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***Case No COMP/M.6496 -
APOLLO / TAMINCO***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 10/02/2012

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EUROPEAN COMMISSION

Brussels, 10.02.2012
C(2012) 1016

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party

Dear Sir/Madam,

**Subject: Case No COMP/M.6496- Apollo/Taminco
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 11 January 2012 the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Apollo Investment Fund VII, L.P. belonging to Apollo Management VII, L.P., which itself is an affiliate of Apollo Management, L.P. ("Apollo", USA), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Taminco Group Holdings S.à.r.l. ("Taminco", Belgium) by way of purchase of shares.² Apollo is designed hereinafter as the "notifying party." Apollo and Taminco are designated hereinafter as "the Parties."

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 16, 19.1.2012, p. 11.

I. THE PARTIES

2. Apollo manages different investment funds which invest in companies involved in various businesses throughout the world, including the chemical sector where it controls Momentive Performance Holdings LLC. ("Momentive"). Momentive is active in specialty chemicals and materials, including thermoset resins, silicones and silicone derivatives and quartz materials.³
3. Taminco, which is owned by CVC Capital Partners ("CVC"), is a Belgian manufacturer of alkylamines and derivatives used for a wide variety of products, including agrochemicals, animal feed additives, crop protection chemicals, rubber chemicals and other applications.

II. THE OPERATION

4. On 15 December 2011, Apollo and CVC signed a Sale and Purchase Agreement ("SPA") under the terms of which Apollo will acquire 100 % of the share capital of Taminco.⁴

III. CONCENTRATION

5. As a result of the proposed transaction Apollo will acquire 100% of Taminco's issued share capital and therefore sole control of the company. The notified operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. EU DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁵ (Apollo: EUR [...] million, Taminco: EUR [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (Apollo: EUR [...] million, Taminco: 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.

³ Momentive is a holding company that includes two separate operating companies: Momentive Performance Materials and Momentive Specialty Chemicals (formerly Hexion Specialty Chemicals). Apollo merged Momentive Performance Materials and Hexion Specialty Chemicals in 2010 in an intra-group transaction that created Momentive.

⁴ A small percentage of the shares (up to [...]%) will be allocated by Apollo to Taminco's management upon completion but these shares will not have any rights attached to them that would give rise to any degree of control over Taminco.

⁵ Turnover calculated in accordance with Article 5 of the Merger Regulation.

V. COMPETITIVE ASSESSMENT

Introduction

7. The proposed transaction does not give rise to any horizontal overlap between the activities of the undertakings concerned as none of Apollo's portfolio companies operates in any of the product markets in which Taminco is active.
8. The proposed transaction does however give rise to a number of vertical relationships as Taminco is active in the production of a number of products that are used downstream by Momentive (the specialty chemical company controlled by Apollo) in the manufacture of polyurethane amine catalysts ("PU catalysts"), foundry resins and phenolic resins. Only one of these vertical relationships, however, for the supply of methylamines used in the manufacture of polyurethane amine catalysts results in vertically affected markets.⁶

(A) Relevant product and geographic market definitions

(i) Methylamines (upstream market)

9. Methylamine is an alkylamine that is produced by a chemical reaction of methanol and ammonia. Methylamines are produced in three forms: monomethylamine ("MMA"), dimethylamine ("DMA") and trimethylamine ("TMA") simultaneously in one reaction. The quantities of the each methylamine produced depend on the reaction procedure, the reaction conditions and the catalyst used.
10. Methylamines are primarily used as intermediates in the manufacture of other chemicals ultimately used in various end markets such as water treatment chemicals, solvents, feed additives and crop protection chemicals.
11. The notifying party argues, in line with the UK Competition Commission in *Taminco/Air Products*⁷, that all forms of methylamines, that is to say MMA, DMA and TMA should be regarded as a single relevant product market despite the lack of demand side substitution. The notifying party claims that there is close supply-side substitutability among the three methylamines because the production process necessarily yields all three forms and they exhibit a high degree of price correlation.
12. The market investigation in the present case confirmed that the three forms of methylamines are produced in the same reaction process and that it is theoretically possible to alter the proportion in which they are produced. This would tend to support the argument that the three forms are part of the same product market due to supply-side considerations. At the same time, however, respondents to the Commission's requests for information addressed to methylamine customers indicated

⁶ Taminco produces alkylalkanolamines which are upstream inputs to many chemical products including polyurethane amine catalysts and foundry resins. Taminco also produces ethylamines used as an input to phenolic resins for thermal insulation. Momentive is active in the production of polyurethane amine catalysts, foundry resins, and phenolic resins for thermal insulation. The Parties' market shares on the relevant upstream and downstream markets are relatively limited and do not lead to any vertically affected markets on the basis of the market definitions considered by the Commission in previous decisions. The market investigation in the present case did not show concerns on any of these markets. These markets are therefore not further addressed in this Decision.

