



EUROPEAN COMMISSION

DG Competition

*Case M.7777 –  
Solvay/Cytec*

Only the English text is available and authentic.

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

---

Purchaser approval - Art. 6(1)(b) in conjunction with 6(2)

Date: 07/09/2016



## 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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, 7.9.2016  
C(2016) 5813 final

PUBLIC VERSION

MERGER PROCEDURE  
IMPLEMENTATION OF  
COMMITMENTS

To the notifying party:

Dear Sir/Madam,

**Subject: Case M. 7777 – Solvay/Cytec  
Approval of " Italmatch Chemicals" as purchaser of Ionquest 290 and  
OPA business following your letter of 05.08.2016 and the Trustee's  
opinion of 12.08.2016**

### I. FACTS AND PROCEDURE

1. By decision of 02.12.2015 ("the Decision") based on Article 6(1)(b) in connection with Article 6(2) of the Merger Regulation,<sup>1</sup> the Commission declared the operation by which Solvay S.A. ("Solvay", Belgium), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Cytec Industries Inc. ("Cytec", United States), hereinafter "the Parties", by way of purchase of share ("the Transaction") compatible with the internal market following modification by Solvay, subject to conditions and obligations (the "Commitments").
2. In particular, the Commitments identify the Divestment Business which is comprised of:
  - i. the Ionquest 290 Business, which is a phosphorous-based solvent extractant for the extraction of cobalt from nickel; including all know-how and

---

<sup>1</sup> Council Regulation (EC) No 139/2004 of 20 January 2004, ( "the Merger Regulation"), Official Journal L 24, 29.01.2004, p. 1-22.

technical documentation, all IP rights and trademark, customer portfolio and any other tangible and intangible assets with the exception of physical production assets.

- ii. the octylphosphonic acid (OPA) Business;
  - iii. the triethylphosphonoacetate (TEPA) Business.
3. The OPA and TEPA Businesses include the same assets as the Ionquest Business and should be divested, in case the purchaser requires so, in order to ensure the viability of the Ionquest 290 Business.
  4. By letter of 05.08.2016, Solvay proposed Italmatch Chemicals S.P.A. ("Italmatch" or "the Proposed Purchaser") for approval by the Commission as purchaser of Ionquest 290 and OPA and submitted the proposed Sale and Purchase Agreement (the "Proposed Agreement"). On 12.08.2016 and 29.08.2016, Smith & Williamson (the "Trustee") submitted an assessment of Italmatch's suitability as a purchaser and, in particular, indicated that it fulfils the criteria of the purchaser requirements in section E of the Commitments attached to the Decision. In this assessment, the Trustee also indicated that, based on the Proposed Agreement, the Divestment Business would be sold in a manner consistent with the Commitments.

## **II. ASSESSMENT OF THE PROPOSAL**

### **(a) Legal Framework**

5. According to paragraphs 24 and 25 of the Commitments, in its assessment of the Proposed Agreement the Commission has to ensure (i) the suitability and independence of the Proposed Purchaser, (ii) the viability of the Divestment Business after the sale, and (iii) that the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision.
6. The Commission should thus verify that the Purchaser:
  - is independent of and unconnected to the Parties;
  - has the financial resources, proven expertise and incentive to maintain and develop Ionquest 290 as a viable and active competitive force in competition with the Parties and other competitors;
  - has proven capacity and incentive to establish a manufacturing line for the Divestment Business in a timely and economic way and to sell the products directly or indirectly (through distributors);
  - is not an existing producer of solvent extractants for cobalt/nickel based on Bis (2,4,4 –trimethylpentyl) phosphoric acid;
  - is neither likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

## **(b) Description of the Proposed Purchaser**

7. Italmatch is headquartered in Genoa (Italy) and has a global manufacturing and commercial presence, with 6 production plants in Europe, 4 in Asia Pacific, 1 in the US and 15 distribution and sales subsidiaries globally. Italmatch is ultimately controlled by AXA LBO Fund V, who holds indirectly 88% of its share capital. The remaining 12% belong to the management of Italmatch.
8. Italmatch activities are grouped in the following product lines: (i) Lube oil, MWF and fuel additives; (ii) Water and oil management; (iii) Flame retardants and plastic additives; (iv) Personal care / Performance products (grouping a wide range of reactive chemical intermediates such as phosphorus chlorides, phosphorus pentasulphide and acid chlorides). The company has a wide portfolio of batch-based specialty chemicals, but is not active in the production of solvent extractants for cobalt/nickel.
9. Italmatch has extensive experience in acquiring businesses. In the past 8 years, Italmatch acquired five major build-ups. Recently, Italmatch already successfully expanded its phosphorus-related activities through the acquisition of Akzo Nobel's PCl<sub>3</sub> derivatives business, Thermphos' PCl<sub>3</sub> plant and the Dequest Phosphonate business for water additives.
10. Ionquest 290 will be integrated into the production of the Water & Oil products (Dequest Water and Oil Recovery Additives Business Unit) which is largely concentrated in the manufacturing facilities in Arese, Italy. OPA will be integrated into the Lube-Metalworking, plastic additives and Performance Products Business Unit.

## **(c) Independence from the Parties**

11. The Trustee's review of relationships between the Parties and Italmatch has shown that there are no cross-shareholdings between Italmatch or its controlling shareholder and the Parties. There is no common Executive or non-Executive director of a member on the management or supervisory boards of either Italmatch or the controlling shareholder. Furthermore, Italmatch and the Parties do not participate in any joint ventures together.
12. In 2016, Italmatch acquired the Novecare desalination and water treatment business from Solvay. In the context of this transaction, Italmatch and Solvay concluded a Transitional Toll Manufacturing Agreement and a Licencing Agreement for the manufacture of the divested products. The duration of these agreements is one year, i.e. to the end of January 2017. Transitional supplies under these agreements currently represent 4% of the total purchases of the Italmatch Group. Italmatch intends to decrease progressively the volume of the products sourced from Solvay under the agreement, to reach zero by the end of September 2016 and aims at early termination.
13. The Trustee report indicates that these commercial links are not material and are of a limited duration so that they cannot affect the independence of Italmatch, either in the long or in the short term. The Trustee report also points out that transitional agreements for the completion of a product transfer are a standard industry practice in the field of chemicals.

