

***Case No COMP/M.6270 -
BERKSHIRE HATHAWAY/
LUBRIZOL***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/08/2011

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EUROPEAN COMMISSION

Brussels, 24.08.2011
C(2011) 6175

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.6270- BERKSHIRE HATHAWAY/ LUBRIZOL
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 19 July 2011, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (Merger Regulation) by which Berkshire Hathaway Inc ("**Berkshire**") acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the undertaking The Lubrizol Corporation ("**Lubrizol**") by way of purchase of shares pursuant to an agreement and plan of merger.² (Berkshire and Lubrizol are hereinafter referred to collectively as "the Parties").

I. THE PARTIES

2. **Berkshire** is a US company which is engaged through its subsidiaries in diverse business activities, including property and casualty insurance and reinsurance, utilities and energy, freight rail transportation, finance, manufacturing, retailing and services.

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.

² Publication in the Official Journal of the European Union No C 221, 27.7.2011, p. 26.

3. **Lubrizol** is a US specialty chemical company supplying technologies and producing additives, ingredients, resins and compounds for its customers in the global transportation, industrial and consumer markets.

II. CONCENTRATION

4. Pursuant to an agreement and plan of merger dated 13 March 2011 by and among Berkshire Hathaway, Ohio Merger Sub, Inc. (a wholly owned subsidiary of Berkshire) and Lubrizol, Berkshire intends to acquire all the issued and outstanding shares of Lubrizol. The proposed transaction involves a public takeover bid which was announced on 14 March 2011. The approval of a majority of Lubrizol's shareholder was obtained at a special meeting of Lubrizol shareholders on 9 June 2011.
5. On completion of the proposed transaction, Ohio Merger Sub, Inc. will be merged with and into Lubrizol, which will become a wholly-owned subsidiary of Berkshire. Berkshire will then own 100 per cent of the share capital in Lubrizol and will have sole control over Lubrizol.
6. Hence, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million ³ (Berkshire: EUR 102 726 million, Lubrizol: EUR 4 026 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Berkshire: EUR [...] million, Lubrizol: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

IV. COMPETITIVE ASSESSMENT

8. There is no horizontal overlap between the activities of the Parties; but there are two minor vertical relations. Berkshire's subsidiary Johns Manville purchases, on a global basis, a small amount of performance coatings which Lubrizol supplies (specifically, certain types of acrylic emulsions) and which Johns Manville uses to manufacture certain glass fibre products. In addition, DBSAM – an acrylic monomer that Lubrizol produces – may be used for decorative coatings produced by Berkshire's subsidiary Benjamin Moore.

Relevant Product Markets

a. Upstream market: acrylic emulsions

Product market definition

9. Acrylic emulsions represent a product family within the group of emulsion polymers. Emulsion polymers – also referred to as latexes or latices - are colloidal dispersions of polymers in an aqueous medium. Emulsion polymers show immense flexibility in their formulation and chemical composition.

³ 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).

10. The notifying party argues that, based on their various chemical raw materials, end-use, characteristics and prices, several types of emulsion polymers may be distinguished as follows: (a) acrylic emulsions, (b) vinyl emulsions, (c) polyurethane emulsions and (d) styrene butadiene.
11. In a previous decision, the Commission has also considered that Acrylic dispersions (another name for acrylic emulsions) constitute a separate market from the other emulsion polymers, while leaving open whether this market needs to be further segmented⁴.
12. Respondents to the market investigation⁵ in the present case indicated that there are indeed differences between emulsion polymers and that the categorisation referred to in paragraph 10 is a normal segmentation within the emulsion business from a technology standpoint. Some of them considered that there are certain end-use applications for which it is possible to substitute one emulsion type with another. However, such substitution would involve reformulating the product and could result in a change in its performance properties.
13. The notifying party has considered whether it might be appropriate to divide the market for acrylic emulsion further by looking at the various end-use applications⁶. However, the notifying party argues that acrylic emulsions are used for all of these end-use applications and manufacturers of acrylic emulsions typically sell their emulsions to customers in each of the various end-use applications. The notifying party therefore argues that from a supply side perspective there is strong case for treating all acrylic emulsions as a single product market.
14. The majority of the respondents to the market investigation⁷ considered that acrylic emulsions should be distinguished on the basis of their end-use application (e.g. textiles, adhesives, coatings, inks or paper), although certain acrylic emulsions can be used in a variety of applications (e.g. paper coating, architectural coating and non-wovens). In general, technical requirements vary between the different applications and therefore a specific type of emulsion shows a better fit for a given application.
15. In any event, the precise product market definition with regard to Acrylic Emulsion can be left open for the purposes of this decision since the competitive assessment would not change under any of the alternative definitions of the product markets discussed above. Lubrizol's market shares would indeed remain limited even under the narrowest relevant market definition (i.e. acrylic emulsions for glass fibre products used in building applications).

