

Case No COMP/M.7691 - APOLLO / OMG

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/09/2015

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 24.9.2015

C(2015) 6702

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sir/Madam,

Subject: Case M.7691 - APOLLO / OMG
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 24 August 2015, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which funds managed by affiliates of Apollo Management, L.P. ("Apollo", USA) acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of OM Group, Inc. ("OMG", USA), by way of purchase of shares.
- (2) For the purpose of this decision, Apollo and OMG are together referred to as the "Parties".

1. THE PARTIES

- (3) Apollo is a private equity company, active in various businesses throughout the world, which include, *inter alia*, companies in the chemical, cruise line, financial services, paper, and television production businesses. Amongst other portfolio companies, Apollo owns Hexion Specialty Chemicals, Inc. ("Hexion", USA) active in the chemical sector.

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").

- (4) OMG is a publicly traded company, active in five distinct businesses: (i) Vacuumschmelze / magnetic technologies; (ii) battery technologies; (iii) advanced organics; (iv) electronic chemicals; and (v) photomasks. Immediately upon the completion of Apollo's purchase of OMG, Apollo will cause the sale of the electronic chemicals and photomasks business units to Platform Specialty Products Corp. ("Platform", USA).³
- (5) Apollo will retain and operate the first three business units (Vacuumschmelze / magnetic technologies, battery technologies and advanced organics). Therefore, only these areas of activity are considered in the present decision.

2. THE CONCENTRATION

- (6) On 31 May 2015, Apollo entered into the Agreement and Plan of Merger whereby Apollo indirectly acquires, through its wholly-owned subsidiary Duke Acquisition Holdings, LLC, the entire share capital of OMG.
- (7) Therefore, Apollo will acquire sole control over OMG and the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (8) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Apollo: EUR [...] million, OMG: EUR [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (Apollo: EUR [...] million, OMG: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (9) The notified operation therefore has Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

- (10) The proposed transaction gives rise to vertical relationships between the Parties concerning to the production and supply of neodecanoic acid, which is upstream of the production and supply of (i) rubber adhesion promoters (tire adhesives), (ii) lubricant and fuel additives, (iii) catalysts and (iv) paint driers. Hexion produces and markets neodecanoic acid under the brand name Versatic Acid 10,⁴ which OMG purchases to manufacture the aforementioned downstream chemical products.

³ The sale of OMG to Apollo is conditional upon the sale of OMG's electronic chemicals and photomasks businesses to Platform. The agreements concerning the two transactions are conditional upon one another and they have been signed on the same date (31 May 2015). The two transactions will close simultaneously. The Apollo/Platform transaction was cleared by the German Federal Cartel Office on 10 July 2015.

⁴ Hexion also manufactures and sells Versatic Acid 5 (known as neopentanoic acid) and Versatic Acid 913, including to OMG. Their chemical formula is different from that of Versatic Acid 10, and they are used for different applications. Versatic Acid 913 is a by-product (or waste-stream product) of Versatic Acid 5 and is used by OMG for the production of coatings and composites. Versatic Acid 5 is used by OMG for a rigid foam catalyst (polyurethane) for insulation in the construction market. No affected markets arise in relation to these products, and they will therefore not be discussed further.

(11) The proposed transaction will not give rise to any horizontal overlaps with respect to the Parties' activities.

4.1. Upstream market: neodecanoic acid

4.1.1. *Relevant product market*

(12) Neodecanoic acid is a synthetic, highly branched-C10 tertiary carboxylic acid. It contains a total number of 10 carbon atoms. It is a water-white product that is liquid at ambient temperature and has a strong odour.

(13) Neodecanoic acid is an intermediate used in the manufacture of a variety of products. Metal salts (such as cobalt, copper or zinc salts) of neodecanoic acid are used in applications such as tire adhesives, paint driers, PVC heat stabilisers, chemical processing catalysts, unsaturated polyester cure catalysts, wood preservatives and fuel additives. Neodecanoic acid is also an effective metal extraction agent, can be used as a corrosion inhibitor in synthetic lubricants, and its ester derivatives are used in surface coatings and cement additives.

(14) In previous decisions, the Commission has examined ester derivatives of neodecanoic acid but has not previously examined neodecanoic acid itself or neodecanoic acid used in metal salts.⁵

(15) Apollo submits that the Versatic Acid 10 sold by Hexion has the same chemical characteristics as neodecanoic acid and that Versatic Acid 10 is merely a brand name. Moreover, Apollo contends that the two products are used in the same applications and are therefore part of the same relevant product market.

