EN

Case No COMP/M.7456 - IMERYS / S&B MINERALS

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 19/02/2015

In electronic form on the EUR-Lex website under document number 32015M7456

Office for Publications of the European Union
L-2985 Luxembourg

EUROPEAN COMMISSION

Brussels, 19.2.2015
C(2015) 1297 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject: **Case M.7456 - IMERYS / S&B MINERALS**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

(1) On 16 January 2015**,** the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Imerys SA (France) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the undertaking S&B Minerals Finance SCA ('S&B', Greece) (with the exception of its Greek bauxite business) by way of purchase of shares.[3] Imerys and S&B 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 OJ L 1, 3.1.1994, p.3 ("the EEA Agreement").

3 Publication in the Official Journal of the European Union No C 27, 27.1.2015, p. 6–6.

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1. THE PARTIES AND THE OPERATION

(2) Imerys is a multinational company that mines and transforms minerals used to improve the quality of customers' products and manufacturing processes. Imerys operates in four business groups: (i) energy solutions & specialties, (ii) filtration & performance additives, (iii) ceramic materials, and (iv) high resistance minerals.

(3) S&B is a global group that is active, through its subsidiaries, in the extraction and processing of certain industrial minerals for use in a wide range of sectors. In particular, it is active in the extraction and supply of perlite, bentonite, wollastonite, as well as in the production and supply of continuous casting fluxes. S&B's mining sites are mainly located in Greece.

(4) The proposed transaction concerns the acquisition by Imerys of 100% of the shares and voting rights of S&B[4] on the basis of a Share Acquisition Agreement concluded on 5 November 2014. Therefore, the transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

2. EU DIMENSION

(5) The concentration does not meet the thresholds required in Article 1(2) and (3) of the Merger Regulation. However, on 26 November 2014 the Commission received a request pursuant to Article 4(5) that the concentration should be reviewed by the Commission. As none of the Member States where the transaction was capable of being reviewed (Austria, Germany and Spain) opposed the referral, the concentration is deemed to have a Union dimension and is notifiable under Article 4 of the Merger Regulation.

3. COMPETITIVE ASSESSMENT

(6) The proposed transaction primarily concerns the markets for the extraction and supply of industrial minerals, notably perlite, as well as the production and supply of wollastonite, continuous casting fluxes and other minerals used in refractory applications.

3.1. Relevant markets

3.1.1. Relevant product market

(7) The Parties consider that, in view of their respective product portfolios, the following products are in particular relevant for the assessment of the Notified Transaction as significant additions to Imerys' existing sales of minerals: (i) perlite; (ii) wollastonite; (iii) bentonite[5]; (iv) continuous casting fluxes. As the Notified

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4 The transaction excludes S&B Group's bauxite business in Greece.

5 The proposed transaction gives rise to minimal horizontal overlaps in bentonite, which is a clay formed by the decomposition of volcanic ash, having the ability to absorb large quantities of water and expand to several times its normal volume. The major uses of bentonite are in pet litter absorbents, civil engineering (sealing, tunnelling, slurry walls), oil drilling mud, foundry-sand bond, binder for pelletizing iron ore, and for bleaching liquids (filtering, clarifying, and decolorizing). According to the Parties' estimates, there is no overlap in the EEA as Imerys only has a small bentonite operation in South Africa which is only serving the local market. At a worldwide level, the Parties' combined market share in 2013 would be below [10-20]%. Bentonite will therefore not be discussed further in this decision.