Geographic market definition

⁴ Case No COMP/M.4071 - Apollo / Akzo Nobel IAR.

⁵ Replies to the Commission's request for information to Acrylic Emulsion suppliers of 20 July 2011.

⁶ Specifically, acrylic emulsions may be used for a range of applications including (i) textiles, nonwovens and carpets, (ii) adhesives and sealants, (iii) paints, coatings and inks, (iv) paper and packaging, and (v) building & construction products.

⁷ Replies to the Commission's request for information to Acrylic Emulsion suppliers of 20 July 2011.

16. The notifying party considers that the relevant geographic markets for acrylic emulsions are best viewed as EEA-wide in scope. Although it is possible to import acrylic emulsions from other regions into the EEA, there are cost disadvantages in doing so and there are practical drawbacks as customers value proximity to their suppliers, often buying on a just-in-time basis.
17. In its previous decisions⁸, the Commission has held that the market for pure acrylic lattices is at least EEA-wide. In other cases⁹, the Commission has defined the underlying geographic markets for emulsion polymers as being EEA-wide in scope. Finally, the market for acrylic dispersions itself has been considered as at least EEA-wide in a more recent decision¹⁰.
18. The market investigation in this case¹¹ provided indications that the geographic scope of the market for acrylic emulsions is EEA-wide. Indeed, while suppliers of acrylic emulsions in general operate globally, production and logistics costs, final market parameters (e.g. climate, competitive landscape, application practices) and pricing conditions can differ significantly between the EEA and other areas (e.g. Asia, North America).
19. The precise geographic market definition with regard to Acrylic Emulsion may however be left open for the purposes of this decision as the assessment of the transaction would not change whichever geographic market definition is retained (EEA wide or worldwide).

b. Upstream market: DBSAM

Product market definition

20. Lubrizol produces DBSAM (Double Bonded Sulfonic Acid Monomer) which is a reactive, hydrophilic, sulfonic acid acrylic monomer capable of imparting a number of distinctive high-performance characteristics to a wide variety of anionic polymers. The primary applications for DBSAM are as flocculants in water treatment applications and lubricity aids in oil well drilling. DBSAM is also used in acrylic fibres, detergents, shampoos, coatings, oil field products and adhesives.
21. The notifying party supports a uniform product market for acrylic monomers/specialty monomers suitable for use in emulsion polymers. However they refer to the Commission's prior decisional practice that has displayed a preference for defining the relevant product markets by reference to the actual monomer being supplied to customers.¹²

⁸ Case No COMP/M.3001 - Celanese /Clariant Emulsion; Case No COMP/M.1467. Rohm and Haas / Morton.

⁹ Case No COMP/M.751 - Bayer / Hüls Case No COMP/M.1097. Wacker / Air Products.

¹⁰ Case No COMP/M.4071 - Apollo / Akzo Nobel IAR.

¹¹ Replies to the Commission's request for information to Acrylic Emulsion suppliers of 20 July 2011.

¹² The notifying party submit that the Commission has never assessed DBSAM in any previous decisions. However, in some decisions related to other specialty monomers, they observe that the Commission has tended to define product markets by reference to the individual monomer (e.g., Case No COMP/M.5355 – BASF/CIBA, para 11, regarding dimethylaminoethyl acrylate).

22. The notifying party does not consider a further segmentation by end use application to be appropriate. It submits that there is no marked difference in the manufacturing process, marketing and customer service that would justify defining separate markets for sales into one or more of these different end use applications.
23. The Commission does not have any precedents regarding the market of DBSAM.
24. The market investigation¹³ indicated that several suppliers of decorative coatings do not use DBSAM as they prefer using alternatives to DBSAM that are lower in cost, more environmentally friendly and safer.
25. In any event, the precise product market definition with regard to DBSAM can be left open for the purposes of this decision as this would not significantly alter the competitive assessment.

