II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 3 December 1997

relating to a proceeding pursuant to Council Regulation (EEC) No 4064/89

(Case No IV/M.942 — VEBA/Degussa)

(notified under document number C(1997) 3833)

(Only the German text is authentic)

(Text with EEA relevance)

(98/455/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings ('the Merger Regulation') [1], and in particular Article 8(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to the Commission Decision of 2 September 1997 initiating proceedings,

Having regard to the opinion of the Advisory Committee on Concentrations [2],

Whereas:

(1) On 2 July 1997 the Commission received notification pursuant to Article 4 of the Merger Regulation of a planned transaction by which Veba AG ('Veba') was to acquire control of Degussa AG ('Degussa'). The notification failed to mention the fact that the Veba subsidiary Hüls was doing business through a joint venture on one of the relevant markets, the market in fumed silica; and on 28 July 1997 the notification was declared incomplete. The notification was supplemented on 31 July 1997.

(2) By Decision of 22 July 1997 the Commission, pursuant to Article 7(2) and Article 18(2) of the Merger Regulation, ordered the suspension of the notified merger until such time as it had taken a final decision.

(3) By Decision of 2 September 1997 the Commission initiated proceedings under Article 6(1)(c) of the Merger Regulation.

I. THE PARTIES

(4) Veba operates mainly in the following businesses: electricity, chemicals, oil, distribution, transport and services, and telecommunications. Its chemicals interests are handled by its subsidiary Hüls and by Hüls subsidiaries Röhm and Servo.

(5) Degussa operates in chemicals, health and nutrition, precious metals, and banking.

[1] OJ L 395, 30. 12. 1989, p. 1 (corrigendum: OJ L 257, 21. 9. 1990, p. 13).
[2] OJ C 224, 17. 7. 1998.

II. THE OPERATION

(6) Veba proposes to acquire all the shares in GFC Gesellschaft für Chemiewerte mbH ('GFC'). GFC owns 33 520 000 Degussa shares. Degussa has an equity capital of DEM 460 297 500. This is divided into 92 059 500 shares, which all have equal voting rights. Thus GFC holds 36,41 % of the equity in Degussa.

III. THE CONCENTRATION

(7) The plan notified constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation, since Veba proposes to acquire sole control of Degussa.

(8) In the last five years attendance at the general meeting of shareholders in Degussa has been below 68 % (1993: 67,38 %; 1994: 63,49 %; 1995: 67,95 %; 1996: 66,78 %; and 1997: 67,84 %). Possession of 36,41 % of the shares has consequently meant an assured majority at general meetings, and GFC has exercised control over Degussa. By taking over GFC, therefore, Veba will acquire a controlling interest in Degussa.

(9) A simple majority of the votes cast at the general meeting will enable Veba to appoint the shareholders' members of Degussa's supervisory board. The supervisory board can appoint or dismiss the members of the board of management by simple majority. This ensures that the holder of a simple majority at the general meeting can control the conduct of Degussa's business.

(10) As a result of the concentration, Veba will become by far the biggest shareholder in Degussa; the next-largest shareholder has a stake of only 6,8 %, and the other shares are widely dispersed. Veba will be the only large industrial shareholder with a knowledge of the markets and industries involved. The 6,8 % shareholder is an American family with no comparable market knowledge. The many other very small shareholders are in no position individually to exercise any decisive influence over the conduct of Degussa's business, and have not in the past made any effort to do so jointly.

(11) Given the assured majority at general meetings and in the light of the other circumstances it may be assumed that Veba will acquire *de facto* control of Degussa.

IV. COMMUNITY DIMENSION

(12) Veba and Degussa have a combined aggregate worldwide turnover of over ECU 5 billion (Veba: ECU 39,04 billion; Degussa: ECU 7,22 billion). Each of them has an aggregate Community-wide turnover of over ECU 250 million (Veba: ECU 32,15 billion; Degussa: ECU 3,59 billion). Degussa does not achieve more than two-thirds of its aggregate Community-wide turnover in any one Member State. The concentration consequently has a Community dimension.

