EN

Case No IV/M.708 - Exxon / DSM

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 13/06/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.06.1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.708 - Exxon/DSM
Notification of 08.05.1996 pursuant to Article 4 of Council Regulation No 4064/89

1. On 8 May 1996 EXXON CHEMICAL HOLLAND VENTURES B.V. and DSM PLASTOMERS B.V. notified to the Commission their agreement to establish a joint venture ("JV") in the chemical sector for the production, marketing and sale of certain polyethylenes (PE's) and plastomers.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the application 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 THE PARTIES

3. EXXON CHEMICAL HOLLAND VENTURES B.V., is a Dutch affiliate of Exxon Corporation ("EXXON"), a diversified company active in oil and gas exploration and production, coal, minerals and various chemical businesses. The European chemical business of EXXON is coordinated by Exxon Chemical Europe Inc. (together " Exxon Chemical").

4. DSM Plastomers BV, a Dutch company, is an affiliate of the Dutch company DSM NV (together "DSM"). DSM NV is a diversified company active in oil and gas exploration and production, and various chemical businesses.

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II THE OPERATION

5. The JV will concern only relatively small parts of Exxon Chemical's and DSM's European chemical businesses. It has been established to produce, market and sell metallocene plastomers, a new generation of high-value polymers and certain speciality grades of high-density PE ("HDPE") and linear low-density PE ("LLDPE"). (The only grade of LLDPE to be produced will be C8 LLDPE.)

6. DSM will contribute to the JV its solution process plant at Geleen in the Netherlands, along with supporting assets, a pilot plant and a license for its proprietary "Compact" solution process. Exxon Chemical will license the JV its proprietary "Exxpol" metallocene catalyst technology and will guarantee the JV a secure source of proprietary catalyst components.

III RELEVANT MARKETS

Relevant Product Market

7. The JV will produce certain PEs (HDPE and *C8* LLDPE) and metallocene plastomers. It is the markets for these products and for other products which are substitutable for them which must be examined. The relevant products of the JV and its parents are shown in the table below.

Product	**Exxon Chemicals**	**JV**	**DSM**
Metallocene plastomers	Minor imports	New entrant	
LLDPE	Large EC producer (C4 Commodity)	Medium-sized EC producer (C8 Specialty)	
LDPE	Large EC producer (Commodity)		Large EC producer (Commodity)
HDPE		Very small EC producer (Specialty)	Large EC producer (Commodity)

8. Metallocene plastomers are manufactured by a new technology using metallocene catalysts which allow exceptional control over the polymerisation process. The resulting products have narrow molecular weight and compositional distributions; the process technology enables clients to specify exactly the performance characteristics they require and escape the fixed relationships between various characteristics, notably between melt tension and melt flow rate, which apply for PEs. According to competitors and customers there is the possibility of some limited substitution between metallocene plastomers and C8 LLDPE. However, given the special characteristics of the metallocene plastomers and the difference in price (plus 50%) compared to C8 LLDPE, this limited substitutability does not seem sufficient to make them part of the same market. However, for the purposes of this decision the question may be left open and the situation examined on the narrowest basis, that is, that metallocene plastomers are a separate market. Metallocene plastomers are therefore one of the relevant markets to be examined.

9. PEs are produced from ethylene which is polymerised to produce a resin. The resins are then used to make films, fibres, moulded goods etc.

10. In its natural form PE is a milky white, solid thermoplastic material. PEs include low density polyethylene (LDPE), LLDPE and HDPE. Within these families of PEs, there are different grades which are achieved by varying the temperature and pressure with the reactor. Within the LLDPE family three distinct groups can be identified, by the co-polymer used in the manufacturing process, C8 LLDPE (octene), C6 LLDPE (hexene) and C4 LLDPE (butene). The relative ease with which manufactures can switch production from one grade to another for most of these families and groups (by varying the reaction conditions) gives rise to a high degree of supply-side substitutability between most grades of LDPE and LLDPE .

11. This is not true, however, for C8 LLDPE which, because of the volatility of the co-polymer, octene, can only be made by a solution process or a slurry process (economically the slurry process is not viable for C8), rather than the high pressure and gas phase processes used for the manufacture of LDPE and other grades of LLDPE. In this situation producers of these latter grades cannot switch their production to C8 LLDPE without substantial capital investment and significant delay.

12. The survey undertaken by the Commission amongst producers and customers of the various PEs shows that none of those contacted considered that LDPE was a substitute for C8 LLDPE. Only one respondent considered that C4 LLDPE was a substitute for C8 LLDPE and only if price differentials were very large.

13. There are physical properties of C8 LLDPE which make it particularly suitable for certain applications, in particular for stretch film where over 60% of West European production is used. Neither LDPE nor C4 LLDPE are much used in this application.

14. It follows that C8 LLDPE does not form part of the same market as C4 LLDPE and LDPE, the bulk PE products. C6 LLDPE may form part of the same market as C8 LLDPE. For the purposes of this analysis it is not necessary to decide this question as neither the JV nor its parents produce this product. (EXXON has announced its intention to produce C6 LLDPE at its Cipen JV plant.)

