



EUROPEAN COMMISSION
DG Competition

***Case M.9553 - DOMO INVESTMENT GROUP /
SOLVAY PERFORMANCE POLYAMIDES BUSINESS
IN THE EEA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/11/2019



EUROPEAN COMMISSION

Brussels, 25.11.2019
C(2019) 8596 final

PUBLIC VERSION

<p>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 Where possible the information omitted has been replaced by ranges of figures or a general description.</p>
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To the notifying party

Subject: Case M.9553 - Domo Investment Group/Solvay's EEA EP and P&I Business
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

Dear Sir or Madam,

- (1) On 21 October 2019, the European Commission received notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of the Merger Regulation by which Domo Chemicals GmbH (“Domo”, Germany), controlled by Domo Investment Group (“DIG”, Belgium), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control from Solvay S.A. (“Solvay”, Belgium), of the divestment business arising from the Commitments attached to the Commission’s decision of 18 January 2019 in case M.8674 *BASF/Solvay's EP and P&I business* (the “Divestment Business”) (the “Transaction”) declaring the acquisition by BASF SE (“BASF”, Germany) of sole control over Solvay’s worldwide polyamide business compatible with the internal

¹ OJ L 24, 29.1.2004, p. 1 (the “Merger Regulation”). With effect from 1 December 2009, the Treaty on the Functioning of the European Union (“TFEU”) has introduced certain changes, such as the replacement of “Community” by “Union” and “common market” by “internal market”. The terminology of the TFEU will be used throughout this decision.

² OJ L 1, 3.1.1994, p. 3 (the “EEA Agreement”).

market, subject to conditions and obligations.³ Domo and the Divestment Business are designated hereinafter as the 'Parties'.

1. THE PARTIES AND THE CONCENTRATION

- (2) Domo is a vertically integrated firm, which offers a portfolio of nylon 6 intermediates, nylon 6 and 6.6 engineering plastics (“EP”), packaging film, fertilizers, and distributes petrochemical products. Domo serves the automotive, food, medical, pharmaceutical, agricultural, chemicals and electronics industries.
- (3) The Divestment Business is primarily involved in the nylon 6.6 value chain and focuses on the manufacturing of nylon 6.6 intermediates, EP, and performance fibres. It is also active in the nylon 6 supply chain (producing nylon 6 base polymer (“BP”) and EP) to a lesser extent.
- (4) By decision of 18 January 2019 (the “Decision”) based on Article 8(2) of Council Regulation (EC) No 139/2004, the Commission declared the operation by which BASF acquires sole control of Solvay’s worldwide polyamide business compatible with the internal market subject to conditions and obligations (the “Commitments”).
- (5) The Commitments offered by BASF consist in the divestiture to a single suitable buyer of the Divestment Business, which includes Solvay's facilities of Belle-Etoile and Valence (France), Gorzow (Poland), and Blanes (Spain). It also includes a 49% minority interest in a newly-created production joint venture (the “Chalampé JV”). BASF will be the owner of the remaining 51% of the Chalampé JV. Assets owned by Solvay, including production facilities of KA Oil, nitric acid, adipic acid and AH Salt, located on the Chalampé (France) site will be transferred to the Chalampé JV. The Commitments also include long-term supply agreements of a key input into the nylon 6.6 value chain, adiponitrile (“ADN”), to meet the Divestment Business' requirements.⁴
- (6) By decision of 31 October 2019, based on Section D of the Commitments attached to the Decision, the Commission approved Domo as a suitable purchaser of the Divestment Business and concluded that the Divestment Business is being sold in a manner consistent with the Commitments.
- (7) As a result of the Transaction, Domo will acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, sole control over the Divestment Business.

2. EU DIMENSION

- (8) The Transaction does not satisfy the turnover thresholds set out in Articles 1(2) or 1(3) Merger Regulation. However, it does meet the national thresholds for

³ Publication in the Official Journal of the European Union No C 361, 25.10.2019, p. 9.