(16) The market investigation has not provided any clear indications that neodecanoic acid could be part of a wider relevant product market or that a further sub-segmentation of the relevant product market is warranted. The market investigation did, however, indicate that Versatic Acid 10 and neodecanoic acid are the same chemical used for the same applications, and that switching from one product to the other would neither imply a change in the manufacturing process or facilities, nor result in significant financial or time-related costs.⁶

(17) Considering the results of the market investigation and on the basis of the information submitted by Apollo, while the exact market definition can be left open as the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible alternative market definition, for the purposes of the present decision the Commission considers that the appropriate product market to be assessed is that for the production and the supply of neodecanoic acid.

⁵ See cases M.3593 – *Apollo/Bakelite* and case M.4835 – *Hexion/Huntsman*.

⁶ Agreed minutes of telephone conferences on 18 August 2015 and 20 August 2015 with two competitors of OMG.

4.1.2. *Relevant geographic market*

- (18) Apollo contends that neodecanoic acid is shipped globally. Indeed, Hexion delivers significant amounts of neodecanoic acid to customers in the USA from its plant in the Netherlands (the EEA represents only [...]% of total merchant sales). Its competitor Exxon, which manufactures neodecanoic acid only in the USA, ships significant quantities to Europe. According to Apollo, transportation costs account for less than [...]% of the total costs within the EEA and between [...]% for transportation between Europe to the USA.
- (19) On that basis, the Apollo submits that the geographic scope for the neodecanoic acid market is worldwide in scope.
- (20) The results of the market investigation indicate that neodecanoic acid is indeed shipped between the USA and the EEA, but that for some customers transport costs still play a role in the decision as to whether to purchase from a supplier in the USA or in the EEA.⁷ The Commission therefore based its assessment of the effects of the proposed transaction on a worldwide and on an EEA-wide relevant geographic market.
- (21) For the purposes of the present decision, the Commission considers that the exact scope of the relevant geographic market for neodecanoic acid can be left open as the transaction does not raise serious doubts as to its compatibility with the internal market in relation to neodecanoic acid irrespective of whether the relevant geographic market is defined as EEA-wide or worldwide in scope.

4.2. **Downstream market: rubber adhesion promoters (tire adhesives)**

4.2.1. *Relevant product market*

- (22) Neodecanoic acid is used as an input for the production of rubber adhesion promoters. Rubber adhesion promoters, including tire adhesives, improve the bonding of rubber to steel in steel-belted radial tires and steel-reinforced conveyor belts and hoses. Specifically, cobalt carboxylates are widely used in the tire industry for this purpose.
- (23) Cobalt carboxylates provide a highly rubber-soluble form of cobalt that serves as a chemical adhesive, bonding with sulphur in both the vulcanized rubber and the sulphided brass coating of the steel cord. OMG offers a number of rubber adhesion promoters: (i) cobalt abietates; (ii) cobalt resinates; (iii) cobalt stearates; (iv) cobalt naphthenates; (v) cobalt neodecanoates; (vi) cobalt boroacylates; and (vii) manobond adhesion promoters.
- (24) The Commission considered adhesion promoters in the context of assessing a broader market of additives. The Commission further considered separate product markets for additives according to the function of the additive.⁸ Specifically, the Commission considered whether wetting agents, matting agents, dispersing agents,

⁷ Agreed minutes of a telephone conference on 18 August 2015 with a customer of Hexion.

⁸ See cases M.310 – *Harrisons & Crosfield/Akzo*, para. 22 and case M.1467 – *Rohm and Haas/Morton*, para. 11.

defoamers, waxes, surfactants, adhesion promoters, extenders and rheology modifiers could constitute distinct product markets given their different functionalities. In each of its previous decisions, however, the Commission has left the exact product definition open.⁹

- (25) The market investigation has not provided any indications that the Commission would have to depart from the approach taken in previous decision. The Commission therefore based its assessment of the effects of the proposed transaction on a relevant product market according to the function of the additive.
- (26) For the purposes of the present decision, however, the Commission considers that the exact product market definition for rubber adhesion promoters, including tire adhesives, can be left open. This is because the proposed transaction does not raise serious doubts as to its compatibility with the internal market in relation to rubber adhesion promoters, including tire adhesives, irrespective of whether additives form one relevant product market or whether a segmentation according to the function of the additive is applied.