V. ASSESSMENT PURSUANT TO ARTICLE 2 OF THE MERGER REGULATION

(13) The business activities of Veba and Degussa overlap partially in the area of chemical products. A more detailed appraisal of the effects of the operation needs to be made in the area of methyl methacrylate, methacrylic acid, transparent plastics, acrylate-based PVC process additives, organosilanes, silicon tetrachloride, fumed silica, diamines/polyamines and reagents for the production of cationic starch. In all other areas and also in other business activities there is no overlap, so that in the absence of other indications the operation will not lead to the strengthening of the existing market positions.

A. The relevant product markets

1. *Methyl methacrylate*

(14) Methyl methacrylate (MMA) is a monomer which is the base for a major proportion of the other products of methacrylic chemistry. It is usually obtained by the ACH process from hydrocyanic acid, methanol and acetone. MMA is a liquid that has no direct use as an end product. As a rule it is processed further, being polymerised for example into polymethyl methacrylate (PMMA), a transparent plastic. According to information supplied by customers and producers, MMA cannot be replaced by other products. Accordingly, the Commission comes to the conclusion that MMA constitutes a separate product market.

2. *Methacrylic acid*

(15) Methacrylic acid is likewise a basic monomer, and is closely related to MMA. It, too, is usually made by the ACH process, from the same raw materials but without the addition of methanol. Like MMA, methacrylic acid cannot be used as an end product, but is processed into other methacrylic products. One important use of methacrylic acid is in paint and varnish resins and dispersions, which in turn

are processed into paints and different kinds of varnish. Methacrylic acid and MMA confer different properties on the products into which they are processed, and are not interchangeable from the user's point of view. This is confirmed by the parties and by competitors and customers. Accordingly, the Commission comes to the conclusion that methacrylic acid is a separate product market.

3. *Transparent plastics*

(16) Transparent plastics are mouldable transparent chemical products, which resemble glass in being transparent, but which are lighter, easier to work and as a rule less fragile than glass. Transparent plastics are used in a wide variety of applications, for example lamp coverings, motor industry subcontracting, advertising, motorway noise barriers, CD cases and other packaging.

(17) The main transparent plastics are polymethyl methacrylate or acrylic glass (PMMA), polycarbonate (PC), styrene-acrylonitrile copolymers (SANS), and polystyrene (PS). These plastics differ in properties and price. PMMA, for example, is especially weatherproof and highly transparent, while polycarbonate has high impact and heat resistance. Polystyrene is less transparent than PMMA and polycarbonate, but it is also cheaper. PMMA is produced by polymerisation from MMA. The other transparent plastics are also produced by polymerisation, but from other raw materials.

(18) The parties are of the opinion that all transparent plastics form one product market. They point out that extensive substitution is possible in many applications — either PMMA or polycarbonate can be used in lamps, for example. Any differences in properties can be reduced in the course of the production process or by the use of additives, and this can be offset in the price. In terms of durability, properties and price, they say, there are no essential differences between the various transparent plastics.

(19) The Commission's enquiries have shown that while substitution is possible in certain uses the extent of substitution varies greatly from one application to another (see the Commission Decision of 28 July 1992 in Case No IV/M.160 Elf Atochem/ Rohm & Haas). Competitors and customers have confirmed that transparent plastics are not interchangeable in all applications. This is in particular the result of the different characteristics of different transparent plastics as described above, which make them specially apt for certain applications and inapt for other applications. But the question whether each transparent plastic constitutes a separate product market can be left open, because even on the assumption that the markets are separate no objections arise in competition law.

(20) On that assumption, only PMMA would be a relevant market. Veba/Hüls and Degussa do both operate in the polycarbonate field, but their combined share of that market is no more than 15 %. Only Veba is involved in polystyrene, through Hüls, which has a market share of less than 15 %, and neither of the parties is active in the SAN business.

(21) Transparent plastics are also sold onward, in the form of moulding powder or extruded or cast sheet. Moulding powder is a granulate which is processed and formed by heating and extrusion or by some other process. It is thus an intermediate product in the production of extruded sheet. Cast sheet, on the other hand, is cast direct at the polymerisation stage, without passing through the moulding powder stage.

