including the gas process[10], the lamp process[11] and the thermal production process.[12] In the case of the lamp black and gas black processes, the notifying parties submit that there is at the present time no demand side substitution between the CTD on the one hand and SCT and FCC on the other hand.[13]

13. The Commission has analysed the CBO market in only one prior decision under the Merger Regulation (IV/M.442 – *Elf Atochem/Rütgers*). In that case, the Commission considered all CBO regardless of origin (FCC, SCT or CTD) to constitute a single product market. The Commission also noted the strong competition between carbochemical oils derived from coal tar and carbochemicals derived from hydrocarbons.[14]

14. The market investigation in the present case has indicated that carbon black producers using the furnace black process are normally indifferent as to the type of CBO they use. At the same time, however, the market investigation has indicated in certain cases, such as the production of carbon black grades designated for food use, that some types of CBO, namely SCT may be preferred to others.[15]

15. The market investigation in the present case has also shown that CTD (the CBO derived from coal tar) has certain distinct characteristics when compared to other CBO types in that it is a denser product with a higher carbon content, which in turn, leads to a greater yield of carbon black. In addition, CTD typically has a relatively low sulphur content in comparison with some other CBO types. This makes it attractive to carbon black producers looking to offset CBO types with a relatively high sulphur content via a blending of CBO feedstocks. This blending may be of interest to carbon black producers whose plants are subject to environmental limits on sulphur dioxide emissions.[16]

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[10] In the gas production process, the feedstock is heated and the resultant vapours are carried by hydrogen rich gas into a gas tube fitted with numerous burners. The individual particles impinge on the surface of a water-cooled drum. A portion of the carbon black generated is deposited on the roller while the rest enters the filter system. In the next stage, the two carbon black streams are combined, before being processed as in the furnace black process.

[11] The lamp process is similar to the furnace black process except that combustion occurs in a large, open, shallow pan

[12] The thermal production process is a semi-batch method. Natural gas is most commonly used although higher grade hydrocarbon oils can also be used.

[13] The Target is the only carbon black producer in the EEA using the lamp black and gas black processes.

[14] See Commission Decision of 29 July 1994 in Case IV/M.442 – *Elf Atochem/Rütgers,* paragraphs 26 and . "*Les huiles carbochimiques, par ailleurs en concurrence avec les différentes coupes Lourdes pétrolières, satisfont environ 13% des besoins de l'industrie européenne du noir de carbone."*

[15] In the case of water pipes, for example, SCT is preferred over other CBO types including CTD as it has a very low sulphur content. See non-confidential minutes of a telephone call with a CBO supplier, 22 June 2011 and the parties' reply to the Commission's request for information of 7 July 2011.

[16] According to the notifying parties, SCT generally has a lower sulphur content than CTD whilst the sulphur content of FCC is generally higher than that of CTD (though some FCC is also available with a lower sulphur content). In any event, any advantages that a certain CBO has because of its lower sulphur content are usually reflected as a premium on the applicable base price. See the parties' reply to the Commission's request for information of 7 July 2011.

16. For the purposes of the present decision, however, the precise definition of the relevant market for CBO can be left open as this would not alter the competitive assessment.

Downstream market – carbon black

17. Carbon black is virtually pure elemental carbon in the form of colloidal particles that are produced by the incomplete combustion or thermal decomposition of gaseous or liquid hydrocarbons under controlled conditions (in a reactor). Its physical appearance is that of a black, finely divided pellet or powder. Carbon black is primarily used as (i) filler/reinforcement and/or performance additive for tyres and other mechanical rubber goods (such carbon black products being known as "rubber blacks") and (ii) as a pigment and/or functional additive in plastics, printing inks, coatings and other special uses (such carbon black products being known as "pigment blacks").

18. Carbon black can be produced in a variety of grades, distinguished on the basis of the size of the primary particles, the number of the primary particles (structure) and the surface area. In the case of rubber blacks, carbon black grades are classified according to the ASTM categorisation.[17] The types of carbon black predominantly used in non-rubber applications such as paints and coatings, printing inks and plastics are not covered by the ASTM nomenclature and are often referred to as specialty, performance, industrial or pigment blacks.[18]

19. The Commission has considered carbon black in a number of previous decisions. In M.1301 – *Texaco/Chevron*, carbon black was found to constitute a separate product market but in the absence of a horizontal overlap between the parties to that transaction it was not considered in any detail.[19] In M.5243 – *CVC/RAG/Evonik*[20], the Commission considered a possible segmentation within carbon black between pigment blacks and rubber blacks and noted that whereas there is limited demand side substitutability between the two, "*there is a greater degree of supply side substitutability*."

