



EUROPEAN COMMISSION  
DG Competition

***Case M.8152 - ARKEMA / DEN BRAVEN***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 04/11/2016

***In electronic form on the EUR-Lex website under document  
number 32016M8152***



## EUROPEAN COMMISSION

Brussels, 4.11.2016  
C(2016) 7194 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sir/Madam,

**Subject: Case M.8152 - ARKEMA / DEN BRAVEN**  
**Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004<sup>1</sup> and Article 57 of the Agreement on the European Economic Area<sup>2</sup>**

(1) On 28 September 2016, the Commission received 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 undertaking DBEW Holding B.V. ("Den Braven", the Netherlands), by way of purchase of shares. Arkema and Den Braven are jointly referred to as "the Parties".

1. THE OPERATION AND THE PARTIES

(2) Arkema is a French chemicals company with global operations in three main product divisions: coating solutions, industrial specialties and high performance materials. It is active worldwide in the supply of adhesives and sealants and in particular in the supply of specialty adhesives for use by consumers and in industrial applications.

(3) Den Braven, based in the Netherlands, produces sealants, adhesives, PU foams and technical aerosols. It sells its products mainly to the construction sector and to

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<sup>1</sup> 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.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

consumers via DIY (do-it-yourself) retailers in more than 100 countries. Around 50% of its sales are generated in Europe.

- (4) Upon completion of the Transaction, all the issued and outstanding shares in the capital of Den Braven will be transferred to Arkema.
- (5) The Transaction therefore constitutes an acquisition of sole control within the meaning of Article 3(1)(b) of the Merger Regulation.

## 2. EU DIMENSION

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2 500 million (Arkema EUR 7 683 million and Den Braven EUR 342 million). Furthermore, their combined aggregate turnover is more than EUR 100 million in at least three Member States (Germany EUR [...] million, the Netherlands EUR [...] million and the United Kingdom EUR [...] million) and in each of the three Member States named above, the aggregate turnover of each of the undertakings is at least EUR 25 million (Germany: Arkema EUR [...] million, Den Braven EUR [...] million; the Netherlands: Arkema EUR [...] million, Den Braven EUR [...] million; and UK: Arkema EUR [...] million, Den Braven EUR [...] million). Neither of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State.
- (7) The Transaction therefore has an EU dimension under Article 1(3) of the Merger Regulation.

## 3. MARKET DEFINITION AND COMPETITIVE ASSESSMENT

### 3.1. Introduction

- (8) The Transaction gives rise to horizontal overlaps in a number of markets related to the production and sale of adhesives and sealants and in the market for the sale of PU foams at the EEA level and in a number of Member States. Affected markets arise only in relation to adhesives and sealants.
- (9) The Transaction would also create vertical relationships between: i) the upstream market for the production of PU foams (on which Den Braven is present) and the downstream market for the sale of PU foams (on which both Parties are present); and ii) the upstream market for the production of rheological additives (on which Arkema is active) and the downstream market for the production of adhesives (on which both parties are present). Only the latter link leads to an affected market.

### 3.2. Market definition

#### 3.2.1. *Adhesives and sealants*

##### 3.2.1.1. Product market definition

- (10) Adhesives are developed to hold or stick objects together while sealants are substances used to block the passage of fluids through the surface of joints or openings in materials such as sanitary joints, roofing joints, expansion joints and window and door joints.

- (11) In previous cases, the Commission considered a possible distinction between adhesives and sealants, but ultimately left the market definition open.<sup>3</sup> Furthermore, the Commission categorised adhesives and sealants into three end-use groups, according to the target customer group, namely adhesives and sealants for consumers and DIY customers, adhesives and sealants for the construction sector, and adhesives and sealants for industrial applications.<sup>4</sup> Finally, the Commission considered defining separate markets for industrial adhesives by application, such as automotive, bookbinding, labelling, packaging etc., whilst also acknowledging the possibility of defining markets according to the adhesive technology, such as water-based technologies, solvent-based technologies, hot melts or reactive adhesives, but ultimately left the market definition open.<sup>5</sup>

*Notifying Party's submission*

- (12) The Notifying Party first contends that adhesives and sealants should be considered to be part of the same market as there is not clear distinction between the two categories; in particular many sealants have adhesive qualities and are therefore used for both purposes. Furthermore, from the supply-side, many adhesives technologies can be formulated into sealants. Within this wider market the Notifying Party agrees that it is relevant to distinguish various adhesives and sealants according to their end-use.
- (13) The Notifying Party also submits that, while adhesives and sealants for industrial applications constitute a distinct product market, there is no reason to distinguish between construction and consumer segments. The Notifying Party claims that individual consumers and small-scale building/repair firms would often purchase from the same retailers. According to the Notifying Party, suppliers also do not take into account the type of intended end-use and products for the construction and the consumer sectors are identical (only packaging and volumes could be different). Thus, it would be impossible to price discriminate between the two markets. The Notifying Party submits that in most countries there are no separate sales units targeting these two segments.
- (14) With regard to the potential segmentation of the market for adhesives or sealants based on the technology, the Notifying Party submits that such segmentation is likely to be too narrow, since there is a significant scope for both demand-side and supply-side substitution between adhesives and sealants based on various technologies. In particular, the Notifying Party notes that different technologies are used for exactly the same applications and that both branding and marketing of the products is focused on the end-use rather than the technology. The Notifying Party also notes that all the major suppliers of adhesives and sealants offer the full range of technologies and can easily switch between production of different technologies.