⁷ See Final Report of the UK Competition Commission in *Taminco/Air Products*, from 30 December 2004, para. 4.64.

that the three forms could constitute distinct product markets since they would not be able to switch between the various methylamines as this would change the characteristics of the end product.

13. For the purposes of the present Decision, however, the question whether the three forms of methylamine, namely MMA, DMA and TMA, are part of the same product market or constitute distinct markets can be left open as the proposed transaction would not raise serious doubts under either alternative.
14. As regards the relevant geographic market definition, the Commission has noted in a previous decision that "*The UK Competition Commission considered that the market for AAAs, CC, DMF is worldwide, whereas the market for methylamines is EEA wide in scope*".⁸
15. For the purposes of the present Decision, however, the precise geographic scope of the market for methylamines can be left open as the proposed transaction would not raise serious doubts whether the market is considered to be EEA or global in scope.

(ii) Polyurethane Amine Catalysts (downstream market)

16. Polyurethanes are thermoset resins that are made by reacting an isocyanate with a polyol, usually in the presence of a catalyst. According to the notifying party, polyurethane producers normally use a combination of several catalysts, including methylamines such as DMA (which Momentive uses to produce polyurethane amine catalysts), to achieve the desired characteristics in the final product.⁹
17. The notifying party submits that producers may be able to substitute one amine catalyst for another wholly or in part, and thus in at least some cases they could change the mix of amine catalysts in response to a small but significant increase in the price of one amine catalyst relative to other amine catalysts. As a consequence, the notifying party is of the opinion that due to the flexibility and substitutability regarding the production of PU catalysts they should be regarded as one market.
18. The market investigation in the present case was not conclusive as regards the product market definition for PU catalysts. Whilst the market investigation revealed that there might be limited supply-side substitutability between different PU catalysts as not all producers can switch production between different PU catalyst types easily, it indicated that a certain degree of demand side substitutability could exist as customers could use different PU catalysts to manufacture the same end-product.
19. As regards the geographic market, the notifying party considers that is likely to be at least EEA-wide and possibly global in scope as significant volumes are imported into the EEA and the transportation costs represent only a small percentage of the selling price.

⁸ See: Case M.4836, *CVC/Univar*, from 17 September 2007, para. 16.

⁹ According to the notifying party, catalysts used in polyurethane foam serve two functions: "gel" and "blow". The gel function causes the isocyanate to react with the polyol to form a polymer. The blow function causes the isocyanate to react with water, causing the release of gas bubbles, which creates foam. Amine catalysts enhance both blow and gel properties.

20. For the purposes of this decision, however, the precise product and geographic market definitions for PU catalysts can be left open as the proposed transaction would not raise serious doubts under any potential market definition.

(B) Competitive assessment

Methylamines used in the production of PU catalysts

21. Taminco is active in the manufacture and supply of methylamines and more specifically in DMA, which is used in the manufacture of PU Catalysts by Momentive.
22. In 2011, Taminco sold [...] (EUR [...] million) of methylamines on the merchant market in the EEA resulting in a market share of [40-50]%¹⁰. Other suppliers in this market include BASF ([30-40]%), Cepsa ([5-10]%) and Balchem ([5-10]%).¹¹
23. [...] ¹² In 2011, Momentive purchased only [...] (EUR [...]) of DMA in the EEA of which [...] (EUR [...]) was purchased from Taminco. Momentive estimates its market shares in PU catalysts to be [5-10]% in value and [5-10]% in volume in the EEA.¹³
24. In view of the minimal quantities of methylamines, or more precisely DMA, purchased by Momentive, it is considered that the proposed transaction will not give rise to any foreclosure concerns. Firstly, as regards input foreclosure, Taminco would not be able to discriminate against Momentive's competitors since the quantities of methylamines consumed by Momentive are relatively minimal and alternative methylamines suppliers are present on the market including distributors. Secondly, as regards customer foreclosure, as Momentive is not an important customer of methylamines, even if it were to source its methylamine requirements from Taminco post-transaction this would not have a significant impact on Taminco's competitors.
25. The market investigation has confirmed that competitors and customers in the markets for methylamines and PU Catalysts do not expect the proposed transaction to have any effects either on their business or the markets under consideration.
26. It is therefore concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards the vertical relationship between methylamines and PU Catalysts.

VI. CONCLUSION

27. 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

¹⁰ Taminco estimates its market shares for each form of methylamine on the EEA merchant market in 2011 to be as follows: MMA ([30-40]%), DMA ([40-50]%) and TMA ([30-40]%). If the market is considered to be global in scope, Taminco's market shares would be MMA ([30-40]%), DMA ([20-30]%) and TMA ([30-40]%).

¹¹ If the market for methylamines were considered to be global in scope, Taminco estimates its merchant market share at [30-40]% in value terms and [30-40]% in volume.

¹² [...]

¹³ Momentive estimates its global market shares in PU catalysts to be [10-20]% in value terms and [5-10]% in volume.

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*