⁴ The only producer of ADN in the EEA is Butachimie, a joint venture between Solvay (to be replaced by BASF following the Decision) and Invista. Under the Commitments, BASF committed to (i) assign to the purchaser of the Divestment Business a long term agreement for the supply of ADN negotiated with a third party, as well as to (ii) enter into a separate agreement to supply directly the purchaser of the Divestment Business with ADN. As a result, the Divestment Business will have access on a long-term basis to a sufficient amount of ADN as it did as part of the Solvay group.

notification or reviewability under the merger control laws of five EU Member States: Austria, Germany, Poland, Romania and Slovakia. The Transaction is deemed to have Union dimension and is notified to the Commission on the basis of Article 4(5) EUMR given that (i) on 16 September 2019 Domo informed the Commission by means of a reasoned submission that the concentration should be examined by the Commission; and (ii) by 9 October 2019 no Member State has expressed its disagreement vis-à-vis the Commission reviewing the concentration.

3. RELEVANT MARKETS

- (9) The main nexus of the Transaction are nylon products, and more precisely PA 6 and PA 6.6 (where PA stands for polyamide, a synonym of nylon) products. PA 6 and PA 6.6 are produced as base polymers (PA 6 BP and PA 6.6 BP), which are then transformed into one of three types of downstream products: (i) engineering plastics (PA 6 EP and PA 6.6 EP), (ii) performance fibres (PA 6 PF and PA 6.6 PF), or (iii) films (PA 6 and PA 6.6 films).
- (10) PA 6 BP and PA 6.6 BP are each manufactured through different processes using different production equipment and inputs.⁵
- (11) PA 6 EP and PA 6.6 EP are used in a wide number of end use applications in the automotive (e.g. engine parts), electronics (e.g. plastic parts in appliances), and construction (e.g. window frames) industries.
- (12) PA 6 and PA 6.6 PF are mainly used for clothing and carpeting.
- (13) PA 6 and PA 6.6 films are used for film for food packaging.
- (14) Domo is vertically integrated in the PA 6 value chain with limited activities in PA 6.6, while the Divestment Business is primarily active in the PA 6.6 value chain with limited activities in PA 6. In the Decision, the Commission concluded that PA 6 BP and PA 6.6 BP constitute distinct product markets.⁶ The Commission also found that PA 6 EP and PA 6.6 EP are different product markets.⁷ Therefore, the product portfolios of the Parties are largely complementary and the Transaction only leads to limited overlaps.
- (15) Domo and the Divestment Business' activities overlap in a number of products in the PA 6 and PA 6.6 value chain. However, the Parties' combined market share only exceeds 20% in the EEA market for PA 6.6 EP. Therefore, only one horizontally affected market arises.
- (16) There are also a number of vertical relationships between Domo and the Divestment Business. However, they only lead to one affected market in relation to Domo and the Divestment Business' PA 6 BP activities (upstream) and Domo's PA 6 Film activities (downstream).
- (17) The present decision only discusses affected markets, as outlined above.

⁵ Commission Decision in Case M.8674 – BASF/Solvay's EP and P&I business, para. 244 et seq.

⁶ Commission Decision in Case M.8674 – BASF/Solvay's EP and P&I business, para. 260.

⁷ Commission Decision in Case M.8674 – BASF/Solvay's EP and P&I business, para. 309.

3.1. PA 6 BP

3.1.1. Introduction

- (18) PA 6 BP is a medium performance polyamide which belongs to the family of aliphatic polyamides.
- (19) PA 6 BP is made from the ring opening polymerisation of caprolactam.
- (20) PA 6 BP is predominantly used for the production of PA 6 PF (including textile and carpet), EP and films for food packaging.

3.1.2. Product market definition

- (21) In case *M.8674 BASF/Solvay's EP and P&I business*, the Commission concluded that PA 6 BP constitutes a separate and standalone product market.⁸
- (22) The Notifying Party concurs with the Commission's decisional practice as regards PA 6 BP.
- (23) The evidence in the Commission's file has not provided any indication which would suggest that departing from the Commission's decisional practice would be adequate and therefore this product market definition is retained for the purposes of this Decision.

3.1.3. Geographic market definition

- (24) In case *M.8674 BASF/Solvay's EP and P&I business*, the Commission concluded that the PA 6.6 BP market is EEA-wide in scope and left open the geographic market definition for PA 6 BP.⁹
- (25) The Notifying Party submits that the PA 6 BP market is EEA-wide in scope.
- (26) The evidence in the Commission's file has not provided any indication that the geographic scope of the market proposed by the Notifying Party is not appropriate and therefore this geographic market definition is retained for the purposes of this Decision.

3.1.4. Conclusion on market definition for PA 6 BP

- (27) For the purposes of the present decision, the Commission considers that the market for PA 6 BP constitutes a separate market which is EEA-wide in scope.