(22) The parties are of the opinion that moulding powder and extruded or cast sheet constitute one market. They argue that extrusion or injection moulding do not involve any further substantial chemical change. Nor is there any difference in properties or price, for example, between extruded and cast sheet. They are fully interchangeable.

(23) According to the Commission's enquiries, sheet is considerably dearer than moulding powder, and the buying publics are different too. But the question whether there is one or several markets can be left open, as the conditions of competition are not fundamentally different for moulding powder and for sheet (see the Commission Decision of 28 July 1992 in Case No IV/M.160 Elf Atochem/ Rohm & Haas).

4. *Acrylate-based PVC process additives*

(24) These are products which make the processing of PVC possible. They take the form of powders; when PVC is being formed they ensure that it passes the extruder feed screw without damage to the equipment, and improve the surface structure of the end product. They are used in the processing of both rigid and plasticised PVC, especially in the

production of film, bottles and sections. The functions of acrylate-based PVC processing additives cannot be performed by other materials, and they constitute one product market.

5. *Organosilanes*

(25) Organosilanes are essentially used as binders and cross-linking agents in a very wide variety of applications, such as glass cloths, adhesives and sealants, tyres, paints, varnishes and coatings for the preservation of structures. Three separate markets in organosilanes have to be distinguished.

(26) Organofunctional silanes are used as binders between inorganic materials such as glass, minerals and metals and organic polymers such as thermoplastics, as surfactants for inorganic and organic materials, and as cross-linking agents for polymers. Organofunctional silanes are divided into those for 'rubber' applications, such as tyre repairs, and those for 'non-rubber' applications. Silanes for 'rubber applications' and silanes for 'non-rubber applications' are produced in different installations and according to different procedures. The Commission's enquiries have confirmed that organofunctional silanes for rubber applications cannot be replaced by organofunctional silanes for non-rubber applications. These are therefore separate markets.

(27) The third group of organosilanes is the alkyl silanes, which are used mainly for the preservation of structures on account of their water-repellent qualities. Alkylsilanes are produced in different installations to organofunctional silanes. Because of their special properties they too form a separate market.

6. *Silicon tetrachloride*

(28) Silicon tetrachloride is a chemical used as a raw material for the production of fumed silica, fumed silica esters, fibre optic cables, synthetic silica glass and other products. Silicon tetrachloride and trichlorsilane, a raw material for organosilanes, are products of the hydrochlorination of silicon metal.

(29) The production and sale of silicon tetrachloride is closely linked to the next market stage. According to information supplied by the parties, silicon tetrachloride is produced by downstream firms themselves, or kept for further processing by the producers who carried out the hydrochlorination of silicon metal from which it results. When the silicon tetrachloride is processed into fumed silica, large quantities of hydrochloric acid are obtained, which are then needed for the hydrochlorination of the initial product, silicon metal, and returned to the producers of silicon tetrachloride. This form of integration results in a closed circuit. Because of the danger it presents, the transport of silicon tetrachloride is possible only to a limited extent.

7. *Fumed silica*

(30) Fumed silica is produced from silicon tetrachloride together with oxygen and hydrogen. The product is used as an additive in a variety of different products. The main areas of use are elastomers (improvement of the mechanical properties of silicone rubber, for example in sealants), thermosetting materials (improving the properties of unsaturated polyesters, epoxy resins and acrylates), and paints and varnishes. Fumed silica cannot be replaced in its function by other materials, and forms a separate product market.

8. *Diamines/polyamines*

(31) According to information supplied by the parties, diamines/polyamines are used mainly as hardeners for epoxy resin systems. Epoxy resin systems are used in varnishes, steel and concrete coatings in shipbuilding, civil engineering and building construction, and adhesives. Diamines are produced on the basis of various chemical substances. The parties, who have isophoron available to them, produce isophoron diamines, while other chemical companies produce ethylene or aniline diamines for example.

(32) According to information supplied by the parties, all diamines/polyamines have the same basic function, which is to act as a cross-linking agent in epoxy resin chains. Evidently the properties of particular diamines may differ somewhat. The parties state that diamines are almost always used in compounds, and that identical properties can be achieved by different diamine compounds. The compounds are made by customers, so that the customers possess wide-ranging know-how, and would certainly be in a position to switch to other diamine compounds rapidly and at no significant cost. In the parties' opinion, therefore, diamines and polyamines form one product market. The Commission's enquiries and information supplied by customers and competitors essentially confirm this assessment.