20. More recently, in M.5453 – *OEP/CCH*, the Commission noted the two main end applications of the carbon black produced by CCH – (i) carbon black for rubber applications and (ii) specialty carbon black for other industrial applications such as pigments for printing inks, coatings, plastics and other non-rubber applications – whilst ultimately leaving the exact definition of the relevant market open.[21]

21. The precise market definition was once again left open in the *Birla/Columbian Chemicals* decision as that proposed concentration did not raise competition concerns irrespective of the exact product market definition retained.[22] In a similar manner, the

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17 ASTM stands for the American Society for Testing and Materials.

18 Some ASTM grades can be used in certain non-rubber applications such as printing inks for newspapers.

19 Commission Decision of 30 October 1998 in Case no IV/M.1301 – *Texaco/Chevron*.

20 Commission Decision of 8 September 2008 in Case no COMP/M.5243 – *CVC/RAG/Evonik*.

21 Commission Decision of 22 February 2009 in Case no COMP/M.5453 – *OEP/CCH.*

22 Commission Decision of 15 June 2011 in Case no COMP/M.6191– *Birla/Columbian Chemicals*, paragraph 23.

precise definition of the relevant product market for carbon black can be left open for the purposes of the present decision as this does not alter the competitive assessment.

II. Relevant geographic markets

22. The notifying parties submit that the market for CBO is at least EEA-wide in scope and could even be worldwide as it can be easily shipped and transport costs are relatively low in relation to its value with the result that there is not really a maximum shipment radius around a CBO production facility.

23. As far as the market for carbon black is concerned, the notifying parties submit that it is likely to be at least EEA-wide although they acknowledge there may be certain factors such as transport costs and product quality issues that may make the potential market for rubber blacks no broader than EEA in scope.

24. The market investigation in the present case has indicated that even though certain CBO producers may have production facilities located within close proximity to some of their customers which provides for transportation efficiencies and therefore lower transportation costs, there is still substantial cross-border trade within the EEA with prices typically set with reference to published price indices such as those for low sulphur fuel oil.

25. In the recent *Birla/Columbian Chemicals* decision, the Commission found that the geographic market for carbon black is at least EEA-wide.[23] The market investigation in the present case has not brought to light any new elements that would question this conclusion.

26. For the purposes of the present decision, however, the precise geographic market definition for CBO and carbon black can be left open as the proposed transaction does not give rise to competition concerns even if the market is considered to be no broader than the EEA.

III. Competitive assessment

27. The proposed transaction does not give rise to any horizontal overlap as neither Rhône Capital nor Triton has any ownership interests in any business that manufactures or sells carbon black. The proposed transaction does however give rise to a vertical link as Rütgers, a company controlled by one of Triton's fund, produces a type of CBO used in the manufacture of carbon black.[24]

28. As this vertical relationship between CBO and carbon black gives rise to a number of vertically affected markets, [25] the issue of foreclosure is relevant for the competitive

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[23] Ibid, paragraph 33.

[24] Rütgers also supplies hydrocarbon resins which are used in the rubber industry to improve the physical properties of the finished rubber goods. It estimates its share of the EEA market for the supply of these resins used in the rubber industry to be [10-20]%. It does not bundle these resins with its sales of CBO as the customers purchasing CBO (i.e. carbon black producers) do not buy resins (and its resin customers in the rubber industry do not purchase CBO).

[25] These are the EEA markets for carbon black, rubber blacks and pigment blacks where the Target's market shares are [20-30]%, [20-30]% and [30-40]% respectively and the EEA market for CBO and coal tar derived CBO where Rütgers' shares are [10-20]% and [50-60]%.

assessment of the notified operation. The assessment that follows therefore examines whether the notified operation is likely to raise the costs of downstream rivals producing carbon black by restricting their access to an important input in the form of CBO ("input foreclosure") or foreclose upstream producers of CBO by restricting their access to a sufficient customer base ("customer foreclosure").[26]

i Input foreclosure

29. As far as input foreclosure is concerned, it is to be noted that Rütgers is a relatively minor supplier with a share in value terms of [10-20]% and [0-5]% on the market for CBO (FCC, SCT and CTD combined) at the EEA and global level respectively. Consequently it would not have the ability to foreclose the Target's competitors on the downstream market.[27]

30. The same holds true if a separate market for CTD is considered notwithstanding the fact that Rütgers' position at an EEA and global level is more significant at [50-60]% and [10-20]%.[28] This is because until February 2008, Rütgers was part of the Evonik Group and therefore part of the same undertaking as the Target.[29] Despite no longer being part of the Evonik Group, Rütgers has continued to sell more than […]% of its CBO produced in Europe to the Target since leaving the Evonik Group in 2008.

