



EUROPEAN COMMISSION

DG Competition

***Case M.8059 -
INVESTINDUSTRIAL /
BLACK DIAMOND /
POLYNT /
REICHHOLD***

Only the English text is available and authentic.

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

Decision on the implementation of remedies - Art. 6(1)(b) in
conjunction with 6(2) - Purchaser approval

Date: 15.5.2017



Brussels, 15.5.2017
C(2017) 3431

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties:

Subject: Case M. 8059 - INVESTINDUSTRIAL / BLACK DIAMOND / POLYNT / REICHHOLD
Approval of Ashland as purchaser of Reichhold's assets in Etain (France) used to manufacture UPR following your letter of 10 April 2017 and the Trustee's Reasoned Opinion of 13 May 2017

Dear Sir/Madam,

I. FACTS AND PROCEDURE

1. By decision of 12 May 2017 ("the Decision") adopted in application of Article 6(1)(b) in connection with Article 6(2) of the Merger Regulation,¹ the Commission declared the operation by which funds affiliated with Investindustrial, through Global Chemicals SARL ("Investindustrial", Luxembourg), and funds affiliated with Black Diamond Capital Management L.L.C. ("Black Diamond", USA) acquire joint control of the Polynt Group ("Polynt", Italy) and the Reichhold Group ("Reichhold", USA) compatible with the internal market and with the EEA Agreement subject to full compliance with the commitments annexed to the Decision and the conditions and obligations contained therein (the "Commitments"). Reichhold and Polynt are designated hereinafter as "the Notifying 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. Under Section B of the Commitments the Parties commit to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 18 of these Commitments.
3. In particular, the Commitments provide for the divestiture of Reichhold's largest unsaturated polyester resins ("UPR") plant, in Etain (the "Divestment Business"), situated in the north-east of France, near Metz.
4. The Divestment Business, described in more detail in the Schedule of the Commitments, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:
 - a) all tangible and intangible assets currently used to manufacture and sell UPR products by the Etain plant;
 - b) all licenses, permits and authorizations issued by any governmental organization for the benefit of the Divestment Business;
 - c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and
 - d) the Personnel (but for certain Retained Personnel)..
5. It also includes a royalty-free, non-exclusive EEA-wide license covering the intellectual property of the Divestment Business, to the extent [confidential information]. At the option of the purchaser of the Divestment Business ("the Purchaser"), this license shall be extended to address the Divestment Business' customer base in the EMEA region. At the option of the Purchaser, in order to enable the Purchaser to describe products as being identical to the Reichhold products previously supplied [confidential information].
6. The Commitments provide for the Divestment Business to be sold to a purchaser already active in UPR production and sales in the EEA.
7. The Commitments also provide that the proposed concentration shall not be implemented before the Notifying Parties have or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the Divestment Business and the Commission has approved the purchaser and the terms of sale; a so-called upfront buyer remedy.
8. By letter of 10 April 2017, the Parties proposed Ashland Global Holdings Inc. ("Ashland", USA) for approval by the Commission as purchaser of the Divestment Business and submitted the proposed Asset Purchase Agreement as well as related agreements (the "Proposed Agreements"). On 13 May 2017, Duff & Phelps, the appointed Monitoring Trustee, (hereafter the "Trustee") has submitted a Reasoned Opinion with an assessment of Ashland's suitability as a purchaser and, in particular, has indicated that it fulfils the criteria of the purchaser requirements in section D of the Commitments attached to the Decision. In this assessment, the Trustee also indicated that, on the basis of the Proposed Agreement, the Divestment Business would be sold in a manner consistent with the Commitments.

