



EUROPEAN COMMISSION
DG Competition

***Case M.9686 - MITSUI / BELCHIM
CROP PROTECTION***

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: 27/04/2021



EUROPEAN COMMISSION

Brussels, 27.4.2021
C(2021) 3098 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Japan

Dear Sir or Madam,

Subject: Case M.9686 – Mitsui/Belchim
Approval of De Sangosse as purchaser of the Paraffinic Oil Divestment Business following your letter of 7 April 2021 and the Trustee's opinion of 20 April 2021

1. FACTS AND PROCEDURE

- (1) By decision of 11 February 2021 (the 'Decision'), based on Article 6(1)(b) in connection with Article 6(2) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the 'Merger Regulation')¹ and Article 57 of the Agreement on the European Economic Area², the Commission declared the operation by which Mitsui & Co Ltd ('Mitsui') acquires sole control of Belchim Crop Protection NV ('Belchim') compatible with the internal market and the EEA Agreement. The Decision is subject to the conditions and

¹ OJ L 24, 29.01.2004, p. 1. 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').

obligations laid down in the commitments annexed to the Decision (the 'Commitments'). Mitsui and Belchim are hereinafter collectively referred to as the 'Parties'.

- (2) In particular, under the Commitments, Mitsui undertook to transfer the distribution agreement (and other relevant agreements) and the product registration package for Fibro, Belchim's pipeline paraffinic oil product for virus control in flower bulbs and in seed potatoes, in the Netherlands (the 'Paraffinic Oil Divestment Business').
- (3) By letter of 18 March 2021, revised on 7 April 2021, the Parties proposed the De Sangosse group ('De Sangosse') for approval by the Commission as remedy-taker of the Paraffinic Oil Divestment Business (the 'Reasoned Proposal') and submitted an amendment ('Amendment I') to the existing agreement on the development, distribution and formulation of Fibro ('Data Development, Distribution and Custom Formulation Agreement'), which incorporates the original Data Development, Distribution and Custom Formulation Agreement, between De Sangosse, its wholly owned subsidiary Comptoir Commercial Des Lubrifiants SAS ('CCL') and Belchim (the 'Transaction Documents'). Amendment I transfers the pending registration application and the exclusive distribution rights for the pipeline paraffinic oil product in the Netherlands to De Sangosse (the 'Proposed Transaction').
- (4) On 20 April 2021, the monitoring trustee, Monitoring Trustee Partners B.V. (the 'Trustee') submitted a document assessing De Sangosse's suitability as a remedy-taker (the 'Reasoned Opinion'), which, in particular, indicated that it fulfils the criteria of the purchaser requirements in section D (paragraph 14) of the Commitments attached to the Decision. In this assessment, the Trustee also indicated that, on the basis of the Transaction Documents, the Paraffinic Oil Divestment Business would be sold in a manner consistent with the Commitments.

2. ASSESSMENT OF THE PROPOSAL

2.1. Legal Framework

- (5) Pursuant to paragraph 15 of the Commitments, the Commission has to verify that the remedy-taker fulfils the purchaser criteria and that the Paraffinic Oil Divestment Business is being transferred in a manner consistent with the Commitments.
- (6) In accordance with paragraph 14 of the Commitments, in order to be approved by the Commission, any remedy-taker must fulfil the following criteria:
 - (a) The remedy-taker shall be independent of and unconnected to each of Mitsui and Belchim and their affiliated undertakings (this being assessed having regard to the situation following the transfer of the Paraffinic Oil Divestment Business);
 - (b) The remedy-taker shall have the financial resources, proven expertise and incentive to maintain and develop the Paraffinic Oil Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;

- (c) The remedy-taker shall be a company already active in the crop protection industry;
- (d) The assignment of the Paraffinic Oil Divestment Business to the remedy-taker must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed.

2.2. Brief description of the proposed purchaser

- (7) De Sangosse is a global company headquartered in France, which develops, manufactures and markets crop protection, plant nutrition and pest control solutions. Overall, the company has approximately 830 employees, 23 operating companies, and distribution activities in over 60 countries. It has a strong footprint in Europe, including in the Netherlands. In 2020, De Sangosse had a turnover of over EUR 280 million.
- (8) De Sangosse, through its wholly owned subsidiary CCL, [...]. CCL formulates this product, [...].

2.3. Independence from the Parties

- (9) Pursuant to paragraph 14(a) of the Commitments, in order to be approved by the Commission, a suitable purchaser must be independent from and unconnected to each of Mitsui and Belchim and their affiliated undertakings.
- (10) According to the information provided by Mitsui and the Trustee, there are [...] between either of Mitsui or Belchim and De Sangosse, and De Sangosse does [...] with Mitsui or Belchim.³
- (11) De Sangosse (through CCL) and Belchim are both members of the relevant paraffinic oil taskforce [...].
- (12) It is a feature of the crop protection industry that companies organize themselves in task forces in order to collaborate with respect to the re-registration of active ingredients. Furthermore, the scope of the task force of which De Sangosse and Belchim are both members is limited to one particular activity. Their joint presence in a task force in itself therefore does not impede the independence of De Sangosse vis-à-vis the Parties.⁴
- (13) In addition, under a number of agreements, De Sangosse supplies products and services to each of the Parties, which accounted for ca. [0-5]% of De Sangosse's revenues in 2020. Because those agreements are considered to be standard collaboration agreements that are common practice in the crop protection industry and are limited in (financial) scope and/or in terms of remaining duration, they do not impede De Sangosse's independence vis-à-vis the Parties.⁵

³ Reasoned Opinion, sections 4.2.2 and 4.2.3; Reasoned Proposal, paragraph 22.