4.2.2. *Relevant geographic market*

- (27) In previous decisions the Commission has defined the relevant geographic market for additives as at least EEA-wide based on prices being broadly uniform across the EEA and transport costs accounting for less than 5% of overall production costs.¹⁰ The replies from the market participants consulted in the present case did not provide a clear indication as to whether the relevant geographic market is EEA-wide or worldwide in scope. The Commission therefore based its assessment of the effects of the proposed transaction on an EEA-wide and a worldwide relevant geographic market.
- (28) For the purposes of the present decision, the Commission considers that the exact market definition of the relevant geographic market for rubber adhesion promoters, including tire adhesives, can be left open as the proposed transaction does not raise serious doubts as to its compatibility with the internal market in relation to rubber adhesion promoters, including tire adhesives, irrespective of whether the relevant geographic market is defined as EEA-wide or worldwide in scope.

4.3. **Downstream market: lubricants and fuel additives**

4.3.1. *Relevant product market*

- (29) Neodecanoic acid is used as an input for the production of lubricants and fuel additives. OMG manufactures lubricant oils and greases, and hydrocarbon-soluble metal carboxylates for use as fuel additives. These products are used to improve viscosity for engine and gear box oils and adherence in oils and chain lubricants.
- (30) An oil lubricant consists of base oil and additives. There are two principal categories of additives: DI packages (Detergent Inhibitor packages) and VI improvers

⁹ See case M.5243 – *CVC / RAG / EVONIK*, para. 24.

¹⁰ See case M.5243 – *CVC / RAG / EVONIK*, para. 58 and case M.1467 – *Rohm+Haas/Morton*, para. 21.

(Viscosity Index improvers). 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. VI improvers modify the viscometric characteristics of lubricants by reducing the rate of thinning with increasing temperature and the rate of thickening with low temperatures.

- (31) In a previous decision,¹¹ the Commission considered that base oils, DI packages and VI improvers constitute separate product markets.
- (32) The market investigation carried out in the present case has not provided any indication that it would be warranted for the Commission to depart from its previous practice of regarding base oils, DI packages and VI improvers as belonging to separate product markets. Therefore, while the exact market definition can be left open in the present decision as the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible alternative market definition, Commission has, in line with its previous decisional practice, based its assessment of the effects of the proposed transaction on the premise that base oils, DI packages and VI improvers constitute separate relevant product markets.

4.3.2. *Relevant geographic market*

- (33) The Commission has considered in a previous decision that the relevant geographic market for DI packages and VI improvers could be the EEA as these products are readily sold across the borders of the EEA countries. The exact scope of the relevant geographic market was, however, left open.¹² The market investigation has not provided any indication that it would be warranted for the Commission to depart from its previous geographic market definition for lubricants and fuel additives. Therefore, while the exact market definition can be left open in the present decision, as the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible alternative market definition, the Commission has based its assessment of the effects of the proposed transaction on an EEA-wide relevant geographic market.

4.4. Downstream market: catalysts

4.4.1. *Relevant product market*

- (34) OMG manufactures various types of catalysts such as polymerization catalysts, resin and composite catalysts and urethane catalysts, for which neodecanoic acid is used as an input. OMG custom-designs these catalysts for a wide variety of applications.
- (35) Polymerization catalysts are produced as solutions in a variety of organic solvents, as solvent-free liquids or as solids in powder or pastille form. The choice of the product is determined by the customer and its application.

¹¹ See case M.1137 – *Exxon / Shell*, para. 11.

¹² See case M.1137 – *Exxon / Shell*, paras. 17 and 18.

- (36) Resin and composite catalysts include accelerators, controllers and enhancers used in conjunction with initiators such as organic peroxide catalysts to accelerate the curing of polyester resins.
- (37) Urethane catalysts are used for the manufacture of rigid foam, flexible foam and elastomers. Urethane catalysts bring strength, power and speed to a broad array of urethane applications and one-component systems.
- (38) In previous cases, the Commission has considered different product markets for catalysts based on their specific applications, but ultimately left the market definition open.¹³ The market investigation has not provided any indication that it would be warranted for the Commission to depart from its previous product market definition for catalysts. Therefore, while the exact market definition can be left open in the present decision as the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible alternative market definition, Commission has, in line with its previous decisional practice, based its assessment of the effects of the proposed transaction on a relevant product market according to the specific applications as outlined at recitals (35) to (37) above.

