



EUROPEAN COMMISSION

DG Competition

***Case M.8674 - BASF /
SOLVAY'S EP AND
P&I BUSINESS***

Only the English text is available and authentic.

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

Decision on the implementation of the commitments -
Purchaser approval

Date: 31.10.2019



EUROPEAN COMMISSION

Brussels, 31.10.2019
C(2019) 7996 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.8674 – BASF / Solvay's EP and P&I Business
Approval of Domo Chemicals GmbH as purchaser of the Divestment
Business following your letter of 21.08.2019 and the Trustee's opinion of
11.10.2019**

1. FACTS AND PROCEDURE

- 1) By decision of 18 January 2019 (the "Decision") based on Article 8(2) of Council Regulation (EC) No 139/2004¹, the Commission declared the operation by which BASF SE ("BASF" or the "Notifying Party", Germany) acquires sole control of Solvay S.A. ("Solvay", Belgium)'s worldwide polyamide business compatible with the internal market following modification by the Notifying Party, subject to conditions and obligations (the "Commitments").
- 2) In particular, the Commitments offered by BASF consist in the divestiture to a single suitable buyer of a business (the "Divestment Business") which includes Solvay's facilities at Belle-Etoile and Valence (France), Gorzow (Poland), and Blanes (Spain), as well as a 49% interest in a production joint venture (the "Chalampé JV") to which the entirety of the assets owned by Solvay on the Chalampé site will be transferred including the production facilities of KA Oil, nitric acid, adipic acid and

¹ OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

AH Salt, with the exception of Solvay's shares in Butachimie, a joint venture between Solvay and Invista active in the production of adiponitrile ("ADN") and hexamethylenediamine diamine ("HMD"). Solvay's stake in Butachimie will be transferred to BASF, while the Divestment Business includes long-term supply agreements of ADN to meet the Divestment Business' requirements.

- 3) By a reasoned submission dated 21 August 2019, the Notifying Party proposed Domo Chemicals GmbH ("Domo", Germany) for approval by the Commission as purchaser of the Divestment Business. Domo is a privately held company owned by Domo Investment Group ("DIG"), active mainly in the production of nylon 6 intermediates, nylon 6 resins, engineering plastics, fertilizers, packaging film and distribution of petrochemical products. Domo's products and services serve the automotive, food, medical, pharmaceutical, agricultural, chemicals and electronics industries. Domo has production facilities in Germany, Italy, US and China, as well as sales and distribution capabilities worldwide.
- 4) The Notifying Party submitted to the Commission the agreements to be entered into between Solvay and Domo, consisting of (i) a Put Option Agreement ("POA") dated 14 August 2019, (ii) a Share Purchase Agreement ("SPA"), (iii) the license agreements as per Schedule 5.2.1 (d) of the POA, (iv) the ancillary agreements as per Schedule 5.2.1 (f) of the POA, (iv) the AlsaChimie Joint Venture Agreement ("JVA") and (vi) a Patent License Agreement BASF – AlsaChimie (all together the "Transaction Agreements").
- 5) In its opinion of 11 October 2019 (the "Reasoned Opinion"), Advolis, acting as monitoring trustee ("the Trustee"), concludes that:
 - a. Domo fulfils the Purchaser Criteria as set out in paragraph 17 of the Commitments and there are no indications that the Divestment Business would not be viable after the sale; and
 - b. the Divestment Business would be sold in a manner consistent with the Commitments under the Transaction Agreements.

2. ASSESSMENT OF THE PROPOSAL

- (6) According to paragraph 18 of the Commitments, in its assessment of the Transaction Agreements, the Commission has to verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market.

