

*Case No IV/M.719 -
Röhm / Rohm and Haas*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/06/1996

*Also available in the CELEX database
Document No 396M0719*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.06.1996 *SG(96)D/5982

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.Case No. IV/M.719 - Röhm/Rohm and Haas
Notification of 24.5.1996 pursuant to Article 4 of Council Regulation No 4064/89

1. On 24.05.1996, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No. 4064/89 by which the undertakings Röhm GmbH Chemische Fabrik (Röhm), controlled by Hüls AG, belonging to the VEBA group, and Rohm and Haas Company (Rohm and Haas) acquire within the meaning of Article 3(1)b of the Council Regulation joint control of the undertaking RohMax Additives GmbH (Rohmax). Röhm and Rohm and Haas will contribute their existing lubricant oil additives businesses to the joint venture and will each hold 50% of Rohmax.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. The business activities of the undertakings concerned are :

- Röhm: methacrylate chemistry, lubricating oil additives

- Hüls : basic chemicals, polymers, specialty chemicals, performance chemicals, methacrylate chemistry and electronics chemistry
 - VEBA : electricity, chemicals, oil, trading, transportation and telecommunications and real estate
 - Rohm and Haas: polymers, resins, monomers, performance chemicals, plastics, lubricating oil additives and agricultural chemicals
4. The joint venture will be jointly controlled by Röhm and Rohm and Haas. Furthermore, the joint venture will perform on a lasting basis all the functions of an autonomous economic entity and its creation will not give rise to coordination of the competitive behaviour of the parties amongst themselves or between them and the joint venture.

II. COMMUNITY DIMENSION

5. The undertakings concerned have a combined aggregate worldwide turnover in excess of 5,000 million ECU (Röhm 635 million ECU, VEBA 38,624 million ECU and Rohm and Haas 2,969 million ECU). Each of them has a Community-wide turnover in excess of 250 million ECU (Röhm [...] ⁽¹⁾ million ECU, VEBA [...] ⁽²⁾ million ECU and Rohm and Haas [...] ⁽³⁾ million ECU), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension, but does not constitute a cooperation case under the EEA Agreement.

III. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product market(s)

6. The operation concerns lubricating oil additives and ester. The turnover of the joint venture in the ester market is less than [...] ⁽⁴⁾ million ECU and the market share of the joint venture is less than 15% in any individual EEA market. Whether ester should be defined as a separate relevant product market can therefore be left open.
7. The main impact of the operation is in lubricating oil additives. An oil lubricant consists of a base oil and additives. There are two principal categories of additives: DI packages (Detergent Inhibitor packages) and viscometric products. DI packages serve to suspend oil contaminants and combustion by-products as well as to prevent oxidation of the oil with the resultant formation of varnish and sludge deposits. Viscometric products modify the viscometric characteristics of lubricants by reducing the rate of thinning with increasing temperature and the rate of thickening with low temperatures. Viscometric products thereby provide enhanced performance at low and high temperatures. In most applications viscometric products have to be used with DI packages.

⁽¹⁾ Deleted business secret

⁽²⁾ Deleted business secret

⁽³⁾ Deleted business secret

⁽⁴⁾ Deleted business secret

- 8 There is a certain degree of substitutability between base oils, DI packages and viscometric products in the production of oil lubricants. High grade base oils thus require less additives than lower grade base oils. It is thus possible to reduce the amount of DI packages and viscometric products in an oil lubricant by using higher grade base oils. Furthermore, viscometric products can be formulated to partly replace some of the components in the DI package and vice versa. However, viscometric products and DI packages are both essential components of an oil lubricant, and they are not interchangeable. It appears, therefore, that DI packages and viscometric products are not in the same relevant product market. The joint venture will be active in lubricating oil additives only through viscometric products.
- 9 There are five major types of viscometric products: polymethacrylates (PMA's), olefin copolymers (OCPs), styrene isoprene, styrene butadienes and a hybrid OCP/PMA. The different types of viscometric products are substitutes in the main applications, but are not perfect substitutes in all applications. PMA's are for example superior to OCPs for usages in smaller applications like hydraulic oils and gear boxes, whereas PMA, OCP and styrene isoprene are interchangeable in crank cases of cars, which is the most important application accounting for more than 70% of the total European usage of viscometric products. Overall the parties, customers and competitors agree that there is a high degree of demand side substitutability between the different types of viscometric products for a wide range of applications. It appears, therefore, that the five major categories of viscometric products are part of the same relevant product market. However, the market definition can be left open, since the parties would not achieve a dominant position even on a more narrowly defined market (see below).

B. Relevant geographic markets

10. According to the parties as well as information from competitors and customers the relevant geographic market for viscometric products is the EEA area. Most customers of lubricating oil additives are large oil companies who pursue a European wide purchasing policy which also means that viscometric products are readily sold across the borders of the EEA countries. The market for viscometric products is therefore the EEA.
- 11 In the ester market the combined market shares of the parties are less than 15% whether individual national markets or a wider market is considered. The geographic market definition for the ester market can therefore be left open.

C. Assessment

12. The businesses being contributed to the joint venture are the lubricating oil additives businesses of Röhm and Rohm and Haas. Following the operation the joint venture will have production facilities in North America and Western Europe.

Viscometric products

- 13 Röhm and Rohm and Haas are active in lubricating oil additives with viscometric products based on PMA technology. The combined market share of the parties in the market for viscometric products was less than [.....]⁽⁵⁾ in 1995 (value terms). The major competitors as well as the main customers of the parties are the major oil companies,

⁽⁵⁾ Between 20-30%

who are vertically integrated, and several of these companies are themselves important producers of lubricating oil additives.

- 14 The new entity will be the biggest supplier of PMA products in the EEA producing about [.....]⁽⁶⁾ of all PMA based viscometric products. However, the parties would not achieve a dominant position enabling it to act independently of competitors, customers and ultimately consumers, even if the relevant product market was defined as narrowly as PMA products. First, several of the big oil companies have in-house production of PMA products which are used for their own purposes as well as sold on the free market. Secondly, customers have indicated that even though Röhme and Rohm and Haas are the biggest suppliers of PMA products, it would be possible for other independent suppliers to develop into satisfactory second-source suppliers within the foreseeable future. Thirdly, PMA technology was first developed more than 100 years ago and is only for a minor part still covered by patents. It is not a complicated technology, and it would be relatively easy, for example, for a major oil company to produce PMA based viscometric products.
15. In view of the market position of the notifying parties, the notified operation will have an insignificant impact on competition in the European Union and, consequently, effective competition in the market for viscometric products would not be significantly impeded in the EEA area or any substantial part of that area.

Ester

- 16 The joint venture will produce ester for its own internal purposes and sell a small amount on the free market. However, the market share of the parties will be less than 15% in each individual EEA country. Consequently, effective competition in the ester market would not be significantly impeded in the EEA area or any substantial part of that area.

V. CONCLUSION

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

For the Commission,

⁽⁶⁾ Between 40-50%