Geographic market definition

26. The notifying party considers that the relevant geographic market for DBSAM, and, more generally, acrylic monomers, is global in scope. It argues that all suppliers of acrylic monomers in general and DBSAM in particular service customers in various different parts of the world while, as far as DBSAM is concerned, production is often confined to particular plants in one location/country whereas the large producers of other acrylic monomers have facilities all over the world.
27. As noted above, there is no Commission precedent concerning DBSAM and/or DBSAM for decorative coatings.¹⁴ The market investigation in the present case has not been conclusive as regards the scope of the relevant geographic market for DBSAM¹⁵.
28. In any event, the precise market definition with regard to DBSAM can be left open for the purposes of this decision as the competitive assessment would not change whichever geographic market definition is retained.

¹³ Replies to the Commission's request for information to decorative coatings suppliers of 22 July 2011.

¹⁴ The notifying party refer to the decisional practice of the Commission regarding other monomers for which it defined both worldwide as well as EEA-wide geographic markets depending on substitutability, sourcing, pricing and other considerations applicable to each individual monomer (see e.g. Case No COMP/M.5355 - *BASF/ CIBA*, para 13, EEA-wide market for dimethylaminoethyl acrylate; Case No IV/M.942 - *Veba/Degussa*, at para. 36: at least EEA-wide market for methyl methacrylate).

¹⁵ Replies to the Commission's request for information to decorative coatings suppliers of 22 July 2011.

c. *Downstream market: glass fibre products*

Product market definition

29. Johns Manville is active in the supply of glass fibre products used in building applications. Glass fibre is an intermediate product manufactured from sand, kaolin, colemanite and quick lime. Depending on the type of process used for production, different sorts of glass fibre are manufactured: glass fibre tissues, glass fibre reinforcement, woven and specialty reinforcement and glass fibre veils.
30. A vertical relationship with acrylic emulsions may arise only in relation to glass fibre tissues¹⁶, glass fibre veils¹⁷, DUCS¹⁸ (dry use chopped strands, a specific type of glass fibre reinforcement) and chemically bonded non woven polyester mats. For technical reasons, acrylic emulsions cannot be used as an input for other types of glass fibre products.
31. The Commission has assessed the glass fibre sector in a number of previous merger decisions¹⁹. In *Ahlström Capital / Capman / Nordkalk*, the market investigation indicated that glass fibre tissue, glass fibre reinforcements and woven and specialty reinforcement are likely to constitute distinct product markets. However, the precise product market definition was left open. In *Owens Corning / Saint Gobain Vetrotex*, the Commission found that the glass fibre reinforcements sector comprises six distinct product markets: direct rovings²⁰, assembled rovings²¹, DUCS, wet use chopped strands (WUCS)²², chopped strand mats (CSM)²³ and continuous filaments mats (CFM)²⁴. In this decision, the Commission also envisaged a distinction between wet and dry glass

¹⁶ Glass fibre tissue is a thin, paper like web used as a raw material for the production of, amongst others, vinyl flooring, building panels and roofing.

¹⁷ Glass fibre veils are thin sheets of non-woven glass fibre strands bound together in order to improve surface characteristics, for example, waterproofing or bitumen roofing membrane.

¹⁸ DUCS are basic strands of treated glass fibre filaments used to reinforce thermoplastic and thermoset resins.

¹⁹ Case No COMP/M.4828 - Owens Corning / Saint Gobain Vetrotex.

²⁰ Direct rovings are produced by pulling individual glass fibres directly from the bushing and winding them onto a roving package. They are used in a variety of manufacturing processes (e.g. weaving, filament winding, pultrusion) to fabricate products such as pipes, turbine blades for wind energy, window and door frames, ladder rails or tool handles.

²¹ Assembled rovings are continuous glass fibres bonded together into strands without twist.

²² WUCS are basic strands of treated glass fibre filaments cut to certain lengths (typically 25mm) that are used wet in a paper-like process, which consists of mixing WUCS with water to make slurry, which is then transformed into a mat.