2.1. Assessment of the Purchaser criteria

- (7) As set out in paragraph 17 of the Commitments, the purchaser of the Divestment Business must fulfil the following criteria:
 - a) be independent of and unconnected to the Notifying Party and its/their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);

- b) 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 BASF/Solvay and other competitors;
- c) have an established presence in the production and global sale of chemical products. The Purchaser shall be in a position to effectively continue the Divestment Business as a viable and active competitor with BASF and other competitors. For example, the Purchaser shall be in a position to service global automotive customers;
- d) 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 BASF and Solvay

- (8) Domo is a privately held company owned 100% by DIG, which in turn is controlled by the family of Jan De Clerck . Therefore, Domo is neither owned nor controlled by BASF, Solvay or any of their affiliates.² Domo has no direct or indirect capital interest in BASF and BASF has no direct or indirect capital interest in Domo.³ No director of any of the BASF or Solvay serves on the board of Domo or any of its affiliates and *vice versa*.⁴
- (9) BASF has an indirect minority shareholding in InfraLeuna GmbH ([...]), the Leuna infrastructure company, where Domo also has a shareholding of [...]. This shareholding is not subject to any shareholder agreement conferring (co-) controlling rights over InfraLeuna GmbH. None of the minority shareholders of InfraLeuna GmbH control the entity within the meaning of the EU Merger Regulation. In its Reasoned Opinion, the Monitoring Trustee argued that these minority shareholdings in a company managing shared infrastructure facilities are not problematic, as they do not confer special rights and do not constitute a situation of control within the meaning of Article 3 of the Merger Regulation.⁵ The Commission concurs with this assessment and considers that these shareholdings do not preclude Domo’s independence from BASF or Solvay.
- (10) The Trustee also reviewed the existing business relations and contractual relations⁶ between Domo and BASF/Solvay and concluded that they do not appear to be material to any party.⁷ Commercial relationships are limited and represents less than [0-5]% of Domo’s annual revenues in 2018.⁸

² Monitoring Trustee Reasoned Opinion on the acquisition of the Divestment Business by DOMO of 11 October 2019 (“Reasoned Opinion of 11 October”), Section 1.3.

³ Reasoned Opinion of 11 October, Section 5.1.

⁴ Reasoned Opinion of 11 October, Section 5.1.

⁵ Reasoned Opinion of 11 October, Section 5.1.

⁶ [Details on contractual business relations]

⁷ Reasoned Opinion of 11 October, Section 5.1.2

⁸ Reasoned Opinion of 11 October, Section 5.1.4

(11) In light of the above, the Commission concludes that Domo fulfils the purchaser criterion of being independent of and unconnected to BASF and Solvay and their affiliated undertakings.

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

I. Financial resources

(12) Domo is part of DIG, which is privately held. In 2018, Domo had a turnover of EUR [...].

(13) Domo will pay in total EUR [...] for the Divestment Business. According to the business plan submitted by DIG, [...].

(14) The Trustee reviewed the financial results of Domo and DIG and concluded that Domo is a healthy and profitable business that has achieved steady growth while maintaining a sound solvency position. On the basis of the business plan, the Trustee also concluded that following the acquisition, the combined business will have [...] to cover investment requirements, payment of interests and repayment of debt.⁹ Moreover, the Trustee stated that the combined business would show a healthy [...] position¹⁰ and calculated that, according to a simplified test run, [...].¹¹ Finally, the Trustee is of the opinion that short of any prolonged market slump – an unlikely event in the cyclical nylon 6.6 industry – the combined entity will have [...] to invest in the Divestment Business as envisaged by management as well as to meet its repayment obligations.¹²

(15) On the basis of the Trustee’s Reasoned Opinion¹³ and all the other information at its disposal on the financial situation of DIG and Domo and the business plan for the acquisition of the Divestment Business, the Commission concludes that Domo fulfils the criterion of having the financial resources to maintain and develop the Divestment Business as a viable and active competitive force in competition with BASF and other competitors.

II. Proven experience

(16) Since 1994, Domo has been active in the business of the production and sale of intermediates, polymers and engineering plastics. Its turnover has grown rapidly from ca. EUR [...] to EUR [...] by a combination of organic growth and acquisitions.

Figure 1 – Domo evolution of revenues since 1994

[Graph on Domo’s revenue evolution]

Source: Domo

⁹ Reasoned Opinion of 11 October, Section 3.4.5

¹⁰ Reasoned Opinion of 11 October, Section 3.4.6.

¹¹ Reasoned Opinion of 11 October, Section 3.4.8.

¹² Reasoned Opinion of 11 October, Section 3.6.

¹³ Reasoned Opinion of 11 October, Section 5.2.4.