(33) According to the Commission's enquiries, isophoron diamines too are a part of the market for diamines and do not constitute a separate product market. Isophoron diamines make up 25 % of the

volume and 30 % of the value of the total market for diamines. Some users have stated that isophoron diamines cannot be substituted at will for all applications. According to those users, the diamines used affect the properties of the end product (epoxy resin systems), so that in existing products isophoron diamines can be replaced only after fresh testing. In some cases the composition of the end product is subject to official authorisation (in the case of products for use in building, for example), or to the agreement of the purchaser of the final product. The users argue that in these cases the substitution of isophoron diamines will take some time (up to two years) and will require some expenditure, as the development of a new compound and new testing are necessary. However, this is only valid for existing compounds, not for newly developed mixtures, as users have a free choice of diamines. Already even, in the main applications isophorondiamines can be replaced by other diamines at short notice. Only up to 20 % of the presently used isophoron diamines are limited in their substitutability. This reason is not sufficient for considering isophoron diamines as a separate market and therefore the Commission has come to the conclusion that diamines constitute one relevant product market.

9. *Reagents for the production of cationic starch*

(34) Untransformed starch from potatoes, maize and wheat is converted into cationic starch with the use of reagents. Cationic starch is used in the paper industry for the pulp and surface treatment of fine paper, wrapping paper and corrugated board.

(35) According to information supplied by the parties, starch reagents are produced in two stages. In the first place, a reagent is obtained which will not initiate the cationisation process by itself. This 'pre-reagent' has to be converted into the finished reagent by means of a reaction with sodium hydroxide. Most producers offer only the pre-reagent, which unlike the finished reagent can be stored and transported without difficulty. For this reason the pre-reagent and finished reagent constitute separate product markets.

B. **Geographic markets**

(36) With the exception of silicon tetrachloride, all the product markets described above are at least EEA-wide. The Commission's enquiries have found no evidence of smaller geographic markets. In the case of silicon tetrachloride, account has to be taken of the special features described in recital 29, namely the need for proximity between producer and customer. For fumed silica, the Commission is satisfied that the market is EEA-wide. As fumed silica is a voluminous material, transport costs are considerable (up to 8 %). Imports of fumed silica produced outside Europe are insignificant (less than 1 %). Hence all customers have stated that they only use European suppliers, a choice which is also influenced by the need to guarantee quality. A small but significant price increase would not cause customers to switch to non-European suppliers.

C. **Assessment**

1. *MMA*

(37) The bulk of MMA is produced for the producer's own use. The non-captive market for MMA in the EEA is not very big. According to the Commission's enquiries, the market volume in the EEA in 1996 was about 85 000 to 90 000 tonnes. On the basis of sales figures supplied by the parties and their competitors, the breakdown of market shares is as follows ([1]):

	Veba/ Röhm	Degussa	Veba and Degussa	ICI	Atochem	Repsol	BASF	Imports
Market share EEA 1996 by volume	[5 to 10] %	[10 to 15] %	[15 to 25 %	[30 to 50] %	[15 to 20] %	[10 to 20] %	[5 to 10] %	Ca. 5 %

([1]) In the published version of this Decision, some information has been omitted or replaced by ranges, pursuant to Article 17(2) of Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets.

(38) The market leader in MMA is ICI, and there are other strong competitors alongside Veba/Degussa. Thus the concentration will not create a dominant position here.

2. *Methacrylic acid*

(39) Methacrylic acid too is produced mainly for the producer's own use. According to the Commission's enquiries, the volume of the open market for methacrylic acid in the EEA is only about 20 000 tonnes. On the basis of sales figures supplied by the parties and their competitors, the breakdown of market shares is as follows:

	Veba/ Röhm	Degussa	Veba and Degussa	ICI	Atochem	BASF	Imports
Market share EEA 1996 by volume	[5 to 10] %	[10 to 15] %	[15 to 25] %	[40 to 60] %	[10 to 15] %	[10 to 20] %	Ca. 4 %

(40) The market leader in methacrylic acid is ICI, and there are strong competitors alongside Veba/Degussa. Thus the concentration will not create a dominant position here.

