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Case No COMP/M.7465 - ARKEMA/ BOSTIK

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

Article 6(1)(b) NON-OPPOSITION

Date: 28/01/2015

***In electronic form on the EUR-Lex website under
document number 32015M7465***



Brussels, 28.1.2015
C(2015) 490 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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/Madam,

Subject: Case M.7465 – ARKEMA / BOSTIK

Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

- (1) On 12 December 2014, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Arkema S.A. (Arkema, France), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the adhesives and sealants business of Total S.A. (Bostik, France) by way of purchase of shares.³
- (2) Arkema is hereinafter referred to as the “Notifying Party”.

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 457, 19.12.2014, p. 21.

1. THE PARTIES

- (3) Arkema is active worldwide in the production, distribution and sale of chemical products. Its activities are organised around three business segments: coating solutions, industry specialties and high performance materials.
- (4) Bostik designs and manufactures adhesives and sealants for three key markets: industry, construction and consumer. Bostik has production facilities around the world.

2. EU DIMENSION

- (5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ (Arkema: EUR 6 098 million, Bostik EUR 1 505 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Arkema: EUR 2 377 million, Bostik: EUR 655 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.
- (6) Therefore, the proposed transaction has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

3. RELEVANT MARKETS

3.1. Introduction

- (7) The proposed transaction gives rise to horizontal overlaps in relation to the manufacturing of adhesives and sealants, without however giving rise to affected markets within the meaning of the Merger Regulation.
- (8) The transaction leads also to vertical links between the upstream markets for the production of raw materials by Arkema (acrylic monomers, dicarboxylic acids, polyester polyols, high content ethylene-vinyl acetate (EVA), polyamids, water-based resins, rheological additives and polyethylene polyolefins), and the downstream market for manufacturing adhesives and sealants. Depending on the market definition these links could lead to affected markets for the upstream markets of acrylic monomers (glacial acrylic acid (GAA) and 2-ethylhexyl acrylate (2EHA)), dicarboxylic acids (sebacic acid), rheological additives for non-aqueous applications based on polyamide powders and epoxide ethylene copolymers (which belong to polyethylene polyolefins).

3.2. Product and geographic markets

3.2.1. Adhesives and sealants

- (9) Adhesives are specifically developed to hold or stick objects together; sealants offer means for leakage control of fluids or gases or prevent the ingress of atmospheric components into an assembly. The Notifying Party submits that adhesives and sealants are part of the same relevant market, since they are used for the same applications, they are produced from the same raw materials and there is no clear business distinction between adhesives and sealants.

⁴ Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

- (10) In previous decisions⁵ the Commission considered a possible distinction between adhesives and sealants, but ultimately left the market definition open. Furthermore, in the past cases the Commission categorised adhesives and sealants into three end-use groups: i) adhesives and sealants for consumers, ii) adhesives and sealants for craftsmen and “Do It Yourself” and iii) adhesives and sealants for industrial applications. As regards the adhesives and sealants for industrial applications the Commission considered further segmentations according to the specific application (e.g. automotive, shipbuilding) and according to the technologies used within each application.
- (11) The Commission considered in its previous decisions that the geographic market for industrial adhesives may vary depending on the segment concerned. In most cases the Commission considered that the market was EEA-wide in scope.⁶
- (12) In any event, for the purpose of the present transaction, the exact product and geographic market definition can be left open, since the transaction does not raise competition concerns as regards production of adhesives and sealants irrespective of the market definition.

3.2.2. *Acrylic monomers – GAA*

- (13) GAA is made of crude acrylic acid and is part of the bigger family of acrylic monomers. In previous decisions⁷ the Commission identified a single relevant product market of GAA and considered that it was not necessary to make a further segmentation within GAA. The Notifying Party agrees with the Commission’s findings.
- (14) As regards the geographic market in its previous decisions the Commission considered the geographic market for GAA to be at least EEA-wide because “customers have a clear preference to source GAA in the region where they are active” and because “there can be price differences for GAA between world regions, although not within the EEA”.⁸ The Notifying Party also submits that the geographic market for GAA is EEA-wide.
- (15) In any event, for the purpose of the present transaction, both product and geographic market definition with regard to GAA can be left open, since the transaction does not raise competition concerns irrespective of the market definition.