Transaction does not lead to any affected markets concerning wollastonite, or continuous casting fluxes these products will be shortly described to the extent they are relevant for the assessment of potential conglomerate effects (see section 3.2.2), but will not be assessed further for the purpose of defining the relevant product market in this Decision:

a. wollastonite is an industrial mineral comprised chemically of calcium, silicon and oxygen. Wollastonite is used as an additive in plastics, paint, metallurgic continuous casting processes, and ceramic applications. Only S&B is active in wollastonite. Other complementary materials for these applications include clays, talc, calcium carbonates, mica, diatomite, vermiculite and feldspar, in some of which the Parties are active.

b. continuous casting fluxes ("CCFs") are a range of specialized and high value-adding products crucial to the continuous casting process in steel casting. In particular, CCFs consist of powder, granule and premolten materials that are manufactured by blending certain mineral-based raw materials, such as wollastonite, sodium oxide, fluorspar, carbon, alumina, and magnesium oxide. S&B is a major supplier of CCFs. Imerys is present on a neighbouring market for refractory materials, which are non-metallic materials (a mix of aggregates, mainly alumina-silicates with binders) primarily used as heat-buffers or linings in industrial installations, including the production of steel.

3.1.2. Perlite

(8) Perlite is a naturally occurring siliceous rock, whose key property is notably expansion - when heated to certain temperatures, it expands from four to twenty times its original volume. According to the Notifying Party, Imerys is mostly active in old perlite ore, and S&B in young perlite ore, which tend, due to different properties, to be used in different industrial applications. In particular, old perlite ore is mainly used for filtration of liquids (e.g. wine), whilst young perlite is used in other end-use applications, notably horticulture, construction (as lightweight and/or fire-resistant material in concrete, ceiling tiles etc.) and other industrial applications such as insulation and foundry.

(9) Production of perlite ore usually involves the following steps. Crude perlite is mined using open-pit methods and then is moved to the plant site where it is stockpiled. The crude ore is ground to variable sizes in several circuits and dried to reduce the moisture content. The desired size processed perlite ore is stored until it is shipped to an expansion plant. In end-use applications perlite is almost always used in expanded form. Perlite ore producers can either be vertically integrated and expand the ore themselves (for example Imerys), or sell unexpanded ore to perlite expanders-traders or end customers, as is the case of S&B.

(10) The practice of trading on the merchant market unexpanded as opposed to expanded perlite varies depending on the industrial application. With respect to filtration applications, end customers source almost exclusively expanded perlite. Conversely, in horticulture and construction applications, most customers tend to buy unexpanded perlite and carry out the expansion process in their own expansion sites (notably large construction material companies).

3.1.2.1. Past decisional practice

(11) The Commission has hitherto not yet assessed a market for perlite. In the past cases concerning industrial minerals (talc and calcium carbonates), the Commission has considered that the relevant product markets should be delineated according to the single mineral, and further segmented in accordance with its end-use applications,[6] subject to certain exceptions, where more than one minerals could be found substitutable for the same application.[7]

3.1.2.2. The Notifying Party's arguments

(12) The Notifying Party considers that on the upstream level, a market for perlite ore to the merchant market could be identified, with the possibility of a further sub-segmentation depending on the age and properties of perlite, namely (i) old perlite ore and (ii) young perlite ore. At the downstream level, in line with the Commission's past practice with respect to industrial minerals, the market for perlite could be segmented based on the main end-use applications, namely: (i) perlite for filtration, (derived from 'old' perlite ore), (ii) perlite for horticulture, and (iii) perlite for construction and other Industrial applications (both derived from 'young' perlite ore).

(13) The Notifying Party also propose a more detailed categorisation of perlite ore for different end-use applications.

Grade	particles size	Age	density (once expanded)	mechanical resistance (once expanded	water retention (once expanded)	End use application
Fine	0.07-0.6 mm	old	high (200 to 300 kg/m3)	Low	High	filter aid
Fine	0.07-0.6 mm	young	low to medium (50 to 150kg/m3)	High	Medium	construction & insulation
medium	0.2-0.8 mm	young	Low to medium (50-150 kg/m3)	High	Medium to high	construction & insulation
medium	0.2-0.8 mm	old	Low to medium (50-150 kg/m3)	low	Medium to high	construction & insulation
coarse	0.8-2.5 mm	young	Low to medium (50-150 kg/m3)	High	high	horticulture

Source: the Notifying Party[8]

(14) For filtration, the final product is based on milled expanded perlite grains, which explains why fine perlite ore grades are required. Most importantly, for this application, the raw perlite type should be such that during expansion it should create a mixture of shattered and very soft particles so as to be easier to be milled afterwards. This malleability is a characteristic of perlite extracted from old ore deposits.