3.2. PA 6 film

3.2.1. Introduction

- (28) PA 6 BP can notably be processed into films, which are either bi-axially oriented polyamide films ("BOPA") or non-oriented cast polyamide films ("CAST"). BOPA film is produced by cast-extruding PA 6 BP into film, which is then horizontally and

⁸ Commission Decision in Case M.8674 – BASF/Solvay's EP and P&I business, para. 252 et seq.

⁹ Commission Decision in Case M.8674 – BASF/Solvay's EP and P&I business, para. 277 et seq.

vertically stretched. CAST film is produced by cast-extruding PA 6 BP into film with no further stretching being involved.

- (29) Customers of PA 6 film use these films for the production of standard flexible packaging materials for consumer goods. This involves significant further processing, for example the lamination with other materials (polyethylene, ethylene-vinyl acetate, polyethylene terephthalate, cast polypropylene, aluminium foil or paper). Packaging based on PA 6 film is mainly used where a good gas and aroma barrier is required. This is for example the case for food and pharmaceutical products.

3.2.2. Product market definition

- (30) The Commission has so far not specifically analysed the product market for PA 6 film.¹⁰
- (31) Domo submits that the PA 6 film market forms a distinct product market and that no further segmentation is appropriate.
- (32) Whether the market for PA 6 film constitutes a standalone separate market or should be further segmented into BOPA and CAST can be left open as the Transaction will leave effective competition unaffected under any alternative definition of the relevant market.

3.2.3. Geographic market definition

- (33) The Commission has so far not specifically analysed the geographic market for PA 6 film.
- (34) Domo submits that PA 6 film is worldwide, as suppliers offer the product globally.
- (35) The precise definition of the relevant geographic market can be left open as to whether it is EEA-wide or worldwide in scope, as the Transaction will leave effective competition unaffected under any alternative definition of the relevant market.

3.2.4. Conclusion on market definition for PA 6 film

- (36) The precise product and geographic market definitions can be left open as the Transaction will leave effective competition unaffected under any alternative definition of the product and geographic market.

3.3. PA 6.6 EP

3.3.1. Introduction

- (37) PA 6.6 EP belongs to the group of engineering plastics. These have been developed in the 1960s and 1970s to replace materials like metal, alloys, wood and glass. Compared to those materials, engineering plastics are often lighter and easier to

¹⁰ The Commission examined the PA 6 EP and PA 6.6 EP markets, as well as the PA 6.6 PF market in Case M.8674 – BASF/Solvay's EP and P&I business, but it did not examine the market for PA 6 film.

process into complex shapes. Their qualities make them suitable for diverse industry segments, i.e., transportation/automotive, industrial and consumer products and construction.

- (38) Engineering plastics are produced in a polymerisation process by mixing molten base polymer (PA 6 BP for PA 6 EP and PA 6.6 BP for PA 6.6 EP) with additional ingredients such as additives (e.g. flame retardants), stabilisers (e.g. to improve resistance against heat or UV light) and various fillers from minerals to fibres. These additional ingredients are, depending on the intended field of application, added for stiffness, strength, impact or other performance features such as thermal or electrical conductivity. After this compounding step, they are sold to customers in form of granules. Customers process the granules into the final product form by using processes like injection moulding, blow moulding or extrusion.

3.3.2. *Product market definition*

- (39) In case *M.8674 BASF/Solvay's EP and P&I business*, the Commission concluded that PA 6.6 EP constitutes a separate and standalone product market.¹¹
- (40) The Notifying Party concurs with the Commission's decisional practice as regards PA 6.6 EP.
- (41) The evidence in the Commission's file has not provided any indication which would suggest that departing from the Commission's decisional practice would be adequate and therefore this product market definition is retained for the purposes of this Decision.

3.3.3. *Geographic market definition*

- (42) In case *M.8674 BASF/Solvay's EP and P&I business*, the Commission concluded that the PA 6.6 EP market is EEA-wide in scope.¹²
- (43) The Notifying Party concurs with the Commission's decisional practice as regards PA 6.6 EP.
- (44) The evidence in the Commission's file has not provided any indication which would suggest that departing from the Commission's decisional practice would be adequate and therefore this geographic market definition is retained for the purposes of this Decision.

3.3.4. *Conclusion on market definition for PA 6.6 EP*

- (45) For the purposes of the present decision, the Commission considers that the EEA-wide market for PA 6.6 EP constitutes a relevant market.