15. In its EXXON/Shell decision[(1)] the Commission made a distinction between LDPE and LLDPE on the one hand and HDPE on the other, on the basis of the characteristics of the products and their applications.

16. The relevant product markets to be examined are, therefore, metallocene plastomers, C8 LLDPE (with or without C6 LLDPE), LDPE and C4 LLDPE, and HDPE

Relevant Geographic market

17. The relevant geographic market for metallocene plastomers is at present world wide, the only producers being EXXON and Dow in the United States of America. However when the JV, Dow and BASF commence production in Europe this situation may change.

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(1) Case N° IV/33.640 EXXON/Shell, OJ L144.20

18. The relevant geographic market for PEs products is at least the whole of the European Union.[2] PEs are easily transported across Europe. Transport costs are relatively low (about 6%) when compared to the value of the products in question. There are no tariff barriers for trade between Member States. The producers of PEs sell these products in different Member States.

19. From these elements it can be considered that the relevant geographic market for PEs is the European Union. This is confirmed by the low level of imports from outside Europe, These imports are subject to significant duties (on the basis of the information provided by the parties, 10%).

III CONCENTRATION

Joint Control

20. Exxon Chemical and DSM will each have a 50% interest in the JV. A Management Committee comprised of six members, three appointed by each party, will govern and manage the JV. The chairperson of the Management Committee will be appointed annually on a rotating basis by the parties and decisions taken by the Committee must be approved by the unanimous consent of all members attending a meeting at which a quorum is present. Such decisions comprise the principal decisions relating to the governance of the JV. Thus both Exxon Chemical and DSM will, by virtue of their representation on the Management Committee, have a right of veto over all matters of fundamental importance for the JV and, accordingly, will exercise joint control within the meaning of Regulation 4064/89.

Full function

21. The JV will have a production plant, contributed by DSM, and technology licensed by DSM and Exxon Chemical. Likewise, Exxon Chemical and DSM will equip the JV with sufficient start-up capital to operate on the market. The JV will manufacture at its own production plant and buy its own raw materials and have its own personnel dedicated to manufacturing and marketing.

22. The JV has entered into a supply agreement for ethylene with DSM . Under this agreement, the latter has agreed to supply the JV with a certain maximum quantity of ethylene for an initial three-year period. Furthermore, such a supply by DSM is subject to the JV's exercise of its option to purchase from DSM and, consequently, the JV will be free to purchase on the open market and its full-functionality will thus not be constrained by the said agreement.

23. The JV will have its own Managing Director, Commercial Director and Financial Manager, separate from the management of its parents and these will operate out of office facilities separate from those of both parents. The JV's management will have sole responsibility for determining and developing the JV's commercial strategy. While the sales functions for the JV's products will be performed by its parents on an agency basis for the initial five-year start up period, the JV will retain control over product marketing to customers, the allocation of products to each of its sales agents and the prices at which products will be sold to customers, thus determining its own marketing strategy.

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(2) For a similar definition see again Exxon/Shell, *supra.*

24. In the light of the above-mentioned factors, the JV is considered to constitute a full-function, autonomous entity.

Absence of coordination of competitive behaviour

25. The relevant product markets are described above (point 16) as HDPE, metallocene plastomers, C8 LLDPE (possibly including C6 LLDPE), LDPE and C4 LLDPE.

26. As the output of the JV will be less than 1% of 1995 European HDPE sales and as only DSM is present in this market area, there is no likelihood of coordination between the parents in HDPE.

27. In metallocene plastomers only the JV and EXXON (in the USA) will be in the market so there is no possibility of co-ordination in this product.

28. For C8 LLDPE (whether or not C6 LLDPE is included) only the joint venture will be involved in production in Western Europe. EXXON may produce C6 LLDPE at its Cipen joint venture. However, as DSM is not engaged in the production of either C8 or C6 LLDPE, there is no possibility of co-ordination between the parents whichever product market definition is used.

29. The JV will not produce LDPE or C4 LLDPE. However, the market for LDPE and C4 LLDPE is a neighbouring market to the markets upon which the JV is active It is therefore necessary to consider whether the JV could be used as an instrument for the co-ordination of the parents' activities in this market.

30. On the market for LDPE and C4 LLDPE it is not likely that there will be a risk of co-ordination between the parents for the following reasons:

- first, the independent activities of the parents in LDPE and C4 LLDPE are much more important than their activities in metallocene plastomers and C8 LLDPE combined in the JV; therefore; it is not likely that the JV will, as such, influence their activities in the LDPE and C4 LLDPE market.

- secondly, the market structure in the LDPE and C4 LLDPE market (eight large companies including EXXON and DSM accounting for some 65% of West European sales in 1995) is not such as to make it likely that EXXON and DSM would use the JV as a vehicle for co-ordinating their behaviour.