(15) For horticulture, the expanded perlite grains need to be large above 1mm up to 5 mm, in order to keep their grain integrity during expansion by not expanding violently and creating a lot of shattered particles. This explains why raw perlite sold for this purpose needs to be a coarse grade (for example 0.8-2.5 or 1.2-3.35 mm). Perlite ore with

6 See, for example, M.3796 Omya/Huber PCC, paragraph 235.

7 M.6189 – Imerys / Rio Tinto Talc Business, paragraph 24.

8 Reply to question 1 of the Commission's request for information dated 10 February 2015.

these features is typically extracted in young ore deposits, i.e. with an age of less than 1 million years.

(16) Finally, for construction and other industrial uses such as cryogenics, the expanded perlite grains need to be finer for having better packing, better insulation and smoother finishing. This is why medium and fine perlite grades are used in this application. In addition, the perlite ore needs to have higher mechanical resistance so as not to create shattered particles during expansion, which is a quality typically found in perlite extracted from young deposits. That said, sometimes, also old perlite ore can provide expanded particles of high strength, hence be employed for such application.

(17) According to the Notifying Party, it may also be sensible to consider, for some end-use application, a wider market comprising other minerals showing a good degree of substitutability with perlite. However, the market definition can be left open.

3.1.2.3. Results of the market investigation

Production of perlite ore / raw perlite

(18) At the highest plausible relevant product market for perlite ore, the market investigation showed that due to the unique characteristics of perlite (such as low weight, filtration, insulation and fire-resistance properties) the possibility to substitute perlite with other industrial minerals is very limited, and only concerns filtration applications (diatomaceous earth and vermiculite).[9]

(19) The distinction between young and old perlite ore, as proposed by the Notifying Party, was rejected as uncommon or overly simplistic in the market investigation. Customers instead referred notably to different grain sizes and expanded/unexpanded form as the relevant product characteristics influencing their procurement.[10] Accordingly, certain competitors claimed that the geological age was not the determining indicator of performance of the perlite ore for various end-use applications.[11]

Upstream merchant supplies of perlite ore

(20) Perlite customers recognised the importance of differentiating between expanded perlite and unexpanded perlite (ore). By definition, expanded perlite is much more voluminous than unexpanded perlite (up to 20 times), and its price can be 10 times higher. The market investigation confirmed that buyers of expanded perlite cannot readily switch to unexpanded perlite, as they lack the facilities to expand perlite. Conversely, buyers of unexpanded perlite, which typically operate own perlite expansion plants, are unwilling to procure expanded perlite.[12]

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9 See replies to questions 7 and 11 – Questionnaire to customers (Q1). For example, customers active in filtration stated that "*customer already switch [sic] on their own, for instance if kieselguhr [diatomaceous earth] is getting too expensive they switch back to perlite*", "*in our filtration process we can use mainly Diatomite instead of Perlite with the same equipment*".

10 See replies to questions 8-10 - Questionnaire to customers (Q1).

11 See replies to questions 9-11 – Questionnaire to competitors (Q2).

12 See replies to questions 12-14 – Questionnaire to customers (Q1).

(21) Supplies of unexpanded perlite ore are therefore distinct from expanded perlite and could therefore be analysed on a plausible merchant market for supply of perlite ore, irrespective of the customer type or the end-use application.

Perlite for filtration, horticulture and construction/industrial end-use applications

(22) The market investigation confirmed a clear differentiation of perlite customer groups and perlite suppliers, and generally supported segmentation by end-use application for filtration, horticulture, and construction/industrial.

(23) In the market investigation, customers confirm that substitution between various types and grades of perlite is limited for a given end-use application. A customer commented that "*we speak about completely different end products – only a few can f.inst. manufacture filter perlite*".[13] Customers using perlite for different applications explained that they can only use certain grades of perlite with appropriate particle size distribution, combined water content, and degree of density/expansion.[14] This suggests a limited degree of demand side substitution for perlite/perlite ore for different end applications.