- (17) The Trustee’s Reasoned Opinion highlights that Domo is experienced in integrating new businesses in its broader organisation. Between 2013 and 2015, Domo completed several acquisitions. Most notably, post-acquisition Domo invested considerably in these companies.¹⁴
- (18) The Trustee’s Reasoned Opinion demonstrates that Domo operates on an integrated business model (from upstream inputs and intermediates to downstream products), like the Divestment Business does, although in a different nylon value chain. Domo has its own production of intermediates and polymers on the chemicals site of Leuna, whose set-up and operations model has many similarities to those of Chalampé. Domo is a long-established and recognised industrial player in the nylon 6 (“PA 6”) industry. Offering a combined portfolio of PA 6 and nylon 6.6 (“PA 6.6”) products may be commercially attractive for several customers, especially in the automotive industry.¹⁵
- (19) While the centre of Domo’s industrial and commercial activity is Europe, it also has PA 6 engineering plastics (“PA 6 EP”) production facilities in the US and China and is present in Japan, Mexico and the Indian and Arabian peninsulas. It operates globally with a network of manufacturing sites, innovation centres, labs and sales offices to serve global accounts and local customers. A number of Domo’s PA6 EP customers are already the Divestment Business’ customers (mainly for PA 6.6 EP), in particular in the automotive industry.
- (20) On the basis of the Trustee’s Reasoned Opinion¹⁶ and all the other information at its disposal, the Commission considers that Domo has the proven experience to maintain and develop the Divestment Business.

III. Incentives to maintain and develop the Divestment Business

- (21) The Trustee’s Reasoned Opinion concludes that the purchase of the Divestment Business represents for Domo an opportunity to consolidate its presence in the PA 6.6 value chain. Indeed, post-transaction Domo will be able to take advantage of the complementary product portfolio and offer a broad range of products to customers, especially in the automotive sector. The Trustee’s report also highlights that Domo’s capex commitment to the Divestment Business and to the Chalampé JV, and its efforts to set up a robust business plan as well as a sophisticated integration plan,¹⁷ clearly indicates Domo’s incentive to maintain and develop the business.
- (22) On the basis of the Trustee’s Reasoned Opinion and all the other information at its disposal, the Commission considers that Domo has the incentives to maintain and develop the Divestment Business.¹⁸

¹⁴ Reasoned Opinion of 11 October, Section 5.2.

¹⁵ Reasoned Opinion of 11 October, Section 5.2.

¹⁶ Reasoned Opinion of 11 October, Section 5.2.4.

¹⁷ DOMO’s Buyer financial due diligence report was prepared by PwC, who are also selected as Post Merger Integration Consultants.

¹⁸ Reasoned Opinion of 11 October, Section 5.2.4.

(c) **Established presence in the production and global sale of chemical products, ability to effectively continue the Divestment Business as a viable and active competitor and capacity to service global automotive customers**

I. Established presence in the production and global sale of chemical products

- (23) As stated above, Domo operates six manufacturing facilities globally, four of which are located in Europe, one in the US and one in China. Domo also has a global network of R&D and customer support capabilities. According to the Trustee, this ensures coverage of all major markets globally.¹⁹
- (24) Domo has a significant annual production of intermediates, upstream products, PA 6 EP and PA 6 film worldwide. It operates through four main business units: Nylon & Intermediates produces and sells end-products (i.e. PA6 polymers, caprolactam), intermediates and by-products; Engineering plastics sells PA6 EP to third party customers; Nylon film engages in the production of flexible packaging by processing PA6 BP; and Trade & Distribution comprises the trading of polypropylene, commodity plastics and chemicals globally.
- (25) As regards global reach²⁰, Domo generated a considerable percentage of its revenues outside of the EEA in 2018. Besides its own sales and customer service capabilities, Domo has distribution contracts with distributors who are active globally. This network has been growing in recent years.
- (26) On the basis of the Trustee's Reasoned Opinion and all the other information at its disposal, the Commission considers that Domo has an established global presence in the production and global sale of chemical products.²¹