3.2.3. *Acrylate esters - 2EHA*

- (16) Acrylate esters are produced in the process of esterification between crude acrylic acid and an alcohol. They impart various qualities to the polymeric materials in which they are used, such as colour stability, heat and aging resistance, low temperature, flexibility, etc.

⁵ COMP M.3612 Henkel / Sovereign, recital 10-19, COMP M.4941 Henkel/ Adhesives & Electronic Business, recitals 11-13.

⁶ COMP M.3612 Henkel / Sovereign, recital 38, COMP M.4941 Henkel/ Adhesives & Electronic Business, recitals 41-42, 56.

⁷ COMP 5424 Dow / Rohm and Haas, recital 20, COMP M.6178 Arkema / Total’s Resin Business recital 35.

⁸ COMP M.5424 Dow / Rohm and Haas, recital 22, COMP M.6178 Arkema / Total’s Resin Business recital 37-38.

- (17) In previous decisions the Commission concluded that various esters, such as 2EHA, constitute distinct relevant product markets.⁹ The Notifying Party agrees with the Commission findings.
- (18) As regards the geographic market, in its previous decisions relating to acrylate ester (butyl acrylate, a “heavy” ester, like 2EHA) the Commission considered the relevant market for that acrylate ester to be at least EEA-wide. The Commission considered that butyl acrylate is a commodity product traded on a global basis, there were however price differences between the EEA and other world regions.¹⁰ The Notifying Party submits that the market for 2EHA is also EEA-wide for the same reasons as those developed for butyl acrylate.
- (19) In any event, for the purpose of the present transaction, the exact product and geographic market definition as regards the acrylate esters can be left open, since the transaction does not raise competition concerns irrespective of the market definition.

3.2.4. *Dicarboxylic acids*

- (20) Dicarboxylic acids are monomers used for the polymerization reaction to form copolyester resins (used in packaging, home appliances, consumer goods, cosmetics etc.). Dicarboxylic acids can be subdivided into i) aromatic dicarboxylic acids and ii) aliphatic dicarboxylic acids. The latter include sebacic acid, produced by Arkema.
- (21) The Commission has not considered the existence of a market for sebacic acid or dicarboxylic acids so far. The Notifying Party states that from the supply-side perspective all acids included in the aliphatic dicarboxylic acids may not be substitutable (one producer usually produces only one type of dicarboxylic acid). However, according to the Notifying Party the aliphatic acids are largely substitutable from the demand-side. In particular, it is claimed that variations in prices of different dicarboxylic acids can lead to subsequent changes in the client’s product mix.
- (22) Consequently the Notifying Party argues that dicarboxylic acids constitute a distinct relevant product market, which includes sebacic acid.
- (23) The Notifying Party claims that the relevant geographic market as regards the dicarboxylic acids is at least EEA-wide, or even worldwide, as producers of dicarboxylic acids supply customers around the world irrespective of the distance and prices do not differ to a significant extent within the EEA territory.
- (24) In any event, for the purpose of the present transaction, the exact product and geographic market definition can be left open, since the transaction does not raise competition concerns irrespective of the market definition.

3.2.5. *Rheological additives*

- (25) Additives are chemical products which are added in small quantities to different compounds in order to modify their properties such as plasticity, rigidity, transparency or flexibility. Rheological additives act as thickening or anti-settling agents and they are

⁹ COMP M.5424 Dow / Rohm and Haas, recital 36, 47, 57 and 67.

¹⁰ COMP M.5424 Dow / Rohm and Haas, recital 38.

used in coatings, paints, inks, cosmetics, construction products and adhesives. Each applicative technology (i.e. water-based or solvent-based applications) requires specific rheological additives.

- (26) In previous decisions the Commission considered separate markets for rheological additives for water based applications and rheological additives for solvent based applications. The Commission suggested that further segmentation according to the chemical composition could be appropriate but left the market definition open.¹¹
- (27) The Notifying Party submits that the relevant distinction for rheological additives is between (i) water-based or (ii) non aqueous, including solvent based applications. The Notifying Party claims that further segmentation based on chemical composition is not necessary, because all chemical compositions have the same objective of modifying the rheology of the final formulations.
- (28) In its previous decisions the Commission has considered the relevant geographic market for rheological additives to be at least EEA-wide in scope due to insignificant transport cost, similar prices across Member States and no barriers to trade.¹² The Notifying Party supports the Commission's findings.
- (29) In any event, for the purpose of the present transaction, the exact product and geographic market definition of rheological additives can be left open, since the transaction does not raise competition concerns irrespective of the market definition.