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<sup>3</sup> COMP M.3612 Henkel / Sovereign, COMP M.7465 Arkema/Bostik.

<sup>4</sup> COMP M.3612 Henkel / Sovereign recitals 10-19, COMP M.4941 Henkel/ Adhesive & Electronic Business, COMP M.7465 Arkema/Bostik.

<sup>5</sup> COMP M.3612 Henkel / Sovereign, COMP M.4941 Henkel / Adhesives & Electronic Business, recitals 10-13.

### *Commission's assessment*

#### *Adhesives versus sealants*

- (15) As regards the distinction between adhesives and sealants, the market investigation did not confirm the Notifying Party's claim that they form a single product market.
- (16) First, the results of the market investigation indicate that typically sealants are used in different applications than adhesives. Sealants, in particular those which are used mainly for insulating, gap-filling, ensuring waterproofness, covering holes or cracks etc. cannot be substituted for by adhesives, which have the bonding capabilities but not have the sealing features to prevent escape of a liquid or gas<sup>6</sup> The Commission also notes that both in the Parties' internal documents and in industry reports, these two categories of products are considered separately.<sup>7</sup>

#### *Consumer versus construction segment*

- (17) As regards the segmentation of the markets based on the target customer group, and in particular the distinction between the professional construction segment and the consumer/DIY segment, the results of the market investigation indicate that there are differences between the products sold into these two segments.<sup>8</sup>
- (18) The significant majority of customers considered that, for all categories of sealants, different sealants were offered to the two segments respectively. Specifically, they identified a number of respects in which products for consumers and for the construction sector typically differ, including packaging, pack size, grade of product and the accompanying information.<sup>9</sup> The customers who replied to the market investigation explain that sealants offered for professional construction customers tend to require more certificates, be of higher quality and thus more expensive than sealants sold to consumers/ DIY segment; sometimes there are designed to specific application. Sealants for professional construction customers are typically sold in bigger volumes, in large packaging and they are distributed through specialised channels for professionals or delivered directly to the construction site.
- (19) The majority of competitors who replied to the market investigation likewise confirmed that they treated the two groups of customers distinctly. They mentioned, *inter alia*, having different strategies, sales teams, pack sizes, packaging and information for use for professionals and for the DIY sector respectively.<sup>10</sup> In general market participants submit that the prices of sealants for professional construction customers tend to be higher, usually reflecting higher quality of products, in particular when used for specialised big jobs. At the same

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<sup>6</sup> See replies to questions 5 and 6 of questionnaire Q2 to customers and replies to question 3 of questionnaire Q1 to competitors.

<sup>7</sup> FEICA in its report *The European Adhesives and Sealants Market 2014-2017*.

<sup>8</sup> See replies to question 11 of questionnaire Q2 to customers.

<sup>9</sup> See replies to question 11(1) of questionnaire Q2 to customers.

<sup>10</sup> See replies to questions 12 and 13 of questionnaire Q1 to competitors.

time, some market participants indicated that the price pressure is higher in the professional construction segment.<sup>11</sup>

- (20) The market investigation also suggested that brand name may play an important role in customers' choice of product, and that brands are important in a slightly different way for DIY customers and for professionals. In general, customers in the DIY sector will tend to look for well-known and advertised names, irrespective of the particular type of product they are buying, whereas professional construction customers will associate specific brands with quality in particular product areas and a more longstanding reputation.<sup>12</sup> As explained by one of the competitors: “Consumer market is more brand driven (...), construction/professional market is more performance – workability – price driven, brands are less important.”<sup>13</sup>

#### *Different technologies*

- (21) Both industry reports and the internal documents of the Parties tend to analyse the adhesives and sealants markets by technology (e.g. silicone sealants, acrylic sealants, polyurethane sealants etc.). The reports also suggest that some adhesives and some sealants are used in only one or a couple of market segments, whilst others have much wider application.
- (22) While both Parties are active in adhesives and in sealants, the transaction leads to affected markets only in the area of sealants, thus the market investigation focused specifically on various categories of sealants.
- (23) The results of the market investigation indicated that there is only limited demand-side substitutability between different sealant technologies. Each sealant technology has its own specific indications and properties, for example:
- a. acrylic sealants are typically used for interior use, in particular on wooden surfaces and for filling gaps and covering cracks; they have the advantage of being able to be painted over;
  - b. polyurethane sealants are suitable for exterior use and are known to offer excellent flexibility;
  - c. silicone sealants can be used for both interior and exterior applications, but are seen as particularly suitable for sealing elastic joints, for use in bathrooms and for insulating glass; and
  - d. silyl-modified polymers are mainly used for exterior applications, and are a particularly strong sealant.<sup>14</sup>

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<sup>11</sup> See replies to question 11.1 of questionnaire Q2 to customers.