(24) A similar conclusion on limited substitution can also be drawn on the supply side. Although one competitor claims that old/fine perlite and young/coarse perlite are one and the same product, replies from other competitors confirm the general lack of supply side substitution. A competitor for example stated: "*Each ore is naturally suited to make certain end products. This can be influenced by the processing steps taken to size the ore and the temperature used for expansion.*"[15]

(25) Limited supply side substitutability is also consistent with the observed supply relationships. Notably, customers active in filtration prevailingly buy expanded perlite from two main sources. (i) Imerys, which is vertically integrated and sells expanded perlite directly. (ii) IPM/Diperlit, which sells perlite ore to traders such as CECA and Grefco which in turn expand the ore and resell expanded perlite to filtration customers. Other suppliers, including S&B, only have a marginal presence in sales to this customer group. The situation is reversed concerning perlite and perlite ore sold for horticulture and construction/industrial applications, where S&B has strong market presence, while Imerys only sells very limited quantities. The pattern repeats for other competitors: Grefco/Dicalite and Ceca are major traders in expanded perlite for filtration but have no noticeable sales to horticulture and construction/industrial customers. On the other hand, important suppliers like EEKOM and Perlite’92 only supply horticulture and/or construction/industrial customers, but are not meaningfully present in the filtration segment.[16] Only one company, IPM/Diperlit seems to have significant presence across several main end-use applications.

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13 See replies to question 19 - Questionnaire to competitors (Q2).

14 See replies to question 18 - Questionnaire to competitors (Q2).

15 See replies to questions 9-11 – Questionnaire to competitors (Q2).

16 See replies to questions 4.2, 29.2 and 29.4 - Questionnaire to customers (Q1).

Conclusion

(26) The market investigation suggests that, in keeping with the Commission's previous decisional practice, different end-use applications of perlite could be found to constitute separate relevant product markets.[17] However, as the subsequent competitive assessment shows that the Notified Transaction does not raise serious doubts as to its compatibility with the internal market on any of the plausible product markets, the exact product market definition can be left open.

3.1.3. Relevant geographic market

3.1.3.1. Past decisional practice

(27) In the *Imerys / Rio Tinto Talc Business*[18], the Commission confirmed its earlier findings[19] that the geographic dimension of markets for industrial minerals can be at least EEA in scope subject to the following factors:

- significant cross-border trade;
- evidence of global trade patterns;
- relative high-value per ton;
- ease of transport;
- low costs of maritime freights.

3.1.3.2. The Notifying Party's arguments

(28) The Notifying Party contends that the Commission's past practice of generally defining the geographic dimension of markets for high value minerals as at least EEA-wide should also apply to all the industrial minerals concerned by the Notified Transaction, including perlite. For these minerals, the geographic market is worldwide in scope in view of existing trade patterns and relative high value of minerals compared to transportation costs.

(29) Expanded perlite is much less dense than perlite ore and thus more voluminous. For this reason, it tends to travel shorter distances than perlite ore. The Notifying Party considers that the market for expanded perlite should be EEA-wide in scope or at least macro-regional.[20]

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17 With the exception of perlite for filtration, where the market investigation suggested that it could be substitutable with other minerals, notably diatomaceous earth and vermiculite See paragraph (18).

18 M.6189 *Imerys/Rio Tinto Talc Business.*

19 See, for example, M.1381, *Imetal/English China Clays* and M.3796 *Omya/Huber.*

20 See also decisions of the Spanish Competition Authority (2 June 2005 N-05049 Imerys/World Mineral and 15 September 2010 CP/0022/10, S&B/Europerlit); Austrian Competition Authority (CECA Italiana S r.l.l Winkelmann Mineraria S.r.lBWB/Z-888 of 22.12.2008) and Italian Competition Authority (C9868 – CECA Italiana/Winkelmann Mineraria S.r.l. In Boll .49/2008).