II. ASSESSMENT OF THE PROPOSAL

Description of the purchaser

9. Ashland is a publicly owned company listed on the New York Stock Exchange. Founded in 1924, it is a global specialty chemical company that provides products, services, and solutions throughout a variety of industries. One of its divisions, Ashland Performance Materials is considered to be a global leader in UPR and vinyl ester resins.
10. Ashland's total assets in 2016 amounted to around EUR 9.7 billion. It generated around EUR 4.6 billion worth of revenues and EUR 580 million worth of EBITDA worldwide for the fiscal year (FY) ending 30 September 2016. It has more than 11,000 employees, sells products in more than 100 countries and has 43 plants and 24 laboratories in 16 different countries. Ashland Performance Materials had revenues of around EUR 0.9 billion.
11. Ashland generates around 24% of its overall and 38% of Ashland Performance materials' sales in the EEA. Ashland already has two manufacturing plants and an R&D facility in France (for specialty materials), with around 200 employees.
12. Turning more specifically to the UPR business, Ashland is an experienced player in the market worldwide, but also in the EEA², where it already has two production facilities, Porvoo (Finland) and Benicarló (Spain). These two plants have a combined production capacity of [...] KT. In 2016 they produced [...] KT and sold [...] KT. Ashland's respective market shares in the EEA were between [10-20]%.
13. The market investigation carried out by the Commission confirmed that Ashland is one of the three smaller multi-plant manufacturers competing pre- and post-merger with Polynt and Reichhold.
14. In order to be approved by the Commission, the Purchaser must fulfil the following criteria³:
 - a) The Purchaser shall be independent of and unconnected to the Notifying Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
 - b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Notifying Parties and other competitors;
 - c) The Purchaser shall be a well-established UPR supplier with activities in the EEA, capable of sourcing the necessary inputs at competitive terms, with a pre-existing network of plants in the EEA, and possessing the necessary manufacturing capabilities to expand it, as well as the necessary commercial and

² It is recalled that the Commission, in its Decision found that the geographic scope of the market is EEA wide.

³ Paragraph 17 of the Commitments.

non-commercial personnel to market the products throughout the EEA and provide the necessary technical support to customers;

- d) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in 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. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

(a) Independence from the Parties ⁴

15. Firstly, based on the reasoned opinion of the Trustee, it can be concluded that the controlling shareholders/investors of each of the Notifying Parties have no ownership stake in Ashland or vice versa.
16. Secondly, it has been confirmed that there are no joint ventures or alliances between the Notifying Parties and Ashland.
17. Thirdly, no transaction was announced and/or concluded between March 2014 and March 2017 that involved either of the Notifying Parties and Ashland or any of their subsidiaries.
18. Additionally, Ashland is independent from the Notifying Parties in that they have no material or other business ties (common supervisory and management board members, etc.)
19. Finally, it was examined whether the conclusion of a limited number of transitional agreements between Reichhold and Ashland in view of the acquisition by the latter of the Divestment Business would negatively impact the independence of Ashland from Reichhold.
20. Given the limited scope of these agreements, essentially concerning human resources and IT services and their relatively small and pre-defined duration, the Commission considers that they are unlikely to affect the mutual independence between Ashland and the Notifying Parties.
21. In view of the above, and in line with the Reasoned Opinion of the Trustee dated 13 May 2017, the Commission considers that Ashland is independent and unconnected to the Notifying Parties.

(b) Financial resources⁵, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

22. In line with the Reasoned Opinion of the Trustee dated 13 May 2017, the Commission concludes that Ashland can easily finance the [purchase price] for the

⁴ The present section is based on the information provided by the Trustee in its Reasoned Opinion of 13 May 2017.

⁵ The present section is based on the information provided by the Trustee in its Reasoned Opinion of 13 May 2017.

acquisition of the Divestment Business from Reichhold through its own resources and/or its capacity to access external finance. Equally, Ashland has all the necessary resources to subsequently operate and further grow the Divestment Business.

23. Moreover, Ashland is an established player with proven expertise in the UPR industry worldwide and in the EEA, where it already operates two plants.