3.2.6. *Polyethylene polyolefins*

- (30) A polyolefin is any class of polymers produced from a simple olefin as a monomer. Polyethylene is the polyolefin produced by polymerizing the olefin ethylene. It is the most common plastic, primary used in packaging (plastic bags, plastic films, containers including bottles etc.).
- (31) In previous decisions¹³, the Commission considered that the market for polyolefins is divided between different sub-segments including in particular polyethylene. Polyethylene based on the production methods, performance characteristics and differences in end-uses can be divided into three distinct sub-markets, namely low-density polyethylene (LDPE), high-density polyethylene (HDPE) and linear low-density polyethylene (LLDPE). According to the Notifying Party, Arkema's products named Lotader MAH, Lotader GMA and Lotryl form part of the LDPE market. LDPE is mainly used in packaging, i.e. for manufacturing of various containers, dispensing bottles, plastic bags etc.
- (32) The Notifying Party submits that the market for LDPE could be further segmented on the basis of the type of copolymer and the type of reactor used in the manufacturing process, amongst others, giving rise to the following relevant markets i) the market of acid copolymers, to which Lotader MAH belongs ii) the market of epoxide ethylene

¹¹ COMP M.5424 Dow / Rohm and Haas, recital 220.

¹² COMP M.5424 Dow / Rohm and Haas, recital 222.

¹³ COMP M.1671, Dow Chemical / Union Carbide, recital 23, COMP Case No IV/M.550 Union Carbide / Enichem, recitals 27 to 35; COMP Case No IV/M.1041 BASF / Shell, recitals 32 to 34; COMP Case No IV/M.1163 Borealis / IPIC / OMV / PCD, recital 14.

copolymers, to which Lotader GMA belongs and iii) the market of ethylene acrylate copolymers, to which Lotryl belongs.

- (33) The Commission has previously assessed the LDPE market and it has left open whether LDPE is a separate market or it forms part of a larger product market together with some LLDPE products.¹⁴ The Commission noted that within each group of polyethylene (LDPE, HDPE and LLDPE) there are different grades produced by varying the conditions of polymerization or by using different additives, but it did not consider a further segmentation of the LDPE market.¹⁵
- (34) As regards the geographic market, in its previous decisions the Commission has considered the relevant geographic market for LDPE to be at least EEA-wide in scope.¹⁶ The Notifying Party supports the Commission's findings.
- (35) In any event, for the purpose of the present transaction, the exact product and geographic market definition of polyethylene polyolefins can be left open, since the transaction does not raise competition concerns irrespective of the market definition.

4. COMPETITIVE ASSESSMENT

4.1. Adhesives and sealants

- (36) The parties' activities overlap in the production of adhesives and sealants for the industry for applications in the shipbuilding, construction, railways and the automotive industries as well as in the production of adhesives for bonding industrial carpets. At maximum the parties' combined market share amounts to [5-10]% in industrial adhesives for construction at the EEA level. The Notifying Party confirms that under any plausible market definition the parties' combined market shares, also if measured at the national level, would not exceed 20%, so no affected market¹⁷ arises as regards the market for production of adhesives and sealants and any of its plausible segments. Therefore the Commission considers that the transaction does not give rise to competition concerns in this market.

¹⁴ COMP M.1671 Dow Chemical / Union Carbide recital , COMP M.4744 INEOS/Borealis recital 12.

¹⁵ IV M.550 Union Carbide / Enichem recital 34 and 35.

¹⁶ COMP M.1671, Dow Chemical / Union Carbide, recitals 46 to 48, COMP Case No IV/M.550 Union Carbide / Enichem, recitals 48 and 49; COMP Case No IV/M.1041 BASF / Shell, recital 37; COMP Case No IV/M.1163 Borealis / IPIC / OMV / PCD, recital 16.