3. *Transparent plastics*

(41) According to the information supplied by the parties, the Community market in transparent plastics as a whole amounts to about 330 000 tonnes, or ECU 1 billion. Veba/Röhm's market share is about [15 to 25] % by volume and by value, and Degussa's share is about [5 to 15] %, giving a combined share of some [20 to 35] %. The Commission's enquiries have confirmed these figures. The major competitors are BASF (market share of about 15 to 25 %), Dow (about 10 to 15 %) and Elf Atochem (about 10 to 15 %).

(42) If PMMA were to be considered as a separate market, the Community-wide market volume would be about 220 000 tonnes, or ECU 600 to 650 million. In this case, the market shares would be as follows:

	Veba/Röhm	Degussa	Veba and Degussa	AtoHaas	ICI	BASF	Others
Market share EEA 1996	[20 to 30] %	[7 to 15] %	[30 to 40] %	[25 to 35] %	[10 to 15] %	[5 to 10] %	10-20 %

(43) The concentration would make Veba/Degussa the market leader in PMMA in the Community. Alongside the parties there are several competitors which are comparable to Veba/Degussa as regards their backward integration and their financial strength. The present market leader, AtoHaas, also has a market share which is not much lower than that of the parties'. Furthermore, PMMA can be replaced by other transparent plastics in some uses at least, which also generates a measure of competitive pressure. Thus the concentration, even assuming an independent market for PMMA, would not create a dominant position here.

(44) The concentration would not lead, either, to the creation of an oligopoly by Veba/Degussa and Ato/Haas on the market for PMMA. The combined market share of Veba/Degussa and Ato/Haas would be above 55 %. However, the market is not very transparent. PMMA is produced and sold in different forms and qualities. According to the Commission's enquiries, many customers have stated that the quality of the product and the service are as important as the price. The barriers to market entry are low. This is confirmed by the successful market entry of east European and East Asian producers in the last five years (in particular, Agrobiochem, Bulgaria and Chimei Corp., Taiwan and Lucky, South Korea). For these reasons, the concentration is not expected to lead to a dominant oligopoly on the market for PMMA.

4. *Acrylate-based PVC processing additives*

(45) The market in acrylate-based PVC processing additives has a volume of only about 30 000 tonnes in the EEA as a whole, and a value of well below ECU 100 million. According to the Commission's enquiries, the parties will have a joint market share

of about [15 to 30] % after the merger (Veba [0 to 10] %, Degussa ca. [15 to 25] %. The clear market leader is Rohm & Haas, with a market share of [55 to 70] %. The only other competitor with a market share of over 10 % is Kaneka (about [10 to 15] %. Thus the concentration would not confer a dominant position on the parties. In view of the fact that market structure would be changed very little, there is no reason to expect that the concentration would create or strengthen a dominant position held jointly by the parties and Rohm & Haas.

5. *Organosilanes*

(46) In organofunctional silanes, Hüls operates only in the 'non-rubber' branch, where it has a share of the EEA market of [40 to 50] %, while Degussa, with a market share of less than 1 %, does practically no business.

(47) In the 'rubber' applications, Degussa is very strong. Until 1990, it had a patent on the sulphur-functional silanes used here, and still holds the market share of [>75] % that it had before. Hüls does no business in this area. According to information supplied by the parties, which is confirmed by customers, the main competitor in rubber applications is Witco/Osi, with a market share of about 18 %. Witco has been offering sulphur-functional silanes only since 1996.

(48) As the parties operate on only one market each, the concentration would not lead to any addition of market shares. And, given the fact that the customers are different, there is no need to fear a portfolio effect.

(49) On the market in alkyl silanes, the parties' combined market share is less than 15 %. The clear market leader is Wacker, with a market share of about [50 to 60] %. Thus the concentration would not create a dominant position here.