(c) Absence of prima facie competition problems

Horizontal overlaps

24. Ashland is a competitor of the Parties on the markets of manufacturing of resins, including UPR and vinyl esters in the EEA. Given that only UPR is produced in the Etain plant, the acquisition by Ashland will have no horizontal impact on competition on other markets.
25. Ashland's market share on the UPR market in the EEA in terms of sales, production and capacity was [10-20]%, [10-20]% and [10-20]% respectively in 2015. The acquisition of Etain will bring an increment of [5-10] and [5-10] percentage points in terms of production and capacity in 2015, resulting in an overall market share of Ashland on UPR in the EEA of [10-20]% by production and [10-20]% by capacity. Ashland's market share by sales for UPR in the EEA will be similar. The acquisition of Etain will thus not lead to an affected market and is unlikely to raise competition concerns.
26. In terms of production and capacity, Ashland will operate three plants for the manufacturing of UPR post-Transaction, located in Finland, Spain and France (the latter being the Divestment Business) which will enable it to effectively compete with the Polynt and Reichhold merged entity which will own 8 plants throughout the EEA. It will also face competition from other large UPR providers in the EEA such as Aliancys ([10-20]% by production and [10-20]% by capacity), AOC ([5-10]% by production and [5-10]% by capacity) or Scott Bader ([5-10]% by production and [0-5]% by capacity), as well as numerous small competitors. Importantly, none of Ashland's UPR competitors are capacity constrained and could increase production in case of an increase in price.
27. In terms of sales, post-transaction Ashland will face the Polynt and Reichhold merged entity which will be the clear market leader, holding a [30-40]% market share for UPR production and [30-40]% for UPR sales. Ashland will also face established competitors, namely Aliancys which has a [10-20]% market share, as well as Scott Bader and AOC, with market shares of [5-10]% and [5-10]%, respectively.
28. A temporary non-compete clause is included in the Commitments according to which Reichhold customers served from Etain will keep being served from Etain by Ashland post-Transaction. This clause is deemed necessary to allow Ashland to compete effectively to avoid the risk of Etain's customers to switch its orders to a different Reichhold plant. It will preserve the utilisation ratio of the Etain plant for a duration of two years to ensure its viability while giving the opportunity to Ashland to build customer relationship with the plant's customers.
29. The Commitments also provide for the situation where, currently, customers dual source functionally equivalent products from the Divestment Business (still owned

by Reichhold) and from Ashland. Post-Transaction these customers would be solely dependent on Ashland. [confidential information].

Vertical relationships

30. First, Ashland does not produce any inputs (e.g., MA, PA and THPA) used to manufacture UPR in the EEA and, to the extent it produces any of these inputs outside the EEA, its market shares on a hypothetical worldwide market would be less than 5%. Therefore there are not vertically affected markets in this respect.
31. Second, while Ashland manufactures and sells gelcoats, which uses UPR as an input, this vertical link is pre-existing to the Transaction. Also, because Ashland's gelcoats' operations are limited, this vertical link does not result in vertically affected markets.
32. In view of the above, and in line with the Reasoned Opinion of the Trustee dated 13 May 2017, 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
33. According to the Trustee, regulatory approval for this Transaction was only required in Germany and has already been granted by the Bundeskartellamt on 20 April 2017.

III. ASSESSMENT OF THE PROPOSED AGREEMENTS

34. The Proposed Agreements between Reichhold and Ashland were signed on 9 May 2017 and sets forth Ashland's irrevocable commitment to purchase the Divestment Business on the terms and conditions as set forth in the Sale and Purchase Agreement.
35. The Proposed Agreements are fully in line with the scope of the Divestment Business as defined in the Commitments. Ashland will not acquire as part of the Divestment Business [number of employees] employees formally included as Etain's employees but whose activities support all Reichhold Group entities. The Commitments also contain elements that are at the option of the purchaser and that have not been required by Ashland. These include sourcing of raw materials arrangements, the transfer of additional technical support personnel and the distribution network of the Divestment Business.
36. The Proposed Agreements also provide for all the ancillary agreements described in paragraphs 18, 30 and 34 of the Commitments, namely the IP License Agreement, the Manufacturing Agreement and the Transitional Services Agreement, which will enter into force on the date of closing and will last for a duration of [time period].
37. The Trustee has reviewed and provided an assessment of the Proposed Agreement and concluded that it fulfils the requirements of the Commitments and that the Divestment Business is sold in a manner consistent with the Commitments.
38. Based on the above, the Commission concludes, in agreement with the assessment of the Trustee in the Reasoned Opinion dated 13 May 2017 that the Divestment Business is sold in a manner that is consistent with the Commitments.

IV. CONCLUSION

39. On the basis of the above assessment, the Commission approves Ashland as a suitable purchaser for the above-mentioned reasons.
40. Moreover, on the basis of the Proposed Agreements, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
41. This decision only constitutes approval of the proposed purchaser identified herein and of the Proposed Agreements. This decision does not constitute a confirmation that Polynt and Reichhold have complied with their Commitments.
42. This decision is based on paragraph 18 of the Commitments attached to the Commission Decision of 12 May 2017

For the Commission

(Signed)

*Johannes LAITENBERGER
Director-General*