¹⁷ The Commission considers the market to be horizontally affected when two or more of the parties to the concentration are engaged in business activities in the same relevant market and where the concentration will lead to a combined market share of 20% or more. See, e.g. Annex 1 to Commission Regulation (EC) No 802/2004 of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings ('Implementing Regulation'), as amended. The Commission considers the market to be vertically affected when one or more of the parties to the concentration are engaged in business activities in a relevant market, which is upstream or downstream of a relevant market in which any other party to the concentration is engaged, and any of their individual or combined market shares at either level is 30% or more, regardless of whether there is or is not any existing supplier/customer relationship between the parties to the concentration. See, e.g. Annex 1 to the Implementing Regulation.

4.2. Acrylic monomers - GAA

- (37) Arkema's share of the EEA market for GAA amounts to [40-50]%, the next largest suppliers include Dow ([20-30]% market share) and BASF ([10-20]% market share) followed by other smaller suppliers, such as Nippon Shokubai (NSKK) ([0-5]).
- (38) The Notifying Party argues that GAA is an insignificant input for the production of adhesives and sealants representing less than [0-5]% in the production costs of Bostik. The Notifying Party underlines that Arkema's sales to Bostik represent less than [0-5]% of Arkema's total sales of GAA in the EEA (worth EUR [...] out of EUR [...] of total sales of GAA by Arkema in the EEA), so Arkema could not afford to supply GAA to Bostik only and reduce its sales to Bostik's competitors. Furthermore, it is noted that Arkema faces strong competition from well-known market players (BASF, Dow, Evonik etc.), that all GAA customers multisource and systematically have the possibility to buy from the spot market.
- (39) Additionally, it is noted that GAA is not used directly to produce adhesives, but to prepare an intermediate product, acrylic dispersion polymer, which is then transformed into an adhesive. Thus, the competitors of Bostik could purchase the intermediate product and cope with no supply of GAA, which reduces significantly Arkema's market power related to GAA.
- (40) Finally, the market investigation indicated that GAA is a commodity product and that switching will remain a possibility post-transaction.
- (41) In view of the above arguments the Commission considers that Arkema would have neither the ability nor the incentive to foreclose access to the supply of GAA, and thus the Commission considers that the transaction does not give rise to competition concerns in the market of GAA.

4.3. Acrylate esters - 2EHA

- (42) As regards the supply of 2EHA in the EEA Arkema's market share amounts to [30-40]% and the next biggest supplier is BASF with [30-40]% market share, while Dow and NSKK have each approximately [5-10]% market share.
- (43) The Notifying Party underlines that 2EHA is not an important input in the production of adhesives and sealants as it represents less than [0-5]% of the total costs of Bostik. In 2013 Arkema sold to Bostik 2EHA for only EUR [...], while the total sales of 2EHA by Arkema were worth around EUR [...]. The Notifying Party indicates that there are other big suppliers of 2EHA other than Arkema: BASF, Dow, Momentis, or LG or NSKK from Asia, who are able to supply 2EHA offering similar quality and price to Arkema. It is also noted that 2EHA (together with GAA, as explained above) is not used directly to produce adhesives, but to produce acrylic dispersion polymer, an intermediate product which is then transformed into an adhesive. Thus, if needed, the competitors of Bostik could purchase the intermediate product and cope with no supply of 2EHA.
- (44) Finally, the contacted customers active in the production of adhesives and sealants confirmed that 2EHA is a commodity product and that post-transaction switching will remain a possibility.

- (45) In view of the above arguments the Commission considers that Arkema would have neither the ability nor the incentive to foreclose access to the supply of 2EHA, and thus the Commission considers that the transaction does not give rise to competition concerns in the market of 2EHA.

4.4. Dicarboxylic acids

- (46) In aliphatic dicarboxylic acids the market share of Arkema in the EEA does not exceed [5-10]%. An affected market in dicarboxylic acids arises only if the market is segmented according to the type of diacid so that the sebacic acid produced by Arkema is considered as a distinct product market. In that case Arkema's market share in the EEA amounts to [40-50]% and it is followed by the Asian producers: Jinghua ([20-30]%), Siqiang (10-20%), Jiangsu Zhongzheng ([10-20]%) and others.
- (47) The Notifying Party underlines that the sebacic acid is not an important input in the production of adhesives and sealants as it represents less than [0-5]% of the total costs of Bostik; it is only one of many components used in the formulation of polyester products, which in turn form only part of Bostik's portfolio.
- (48) More importantly, production of adhesives is a marginal end-application of sebacic acids. Arkema's sales of the sebacic acid to Bostik represent only [0-5]% of Arkema's total sales of sebacic acid in the EEA and more than [50-60]% of Arkema's sales of sebacic acid is sold via distributors and traders. Finally, the Notifying Party notices that nowadays the available production capacity for sebacic acid is more than twice the market demand.
- (49) In view of the above arguments the Commission considers that Arkema would not be able to foreclose access to the supply of sebacic acid, and thus the Commission considers that the transaction does not give rise to competition concerns in the market of sebacic acid.