3.1.3.3. Results of the market investigation

(30) The market investigation broadly confirmed that the geographic scope of the market for perlite is at least EEA and Turkey irrespective of the end application. This is supported by significant cross border trade across the EEA and sizeable imports to the EEA from Turkey. In addition, perlite ore from mines used to supply the EEA market is also sold to overseas markets world-wide without any major variations according to the end application.[21]

(31) Concerning expanded perlite, transport costs appear to represent an important constraint, resulting in shorter transport distance ranges compared to perlite ore.[22] Accordingly, actual transport patterns show that expanded perlite only travels to a limited extent in the EEA, either within the same Member State or cross-border to neighbouring or nearby Member States.[23]

(32) However, the geographic market definition can be left open as the Notified Transaction raises no competitive issues regardless of the exact geographic scope of the markets.

3.2. Competitive Assessment

3.2.1. Perlite

3.2.1.1. Horizontal overlaps

Production of perlite ore / raw perlite

(33) On the plausible market for the production of perlite ore irrespective of the end application, the Parties hold [20-30]% on the world-wide level (Imerys: [5-10]%, S&B: [20-30]%), followed by Grefco/Dicalite and IPM/Diperlite with around [10-20]% each.[24] If the relevant geographic dimension of the market were to be the EEA and Turkey[25], the Parties' combined production would amount to approximately [40-50]%, all end-uses combined (S&B: [40-50]%, Imerys: [5-10]%).[26] The Notified Transaction appears unlikely to lead to unilateral anticompetitive effects due to (i) the limited increment in the production of perlite ore, (ii) the complementary nature of the Parties' respective perlite product and customer portfolios, and (iii) the presence of other significant perlite ore suppliers

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21 See replies to questions 22 and 31– Questionnaire to competitors (Q2), and questions 21 and 27– Questionnaire to customers (Q1).

22 See replies to questions 23 and 29 – Questionnaire to competitors (Q2), and questions 22 and 27– Questionnaire to customers (Q1). A customer explained that "*expanded perlite has got a strongly different specific weight (50-70 kg/m3), while raw perlite is 1000-1200 kg/m3. This reflects on a strongly different transportation price, as the delivered volume (bulk or big bags) will be the same but with 15/20 times weight difference.*"

23 See replies to question 25– Questionnaire to customers (Q1).

24 Form CO, p. 74-75.

25 Imerys exports the totality of its EEA supplies from Turkey. See Form CO, p. 77, and reply to question 1 of the Commission's request for information dated 10 February 2015.

26 See Form CO, p. 77-80.

in the EEA: IPM/Diperlit[27], Perlite '92 and EEKOM. Moreover, certain sophisticated buyers of perlite ore appear to be able to sponsor the expansion of suppliers' capacity to foster more price competition.[28] Finally, Imerys' product portfolio focussed on filtration appears to be subject to some degree of competitive pressure from other filtration minerals, such as diatomaceous earth and vermiculite.

(34) The Notified Transaction could also be assessed on a plausible market for merchant sales of perlite ore. On that market, S&B would hold [30-40]% of sales in 2013. However, Imerys' is vertically integrated into the downstream market for the supplies of expanded perlite and hardly sells any perlite ore in the EEA. Accordingly, its market share only amounts to [0-5]% of merchant sales. A competitive assessment on this plausible market level would thus not be representative of the Parties' respective market position in the production and supply of perlite.

Expanded perlite

(35) Unlike Imerys, S&B does not focus on sales of expanded perlite. Its sales of expanded perlite are thus very limited, and do not lead to any significant overlaps even on national markets as the narrowest plausible geographic market.[29]

Perlite for, respectively, filtration, horticulture, and construction

(36) The narrowest possible relevant product market is that for perlite (or perlite ore) for distinct end applications, respectively for filtration, horticulture and construction/industrial use.

(37) According to the Notifying Party, the Parties' activities in perlite appear to be mostly complementary since Imerys uses its ore mostly internally to produce expanded perlite for the filtration industry, whereas S&B mostly sells unexpanded perlite ore to the horticulture and construction industries.