¹¹ Commission Decision in Case M.8674 – BASF/Solvay's EP and P&I business, para. 292 et seq.

¹² Commission Decision in Case M.8674 – BASF/Solvay's EP and P&I business, para. 310 et seq.

4. COMPETITIVE ASSESSMENT

4.1. Horizontal overlaps

4.1.1. PA 6.6 EP

- (46) As can be seen in the table below the combined market shares of the Parties on the PA 6.6 EP market are [20-30]% in terms of volume and below 20% in terms of value.

Table 1: Market shares estimates on the PA 6.6 EP market (EEA) (2018)

Market Player	Volume (kt)	%	Value (m EUR)	%
Divestment Business	[...]	[20-30]%	[...]	[10-20]%
Domo Chemicals	[...]	[0-5]%	[...]	[0-5]%
Combined	[...]	[20-30]%	[...]	[10-20]%
BASF	[...]	[20-30]%	[...]	[20-30]%
DowDupont	[...]	[20-30]%	[...]	[20-30]%
DSM	[...]	[0-5]%	[...]	[0-5]%
EMS	[...]	[0-5]%	[...]	[5-10]%
Radici	[...]	[10-20]%	[...]	[10-20]%
Lanxess	[...]	[5-10]%	[...]	[5-10]%
Celanese	[...]	[0-5]%	[...]	[0-5]%
Albis	[...]	[0-5]%	[...]	[0-5]%
Ascend	[...]	[0-5]%	[...]	[0-5]%
Total	[400-500]	100.0%	[1000-1500]	100.0%

- (47) Therefore, Domo and the Divestment Business' combined market share only exceeds the affected market threshold of 20% in the EEA market for PA 6.6 EP in terms of volume, where the Parties' market share remains below 25%, the level under which concentrations are presumed to not impede effective competition.¹³ Moreover, the increment brought by Domo is of only [0-5]%.
- (48) Numerous players remain on the market in the EEA post-Transaction, including important players such as BASF and DowDupont, and a number of other medium and small players such as Radici, Lanxess, Celanese, Albis, Ascend, EMS and DSM, all of them with higher market shares than Domo pre-Transaction. In particular,

¹³ See Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, of 05/02/2004 (the "Horizontal Merger Guidelines"), para. 18.

BASF and DowDupont's market share will remain very close to the merged entity's post-Transaction, and even exceed it based on value.

4.1.2. Conclusion on horizontal effects on the PA 6.6 EP market

- (49) In view of the limited market shares of the Parties and the number of players active in the PA 6.6 EP market in the EEA, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market regarding the PA 6.6 EP market in the EEA.

4.2. Vertical overlaps

4.2.1. Domo and the Divestment Business' PA 6 BP activities (upstream) and Domo's PA 6 film activities (downstream)

- (50) Domo and the Divestment Business are active in the production of PA 6 BP, [sales strategy].
- (51) As can be seen in table 2 below, the combined share of the Parties on the upstream PA 6 BP market is [10-20]% in terms of consumption (merchant sales plus captive use), while for merchant sales the combined share of the Parties is [10-20]%. In terms of capacity the combined share of the Parties is [10-20]%.

Table 2: Market shares estimates on the PA6 BP market (EEA) (2018)

Market Players	Merchant sales				Merchant sales + captive			
	Volume		Value		Volume		Value	
	kt	%	m EUR	%	kt	%	m EUR	%
Divestment Business	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	N/A	N/A
Domo Chemicals	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	N/A	N/A
Combined	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	N/A	N/A
BASF	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	N/A	N/A
DSM	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	N/A	N/A
Groupo Azoty	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	N/A	N/A
Lanxess	[...]	[5-10]%	[...]	[5-10]%	[...]	[10-20]%	N/A	N/A
UBE	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	N/A	N/A
Kubishev	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	N/A	N/A
Other	[...]	[20-30]%	[...]	[20-30]%	[...]	[10-20]%	N/A	N/A
TOTAL	[400-500]	100.0%	[1000-1500]	100.0%	[800-900]	100.0%	N/A	N/A

- (52) Domo is also active downstream, notably in the PA 6 film market. By contrast, the Divestment Business is not active in the downstream market of PA 6 film and consequently there will be no market share increment downstream as a result of the Transaction.
- (53) At worldwide level, the market shares of Domo on the downstream PA 6 film market remain below 30% under any market segmentation. In the EEA, the market shares of Domo in the PA 6 film market¹⁴ are [20-30]% in terms of both volume and value, and would thus fall below the affected market threshold for vertical relationships. However, if the market is further segmented, the market shares of Domo in the EEA would amount to [20-30]% (volume) and [20-30]% (value) in the BOPA market, and [30-40]% (volume) and [30-40]% (value) in the CAST market.