<sup>12</sup> See replies to question 12 of questionnaire Q2 to customers. This is also true of the Parties' own brands, some of their brands are better known in the construction sector than amongst DIY consumers, and they sometimes have different brand names for different customer segments.

<sup>13</sup> See non-confidential replies to question 16 of questionnaire Q1 to competitors.

<sup>14</sup> See replies to question 5 of questionnaire Q2 to customers and replies to question 5 of questionnaire Q1 to competitors.

- (24) While each of these sealants could, theoretically, be substituted for with another type of technology, the vast majority of responses from customers indicated, however, that the substitutability of the different products would, in practice, be generally limited, at least for some applications. As explained by one of the market participants “*For 50% of sealing purposes all the technologies are interchangeable, however for special purposes each of them has special properties, e.g. elasticity, coatability, adhesion, temperature etc.*”<sup>15</sup> This is both due to the difference in price between the different technologies, and also due to the specific properties that each offers. For acrylics, for example, the main constraint on substitutability is price, as acrylics are significantly cheaper than silicones and silyl-modified polymers.<sup>16</sup> These alternative products would also be less suitable for certain uses as they can't be painted over. Price was also seen to be the main criteria limiting substitutability of polyurethanes with silicones and silyl-modified polymers.<sup>17</sup>
- (25) In the case of silicones, the two possible substitutes mentioned were acrylics and silyl-modified polymers. Acrylics were generally considered not to offer the same properties as silicones, and therefore to be less suitable for many of the applications for which silicones would be used. Silyl-modified polymers, meanwhile, are more expensive, and the price difference therefore limits substitutability. Silyl-modified polymers, as one of the newer and more expensive technologies, offer various advantages over other products in terms of performance, and substitutability would therefore normally mean using a less effective product for a specific use. Alternatives may also not be solvent free, which could be a health and safety issue.<sup>18</sup>
- (26) As regards the supply-side perspective, the Commission notes that both Parties have production facilities that produce only one or a small number of the different types of sealant technologies, suggesting that the manufacturing process for the different technologies does vary, and that it would be either impossible, or at least inefficient, to produce all sealants at the same facility. This would suggest that supply-side substitutability between the different products is also limited.
- (27) The market investigation seems to confirm that supply-side substitutability between the different sealant technologies would be limited. The majority of competitors stated that there were significant differences in the manufacturing processes of sealants based on different technologies.<sup>19</sup> These relate to the chemical substances used and the way they react during the process, the production process itself and the processing times required at the different steps.
- (28) Furthermore, the vast majority of competitors use different equipment for producing different types of adhesive and sealant, either because they consider that

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<sup>15</sup> See replies to question 6 and 6.1 of questionnaire Q2 to customers.

<sup>16</sup> See replies to question 6 of questionnaire Q2 to customers.

<sup>17</sup> “*Polyurethane is cheaper than silyl-modified polymers, therefore more attractive for end user*”, see replies to question 6 of questionnaire Q2 to customers.

<sup>18</sup> See replies to question 6 and 6(1) of questionnaire Q2 to customers.

<sup>19</sup> See replies to question 7 of questionnaire Q1 to competitors.

it would be impossible to do otherwise, or because, even though they could theoretically produce all adhesives and sealants with the same equipment, it is more efficient for them to have dedicated equipment for each technology.<sup>20</sup> Competitors mention using different mixers for different types of sealant, and also refer to the need for a different environment, e.g. the level of air humidity.

- (29) The market investigation also revealed that there is some degree of specialisation amongst manufacturers. Most of the major international manufacturers offer a comprehensive range of products, but may be known to be particularly strong in certain technologies. It may also be the case that they do not in fact have production capacity for all technologies, but outsource production for those that they are not able to produce in-house, so as to be able to offer the full range of products. Medium-sized and smaller manufacturers, meanwhile are likely to specialise to some extent.<sup>21</sup>
- (30) In view of the above, the Commission considers that there are likely distinct product markets for adhesives and for sealants. Furthermore, the Commission considers that the market for sealants should most likely be further segmented into sealants produced for the construction and the consumer sectors respectively. Furthermore, the lack of true demand- or supply-side substitutability between the different sealant technologies suggests that separate product markets may exist for each type of sealant, i.e. acrylic sealants, polysulfide sealants, polyurethane sealants, silicone sealants and silyl-modified polymers.
- (31) The Commission considers, however, that for the purpose of this case, the precise product market definition with regard to adhesives and sealants can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

#### 3.2.1.2. Geographic market definition

- (32) In previous decisions, the Commission considered the geographic market for industrial sealants and adhesives to be at least EEA-wide for some industries. For other uses (construction or consumer segment), however, the situation was less clear and some evidence was found to suggest the presence of national markets. The exact definition of the geographic markets was ultimately left open.<sup>22</sup>

#### *Notifying Party's submission*

- (33) The Notifying Party claims that the geographic market for adhesives and sealants is (at least) EEA-wide, or comprises a small number of large supranational regions, e.g. Western Europe, Central and Eastern Europe. The Notifying Party submits that the major producers operate at least across the EEA, if not worldwide, that adhesives and sealants are easily transportable, and that transport costs have only a limited effect on price. Furthermore, the Notifying Party notes that production

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<sup>20</sup> See replies to questions 8 and 8(1) of questionnaire Q1 to competitors.

<sup>21</sup> See replies to questions 9 to 11 of questionnaire Q1 to competitors and replies to question 7 to 10 of questionnaire Q2 to customers.

<sup>22</sup> COMP M.3612 Henkel / Sovereign recitals 36-42, COMP M.4941 Henkel / Adhesives & Electronic Business, recitals 38-58.



plants typically distribute to a number of countries and that retailers often choose their suppliers for a number of countries under one contract.

*Commission's assessment*

- (34) The documentation provided by the Parties substantiated the argument that their distribution networks covered large regions of the EEA, if not the whole EEA. From each of their plants, the Parties would typically distribute to a fairly large number of markets, going beyond just the neighbouring countries, and in some cases to all EEA markets. There was, nonetheless, significant variation between the number of markets supplied by the different plants.<sup>23</sup> The need for these fairly wide distribution networks would seem to be consistent with the specialisation of different production facilities mentioned in the above section on product market definition.
- (35) The market investigation indicated there to be a certain amount of variation in customers' sourcing pattern of sealants. Approximately a third of customers source the majority of their purchases regionally, approximately a third from all over the EEA and just under a third source nationally. The replies of the customers demonstrate, however, that both professional construction companies and industrial customers tend to purchase sealants at supranational level (regionally or at EEA-wide level), while consumers and a large proportion of DIY retailers tend to purchase sealants at national level.<sup>24</sup>
- (36) In general, distance was not seen to be a major factor limiting the area from which customers could source, as the transport costs are relatively low, and there may therefore be a cost advantage in sourcing from further away if other markets are cheaper, at least for certain types of product.<sup>25</sup> Competitors did not generally consider transport costs to be a limiting factor in terms of the areas they can supply. The cost of transport as a proportion of the cost of the sealant was generally said to be between 2-3% and 10%.
- (37) A majority of customers who responded to the question regarding prices in the EEA perceived there to be some degree of price differentiation in the market for sealants across the EEA. Of the customers who did consider prices to vary across Europe, the general view was that prices were lower in Eastern Europe. Competitors' views of price differences generally echoed those of consumers, with the overall perception being that prices are higher in Western Europe than in Central, Eastern, and potentially Southern, Europe.<sup>26</sup>
- (38) The market investigation revealed that some manufacturers do adapt their products and/or product ranges to different geographic markets. Whilst some manufacturers stated that products and packaging will generally be fairly standard, others mentioned that the product itself and/or the product range offered might be

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<sup>23</sup> Den Braven's plant in [place] and Arkema's plants in the [place] and [place] all distributed to a smaller range of countries than the Parties' respective plants in [place], [place] and the [place].

<sup>24</sup> See replies to question 13 of questionnaire Q2 to customers.

<sup>25</sup> See replies to questions 13 and 13(1) of questionnaire Q2 to customers.

<sup>26</sup> See replies to question 17 of questionnaire Q2 to customers.

different in different countries and/or regions, and also that they do have to adapt their products to conform with local standards and regulations. The difference would largely depend on the categories of products concerned.

- (39) Products for consumers would typically need to include explanations in national languages, would need to comply with local quality standards or local building methods and would be sold through retailers, DIY shops/markets. As is typically the case for any consumer product, sealants for consumers would tend to have sales teams, marketing and branding organised at national level.<sup>27</sup> The market investigation provided numerous examples of brand names, particularly those in the consumer/DIY sector, that are only used, or are most recognised, within a particular country or group of countries. Furthermore, responses from DIY retailers very strongly suggested that they are aware of there being strong national differences in their customers' preferences. They would typically refer only to their own national market, or when part of a group, gather separate, often diverging, information for each market.<sup>28</sup>
- (40) Products for professional construction companies are sold directly or through professional and independent wholesalers, active internationally.<sup>29</sup> Furthermore, as explained by competitors, while for consumer/DIY segment consumer branding, breadth of product offering and (geographically adapted) distribution strength is more important, for professional/ construction customers quality and compliance with qualification and labelling requirements is more relevant.
- (41) In view of the product market definitions discussed in the section above, for the purpose of this case, the Commission considers that the geographic market may not necessarily be the same for adhesives and sealants for the construction sector and for the consumer sector. For the construction sector, in particular in view of the following: i) manufacturers tend to supply, and construction companies tend to purchase adhesives and sealants at regional or EEA level, ii) manufacturers are often considered to be strong in a particular region, and iii) there seems to be none or insignificant national marketing or branding, it would seem likely that the relevant geographic market definition for the construction sector are supra-national or at least regional, namely Western Europe, Central & Eastern Europe and Scandinavia.
- (42) The Commission considers that, for the purpose of this case, the market for adhesives and sealants for use in the DIY/consumer segment is likely to be national. This is supported by the importance of brand names, many of which are known only in a specific country or in a small cluster of countries, the fact that a large proportion of DIY retailers are active only in one country, and that relevant products tend to be adapted to national requirements and expectations, are marketed nationally and tend to be sold by national sales teams.

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<sup>27</sup> See replies to question 12 of questionnaire Q1 to competitors.

<sup>28</sup> See replies to questions 12, 23 and 24 of questionnaire Q2 to customers.

<sup>29</sup> See replies to question 12 and 13 of questionnaire Q1 to competitors and replies to question 11 of questionnaire Q2 to customers.

(43) The Commission considers, however, that for the purpose of this case, the precise geographic market definition can be left open, as serious doubts do not arise under any plausible geographic market definition in relation to adhesives and sealants.

### 3.2.2. *Rheological additives as an input in the production of adhesives and sealants*

#### 3.2.2.1. Product market definition

(44) Additives are chemical products which are added in small quantities to different compounds in order to modify properties such as plasticity, rigidity, transparency and flexibility. Rheological additives act as thickening and anti-settling agents and they are used in coatings, paints, inks, cosmetics, construction products and adhesives.

(45) In previous decisions, the Commission considered separate markets for rheological additives for water-based applications and rheological additives for solvent-based applications. The question as to whether the product market should be further divided based on chemical composition was, however, ultimately left open.<sup>30</sup>

(46) The Notifying Party contends that there are two product markets: one for the production and supply of rheological additives for non-aqueous applications, and one for the production and supply of rheological additives for aqueous applications. The Notifying Party argues that there is no need for further market segmentation as the products within these two broad categories fulfil the same function and are therefore substitutable from the customer's point of view.

(47) Rheological additives based on polyamide powders are used, *inter alia*, in the production of reactive polymerising systems (RPS), of which silyl-modified polymers and SPUR are two types. They are also used in the production of coatings, in particular protective and marine coatings.

(48) The Commission considers that for the purpose of this case, the question as to whether the rheological additives market should be further segmented can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

#### 3.2.2.2. Geographic market definition

(49) In previous cases the Commission discussed the possibility of the market for rheological additives being either worldwide or EEA-wide, noting the low transport costs on the one hand, but also differences in regional preferences for water-based or solvent-based additives, and differences in relative prices.<sup>31</sup> The Notifying Party agrees with previous Commission findings.

(50) The market investigation indicated that customers are able to source rheological additives based on polyamide powders from across a wide geographic area, at least EEA-wide and potentially worldwide. It can be derived from responses to the

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<sup>30</sup> COMP M.3910 Rockwood / Süd Chemie, recital 8. COMP M.5424 Dow / Rohm and Haas, recitals 218-220. M.7465 Arkema/Bostik.

<sup>31</sup> COMP M.5424 Dow / Rohm and Haas, recital 222; COMP M.7465 Arkema/Bostik, recital 29.

market investigation that producers of rheological additives have distributors at national level, and that the location of the manufacturer is not therefore a concern. The suppliers of rheological additives are all active either globally or at least across the EEA.

- (51) The Commission considers that, for the purpose of this case, the question as to whether the market for rheological additives is global or EEA-wide in scope can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition of rheological additives.

### 3.3. Competitive assessment

#### 3.3.1. *Adhesives and sealants*

- (52) On the overall market for adhesives and sealants, the Parties' combined market share in the EEA amounts to [5-10]%, with an increment of [0-5]% brought by Den Braven. Two main competitors will remain present, namely Henkel ([20-30]%) and Sika ([10-20]%), while the remainder of the market is composed of a long tail of smaller suppliers, each with a market share of below [0-5]%. Should the geographic scope of the market be regional the Parties' market shares would not be significantly different (combined market share of [5-10]% in Western Europe and [0-5]% in Central and Eastern Europe).<sup>32</sup>
- (53) Should the market be subdivided into adhesives and sealants, the Transaction would lead to affected markets only in sealants. As regards the further segmentation according to end-use, the Commission notes that Den Braven is not active in industrial sealants, and therefore the Parties' activities overlap only in the construction and consumer segments.
- (54) The Parties point out that Den Braven specialises in the production of silicones and acrylics, whilst Arkema is strong in silyl-modified polymers, reflecting its general focus on adhesives rather than sealants. Nonetheless, both Parties do have significant market share in acrylic sealants and silicone sealants, and some, albeit smaller, market shares in polyurethane sealants.
- (55) Against the market definition background set out above, the combined market shares for the affected markets are presented below.

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<sup>32</sup> The market shares for the EEA market are based on the 2013 and 2014 figures, source: Form CO, the market shares for the regional market shares are based on 2015 figures, source Form CO.

Table 1: Markets affected by the Transaction in various categories of sealants:

	Arkema	Den Braven	Combined	Sika	Soudal	Henkel
<b>Acrylic sealants, construction segment</b>						
Western Europe	[5-10]%	[20-30]%	[20-30]%	[10-20]- [20-30]%	[10-20]- [20-30]%	[10-20]- [20-30]%
Central & Eastern Europe	[0-5]%	[30-40]%	[30-40]%	[0-10]- [10-20]%	[10-20]- [20-30]%	[10-20]- [20-30]%
<b>Acrylic sealants, consumer segment</b>						
Austria	[20-30]%	[5-10]%	[20-30]%	[10-20]%	[20-30]%	[20-30]- [30-40]%
Denmark	[10-20]%	[20-30]%	[40-50]%	[10-20]%	[20-30]%	[10-20]%
<b>Silicone sealants, consumer segment</b>						
Denmark	[5-10]%	[30-40]%	[30-40]%	[10-20]%	[20-30]%	[10-20]%
<b>Polyurethane sealants, consumer segment</b>						
Denmark	[5-10]%	[10-20]%	[20-30]%	[50-60]%	[10-20]%	-

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: Form CO.

Western Europe: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, UK.

Central and Eastern Europe: Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia.

- (56) The Transaction leads to affected markets in acrylic sealants for construction both at Western Europe level, where the combined market share amounts to [20-30]% with an increment of [5-10]% brought by Arkema and at Central & Eastern Europe level, where the combined market share is [30-40]%, but the increment brought by the transaction (by Arkema) is only [0-5]%. Furthermore, the Transaction leads to affected markets in the following consumer segments:
- a. in acrylic sealants in Denmark (combined market share of [40-50]%, with an increment of [10-20]% brought by Arkema) and Austria (combined market share of [20-30]%, with an increment of [5-10]% brought by Den Braven); and
  - b. in silicone sealants and polyurethane sealants in Denmark, where the combined market shares amount to respectively [30-40]% and [20-30]% respectively, with an increment of [5-10]% brought by Arkema in both markets.

- (57) The Notifying Party argues, first, that segmenting the market according to technology is not appropriate, as significant demand and supply side substitutability across various technologies exists, therefore these are not plausible markets. Furthermore, the Notifying Party notes that the Parties are not close competitors in sealants in general and in acrylic sealants in particular. In addition,

significant competitors will remain present, such as Soudal, Henkel, Selena and Sika, which Den Braven perceives as its close competitors.

- (58) The market investigation confirmed that generally the Parties are not perceived as each other's close competitors. Market participants generally see Arkema's activities as being focused mainly on the production of adhesives and sealants for industry, with its other areas of activities being adhesives and sealants for the construction sector and the supply of raw materials. Within the market for adhesives and sealants for the construction and consumer segments, Arkema is mainly known for its branded Bostik products. It is seen as a manufacturer having reputation for quality, and sometimes high prices.<sup>33</sup> Den Braven on the other hand is considered to be primarily a provider of private label sealants, with lack of brand presence often mentioned as one of its main weaknesses.<sup>34</sup> Unsurprisingly for a manufacturer that sells most of its products as private label, Den Braven is also perceived to be at the lower end of the price range.
- (59) Furthermore, Arkema and Den Braven are rarely mentioned as each other's close competitors in any of the different types of sealants. This supports the claim made by the Notifying Party that they are active in different segments of the market, and potentially also in different technologies.
- (60) The market investigation revealed that other major manufacturers such as Soudal, Henkel and Sika all offer a comprehensive range of products, and there will therefore still be at least three strong competitors present in all the markets concerned. In addition to these suppliers, market investigation indicated that there is often a large number of smaller companies present at local level, either specialising in particular technologies or offering a range of products.

#### 3.3.1.1. Acrylic sealants

- (61) Considering specifically the market for acrylic sealants at all geographic levels where transaction gives rise to affected markets, Den Braven and Arkema are rarely mentioned as each other's close competitors, by either customers or competitors.<sup>35</sup> The competitors to Den Braven and Arkema considered to be strongest in this area include Soudal, Henkel, Sika and Tremco Illbruck, with a range of other, often local, companies also mentioned.<sup>36</sup>
- (62) Although the merged entity would have a significant market share in both regions of Europe on the markets for acrylic sealants for the construction sector, it should be noted that other manufacturers, in particular Sika, Henkel and Soudal will remain present, with significant market shares (above 10% each), alongside a large

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<sup>33</sup> See replies to questions 27 and 28 of questionnaire Q2 to customers and replies to questions 19 and 20 of questionnaire Q1 to competitors.

<sup>34</sup> The only exception to this would seem to be in the Netherlands, and to a lesser extent Belgium, where the brand name Zwaluw is well known, albeit more in the construction sector than among DIY consumers.

<sup>35</sup> See replies to questions 29 and 30 of questionnaire Q2 to customers and replies to question Q1 to competitors.

<sup>36</sup> See replies to question 29 and 30 of questionnaire Q2 to customers and replies to question 21 and 22 of questionnaire Q1 to competitors.

number of smaller companies. In Central and Eastern Europe specifically, the increment is also very small ([0-5]%), as Arkema does not have a strong presence in these markets.

- (63) In the two national markets, Austria and Denmark, where the combined entity would have higher market shares in the market for acrylic sealants for the consumer sector market investigation provided indications that strong competitors will remain present and exercise competitive constraint on the merged entity. Sika, Soudal and Henkel, the three major manufacturers enjoying high brand recognition, have substantial market shares in both countries (in Austria: Henkel [20-30]% to [30-40]%, Soudal approximately [20-30]% and Sika approximately [10-20]%; in Denmark: Soudal a market share of [20-30]% and Sika and Henkel of [10-20]% each) , while strong local companies are also present on the market. Indeed, in Austria, the two German manufacturers UHU (belonging to the Bolton Group) and Hanno are estimated to each have at least around [10-20]% of the market, and in Denmark, the Danish supplier DanaLim is estimated to be the market leader with [30-40]-[40-50]% market share.

#### 3.3.1.2. Silicone sealants and polyurethane sealants for consumer segment

- (64) Similarly to acrylic sealants, the market investigation did not provide indications that Parties would be close competitors in the affected markets. Considering the responses from customers in Denmark, there were no mentions of Arkema as one of Den Braven's top three competitors in any type of sealant technology, or vice-versa. The general perceptions of Arkema and Den Braven described above, in recital (58) and the following, appeared to apply equally in the Danish market. Den Braven is known as a private label supplier, and is associated with low prices and a lack of brand presence, whilst Arkema is identified with high brand value. Under the brand name Bostik, Arkema was cited as offering a broad range of products for both consumers and the construction sector, and as being particularly known for MS polymers (rather than any of the technologies where the combined market shares are significant). It is seen as a high quality supplier.<sup>37</sup>
- (65) Overall, no substantiated concerns were raised by Danish customers. Equally, there was no suggestion of there being any potential specificities of the Danish market, or of either Den Braven or Arkema having an especially strong position in this market. Denmark was even referred to as the market where Arkema had a relatively weak presence compared to the other Nordic countries.<sup>38</sup>
- (66) Although one customer in Denmark did consider that the merger could have an impact on the market, across all technologies, replies from the same respondent to earlier questions demonstrated, however, that it considered Arkema and Den Braven to have quite different focuses and strengths. This therefore suggests that the effect that customer was referring to relates more to the merged entity being able to offer a wider product range, and serve a wider market in terms of type of customer, rather than to potential competition concerns.<sup>39</sup>

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<sup>37</sup> See replies to questions 19, 20, 23 and 24 of questionnaire Q1 to competitors.

<sup>38</sup> See replies to question 19 of questionnaire Q1 to competitors.

<sup>39</sup> See replies to question 25 of questionnaire Q1 to competitors.

- (67) In the markets for silicone sealants and polyurethane sealants for consumers, there are likewise other manufacturers with significant market shares. Specifically on the market for silicone sealants in Denmark there will remain Soudal present with the market share of approximately [20-30]% as well as Henkel and Sika with a market share of [10-20]% each. On the market for polyurethane sealants, post-Transaction Sika will remain a clear market leader with the estimated market share of [50-60]%; there will remain also Soudal with the market share of [10-20]%. Neither Arkema nor Den Braven is currently market leader in either of these markets.
- (68) As a result of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for adhesives and sealants or any of its segments irrespective of the geographic market definition.

### 3.3.2. *Rheological additives as an input in the production of adhesives and sealants*

- (69) The Transaction leads to a vertical link between the upstream market for the supply of rheological additives on which Arkema is present, and the downstream market for adhesives and sealants, for which rheological additives are used as an input.
- (70) On the market for rheological additives in the EEA, Arkema's market share is below [0-5]%. Were the product markets to be defined narrowly, i.e. by the chemical composition of the rheological additive, then Arkema would have a market share of [40-50]% (by value and [50-60]% by volume) on the product market for rheological additives for non-aqueous applications based on polyamide powders. The Parties' combined share in the EEA on the downstream market, adhesives, and in particular reactive polymerising systems (RPS), does not exceed [10-20]%.
- (71) The Notifying Party claims that there is no risk of input foreclosure, as a number of alternative suppliers of rheological additives for non-aqueous applications, including those based on polyamide powders, will remain active on the market and switching suppliers in this area is easy. The market shares of the main competitors in the EEA are as follows:

Table 2: Competitors' estimated market shares in the market for rheological additives based on polyamide powders (EEA):

Company	Description	Market share
Kusumoto	Japanese manufacturer of chemical products	[20-30]%
Elementis	UK-listed global specialty chemicals company	[10-20]%
Lehman & Voss	German supplier of chemical and mineral specialties	<10%
Itoh Oil Chemicals	Japanese manufacturer of specialty chemicals and additives	<10%
Isca	UK-based manufacturer of specialty chemicals	<10%
BASF	German chemicals company	<10%

Source: Response to RFI from the Notifying Party

- (72) Furthermore, the sales of rheological additives to Den Braven represent a small proportion of Arkema's total sales of rheological additives for non-aqueous applications based on polyamide powders. The Notifying Party also submits that rheological additives do not represent a significant cost in the production of adhesives and sealants (less than [0-5]%), therefore even if Arkema were able to restrict competitors' access to rheological additives, it is highly unlikely that the



downstream activity of the merged entity could benefit from such foreclosure. Considering only rheological additives based on polyamide powders, the Notifying Party maintains that rheological additives based on polyamide powders typically represent around [10-20]% of the total cost of materials when producing silyl-modified polymers, and around [5-10]% when producing SPUR.

- (73) Similarly, the Notifying Party claims that there is no risk of customer foreclosure. The Notifying Party notes that many customers multi-source, including to a significant extent from third party distributors, for example [20-30]-[30-40]% of Arkema's sales of rheological additives for non-aqueous applications based on polyamide powders are made through distributors.
- (74) Furthermore, the Notifying Party submits that the Parties, and in particular Den Braven, account for only a small proportion of the sales of rheological additives for non-aqueous applications based on polyamide powders (less than [20-30]%), and thus, other suppliers of rheological additives would still have access to many customers other than the Parties.
- (75) Finally, the Notifying Party maintains that fumed silicas and organoclays can both be used as alternatives to polyamide powders in the production of RPS, without necessitating significant changes to the production process. It further argues that fumed silicas have certain advantages over rheological additives based on polyamide powders, including ease of processing, as they are less temperature dependent. In general, the choice between rheological additives based on polyamide powders and fumed silicas will depend on the end application and the desired characteristics of the product being manufactured.
- (76) The market investigation mainly confirmed the Notifying Party's statements with respect to the role of rheological additives based on polyamide powders in the production of RPS. In particular, the cost of these additives relative to total production costs does not seem to be significant.<sup>40</sup> The general view of customers for rheological additives based on polyamide powders was that there were other products they could use in production.<sup>41</sup>
- (77) Similarly, customers confirmed that they would have alternative suppliers for rheological additives based on polyamide powders, and they did not, generally, seem to be concerned about the possibility of Arkema pursuing an input foreclosure strategy.<sup>42</sup> They spontaneously named three other producers – Lehmann & Voss, Kusumoto Chemicals and King Industries (a US-based manufacturer of additives).
- (78) In view of the above, the Commission considers that the merged entity would have neither the ability nor the incentive to foreclose the supply of rheological additives based on polyamide powders to Den Braven's competitors, and that any potential loss of orders from Den Braven will have negligible effect on Arkema's competitors in the supply of rheological additives based on polyamide powders.

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<sup>40</sup> See replies to question 35 of questionnaire Q1 to competitors.

<sup>41</sup> See replies to questions 36 and 37 of questionnaire Q1 to competitors.

<sup>42</sup> See replies to question 38 of questionnaire Q1 to competitors.

- (79) In view of the above the Commission considers that the Transaction does not raise competition concerns in the market for the supply of rheological additives, in particular rheological additives based on polyamide powders.

4. CONCLUSION

- (80) 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)*

*Elżbieta BIEŃKOWSKA  
Member of the Commission*