(38) The market investigation confirmed that, based on the past supply patterns, there was no significant overlap between the Parties for each of the three main end applications: filtration (limited presence of S&B), horticulture (only limited presence of Imerys), and construction (limited presence of Imerys).

Filtration

(39) According to the Notifying Party, Imerys is the second largest producer on the upstream market for perlite ore for filtration, with around [20-30]%, and

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27 S&B and two key shareholders of IPM/Diperlite have established a joint venture company Pergem Mineral Mining Industry and Trade S.A. The objective of the JV is the production, processing and export of perlite ore in the former Commonwealth of Independent States. […] the JV is not likely to reduce competition between the Parties and IPM/Diperlite, as it appears that […]. See reply to the questions of 4 February 2015.

28 Minutes of a telephone call with a customer held on 3 February 2015.

29 S&B's expansion facilities are located in Spain (Sevilla), Greece and Bulgaria, while Imerys expansion facilities are in Spain (Alicante and Rubi), France and the north of Italy. As the transport distance is on average between 150 and 250 km, there appears to be no geographic overlap of the Parties' perlite expansion activities in Spain. See reply to the Commission's request for information dated 20 January 2015.

significantly smaller than IPM/Diperlit, with more than double the sales of Imerys.[30] Perlite for filtration is typically sold in expanded form, concerning which Imerys competes with a number of perlite ore expanders such as Grefco/Dicalite ([30-40]%), Ceca ([10-20]%) and Nordisk ([10-20]%), to which IPM/Diperlit supplies filtration grade perlite ore. The market investigation confirmed the strong market position of IPM/Diperlit and the existence of downstream expanders of perlite supplied by IPM/Diperlit as direct competitors to Imerys. It also confirmed that S&B only had a marginal presence in this segment.[31] Moreover, it appears that other industrial minerals, such as diatomaceous earth and vermiculite, can viably replace perlite as a filtration aid, and thus represent a further source of constraint for the Parties.

(40) Given the very limited overlap of the Parties, the presence of a very strong supplier of perlite ore for filtration IPM/Diperlite and significant downstream suppliers of expanded perlite for filtration, as well as competitive constraints from other minerals used for filtration, the transaction is unlikely to lead to anticompetitive effects due to the combination of the Parties' production of perlite ore for filtration.

Horticulture

(41) Perlite is sold in both expanded and unexpanded form to horticulture customers. According to the Notifying Party, S&B sells approximately [40-50] % of perlite ore for horticulture, Imerys accounts for around [0-5]% of sales, while the largest competitor is EEKOM with around [50-60] %.[32]

(42) The market investigation confirmed that Imerys only has a marginal presence in this segment, and no customer in the horticulture sector expected the transaction to have a negative impact on competition. In addition, Imerys appears to have limited, if any, spare capacity for the production of perlite ore.[33] As such, it would lack both the ability and the incentive to divert its sales from existing sales channels to enter the horticulture segment on a significant scale.

(43) Given the very limited overlap of the Parties, and the presence of other significant supplier of perlite ore for horticulture, the transaction is unlikely to lead to anticompetitive effects due to the combination of the Parties' production of perlite ore for filtration. For the same reason, the transaction is also unlikely to lead to concerns of input foreclosure through increased prices of S&B's perlite ore to Imerys' competitors in the supply of expanded perlite for horticulture.

Construction / industrial

(44) Construction is the largest end-use segment for perlite in the EEA (550-580kt in 2013, filtration: 130-150kt, horticulture: 90-100kt). For the most part, perlite ore is

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30 See Form CO, p. 79-80. The sales volumes for filtration concern expanded perlite. As the sales are expressed in metric tons, and the expansion process is essentially only about expanding the volume of perlite, the weight of expanded perlite can be used to assess the production/sales volumes of unexpanded perlite ore.

31 See replies to question 35.2. - Questionnaire to competitors (Q2) and replies to question 5 and 29 – Questionnaire to customers (Q1).