⁴ Reasoned Opinion, section 4.3.1.

⁵ Reasoned Opinion, section 4.3.1.

- (14) On the basis of the information provided by Mitsui and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that De Sangosse is, and will continue to be after the Proposed Transaction, independent from, and unconnected to, each of Mitsui and Belchim and their respective affiliated undertakings.

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

- (15) Pursuant to paragraph 14(b) of the Commitments, in order to be approved by the Commission, the remedy-taker must have the financial resources, proven expertise and incentive to maintain and develop the Paraffinic Oil Divestment Business as a viable and active competitive force in competition with the Parties and other competitors. In particular, and pursuant to paragraph 14(c) of the Commitments, the remedy-taker must be already active in the crop protection industry.
- (16) Based on information provided by Mitsui and the Trustee, De Sangosse's 2020 revenues amounted to approximately EUR 300 million, representing an increase of approximately [0-5]% on the prior year. The Trustee assesses De Sangosse as quite profitable, [...]. The Trustee considers that, based on De Sangosse's current financial position and [...], the company has sufficient financial resources to acquire the Paraffinic Oil Divestment Business and to develop it in the future.⁶
- (17) As regards expertise, De Sangosse has over 90 years' experience in the agrochemicals sector, with a proven track record for the registration, bringing to market and successful commercialization of agrochemical products. In particular, De Sangosse's subsidiary CCL manufactures Fibro, [...]. The Paraffinic Oil Divestment Business [...], which has a well-established presence in the Netherlands. In addition, De Sangosse is [...] ⁷ a member of the relevant paraffinic oil taskforce. It is therefore capable of obtaining the national registration for Fibro, bringing the product to the Dutch market and growing its market share in competition with the Olie H product of Certis, Mitsui's wholly owned subsidiary.
- (18) As regards incentives, the Trustee notes that the acquisition of the Paraffinic Oil Divestment Business will enable De Sangosse to expand its distribution of paraffinic oil for seed potatoes and flower bulbs from France to the Netherlands and diversify its existing business in the Dutch market. In addition, De Sangosse will be able to take advantage of its own existing formulation facilities and thus benefit from a competitive cost position to place Fibro on the market in the Netherlands.⁸
- (19) On the basis of the information provided by Mitsui and taking into account the Reasoned Opinion submitted by the Trustee, the Commission considers that De Sangosse is active in the crop protection industry, has sufficient financial resources, proven expertise and the incentives to maintain and develop the Paraffinic Oil Divestment Business as a viable and active competitive force in competition with Belchim and other competitors.

⁶ Reasoned Opinion, section 6.2.

⁷ [...]

⁸ Reasoned Opinion, section 6.4.

2.5. Absence of *prima facie* competition problems

- (20) Pursuant to paragraph 14(d) of the Commitments, the transfer of the Paraffinic Oil Divestment Business to a suitable remedy-taker must neither be likely to create *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed.
- (21) Based on information provided by De Sangosse and the Trustee, De Sangosse is currently not active in the Dutch paraffinic oil market and [...].⁹ Accordingly, the Proposed Transaction would not be likely to create *prima facie* competition concerns.
- (22) In addition, Mitsui does not anticipate that the transfer of the Paraffinic Oil Divestment Business will trigger any merger control filings. The Trustee has accordingly not identified a risk of delayed implementation of the Commitments due to outstanding regulatory approvals.¹⁰
- (23) On the basis of the above and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that the acquisition of the Paraffinic Oil Divestment Business by De Sangosse is neither likely to create *prima facie* competition concerns, nor give rise to a risk that the implementation of the Commitments will be delayed.
- (24) This *prima facie* assessment is based on the information available for the purpose of this buyer approval and is without prejudice to the review of the transfer of the Paraffinic Oil Divestment Business to De Sangosse under the applicable merger control rules, if any.

2.6. Assessment of the Transaction Documents

- (25) The Trustee reviewed the Transaction Documents and confirmed that they fulfil the condition of the Commitments to transfer the Paraffinic Oil Divestment Business to a suitable remedy taker. In general, the Trustee considered that the terms of the Transaction Documents reflect Mitsui's obligations set out in the Commitments.¹¹
- (26) In light of the above considerations, the Commission concludes that the Transaction Documents are consistent with the Commitments and that, accordingly, the Paraffinic Oil Divestment Business is being transferred in a manner consistent with the Commitments.

3. CONCLUSION

- (27) On the basis of the above assessment, the Commission approves De Sangosse as a suitable remedy-taker for the above-mentioned reasons.

⁹ Reasoned Opinion, section 6.5.

¹⁰ Reasoned Opinion, section 6.5.

¹¹ Reasoned Opinion, section 5.

- (28) On the basis of the Transaction Documents, the Commission further concludes that the Paraffinic Oil Divestment Business is being sold in a manner consistent with the Commitments.
- (29) This decision only constitutes approval of the proposed purchaser identified herein and of the Transaction Documents. This decision does not constitute a confirmation that Mitsui has complied with its Commitments.
- (30) This decision is based on paragraph 15 of the Commitments attached to the Commission Decision of 11 February 2021.

For the Commission

(Signed)
Olivier GUERSENT
Director-General