II. Capacity to service global automotive customers

- (27) According to data provided by Domo to the Monitoring Trustee, a significant part of Domo's total EP sales were generated with automotive customers,²² including key automotive global accounts supplied outside the EEA.
- (28) Domo's EP products are registered to supply EP to models for several global automotive manufacturers with widely recognised brands. Once Domo's EP products are approved by a car manufacturer, Domo sells them to the Tier 1-3 suppliers which make individual parts that are ultimately fitted into vehicles.
- (29) Domo's revenues in the automotive sector have been steadily and significantly increasing between 2016 and 2018 both in the EEA and globally.²³
- (30) The Commission conducted a number of interviews with some of the largest customers of the Divestment Business, which are mostly active in the automotive sector, and purchase PA 6.6 EP. The Commission investigated the perceived ability of Domo to run successfully the Divestment Business, especially for the supply of

¹⁹ Reasoned Opinion of 11 October, Section 5.3.1.

²⁰ Reasoned Opinion of 11 October, Section 5.3.1.

²¹ Reasoned Opinion of 11 October, Section 5.3.3.

²² Reasoned Opinion of 11 October, Section 5.3.2.

²³ Reasoned Opinion of 11 October, Section 1.2.

PA 6.6 EP to global automotive customers. All of the interviewees clearly stated that they did not foresee any problems in the supply of PA 6.6 EP for the automotive industry. They also overall drew a positive profile of Domo as an industrial player in the wider nylon industry landscape.

- (31) On the basis of the Trustee’s Reasoned Opinion, the interviews conducted by the Commission and all the other information at its disposal, the Commission considers that Domo has the capacity to service global automotive customers.²⁴

(a) Absence of *prima facie* competition problems

- (32) The acquisition of the Divestment Business by Domo is *prima facie* not likely to give rise to competition concerns. Domo currently has a limited presence in the markets where the Divestment Business is active in the EEA.
- (33) The activities of Domo and the Divestment Business only overlap horizontally to a limited extent, and such overlaps are unlikely to give rise to competition concerns, based on a preliminary assessment of the Commission. There are four markets giving rise to horizontal overlaps between Domo and the Divestment Business: (i) KA Oil (an intermediate of the PA 6.6 value chain); (ii) PA 6 Base Polymer (“PA 6 BP”); (iii) PA 6 EP; and (iv) PA 6.6 EP. However, Domo and the Divestment Business’ combined market share only exceeds 20% in the EEA market for PA 6.6 EP, where they remain below 25%, the level under which concentrations are presumed to not impede effective competition.²⁵ Numerous players remain on the market in the EEA post-Transaction, including BASF.
- (34) Vertical relationships would also arise but do not create any foreclosure risks, based on a preliminary assessment of the Commission. In particular. There are vertical relationships between Domo and the Divestment Business with regards to: (i) Domo’s Caprolactam activities (upstream) and the Divestment Business’ PA 6 BP activities (downstream); (ii) Domo and the Divestment Business’ PA 6 BP activities (upstream) and their PA 6 EP activities (downstream);²⁶ (iii) Domo and the Divestment Business’ PA 6 BP activities (upstream) and Domo’s PA 6 Film activities (downstream); (iv) the Divestment Business’ PA 6.6 base polymer (“PA 6.6 BP”) activities (upstream) and Domo and the Divestment Business’ PA 6.6 EP activities (downstream); and (v) Domo and the Divestment Business’ KA Oil activities (upstream) and the Divestment Business’ adipic acid activities (downstream). However, in view of the moderate market shares of Domo and the Divestment Business, and the number of competitors active in these markets, these relationships would not give rise to any foreclosure concerns on the basis of the information at the Commission’s disposal on this case.
- (35) Based on the above, the Commission considers, in line with the Trustee’s Reasoned Opinion, that the acquisition of the Divestment Business by Domo does not give rise to *prima facie* competition concerns.

²⁴ Reasoned Opinion of 11 October, Section 5.3.3.

²⁵ See Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 031, of 05/02/2004 (the “Horizontal Merger Guidelines”), para. 18.

²⁶ [...], as a result, any vertical effect can be excluded regarding these markets.

- (36) This *prima facie* assessment is based on the information available for the purpose of this buyer approval process and does not prejudice the assessment of the acquisition of the Divestment Business by Domo by the Commission, or any other relevant authority, under the applicable merger control rules.