32 See Form CO, p. 79-80, and the explanation in footnote 30.

33 See Form CO, p. 83 and 74.

sold unexpanded to the customers in the construction/industrial sector, as many of them purchase significant quantities and have own expanding facilities. According to the Notifying party, S&B holds approximately [50-60] % of sales volumes for this end use (of which around [a significant portion] account for low-end perlite), while Imerys accounts for around [0-5]%. Other significant competitors include Perlite 92 (around [10-20] %), and EEKOM ([10-20] %), and IPM/Diperlit ([0-5] %).

(45) The market investigation on the whole corroborated the Parties' assessment, and confirmed that Imerys only had marginal sales in this segment. It also suggests that some of the competitors may even have a stronger market position than indicated by the Notifying Party. Certain respondents have however raised concerns that the notified transaction may result in price increases, as the combined entity may have such market power as to deter expansion or new entry.

(46) Considering that Imerys does not have a meaningful presence in the construction segment, the transaction is unlikely significantly to increase the Parties' combined market power in perlite sales for construction / industrial end uses. In addition, Imerys appears to have limited, if any, spare capacity for the production of perlite ore.[34] As such, it would lack both the ability and the incentive to divert its sales from existing sales channels to enter the construction/industrial segment on a significant scale.

Conclusion

(47) In view of very limited overlap of the Parties and the existence of significant competitors, the notified transaction does not raise serious doubts as to its compatibility with the internal market on each of the main end-use perlite applications, namely perlite for filtration, horticulture, and construction/industrial use, respectively.

3.2.1.2. Vertical relationships

(48) The notified transaction would result in a vertically integrated undertaking, active both on the upstream market of selling perlite ore (primarily current S&B business) to end customers and perlite expanders/traders (which buy perlite ore, expand it and resell it to end customers) and on the downstream market(s) for the supply of expanded perlite (primarily current Imerys business).

(49) However, in line with the arguments developed above, it seems unlikely that the proposed transaction would give rise to input foreclosure effects because (i) Imerys and the S&B Group focus on different types of perlite ore which are used for different end applications, (ii) the market for perlite ore appears to be global (or at least EEA-wide) and there are a number of alternative perlite ore suppliers.

(50) In the market investigation, a respondent claimed that the Parties would be able to foreclose downstream competitors in expanded perlite by increasing the prices for perindopril ore sold as an input to perlite expanders/traders. This would presumably allow the combined entity to gain market shares in expanded perlite to the detriment of existing independent expanders/traders. As Imerys is currently prevailingly supplying expanded perlite for filtration, while S&B sells unexpanded

[34] See Form CO, p. 83 and 74.

perlite for horticulture and construction/industrial use, such a scenario would rest on the premise that the expanders of perlite ore currently supplied by S&B are in competition with Imerys' expanded perlite business. While this would contradict the finding that the relevant product market is segmented according to main end-use applications for perlite, the merits of this claim will be examined on a hypothetical broader market comprising all perlite material irrespective of end use.

(51) The Parties would hold approximately [40-50] % on the hypothetical merchant market for perlite ore (S&B: 39%, Imerys: [10-20] %), or [40-50]% in the production of perlite ore in the EEA and Turkey, all end-uses combined (S&B: [40-50] %, Imerys: [5-10]%)[35]. However, while the total sales of perlite (expanded or unexpanded) amounted to around 770kt[36] in the EEA in 2013, the Parties' combined expansion capacities would only suffice to expand […]kt[37] of perlite ore yearly, less than ([10-20] % of all perlite. To gain market share for expanded perlite, it would thus not be sufficient to merely increase perlite ore prices. In addition, the Parties would need to invest into new expansion capacity with significant costs and lead time. However, even disregarding the limited substitutability between different grades of perlite ore, the Parties would risk that their current customers for perlite ore would switch to other suppliers of perlite ore in view of the price increase. This risk is all the more significant as any new expansion capacity would likely remain limited compared to the Parties' current overall sales of perlite ore. While the Parties could only capture a small part of the demand with the incremental expansion capacity, the entirety of their perlite ore sales could be contested in case of such a price increase by significant competitors such as IPM/Diperlite, Perlite'92 and EEKOM. The market investigation suggested that such switching would generally be possible.[38] In view of the above arguments, the Parties thus likely lack ability and incentive to follow such a foreclosure scenario. At any rate, given that such a scenario would relate principally to current S&B output, and that Imerys' increment is relatively small, such a scenario is not necessarily specific to the notified transaction.