31. Rütgers has not historically been a significant supplier to the Target's competitors with relatively limited sales in 2010 to other major carbon black manufacturers such as […] and […].[30] These companies have not raised any concerns regarding possible input foreclosure. In addition, there are various alternative suppliers of CTD active in the EEA including Koppers, Industrial Química del Nalón S.A ('NalónChem) and Bilbaína de Alquitranes, S.A. ('BASA').[31]

32. It is therefore concluded that the proposed transaction does not give rise to any concerns relating to possible input foreclosure.

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[26] Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008, p. 6.

[27] Rütgers' shares in volume terms would be [10-20]% (EEA) and [0-5]% (worldwide). See the parties' reply to the Commission's request for information of 7 July 2011.

[28] Rütgers' shares in volume terms would be [40-50]% (EEA) and [10-20]% (worldwide). See the parties' reply to the Commission's request for information of 7 July 2011.

[29] Triton's acquisition of Rütgers was notified to the Commission on 20 December 2007. See Commission decision of 1 February 2008 in Case COMP/M. 5016 *Triton/Rütgers*.

[30] In 2010, Rütgers sold a total of […] tonnes of CTD in the EEA. Of this amount, […]% or some […] tonnes was sold to the Target, […]tonnes to […].

[31] When notifying the proposed transaction, the parties submitted that DEZA was active on the merchant market as a supplier of coal tar derived CBO. The market investigation has shown however that DEZA is not active on the merchant market but supplies its CTD to a carbon black joint venture it operates with Cabot. The notifying parties therefore submitted revised market share data to reflect the fact that DEZA is not present on the CBO merchant market. See the parties' reply to the Commission's request for information of 7 July 2011.

ii Customer foreclosure

33. For customer foreclosure to be a concern there would have to be grounds to consider that the proposed transaction could lead to the Target switching all or a large proportion of its demand for CTD from Rütgers' competitors to Rütgers, thereby depriving Rütgers' competitors of an important source of demand for CTD.

34. Currently, Rütgers supplies […]% of the Target's CTD requirements in the EEA meaning that the Target sources […]% of its requirements for CTD in the EEA from Rütgers' competitors. The Target's demand for CTD that is satisfied by purchases from Rütgers' competitors accounts for only […]% of merchant demand for CTD in the EEA.

35. Even if ECB were able to switch all its demand for CTD coal tar CBO to Rütgers, there would still be ample demand for Rütgers' competitors due to the technical capacity limits of Rütgers' production facilities. These facilities have a total technical capacity of […] tons of coal tar per year of which some 35% can be allotted to tar oils/blend oils (from which CTD is derived) given the more or less fixed proportion that the different fractions account for in the distillation of coal tar.[32] Therefore, the theoretical maximum output of Rütgers' production facilities is around […] tons of tar oils/blend oils. In theory, 100% of this output could be allocated to the production of CTD but this would mean foregoing sales of other products derived from the tar oils/blend oils fraction such as creosote and additives for heavy fuel oils and would lead to Rütgers foregoing profit for the benefit of the Target. Moreover, given the respective ownership interests in Rütgers and the Target (see under section iii below) the benefits of such a strategy would accrue to the Target's jointly controlling shareholders Triton Fund III and Rhône Capital while being detrimental to the investors in Triton Fund II.

36. In 2010 the Target purchased approximately […] tonnes of CBO of which […]% was CTD, […]% FCC and […]% SCT. Therefore, even if Rütgers were to dedicate 100% of its theoretical technical production capacity of […] tonnes to CBO, the Target would still need to rely on Rütgers' competitors for a considerable proportion of its demand for this input. Moreover, if Rütgers were to adopt such a commercial strategy and dedicate its entire production to the Target, this would free up volumes that the company currently supplies to the Target's competitors such as Cabot and Columbian Chemicals that would then be available for other CBO suppliers.

37. In light of the above factors, it is concluded that the proposed transaction does not raise concerns as to possible customer foreclosure.

[32] According to the notifying parties, the proportion of 35% of total output from distilling coal tar that is accounted for by so-called basic aromatics (tar oils/blend oils) as one of the main fractions is determined by the set of feedstock and quality specifications of the main fractions. The notifying parties further submit that the producer does not have a real possibility to vary the proportions of the main fractions which are as follows: coal tar pitch, around 48%; tar oils/blend oils, around 35%; naphthalene oil, around 5%; and water/benzol/losses around 5%. The fact that the proportions of the main fractions are relatively fixed has been confirmed coal tar distillers contacted during the market investigation.

VI. CONCLUSION

38. 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