4.4.2. *Relevant geographic market*

- (39) In past cases the Commission has considered that the relevant geographic market for catalysts could be global, but ultimately left the exact definition open.¹⁴ The market investigation has not provided any indication that it would be warranted for the Commission to depart from its previous geographic market definition for catalysts. The Commission therefore based its assessment of the effects of the proposed transaction on a worldwide relevant geographic market.

4.5. Downstream market: paint driers

4.5.1. *Relevant product market*

- (40) Neodecanoic acid is used as an input for the production of cobalt paint driers. Paint driers have the function of shortening the total drying time of paint. OMG manufactures paint driers with the following drier metals: aluminum, barium, bismuth, calcium, chromium, cobalt, copper, iron, lithium, manganese, nickel, potassium, rare earth, sodium, strontium, tin, titanium, vanadium, yttrium, zinc and zirconium.
- (41) The Commission has considered in a previous decision that the relevant product market for paint driers includes natural and synthetic octoates of barium, calcium, cerium, cobalt, manganese, lead, strontium, zinc and zirconium, used alone or in various combinations to promote the oxidative drying of solvent/alkyd resin-based paints.¹⁵ The market investigation has not provided any indication that it would be warranted for the Commission to depart from its previous product market definition for paint driers. Therefore, while the exact market definition can be left open in the

¹³ See cases M.4102 – *BASF / ENGELHARD*, paras. 9, 10; M.5927 – *BASF / COGNIS*, para 165, 166.

¹⁴ See case M.3213 – *Umicore/OMG Precious Metals*, paras. 40-42; M.3125 – *Huntsman/Matlinpatterson/Vaticano*, para. 15; M.4102 – *BASF / ENGELHARD*, para 12; M.5927 – *BASF / COGNIS*, para 166.

¹⁵ See case M.310 – *Harrisons & Crosfield/AKZO*, para 24.

present decision as the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible alternative market definition, Commission has followed its previous product market definition for paint driers for the purposes of assessing the proposed transaction.

4.5.2. *Relevant geographic market*

(42) In past cases the Commission has considered that the relevant geographic market for paint driers was EEA-wide.¹⁶ In Apollo's view, the scope of the relevant geographic market could even be worldwide as paint driers are generally shipped globally. The Commission therefore based its assessment of the effects of the proposed transaction on a worldwide and on an EEA-wide relevant geographic market.

(43) For the purposes of the present decision, the Commission considers that the exact market definition of the relevant geographic market for paint driers can be left open as the proposed transaction does not raise serious doubts as to its compatibility with the internal market in relation to paint driers irrespective of whether the relevant product market is defined as EEA-wide or worldwide in scope.

5. **COMPETITIVE ASSESSMENT**

5.1. Introduction

(44) The proposed transaction gives rises to vertically affected markets relating to the production and supply of neodecanoic acid, (upstream) and to the production and supply of (i) rubber adhesion promoters (tire adhesives); (ii) lubricant and fuel additives; (iii) catalysts; and (iv) paint driers (downstream). In the following, the Commission assesses the vertical relationships between the upstream product neodecanoic acid and each of the downstream products.

(45) Vertical mergers may potentially give rise to two types of competition effects: input foreclosure and customer foreclosure.

(46) Input foreclosure arises where, post-merger, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger.

(47) Customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. Because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete.

(48) In the present case, only a possible input foreclosure scenario needs to be assessed as Hexion's market shares in the upstream market for neodecanoic acid exceeds 30%, while OMG's market share on any of the downstream markets is below [10-20]%.

¹⁶ See case M.310 – *Harrisons & Crosfield/AKZO*, para 26.

Therefore, the combined entity would not have sufficient market power on any of the downstream market segments to engage in customer foreclosure strategies.

- (49) In order for input foreclosure to be a concern, three conditions need to be met post-transaction: (i) the merged entity needs to have the ability to foreclose its rivals from access to inputs; (ii) the merged entity needs to have the incentive to foreclose its rivals from inputs; and (iii) the foreclosure strategy needs to have a significant detrimental effect on competition on the downstream market.

5.2. Ability to foreclose rivals from access to inputs

- (50) The ability to foreclose access to inputs requires, first, that the combined entity has a significant degree of market power in the upstream market, leading to significant influence on the conditions of competition in the upstream market and thus, possibly, on prices and supply conditions in the downstream market.
- (51) In 2014, the total worldwide merchant sales of neodecanoic acid amounted to approximately 27 ktons (3 ktons in the EEA), with Hexion accounting for [...] ktons ([...] ktons in the EEA). The total worldwide merchant market represents approximately 23% of the total worldwide consumption of neodecanoic acid (which includes captive consumption).
- (52) On this basis, Hexion's market share on the merchant market for the production and supply of neodecanoic acid is around [40-50]% worldwide and [50-60]% in the EEA (based on volume). The only alternative supplier of this chemical product is Exxon, with a market share of [50-60]% worldwide and [40-50]% in the EEA (based on volume and value).¹⁷ Considering Hexion's share in the market for the production and the supply of neodecanoic acid, it cannot be excluded that it has significant influence on the conditions of competition in the upstream market.
- (53) However, an ability to foreclose downstream competitors would also require that, by reducing access to its own upstream products or services, Hexion could negatively affect the overall availability of inputs for the downstream market in terms of price or quality.
- (54) In 2014, OMG purchased [...] ktons (€[...]) of neodecanoic acid in total, [...] ktons (€[...]) of which it purchased from Hexion. OMG's total consumption of neodecanoic acid therefore accounted for approximately [...] % of Hexion's total worldwide sales of neodecanoic acid. OMG is therefore only a small purchaser of neodecanoic acid.
- (55) In 2014, Hexion sold approximately [...] ktons of neodecanoic acid to companies competing with OMG in relation to downstream products using neodecanoic acid as an input. [...] ktons were sold to companies for different applications than those used for by OMG, and the remaining [...] ktons were sold to distributors, where it cannot be clearly established whether the product was sold to competitors of OMG.

¹⁷ Apollo further claims it is likely that these figures are overstating Hexion's market position given that Chinese companies may be more active on the merchant market than envisaged. However, there is no need to conclude on the scale of Chinese competitors regarding the market for neodecanoic acid as no serious doubts arise even with Exxon as sole competitor to Hexion.

(56) A competitor of OMG in the area of metal carboxylates expressed concerns about possible supply disruptions or price increases for neodecanoic acid following the proposed transaction.¹⁸ However, the market investigation has shown that Exxon has spare capacity which could be used to satisfy increasing demand for neodecanoic acid in a scenario in which Hexion attempts to adopt an input foreclosure strategy.¹⁹ It is unlikely, therefore, that the combined entity would be in a position to increase prices as a result of the transaction.²⁰

(57) On this basis, it can be established that Hexion is unlikely to have the ability to foreclose rivals from access to neodecanoic acid post-transaction.

5.3. Incentive to foreclose rivals from access to inputs

(58) Apollo submits that an input foreclosure strategy would not be profitable as the combined entity would be unable to recoup foregone profits following the lower sales of neodecanoic acid by increasing the profits on the downstream markets. As outlined above at recital 57, OMG's total consumption of neodecanoic acid accounted for approximately [...] % of Hexion's total worldwide sales of neodecanoic acid. Against this background, it can be concluded that OMG would have to increase its demand for neodecanoic acid to a very significant extent to be able to offset lost sales to other customers and thereby rendering a foreclosure strategy profitable for Apollo. There are no indications that OMG would have the ability to increase its purchases to such a significant extent.

(59) On this basis, it can be established that Hexion is unlikely to have an incentive to foreclose rivals from access to neodecanoic acid post-transaction.

5.4. Conclusion

(60) It is unlikely that the combined entity would have the ability and/or an incentive to engage in input foreclosure strategies following the proposed transaction.

(61) It follows the proposed transaction does not raise serious doubts as to its compatibility with the internal market regarding the vertical relationships between the production and supply of neodecanoic acid and (i) rubber adhesion promoters (tire adhesives), (ii) lubricants and fuel additives, (iii) catalysts and (iv) paint driers under any product and geographic market definitions.

¹⁸ Agreed minutes of a telephone conference on 18 August 2015 with a competitor of OMG.

¹⁹ Agreed minutes of a telephone conference on 27 August 2015 with a competitor of Hexion in relation to neodecanoic acid.

²⁰ During the market investigation competitors of OMG also expressed concerns about the availability of certain side-stream products of neodecanoic acid and about the availability of some derivatives of neodecanoic acid which are also produced by Hexion. However, as no vertical relationship exists between Hexion and OMG in respect of these products, no further investigation was carried out.

6. CONCLUSION

- (62) 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*