4.5. Rheological additives

- (50) As regards all the rheological additives for non-aqueous applications, in line with the market definition proposed by the Notifying Party, Arkema's market share is below [5-10]% in the EEA. If, however, the market for rheological additives is segmented according to chemical composition of the additive, an affected market arises in the rheological additives for non-aqueous applications based on polyamide powders in the EEA, where Arkema has a market share of [50-60]%.
- (51) The Notifying Party underlines that the rheological additives, and in particular those for non-aqueous applications based on polyamide powders are not an important input for the production of adhesives and sealants. The main customers of these rheological additives are paint and sealants producers such as AkzoNobel, PPG, Sherwin Williams, Henkel, 3M etc., while the producers of adhesives and sealants purchase only a small fraction of Arkema's sales. Furthermore, Arkema would not be able to foreclose Bostik's competitors from this input, since approximately [20-30]% of Arkema's sales are done through third party distribution. Finally, the Notifying Party argues that there are many suppliers such as Elementis, Lehman & Voss, Byk, Kusumoto Chemicals, Troy Corp etc. all of which have similar overlapping product offerings that can easily substitute Arkema's offer both in terms of price and quality.

- (52) Furthermore, as regards the downstream market, Bostik uses the rheological additives to produce elastic adhesives mainly for the transportation segment within the industrial adhesives (e.g. for windscreen bonding, or glass, metal and composite panel bonding or sealing in rail and coach-building industries), which is not at the core of its business strategy. In 2014 Bostik's total sales of these adhesives did not exceed EUR [...], and Bostik's market shares in this segment was below [0-5]%, while other competitors, such as Henkel, Sika, and Dow had much stronger positions. Therefore, even if Arkema were able to restrict Bostik's competitors' access to its rheological additives, it is highly unlikely that the downstream activity of Bostik could benefit from such foreclosure and make up for the profits lost in the upstream market of Arkema.
- (53) Based on the above, the Commission considers that Arkema would have neither the ability nor the incentive to foreclose access to rheological additives for non-aqueous applications based on polyamide powders, and thus, the transaction does not give rise to competition concerns in this market.

4.6. Polyethylene polyolefins

- (54) The Notifying Party confirms that if LDPE is considered the relevant market for its products, Arkema's market share in the EEA does not exceed [0-5]%.
- (55) If the LDPE market is further segmented according to the manufacturing process, as suggested by the Notifying Party, Arkema's market share in the EEA in the market of acid copolymers amounts to [10-20]% and in the market for ethylene acrylate copolymers to [10-20]%. Consequently, none of these two markets is affected and thus, the transaction does not raise competition concerns in this respect.
- (56) An affected market would, however, arise in the market of epoxide ethylene copolymers, where Arkema's market share, with its product Lotader GMA, amounts to [50-60]%. The remaining [50-60]% of epoxide ethylene copolymers in the EEA is supplied by DuPont. Among Arkema's customers only two are producers of adhesives and sealants: Sika and L&L and both purchase Lotader GMA for the production of automotive foams and adhesives. Bostik also produces some automotive adhesives, but not based on Lotader GMA, and in any event it has an insignificant market share in this segment of around [0-5]%, while according to the Notifying Party the largest players include Dow, Sika and Henkel, with each a share of at least [10-20]% of the market segment.
- (57) Finally, the Notifying Party notes that for Arkema it would make no sense to reduce its sales of Lotader GMA to the producers of adhesives and sealants other than Bostik, because they buy much larger quantities than Bostik.
- (58) In view of the above facts, the Commission considers that Arkema would have no incentive to foreclose the supply of Lotader GMA from Bostik's competitors and thus the transaction does not raise competition concern in the market of LDPE or any of its segments, in particular in the epoxide ethylene copolymers.

5. 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