2.2. Divestment business is being sold in a manner consistent with the Commitments

2.2.1. Modification of the list of personnel to be transferred to the Purchaser

- (37) Under clause 2(g) of the Schedule to the Commitments, the Divestment Business includes the Key Personnel as specified in Annex 5 to the Commitments. BASF undertakes, under clause 9(c) of the Commitments, to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice) to be agreed between BASF and Solvay, to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to BASF's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, BASF in consultation with Solvay shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. BASF in consultation with Solvay 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 Key Personnel.
- (38) Schedule G of the POA lists all Key Personnel who will be transferred to Domo, and is consistent with Annex 5 to the Schedule of the Commitments, except for two members of the Key Personnel who refused to be transferred to Divestment Business and who were replaced accordingly. BASF explained that despite the incentives offered to them, two members of the Key Personnel, [...] (former legal director) and [...] (former communication director) declined to stay with the Divestment Business and were replaced by employees formerly reporting to them. In this respect the Trustee notes, after consultation of the hold separate manager, that these individuals acted in support functions which are not critical to the viability of the Divestment Business, and that replacements were available. BASF proposed to replace [...] with [...] (EP lawyer) and [...] (IP lawyer), and [...] with [...] (communication). The HSM was fully satisfied with the suitability of the proposed replacements as they are suitably qualified to carry out the functions exercised by [...] and [...].²⁷
- (39) Taking into account the Trustee's opinion and given the non-critical role of the replaced members of the Key Personnel and the suitability of the qualification of both replacements, the Commission considers that the modifications of the list of members of the Key Personnel proposed by BASF would not negatively affect the viability of the Divestment Business in a significant way. Therefore, the Commission hereby approves, in accordance with clause 9(c) of the Commitments, the modification of the list of personnel included in clause 2(g) of the Schedule to the Commitments, by replacing [...] with [...] and [...], and [...] with [...].

²⁷ First Report of the Monitoring Trustee to the European Commission, section II.1 and Reasoned Opinion of 11 October, section 4.2.

2.2.2. *Modification to supply and services agreements*

- (40) Domo agreed with BASF (and [ADN supplier]) on a number of deviations from the text of the Commitments regarding supply and services agreements:
- (a) The ADN supply agreements with both BASF and [ADN supplier] offer [...] to Domo in terms of [...].
 - (b) The final price formula of the ADN Supply Agreement with [ADN supplier] was modified to the benefit of Domo.
 - (c) Transitional Service Agreements (“TSAs”) required to avoid disruptions to the Divestment Business’ operations until completion of the integration have also been modified. At the request of Domo, the duration of the TSA [...] (with an option to extend once for an additional [...]), instead of a duration of [...] (with the option to prolong once for an additional [...]) as envisaged in the Commitments. [...].
 - (d) The price formula for the Specialty PA Base Resin Supply Agreement in the Transaction documents deviates from the term sheet annexed to the Schedule of the Commitments. Domo and BASF agreed to [...] price formula. According to the information on the Commission’s file this change will not negatively impact the Divestment Business.
- (41) The Commission has reviewed the Transaction Agreements and concludes, on the basis of the Trustee’s Reasoned Opinion and all the other information at its disposal that the Transaction documents reflect the Domo and BASF’s obligations set out in the Commitments. Deviations were mutually agreed by Domo and BASF, and according to Domo, are to the benefit of the Divestment Business.²⁸ Therefore, the Commission concludes that the Divestment Business is being sold in a manner consistent with the Commitments, and that Domo has the incentive to run the Divestment Business competitively in the future.

3. CONCLUSION

- (42) Based on the above assessment, the Commission approves Domo as a suitable purchaser.
- (43) Based on the Transaction Agreements, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
- (44) This Decision only constitutes approval of the proposed purchaser identified herein and of the Transaction Agreements. This decision does not constitute a confirmation that BASF has complied with its Commitments.

²⁸ Reasoned Opinion of 11 October, Section 4.3.

(45) This Decision is based on Section D of the Commitments attached to the Decision.

For the Commission

(Signed)
Cecilio MADERO VILLAREJO
Acting Director-General