3.2.2. Conglomerate effects

(52) In the *Imerys/Rio Tinto Talc Business*, the Commission considered that conglomerate effects are unlikely to arise in industrial minerals: "*bundling or tying practices are not common with respect to the end use applications in which the talc and the minerals in Imerys's portfolio are used*".[39]

(53) In general, the Parties would benefit from an extended and, to a large extent, complementary product portfolios for certain industrial applications, notably metallurgy (S&B's continuous casting fluxes – "CCFs" and Imerys' refractory materials) and chemicals (S&B's wollastonite and Imerys' clays and other minerals). The Notified Transaction however does not raise doubts as to its

35 See Form CO, p. 77-80.

36 The vast majority of this volume is expanded prior to end-use, either by the producer of perlite ore directly (for example, Imerys), by independent expanders/traders, or by the end customers itself.

37 Annex 1 to the reply to the Commission's request for information of 20 January 2015.

38 See replies to questions 32 and 33 – Questionnaire to customers (Q1).

39 M.6189 Imerys/Rio Tinto Talc Business Talc.

compatibility with the internal market due to possible conglomerate effects for the following reasons.

Wollastonite

(54) Wollastonite can potentially be combined with kaolin, calcium carbonates, mica, diatomite, ball clays, perlite, vermiculite, feldspar, quartz and talc that are sold by Imerys for use in paint, plastics and ceramics applications. Since Imerys holds a high market share for talc (([70-80]%), it could attempt to make the sales of talc dependent on the customers' purchases of wollastonite in a tying and/or bundling scenario, to the detriment of other wollastonite suppliers.

(55) However, the market investigation[40] has confirmed that (i) there are alternative sources of supply for wollastonite and talc and there are competitors, such as Sibelco, also capable of of offering both, (ii) none of the minerals at issue can be considered a "must-have" item in a way similar to consumer goods, (iii) Imerys has a limited market share for some key minerals, (iv) bundling is quite uncommon in the industry, and (v) customers tend to be large sophisticated groups with buyer power.

CCFs

(56) CCFs are primarily used as key additives in iron and steel casting processes. S&B supplies CCFs exclusively to the steel industry where Imerys is active in the production of refractory materials, which are essentially used as temperature-resistant lining for installations, such as furnaces. S&B appears to hold a strong market position in CCFs ([50-60] %). It could thus attempt to tie or bundle its sales of CCFs to the metallurgy customers' purchases of refractory materials in order to improve its market position in the latter business.

(57) Such a scenario however appears unlikely for the following reasons. Firstly, Imerys is not active in all types of refractory products, and is present in only 3 out of 5 reported product segments (active in acid unshaped refractories (monolithics), basic unshaped refractories (monolithics) and acid shaped refractories, but not in basic shaped refractories and flow-control refractories). Moreover, Imerys only has a more significant presence in the acid unshaped segment ([10-20]%), while it has low market shares both in basic unshaped and acid shaped refractories ([5-10] % and [0-5]%, respectively). Therefore, it is not clear whether the Parties would have the incentive to engage in such a strategy as there would be a risk that customers divert their purchases from the Parties in view of the limited presence and incomplete product portfolio in refractories. Moreover, the market investigation[41] confirmed that (i) there are alternative suppliers and there is at least one competitor, Vesuvius, capable of matching Imerys' offer, (ii) bundling is quite uncommon in the industry, and (iii) customers tend to be large sophisticated groups with buyer power.

(58) Accordingly, the vast majority of respondents in the market investigations raised no concerns that the Notified Transaction would lead to anti-competitive effects in either metallurgy or chemicals applications.

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40 See customers' replies to questionnaires dated 21 January 2015.

41 See customers' replies to questionnaires dated 21 January 2015.

4. CONCLUSION

(59) 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 and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission