



EUROPEAN COMMISSION

DG Competition

*Case M.8492 - Quaker / Global Houghton*

Only the English text is available and authentic.

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

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Decision on the implementation of the commitments -  
Purchaser approval

Date: 11.06.2019





EUROPEAN COMMISSION

Brussels, 11.6.2019  
C(2019) 4456 final

## **PUBLIC VERSION**

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

### **To the notifying party**

Dear Sir/Madam,

**Subject: Case M.8492 – Quaker / Global Houghton  
Approval of Total as purchaser of Houghton’s AHRO, SHRO and SCRO businesses in the EEA following your letter of 1 April 2019, the Trustee’s opinion of 9 April 2019 and its supplementary report of 27 May 2019**

### **1. FACTS AND PROCEDURE**

1. By decision of 11 December 2018 (the "Decision"), adopted in application of Article 6(2) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings<sup>1</sup>, the Commission declared the operation by which Quaker Chemical Corporation ("Quaker", US) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Global Houghton, Ltd. ("Houghton", US) compatible with the internal market subject to full compliance with the commitments annexed to the Decision and the conditions and obligations contained therein (the "Commitments"). Quaker and Houghton are further collectively referred to as "the Parties".

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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.

2. In particular, the Commitments provide that the Parties shall divest or procure the divestment of Houghton's aluminium hot rolling ("AHRO"), steel hot rolling ("SHRO"), steel cold rolling, pickle and tinplate rolling (together "SCRO") oil businesses in the EEA (the "Divestment Business"). More specifically, the Divestment Business consists in:
  - a. the global divestment of all know-how (including both (i) general know-how with regard to lubricants, the aluminium and steel industries, and (ii) specific know-how and trade secrets with regard to *inter alia* formulations, processes, methods, manufacturing information and specific customer-related demands relating to the Divestment Business) and intellectual property rights (including brand names and one specific US patent in relation to NOA technology) in relation to Houghton's AHRO, SHRO and SCRO businesses in the EEA;
  - b. the transfer of [20-40] Houghton employees active in sales, technical servicing and R&D as well as [10-30] product support engineers from Houghton's EEA fluidcare services related to steel rolling oils;
  - c. specific laboratory equipment necessary for the continuation of R&D activity as well as any inventory of finished goods, packaging and raw materials related to divested products;
  - d. the divestment of the entirety of Houghton's existing customer contracts and records as well as Houghton's relationships with its existing suppliers of raw materials in relation to the divested products;
  - e. the provision of a transitional services and toll-manufacturing agreement for a transitional period of [...], extendable twice (first with a [...] and then with a [...] extension) at the option of the purchaser and subject to the agreement of the monitoring trustee;
  - f. in case the purchaser were not able to conclude supply contracts with the relevant third-party suppliers, the commitment, for a period of [...], to offer back-to-back agreements for the supply of raw materials used in the production of the divested products;
  - g. at the option of the purchaser, the provision of technical training services for R&D personnel, sales and technical services personnel, and technical support personnel.
3. By letter of 1 April 2019, the Parties proposed Total Marketing Services S.A., a subsidiary of Total S.A. ("Total", France), for approval by the Commission as purchaser of the Divestment Business and submitted a proposal of a sale and purchase agreement and other related agreements (the "Initial Proposed Agreement"). On 9 April 2019, Advolis S.A. (the "Trustee") submitted a reasoned opinion as regards Total's suitability as a purchaser. Following subsequent exchanges with the Commission and amendments to the Initial Proposed Agreement, the Trustee submitted a supplementary report on 27 May 2019 (designated hereinafter, together with the reasoned opinion, as the "Reasoned Opinion") and indicated that, in the revised version of the Initial Proposed Agreement (constituting the "Proposed Agreement"), Total fulfils the criteria of the purchaser requirements set in section D of the Commitments. In its Reasoned

Opinion, 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.

## **2. ASSESSMENT OF THE PROPOSAL**

### **2.1. Legal framework**

4. Pursuant to paragraph 17 of the Commitments, in its assessment of the Proposed Agreement, the Commission shall verify that the purchaser fulfils the purchaser criteria and that the Divestment Business is being sold in a manner consistent with the Commitments.
5. According to paragraph 16 of the Commitments, the Commission must ensure that the purchaser fulfils the following criteria:
  - a. It is independent of and unconnected to Quaker and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);
  - b. It has the financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitive force in competition with the Parties and other competitors;
  - c. It is a well-established lubricant supplier with activities in the EEA which fulfils the following criteria:
    - i. proven track record in related industrial lubricant markets;
    - ii. manufacturing capabilities for industrial lubricants in the EEA;
    - iii. capability of sourcing key raw materials at competitive terms;
    - iv. necessary resources to effectively carry out R&D activity for the divested products, manufacture those products at the same quality as Houghton, sell and distribute those products cost-effectively throughout the EEA and provide the necessary technical support to customers.
  - d. Its acquisition of the Divestment Business 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; in particular, it must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

### **2.2. Description of the proposed purchaser**

6. Total is a publicly listed company, with its common stock being listed on the stock exchanges of Paris, London, New York and Brussels.
7. Total is a multinational integrated oil and gas company headquartered in France. Its businesses cover the entire oil and gas chain, from crude oil and natural gas exploration and production to power generation, transportation, refining, petroleum product marketing, and international crude oil and product trading.

8. Total is also a large-scale chemicals manufacturer, including specialised greases and lubricants. Within the greases and lubricants, Total is active in the production and sale of metal working fluids, among which forming and rolling oils. Total is not active in the markets covered by the Divestment Business.

### **2.3. Independence from Quaker**

9. Total has no direct or indirect capital interests in Quaker and Quaker has no direct or indirect capital interests in Total or its affiliated undertakings. Only limited business relationships exist between Quaker and Total, whereby Total and the Parties purchase products from each other, mainly on a spot-basis.
10. The Trustee has reviewed the transactional links between Quaker and Total and concluded in its Reasoned Opinion that they do not appear to form a structural commercial relationship. Nor did the Trustee indicate any dependence of Total on the Parties.
11. On the basis of the information made available to the Commission by the Parties and taking the Trustee's Reasoned Opinion into account, the Commission considers that Total is independent of and unconnected to the Parties.

### **2.4. Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor**

12. Total's revenues in 2018 amounted to EUR 160 billion and to a net income of approximately EUR 10 164 million. Total ended financial year 2018 with cash and cash equivalents totalling EUR 24.6 billion. According to the Trustee, Total intends to finance the purchase of the Divestment Business through [...].
13. The Trustee has reviewed the available key performance indicators of Total's business unit that will acquire the Divestment Business and concluded in its Reasoned Opinion that Total has sufficient financial resources to acquire and develop the Divestment Business, taking into account Total's profitability and strong financial position.
14. Total is already active in the industrial lubricants business through its activity in metal working fluids although it does not currently manufacture AHRO, SCRO or SHRO products. According to the Trustee, the acquisition of the Divestment business will allow Total to overcome the high market entry barriers applicable to each of these specific products included in the Divestment Business.
15. According to the Trustee, the Divestment Business will be fully integrated in the local affiliates of Total and all staff will be trained on all products of Total and the Divestment Business to enhance cross-selling, product application, know-how and technical expertise. After expiration of a toll manufacturing agreement between Total and Quaker, Total will manufacture all of the Divestment Business' products in existing Total lubricating oil plants.
16. The Trustee also considers that Total will have a strong incentive to maintain and develop the Divestment Business as divested products constitute a complementary high-end supplement to its existing product portfolio of industrial lubricants.

17. On the basis of the information made available to the Commission by the Parties and taking the Trustee's Reasoned Opinion into account, the Commission considers that Total has 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 Parties and other competitors.

## **2.5. Establishment as a lubricant supplier with activities in the EEA**

18. Total is already active in the industrial lubricants market and in the sub-segments of forming fluids, wherein Total offers a product line in the market for aluminium cold rolling oils ("ACRO").
19. In its Reasoned Opinion, the Trustee observed that Total's yearly production of lubricants in the EEA is significantly larger in volume compared to the size of the Divestment Business. The Trustee further notes that Total currently provides industrial lubricants to major steel and aluminium clients, including customers of the Divestment Business. According to the Trustee, Total is a recognized player in these industries and members of Total's current sales team have regular contacts with customers of the Divestment Business. According to the Trustee, these pre-existing business relationships will further facilitate the transition process and contribute to the immediate viability of the Divestment Business.
20. Total has [...] manufacturing plants spread across the EEA which are capable of producing industrial lubricants, whereby [...] have already been selected to manufacture the products included in the Divestment Business. The existence of alternative suitable plants for the manufacture of divested products provides Total additional flexibility.
21. Since Total is already active in the production of metal working fluids, Total already has commercial arrangements in place with suppliers of key raw materials such as base oils, esters and other additives. In fact, Total sources the raw materials for their metal working fluid product lines from suppliers in bulk alongside the materials it uses for its wider lubricants business. According to the Trustee, this large-volume sourcing strategy guarantees Total's ability to source the necessary raw materials for the Divestment Business on competitive terms.
22. In its Reasoned Opinion, the Trustee submitted that Total possesses the necessary technical resources in combination with the adequate personnel and assets included in the Divestment Business in order to (i) effectively carry out R&D, (ii) successfully manufacture the divested products at the same quality level as prior to the divestment, (iii) sell the products cost-effectively throughout the EEA and (iv) provide the necessary technical support to customers.
23. Total operates a dedicated global R&D program for lubricants, employing a complete staff of chemists, technicians and support personnel. Total will receive all the necessary R&D personnel associated with the Divestment Business and integrate them into its established EEA-wide lubricants research program.
24. According to the Trustee, Total currently produces both off-the-shelf lubricants and tailor-made products to meet specific customer requirements. Through the acquisition of the Divestment Business, Total is confident to be able to achieve the required quality level with respect to divested products.

25. The Trustee also submitted that Total has a mature distribution network and currently already successfully supplies lubricants to its customers. According to the Trustee, Total has sufficient warehousing facilities to stock products close to customers should it be competitively advantageous to do so, as well as to ensure continuity of supply. Through its national affiliates, Total has access to warehouse space in every EEA country.
26. According to the Trustee, Total considers that the specialists included in the Divestment Business will enable Total to continue to provide the necessary high-quality technical support to customers. Total will supplement the Divestment Business's specialists with those individuals currently providing technical support in relation to Total's ACRO customers.
27. On the basis of the information made available to the Commission by the Parties and taking the Trustee's Reasoned Opinion into account, the Commission considers that Total is a well-established lubricant supplier with activities in the EEA and has sufficient (i) proven track record in closely related markets for industrial lubricants, (ii) manufacturing capabilities for lubricants in the EEA, (iii) capability of sourcing key raw materials at competitive terms and (iv) necessary R&D resources and manufacturing, commercialisation, distribution and customer support capabilities.

#### **2.6. Absence of *prima facie* competition problems**

28. As Total is not currently active in the production and sale of products competing with those included in the Divestment Business, the proposed acquisition of the Divestment Business by Total does not raise any *prima facie* competition concerns in the EEA.
29. On the basis of the information made available to the Commission by the Parties and taking the Trustee's Reasoned Opinion into account, the Commission considers that Total 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. The above *prima facie* assessment is exclusively based on the information available to the Commission for the purpose of this Decision and does not prejudice any competitive assessment by a competent competition authority under applicable merger control rules.

#### **2.7. Conclusion on the purchaser criteria**

31. In light of the above considerations and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that Total meets the Purchaser criteria set out in paragraph 16 of the Commitments.

### **3. ASSESSMENT OF THE PROPOSED AGREEMENT**

32. As mentioned in paragraph 3 of the present decision, the Parties modified the Initial Proposed Agreement in order to align it to the Commitments. All observations from the Commission on the Initial Proposed Agreement have been



addressed in the Proposed Agreement, which was submitted to the Commission on 17 May 2019.

### **3.1. Modification of the list of personnel to be transferred to the Purchaser**

33. Under clause 2(f) of the Schedule annexed to the Commitments, [20-40] key personnel as well as [10-30] additional personnel (collectively the "Personnel") from Houghton's EEA divested business are identified. The Parties undertake, under clause 10(d) of the Commitments, to take all reasonable steps to encourage all Personnel to remain with the Divestment Business. Where, nevertheless, individual members of the Personnel exceptionally leave the Divestment Business, the Parties must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Personnel.
34. The Parties explained that two technicians from Houghton's fluidcare services business ([...] and [...]) respectively employed at [...] and at [...] and who were included as members of the Personnel resigned and left Houghton in October 2018 (before the submission of the Commitments) to move to positions outside the organisation. Following a standard recruitment process, hiring managers, who are members of the Personnel and report to the hold separate manager, appointed, in October 2018, two other similarly qualified individuals ([...] and [...]) to be transferred to the Purchaser with the Divestment Business. However, due to an internal miscommunication the Parties omitted to update the submitted Commitments and left [...] and [...] in the personnel list included in clause 2(f) of the Schedule.
35. In this respect the Trustee notes, after consultation of the hold separate manager, that neither of the individuals who resigned occupied critical roles or performed critical tasks based on unique technical skills. The Trustee also confirms in its Reasoned Opinion that both replacements as transferred to the Purchaser are suitably qualified to carry out the functions exercised by the replaced fluidcare technicians and that customers' activities have not been impacted by the replacement.
36. Taking into account the Trustee's opinion and given the non-critical role of the replaced members of the Personnel and the suitability of the qualification of both replacements, the Commission considers that the modifications of the list of members of the Personnel proposed by the Parties would not negatively affect the viability of the Divestment Business in a significant way. Therefore, the Commission hereby approves, in accordance with clause 10(d) of the Commitments, the modification of the list of personnel included in clause 2(f) of the Schedule annexed to the Commitments, by replacing [...] and [...] with [...] and [...].

### **3.2. Assessment of the Proposed Agreement**

37. The Trustee has reviewed and provided an assessment of the Proposed Agreement, concluding in its Reasoned Opinion that it fulfils the requirements of the Commitments and that the Divestment Business is sold in a manner consistent with the Commitments.

38. The Commission considers that, following the revision of the Initial Proposed Agreement, the Proposed Agreement is fully in line with the text of the Commitments and with the scope of the Divestment Business.

### **3.3. Conclusion on the Proposed Agreement**

39. In light of the above considerations, and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that the Proposed Agreement is consistent with the Commitments and that, accordingly, the Divestment Business is being sold in a manner consistent with the Commitments.

## **4. CONCLUSION**

40. On the basis of the above assessment, the Commission approves Total as a suitable purchaser of the Divestment Business.
41. Moreover, on the basis of the Proposed Agreement, the Commission also concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
42. This Decision only constitutes approval of the proposed purchaser identified herein and of the Proposed Agreement. This Decision does not constitute a confirmation that Quaker has complied with its Commitments.
43. This Decision is based on paragraphs 16 and 17 of the Commitments attached to the Decision of 11 December 2018.

*For the Commission*

*(Signed)*  
*Johannes LAITENBERGER*  
*Director-General*