14. In view of the above, the Commission considers that the Proposed Purchaser is independent of and unconnected to the Parties.

**(d) Financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitor**

*Financial resources*

15. The Trustee's financial analysis of Italmatch Audited Financial Statements indicates that the company presents a good level of structural profitability and sound financial position. Italmatch will fund the acquisition of the Divestment Business through an unused committed credit line of EUR [...] extended by five leading banks. Italmatch has demonstrated its ability to access this credit line at any moment in order to fund capital expenditures, such as the acquisition of Ionquest 290 and OPA.

*Proven expertise and knowledge of the relevant chemistry*

16. Italmatch is a well-established player in the field of the production of phosphorus derivatives and has demonstrated its extensive knowledge for the production of hypophosphorus based products. Italmatch is among the largest European producers of phosphorous derivatives, with dedicated manufacturing plants in the following locations:

- *Spoleto (Italy)*: inorganic phosphorus derivatives (starting from P<sub>4</sub>);
- *Arese (Italy)*: organic phosphorus derivatives (starting from PCl<sub>3</sub> or H<sub>3</sub>PO<sub>3</sub>);
- *Frankfurt (Germany)*: PCl<sub>3</sub>/POCl<sub>3</sub>/PCl<sub>5</sub> from P<sub>4</sub>;
- *Nantong (China)*: inorganic phosphinate.

17. Italmatch has demonstrated its capability and incentive to establish a manufacturing line for the Divestment Business in a timely and economic way. The production of OPA and Ionquest 290 will be integrated into the Arese production site, which is already equipped with an appropriate reactor. Italmatch has demonstrated a good knowledge and proven record of handling the raw materials used for the production of Ionquest 290. Italmatch uses some of these materials and is vertically integrated in the production of the main raw material (Elemental Phosphorus or P<sub>4</sub>).

*Ability and incentives to establish a manufacturing line*

18. Italmatch's Business plan demonstrates its intention to expand its product offering of phosphorus related chemistry products and the acquisition of Ionquest 290 completes very well the product portfolio.
19. Italmatch has demonstrated that it possesses the necessary equipment to successfully complete the technology transfer for the production of Ionquest 290 and OPA within a short period of time (estimated in less than a year).
20. Further, Italmatch's capability to establish the manufacturing process for the Divestment Business was also confirmed by the opinion of a technical expert who considers that: *"there is no fundamental reason why Italmatch is not technically and operationally capable of building and then operating process plant to manufacture the Ionquest 290 and OPA products at Arese and integrating*

*operating process of manufacturing of the Ionquest 290 within the premises of the Arese plant."*

*Ability and incentives to commercialise Ionquest 290 and OPA*

21. As mentioned above, Ionquest 290 and OPA will be integrated into Dequest Water and Oil recovery Business unit and supplies to customers will take place via a pre-existing global sales force.
22. The Business plan indicates that its commercial structure is composed of 15 logistic and distribution subsidiaries active both in the EEA and globally. In addition, Italmatch has established commercial relationships with several specialised distributors among which: [...] actually sells chemicals used in the field of the mining industry, including intermediates used for production of flotation agents in copper mining. Italmatch has also started exploring the possibilities of [...].
23. More generally, in recent years Italmatch has put in place a significant portfolio expansion strategy, which further reinforces its geographic footprint and distribution channels.
24. The Trustee report expresses a positive opinion on Italmatch' abilities and incentives to commercialise Ionquest 290 and OPA.
25. The Commission therefore, considers that Italmatch satisfy the purchaser' criteria as to the capability to commercialise Ionquest 290 and OPA.

*Conclusion*

26. In view of the above, the Commission considers that the Proposed Purchaser has the financial capabilities, proven expertise and incentive to maintain and develop Divestment Business as a viable and active competitive force in competition with the Parties and other competitors and in particular has the capabilities to establish a production line and complete the technology transfer for Ionquest 290 and OPA in a timely manner and distributes the products (directly or indirectly) to customers.

**(e) Absence of *prima facie* competition problems**

27. There are no horizontal or vertical relationships between the activities of Italmatch and the Divestment Business, and accordingly, this acquisition does not give rise to *prima facie* competition concerns.
28. The Trustee reports supports the view that the acquisition by Italmatch of the Divestment Business will not lead to any *prima facie* competition concerns and there are no regulatory obstacles expected in the divestiture process.
29. In view of the above, the Commission considers that the Proposed Purchaser is neither likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and is expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.
30. This *prima facie* assessment is exclusively based on the information provided by the Trustee and Solvay, and does not prejudice the conclusion stemming from a

deeper enquiry if and when this proposed concentration is notified to a competition authority.

### **III. CONCLUSION**

31. Given the above mentioned assessment, the Commission approves Italmatch as a suitable purchaser. On the basis of the Proposed Agreement, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
32. This decision only constitutes approval of the proposed purchaser identified herein and of the Proposed Agreement. This decision does not constitute a confirmation that Solvay has complied with its Commitments.
33. This decision is based on paragraphs 24 and 25 of the Commitments attached to the Commission Decision of 02.12.2015.

*For the Commission*

*(Signed)*

*Johannes LAITENBERGER  
Director-General*