31. The JV will make use of solution technology which has costs at least 30% more than the competing high pressure and gas phase technologies used to produce PEs. Neither EXXON nor DSM will retain any solution technology plants capable of producing C8 LLDPE.

32. The Commission concludes that there is no possibility of co-ordination between the parents in the markets for metallocene plastomers, HDPE, C8 and C6 LLDPE because at the most only one parent is active in the manufacture and sale of these products. In the neighbouring market for LDPE and C4 LLDPE, where both parents will remain active, a market structure such as the one described above should normally make it unlikely that this particular JV entails a risk of co-ordination between the parent companies.

IV COMMUNITY DIMENSION

33. The combined aggregate turnover of the parties exceeded 5,000 million Ecu in 1994. (EXXON 94.036 billion Ecu and DSM 4.681 billion Ecu). The European Union turnovers at 7.645 billion Ecu and 3.337 billion Ecu respectively, exceeded 250 million Ecu. The parties do not generate more than two thirds of their aggregate community wide turnover in one and the same Member State. The operation therefore has a Community dimension.

V COMPETITIVE ASSESSMENT

34. The market of metallocene plastomers is very new and only limited quantities are sold in the European market. At the moment, in the EU three suppliers are present on the market, DOW Chemical, Exxon Chemical and BASF. Currently, there is no production of metallocene plastomers within the EU and Dow is by far the most important importer. Consequently, the present position of the other suppliers is insignificant.

35. Furthermore, DOW Chemical has recently announced the conversion of its plant in Tarragona, Spain, for the production of metallocene plastomers. It can be expected that by means of this DOW will be better able to defend its present strong presence in the EU. In these circumstances the present operation will create a new producer in the EU. It can thus be concluded that the operation will have a pro-competitive effect with respect to the supply of metallocene plastomers in the EU and elsewhere.

36. With respect to C8 LLDPE, the main suppliers on the EU market, according to the parties, are DOW, DSM and Polimeri, with respective shares of approx. 50%, (deleted business secret - between 15% and 20%) and 5% of the total sales of this product, while Exxon has no activities in the EU with respect to this product. The joint venture will inherit the DSM market share of (deleted business secret - between 15% and 20%) but this may fall as the JV's production of metallocene plastomers increases.

37. In C6 LLDPE neither DSM nor Exxon have a presence, therefore their share of the possible combined product market for C6 and C8 LLDPE is lower than their share if C8 LLDPE alone is considered the relevant product market. Whether or not the relevant market is considered to be C8 LLDPE or C8 LLDPE and C6 LLDPE, there is no addition of market shares as a result of the operation.

38. As the JV does not operate in the market for LDPE and C4 LLDPE, it is not necessary to examine the situation in this market as there will be no addition of market shares.

39. For HDPE the overall situation will be unchanged by the operation. Only DMS is currently present on this market. DSM will cede part of its business, respresenting less than (deleted business secret - between 1% and 5%) of Western European demand, to the JV. Overall DSM's share in 1995, including the sales from the plant ceded to the JV, accounted for about (deleted business secret - between 5% and 10%) of total Western Europe sales.

40. Consequently it is not considered that the concentration creates or strengthens a dominant position in the common market.

VI AGREEMENTS AND ANCILLARY RESTRAINTS

41. DSM has undertaken to supply ethylene to the JV for an initial period of three years. The JV is not required to purchase its ethylene requirements from DSM and is free to purchase supplies from wherever it wishes. The agreement, which places a minor restriction on DSM, ensures the JV of a sufficient and reliable source of its essential raw material during the start-up period. It is therefore directly related and necessary to the operation and may be regarded as ancillary to it.

42. EXXON will license its proprietary metallocene catalyst technology and supply the JV with catalyst and co-catalyst. To the extent that these agreements are a restraint on competition, they can be considered as ancillary, because without them the joint venture would be unable to produce metallocene plastomers.

43. DSM will license its solution technology to the JV. To the extent that this agreement is a restraint of competition it may be considered as ancillary because without it the JV would not be able not be able to operate its plant.

44. EXXON is restricted, for five years, from licensing its metallocene catalyst technology to any licensee of DSM's solution technology for the purpose of producing metallocene plastomers. Similarly DSM is restricted for five years from licensing its solution technology to any licensee of EXXON's metallocene catalyst technology for the purpose of producing metallocene plastomers. In effect these restrictions only constrain the parents from licensing third parties to produce metallocene plastomers using the combination of technologies, metallocene catalysts and solution technology, which will be used by the JV. They do not prevent the parents from licensing their technologies for any other purpose.The restrictions which are incorporated in the JV agreements are essential to ensure the JV the full value of these technologies in so far as they are used for the principal purpose of the JV, that is, to produce metallocene plastomers. They do not last longer than the start-up period for the JV. They are, therefore, no more restrictive than is necessary. They are, therefore, directly related and necessary to the operation and may be regarded as ancillary to it.

VII CONCLUSION

45. It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the common market or in a substantial part of it.

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46. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with 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,