6. *Silicon tetrachloride*

(50) Degussa uses its entire output of silicon tetrachloride in Antwerp as a raw material for fumed silica. Veba/Hüls supplies mainly to Cabot Hüls and Degussa in an integrated operation for the production of fumed silica. Other producers are Wacker, which processes it into fumed silica, and Dow, in an integrated fumed silica operation. Because of the difficulty of transporting it, the geographic market in silicon tetrachloride is confined to the place of production, so that the concentration will not lead to any addition of market shares.

7. *Fumed Silica*

(51) Fumed silica is generally produced in a closed circuit, in which the supplier of the raw material, silicon tetrachloride or trichlorsilane, recycles the hydrochloric acid resulting from the production of fumed silica. The supplier of the raw material needs the hydrochloric acid for the production of the raw material, that is to say in the hydrochlorination of silicon metal. This means that the fumed silica producer must either cooperate closely with another firm or integrate the upstream stage into his operation.

(52) In the EEA and throughout the world, the market in fumed silica is highly concentrated. There are three producers in Europe: Degussa, Cabot and Wacker. In the United States of America fumed silica is produced by Cabot and Degussa, in Japan by Tokuyama Soda and Nippon Aerosil, which is a Degussa and Mitsubishi joint venture. Other producers, such as Oriana in Ukraine, are of no great importance. Sales of fumed silica in the EEA amount to about ECU 160 million. According to the Commission's enquiries, Degussa has a market share of about [50 to 60] % in the Community, Wacker has [15 to 25] %, and Cabot [25 to 35] %.

(53) Degussa has production facilities in Rheinfelden and Antwerp. Production of the raw material is integrated into the Antwerp operation, and, after the take-over by Hüls, Degussa's Rheinfelden operation will be integrated too. Wacker has production facilities in Burghausen and Kempten, and is likewise integrated with respect to the raw material. Cabot has a production plant in Barry, Wales, where the raw material is supplied by Dow Corning.

(54) In Rheinfelden, Cabot produces fumed silica in a joint venture with Hüls, Cabot Hüls GmbH. The raw materials are supplied by Hüls, and Hüls takes the hydrochloric acid by-product from the joint venture. Hüls also supplies a variety of services such as waste disposal, works protection and fire-fighting. Under the joint venture agreement Cabot and Hüls have equal voting rights. The general meeting of shareholders takes decisions by unanimous vote on real property, longer-term lease agreements, cooperation with other enterprises, agreements on industrial property rights, the budget, borrowing, and agreements on the supply or sale of the products produced by Cabot/Hüls. Hüls and Cabot each appoint a manager. The two managers are responsible for different areas. That appointed by Hüls reports to the manager

appointed by Cabot. Profits and losses of the joint venture are shared between Cabot and Hüls. According to a supply contract between Cabot Hüls and Cabot, Cabot/Hüls is obliged to supply certain minimum quantities to Cabot; in practice, the entire production of Cabot/Hüls is sold to Cabot. The purchase price is linked to Cabot's average selling price for fumed silica.

(55) Veba, through its stake in the joint venture Cabot/Hüls, has an interest in one of the two production plants operated by Degussa's biggest competitor in Europe, so that if Veba takes over Degussa the concentration will confer a dominant position on Veba/Degussa on the market in fumed silica. Degussa is the clear market leader in Europe with a market share of 50 to 60 %. As a result of the joint venture operated by Cabot and Veba there will be a structural link between them which would significantly weaken the position of Cabot as an independent competitor. As a result of the contractual relations between Veba and Cabot/Hüls, Veba/Degussa would always be informed about the pricing behaviour of Cabot on the market for fumed silica and could adapt its pricing behaviour accordingly. The already existing level of transparency of the market resulting from the homogeneity of the product would therefore be considerably increased by the concentration. The fact that Veba, through the Cabot-Hüls joint venture profits transfer arrangement, will benefit directly from a higher price level for the fumed silica sold by Cabot would also obstruct price competition between Cabot and Veba/Degussa. The market position of the remaining competitor, Wacker, would no longer be sufficient to generate effective competitive pressure and to prevent Veba/Degussa from acting independently of customers and competitors on the market. Buyers of fumed silica have therefore for the most part been critical of the merger between Veba and Degussa, assuming that Veba is to maintain its links in a joint venture with an important competitor. In addition, there are major barriers to the entry of new competitors onto the market, as the investment required to set up a new fumed silica plant is very heavy, and the specific process requires a supply of raw materials and an outlet for hydrochloric acid. No new competitor has entered the market in the last five years.