²³ CSMs are chopped glass fibres bonded together using a binder. The mats are designed to be compatible with unsaturated polyester and vinyl ester. CSM is used as gel-coat backups and standard laminate reinforcements for most contact moulding applications, including boats, surfboards, panels and tanks.

²⁴ CFMs are non-woven mats made by spreading continuous glass fibres uniformly across a surface and applying an insoluble binder. CFM is particularly suitable for compression moulded electrical and non-electrical laminates, as well as for use in pultrusion processes.

fibre veils but eventually left open whether the market for glass fibre veils should be further sub-segmented according to this distinction.

32. The market investigation conducted in this case²⁵ did not confirm that glass fibre tissues and glass fibre veils should be considered as separate markets. Indeed, some respondents argued that glass fibre tissues and glass fibre veils actually refer to the same products.
33. In any event, the precise product market definition with regard to glass fibre products can be left open for the purposes of this case since the competitive assessment would not change under any of the alternative definitions of the product markets discussed above.

Geographic market definition

34. The notifying party does not have a strong view on the geographic definition of the glass fibre products markets and has considered the Commission's past definitions as an appropriate basis for the purposes of the Form CO.
35. In *Ahlström Capital / Capman / Nordkalk*, the results of the market investigation suggested that the market for glass fibre products and its subsegments would be at least EEA-wide in scope, but the geographic market definition was eventually left open.
36. In *Owens Corning / Saint Gobain Vetrotex*, the Commission found that the markets for glass fibre reinforcements were European in scope (EEA Member States as well as Serbia, Montenegro, Croatia and Turkey) with the possible exception of assembled rovings for which it was left open whether the market was European wide or global. The Commission also found that the markets for glass fibre veils are European wide in scope.
37. A majority of respondents to the market investigation²⁶ provided indications that price differences exist between the EEA and other parts of the world (e.g. Asia), although most of Johns Manville's competitors sell glass fibre products throughout the world.
38. However, for the assessment of this case, it is not necessary to conclude on the exact geographic market definition since the competitive assessment would not change whichever geographic market definition is retained.

d. Downstream market: decorative coatings

Product market definition

39. The term decorative coatings is used to describe various types of coatings for walls, ceilings, doors, window frames and other surfaces, which are normally used on-site both internally and externally during the construction or refurbishment of architectural structures²⁷.
40. The notifying party considers decorative coatings, without any further sub-segmentation, to be the appropriate market.

²⁵ Replies to the Commission's request for information to glass fibre product manufacturers of 20 July 2011.

²⁶ Ibid.

²⁷ Case No. COMP/M.4853-PPG/Sigmakalon, Commission's decision of 10 December 2007, recital 9.

41. In a previous decision, the Commission considered that decorative coatings were a distinct market from other types of coatings²⁸. Furthermore, within the overall market for decorative coatings, the Commission in the past considered potential submarkets for paints and for woodcare products²⁹. The Commission also considered whether a distinction should be made between the trade segment (products for professional users) and the retail segment (products for non professional users) sold mainly through Do It Yourself supermarkets³⁰. Finally the Commission envisaged whether a distinction between branded and private label products could be appropriate.³¹ The product market definition and the potential sub-segmentation within decorative coatings were ultimately left open in these cases.
42. The market investigation conducted in this case³² confirmed the relevance of a separate market for decorative coatings but was not conclusive on whether this market should be subdivided or not. Most decorative coatings suppliers have considered that there is no reason to sub-segment the market as they supply most types of decorative coatings and often switch production from one to the other. However, they also indicate that there are some differences in the technology, formulations, manufacturing processes, product packaging and marketing depending on the specific kind of decorative coating.
43. In any event, the precise product market definition with regard to decorative coatings can be left open for the purposes of this case since the competitive assessment would not change under any of the alternative definitions of the product markets discussed above.

Geographic market definition

44. The notifying party considers the market for decorative coatings is national in scope.
45. In its previous decisions, the Commission has held that the market for decorative coatings could be national or even EEA-wide³³.
46. The market investigation in the present case has indicated that market players tend to consider the market for decorative coatings and its potential subsegments are national in scope, mainly due to differences in prices, legislation, product specifications and distribution channels between different countries. In addition, cross-border sourcing by distributors or customers is limited, transportation of decorative coatings over long distances by road is generally considered uneconomical and brands tend to have a national focus.

²⁸ For example, Case No COMP/M.4779 *Akzo Nobel/ICI*, Case No. COMP/M.4853 *PPG/Sigmakalon*, Case No M.390 *Akzo/Nobel Industrier*, Case No M.1167 *ICI/Williams* and Case No M.1182 *Akzo Nobel/Courtaulds*.

²⁹ Case COMP/M.1167 *ICI/Williams*; Case No COMP/M.4779 *Akzo Nobel/ICI*.

³⁰ Case COMP/M.390 *Akzo /Nobel Industrier*; Case No COMP/M.4779 *Akzo Nobel/ICI*.

³¹ Case No COMP/M.4779 *Akzo Nobel/ICI*.

³² Replies to the Commission's request for information to decorative coatings suppliers of 22 July 2011.

³³ Case No. COMP/M.4853 *PPG/Sigmakalon*: the result of the market investigation suggested that the market for decorative coatings would be at least national-wide in scope while leaving open whether the geographic scope of the market should be considered as national, regional or EEA-wide.

47. However, for the assessment of this case, it is not necessary to conclude on the exact geographic market definition since the competitive assessment would not change whichever geographic market definition is retained.

3. Competitive assessment: Vertical effects

A. Vertical link between acrylic emulsions and glass fibre products

a. Acrylic emulsions

48. Lubrizol's market shares in the market for acrylic emulsions are as follow (Table 1).

Table 1: Lubrizol's market share in the market for acrylic emulsions

2010	In volume	In value
World	[0-5]%	[5-10]%
EEA	[0-5]%	[0-5]%

49. On a global basis, Lubrizol's most important competitors in the market for acrylic emulsions are Dow/Rohm & Haas and BASF, with an estimated market share of [30-40]% and [30-40]%, respectively, followed by Arkema, PolymerLatex and DSM each with a market share comprised between [5-10] and [10-20]%. Within the EEA, Lubrizol's main competitors are BASF (with a market share of [40-50]%), Dow/Rohm & Haas ([30-40]%), PolymerLatex ([5-10]%), DSM ([5-10]%) and Arkema ([0-5]%).

50. In addition, under any possible sub-segmentation of the market for acrylic emulsions, Lubrizol's market shares would remain at or below [5-10]% at an EEA or global level in volume and value terms. Under the narrowest possible product market definition, which would be acrylic emulsions for glass fibre products used in building applications, Lubrizol is not present in the EEA and has a smaller market position globally than under a wider definition encompassing all acrylic emulsions (for which its market share is [0-5]% in volume and [5-10]% in value).

b. Glass Fibre Tissue

51. The only product markets which are vertically affected as a result of the transaction are the potential markets for glass fibre tissue and glass fibre wet veils³⁴. Indeed acrylic emulsions are not used for the manufacture of WUCS, direct rovings, assembled rovings, CSM and CFM. In addition, according to the notifying party, Johns Manville does not hold a market share in excess of [20-30]% under any plausible geographic or product market definition in any of DUCS, chemically bonded non-woven polyester mats or woven decorative wall-coverings.

³⁴ The competitive assessment is hereafter conducted under the narrowest possible product market definition. As no concerns arise even under this narrowest definition, *a fortiori* no concerns could arise under a wider product market definition such as that of glass fibre products in general.

Glass Fibre Tissue

52. Johns Manville's (and therefore the notifying party's) market shares in the market for glass fibre tissue reached [30-40]% (in both volume and value) in the EEA in 2010, and [20-30]% globally. The main competitors of Johns Manville are Saint-Gobain (with a market share of [30-40]% in the EEA), Owens Corning ([10-20]%) and Ahlström ([5-10]%). The notifying party also considers that its market shares and that of its competitors would not be materially different at a European level (including the EEA as well as Serbia, Montenegro, Croatia and Turkey) to its respective market shares in the EEA.

Glass Fibre Wet Veils

53. Johns Manville's (and therefore the notifying party's) market shares in the market for glass fibre wet veils reached [30-40]% (in value) in the EEA in 2010 and less than [20-30]% globally (so that this market would not be vertically affected at a global level). The main competitors of Johns Manville are Owens Corning (with a market share of [30-40]% in the EEA), Saint-Gobain ([20-30]%) and Ahlström ([5-10]%). The notifying party also considers that its market shares and that of its competitors would not be materially different at a European level (including the EEA as well as Serbia, Montenegro, Croatia and Turkey) to its respective market shares in the EEA.

c. Vertical effects of the transaction

Input foreclosure

54. The notifying party argues that Lubrizol would have no ability or incentive to foreclose competitors of Johns Manville as: (i) Lubrizol's market shares in the markets for acrylic emulsions are very limited at the EEA or global level, (ii) it faces competition from a variety of companies that are much stronger in this market and that have excess capacity in the EEA, (iii) switching costs are limited for Lubrizol's customers (EUR [...] for qualified suppliers; [...] euro and [...] months for non-approved suppliers). Accordingly, any attempt to increase prices or refuse to supply John's Manville's competitors would simply result in customers switching to other suppliers.
55. The notifying party adds that the costs of acrylic emulsions do not constitute a major proportion of the downstream sale price of glass fibre products ([10-20]%), therefore limiting the effects of a foreclosure strategy to raise downstream rivals' costs with a view to hinder their ability to compete.
56. Market participants see Lubrizol as a small (if not very small) player in the Acrylic Emulsion market facing competition from well established competitors such as BASF, DOW or Arkema all of which have a worldwide presence, significant production capacities and a broad product portfolio³⁵. In addition, none of the respondents to the market investigation consider that Lubrizol has a special know-how or technological characteristics/advantages with regard to the manufacturing of Acrylic Emulsion for glass fibre products³⁶. They confirmed that switching Acrylic Emulsion supplier is not

³⁵ Replies to the Commission's request for information to Acrylic Emulsion suppliers of 20 July 2011; replies to the Commission's request for information to glass fibre product manufacturers of 20 July 2011.

³⁶ Replies to the Commission's request for information to Acrylic Emulsion suppliers of 20 July 2011.

difficult and requires on average 3 months and EUR 40 000. Almost all the respondents to the market investigation³⁷ have non exclusive and yearly contracts with their Acrylic Emulsion suppliers which would enable them to switch supplier relatively easily. Indeed, the majority of respondents to the market investigation confirmed that they would change supplier if Lubrizol were to raise its prices by 5-10%. Finally, a majority of glass fibre producers did not express any concerns about the impact of the transaction.

Customer foreclosure

57. The notifying party argues that Johns Manville would have no ability to foreclose Lubrizol's upstream competitors by purchasing acrylic emulsions only or mainly from Lubrizol as: (i) Johns Manville's purchases of acrylic emulsions represent only a tiny fraction of total demand, both globally ([0-5]%) and at an EEA level ([5-10]%), (ii) there will continue to be many other customers of acrylic emulsions available to upstream competitors of Lubrizol, even in the distinct markets for glass fibre tissues and glass fibre wet veils respectively. As such a foreclosure strategy would be deemed to fail and would damage the relationship between Johns Manville and other suppliers (for instance [...] or [...]) from which it buys other products in addition to acrylic emulsions. For the same reason, the notifying party argues that such a foreclosure strategy would not have any effect on the competitive position of other producers of glass fibre products.
58. Furthermore, none of the respondents in the market investigation³⁸ expressed any concerns as to the consequences of losing Johns Manville as a customer. Indeed, Johns Manville is generally considered as a small customer when compared with the total volume represented by the Acrylic Emulsion business.³⁹ In addition, the demand for Acrylic Emulsion is very fragmented and includes a multitude of customers⁴⁰. Finally, no Acrylic Emulsion supplier expressed any concerns regarding the impact of the transaction.

B. Vertical link between DBSAM and decorative coatings

59. Berkshire's subsidiary Benjamin Moore is active on the market for decorative coatings which is downstream of DBSAM.

³⁷ Replies to the Commission's request for information to glass fibre product manufacturers of 20 July 2011.

³⁸ Replies to the Commission's request for information to Acrylic Emulsion suppliers of 20 July 2011.

³⁹ Johns Manville does not rank amongst the five main customers for Acrylic Emulsion for any of the respondents to the market investigation.

⁴⁰ More than 15 different customers have been quoted by the Acrylic Emulsion suppliers who replied to the market investigation.

Input foreclosure

60. The notifying party considers that, even if Lubrizol's market shares on a market for DBSAM exceeds 25% ([40-50]% worldwide and [30-40]% in the EEA), it does not give rise to any risk of input foreclosure⁴¹.
61. First, Lubrizol lacks the necessary market power to engage in a foreclosure strategy; the market is highly competitive with a number strong competitors in DBSAM such as Vinati Organic ([20-30]% globally; [30-40]% within the EEA), Toagosei ([10-20]% globally; [20-30]% within the EEA), All Plus Chemical ([5-10]% globally; [0-5] % within the EEA) and Shangdong Lianmeng ([0-5]% globally; [0-5]% within the EEA). Moreover, it would be relatively easy for customers to switch among different suppliers of DBSAM⁴².
62. Also, even under the narrowest market definition (for DBSAM supplied to the paints and coatings industries), Lubrizol supplies only very limited amounts of DBSAM to Benjamin Moore's competitors in the paints and coatings industry. More specifically, apart from Benjamin Moore, Lubrizol had only [...] isolated requests for shipments of very limited amounts of DBSAM⁴³ from paints and coatings' customers⁴⁴.
63. Finally, according to the notifying party, DBSAM would be just one of several of these raw materials (acrylic/specialty monomers) that may be, but which does not have to be, used as an input for the production of paints/decorative coatings. Various other acrylic monomers such as glacial acrylic acid, acrylamides and methacrylamides can be used interchangeably by paints and coatings manufacturers to meet their supply requirements as an input into the manufacture of paints. In addition, there are various very significant competitors of Lubrizol, most notably BASF, Arkema and Dow/Rohm & Haas that would be able to step in at the expense of Lubrizol if it were to raise prices vis-à-vis those customers or would otherwise try to foreclose them from the supply of DBSAM.
64. The market investigation conducted in this case⁴⁵ has confirmed that DBSAM is not an essential input in the production of paints and coatings with many manufacturers using products other than DBSAM in their paints and coatings. In addition, none of the respondents to the market investigation expects any negative impact resulting from the Transaction.

⁴¹ On a wider market including other types of Acrylic Monomers Lubrizol's share would be minimal ([0-5]both in the EEA and globally). Furthermore, if national markets were retained for DBSAM (the narrowest market definition possible), Lubrizol market shares would [0-5] in all Member States except the UK. Indeed, Lubrizol's sales into Europe of DBSAM for use in performance coatings (decorative coatings) consist of [...] to [...]isolated European customers located in the UK.. As a reminder, Benjamin Moore only sells decorative coatings in [...] and in very small quantities.

⁴² Specifically, there is typically no burdensome pre-qualification process required in order to effect a shift from one supplier to another meaning that the financial impact of any such switch would be limited whilst the time involved in switching simply relates to the processing time for a new order at a different supplier and the time period involved in shipping the product from the manufacturer's plant to the customer.

⁴³ About [...] mt worldwide and [...] mt within the EEA sold in 2010.

⁴⁴ [...].

⁴⁵ Replies to the Commission's request for information to decorative coatings suppliers of 22 July 2011.

Customer foreclosure

65. Benjamin Moore sells very limited quantities of decorative coatings in a limited number of countries in the EEA ([...]).
66. In each of these countries, its market share for decorative coatings is negligible at less than [0-5]%. In addition, under any possible sub-segmentation of the market for DBSAM, Benjamin Moore's market shares would remain at or below [0-5]% in volume or value in the [...] Member States where it is active.
67. Therefore, the notifying party considers that there is no possibility that the proposed transaction could give rise to customer foreclosure concerns irrespective of how the market is defined because: i) [...]; ii) Benjamin Moore purchases such small volumes of DBSAM that it is implausible that a policy of sourcing only from Lubrizol would have any effect on the competitive position of other DBSAM suppliers.
68. The market investigation carried out by the Commission⁴⁶ has confirmed that Benjamin Moore is not a major supplier of decorative coatings in the EEA. Finally, none of the market participants who replied to the market investigation has raised concerns in relation to decorative coatings or DBSAM.

V. CONCLUSION

69. 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

⁴⁶ Replies to the Commission's request for information to decorative coatings suppliers of 22 July 2011.