Table 3: Market shares estimates on the PA 6 film market (EEA) (2018)

Market Player	BOPA + CAST				BOPA				CAST			
	Vol (kt)	%	Value	%	Vol (kt)	%	Value	%	Vol (kt)	%	Value	%
Domo Chemicals	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[30-40]%	[...]	[30-40]%
TPL	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[20-30]%	[...]	[0-5]	[...]	[0-5]
MF Folien	[...]	[20-30]%	[...]	[20-30]%	[...]	[10-20]%	[...]	[20-30]%	[...]	[60-70]%	[...]	[60-70]%
Biaxis/Sojitz	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[0-5]	[...]	[0-5]
Other traders	[...]	[5-10]%	[...]	[5-10]%	[...]	[10-20]%	[...]	[5-10]%	[...]	[0-5]	[...]	[0-5]
Other traders extra EEA	[...]	[10-20]%	[...]	[5-10]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[0-5]	[...]	[0-5]
Total	[40-50]	100%	[100-200]	100%	[30-40]	100%	[100-200]	100%	[0-10]	100%	[20-30]	100%

- (54) Therefore, given that the market shares of Domo in the CAST market are above 30%, a vertically affected market arises with regard to Domo and the Divestment Business' PA 6 BP activities (upstream) and Domo's PA 6 film activities in the CAST market (downstream).

4.2.2. Input foreclosure

- (55) The ability of the merged entity to foreclose the access by PA 6 film competitors to PA 6 BP will not change significantly as result of the Transaction. First, the

¹⁴ Domo Chemicals sells all its PA 6 film production to third parties and does not use it captively.

Divestment Business is not active in the merchant market pre-Transaction and needs all of its limited production for captive use. Second, the combined market shares of the Parties in the PA 6 BP market (based on consumption shares) are relatively low ([10-20]%) and the increment brought by the Divestment Business is limited ([0-5]%). Third, there is a significant number of other well-established PA 6 BP suppliers active on the merchant market and from which rival PA 6 film manufacturers could source PA 6 BP such as BASF, DSM Groupo Azoty, Lanxess or UBE.

- (56) The incentives of the merged entity to foreclose the access by PA 6 film competitors' access to PA 6 BP will not materially change since Domo was already vertically integrated and the Divestment Business is not active in the PA 6 film market. Therefore, there is no increment of market shares in the downstream market. Moreover, the Divestment Business only has a market share of [0-5]% in the downstream PA 6 EP market (with sales of [quantities sold] kts) and is not active in PA 6 PF. Therefore, [quantities sold and sales strategy].

4.2.3. *Customer foreclosure*

- (57) The ability of the merged entity to foreclose access of PA 6 BP suppliers to a sufficient base of customers will not change significantly as result of the Transaction. First, the distinction between BOPA and CAST is not relevant for a customer foreclosure strategy, as the PA 6 BP is the same for both products. If the assessment is carried out on the basis of the plausible PA 6 film market as a whole, instead of a narrower plausible CAST market, there is no affected market as Domo has a moderate market share of [20-30]% on the downstream PA 6 film market and the Divestment Business is not active in this market. Second, Domo is not an important customer of PA 6 BP and [sales strategy]. In fact, Domo [quantities sold and sales strategy]. Third, the increment brought about by the Divestment Business in terms of PA 6 BP market share is very limited and [sales strategy]. Consequently, [quantities sold and sales strategy]. Finally, PA 6 film is only a minor end-application of PA 6 BP (total market of [40-50] kts) as PA 6 BP is predominantly used for the production of PA 6 EP (total market of [400-500] kts). PA 6 PF producers also need to purchase PA 6 BP. The incentives of the merged entity to foreclose access of PA 6 BP suppliers to a sufficient base of PA 6 films customers will not materially change since Domo was already vertically integrated and has [quantities sold and sales strategy].

4.2.4. *Conclusion*

- (58) The Commission therefore concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of vertical effects arising from vertical links between the upstream market for PA 6 BP in the EEA and the downstream market for PA 6 film in the EEA.

5. CONCLUSION

- (59) 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)

Margrethe VESTAGER

Member of the Commission