(56) In order to overcome the Commission's concerns, Veba has given an undertaking to dispose of its stake in Cabot Hüls GmbH by [. . . . .] at the latest to a competitor which does not belong either to the Veba group or to the Degussa group, or in which Veba and/or Degussa have no interest, and with which there is no relevant interlocking of directorships. If there has been no such disposal by that date, Veba will transfer all its voting and management rights to a neutral and independent trustee. The appointment of the trustee must be approved by the Commission. The trustee will be given an irrevocable mandate to dispose of Veba's shares by [. . . . .] at the latest to a buyer which does not belong either to the Veba group or to the Degussa group, which has no holding in either Veba or Degussa, and with which there is no relevant cross-tenure of directorships.

(57) The Commission takes the view that the promise of a legal separation between Veba and the joint venture Cabot Hüls prevents the creation of a dominant position by Veba/Degussa. Cabot continues to be an independent competitor with Veba/Degussa. This assessment is shared by the buyers who expressed criticism of the concentration.

(58) The fact that Hüls will go on supplying Cabot with raw materials (silicon tetrachloride and trichlorsilane) and that Cabot will go on supplying Hüls with hydrochloric acid resulting from the production does not justify the conclusion that the companies will not behave as competitors on the market. The mutual supply results from the closed loop situation which is specific to the production as it has been described by the parties. It will also be necessary in the future in order to allow Cabot to remain as an independent competitor on the market. Therefore, the Commission assumes that Hüls will supply Cabot with raw materials in the future. The Commission has been informed of a supply agreement to be entered into which will maintain the continuing competitiveness of the plants. The fact that Hüls has in the past supplied both the joint venture Cabot Hüls and Degussa with raw materials has according to the Commission's enquiries not prevented Cabot and Hüls from behaving independently on the market. Furthermore, Cabot is not unilaterally dependent on Hüls, as Hüls is at the same time dependent on supplies of hydrochloric acid by Cabot. Furthermore, Cabot is supplied independently from Hüls in its works in Barry.

(59) To enable the Commission to verify that this undertaking is complied with, Veba should be required to report to the Commission at the beginning of every month on the steps it has taken to give effect to the undertaking.

8. *Diamines/polyamines*

(60) According to information supplied by the parties, the total volume of the market in diamines and polyamines in the Community is about 31 800 tonnes, or about ECU 116 million. The market shares break down roughly as follows:

	Veba/Hüls	Degussa	Veba and Degussa	BASF	Bayer	Others
Market share EEA 1996	[20 to 30] %	[5 to 10] %	[25 to 35] %	[20 to 30] %	[15 to 25] %	20 to 30 %

(61) Therefore, the concentration will not create a dominant position in the market for diamines/polyamines. Alongside the strong competitors BASF and Bayer there are other smaller suppliers. There is no evidence to suggest a dominant oligopoly consisting of the parties, BASF and Bayer. Diamines are not homogeneous products; each of the leading producers offers its own range, using different chemical bases. Therefore the prices of different types of diamine differ, too.

9. Reagents for the production of cationic starch

(62) This market is small: the market volume in the EEA, including captive use and finished reagents, is between 25 000 and 30 000 tonnes, and excluding captive use and finished reagents it is about 10 000 to 15 000 tonnes. The market shares break down roughly as follows:

	Veba/Servo	Degussa	Veba and Degussa	CFZ	Others
Market share EEA 1996	[15 to 20] %	[17 to 23] %	[35 to 40] %	[25 to 35] %	[30 to 40] %

(63) There are other smaller suppliers of starch reagents too. Two producers, Raisio and Roquette, make reagents for the production of cationic starch mainly or entirely for their own use. But it is conceivable that they might increase or begin production for sales to outsiders if market conditions are attractive enough. Since 1995 the US company Dow has entered the market, with a market share that is still low, but rising. Thus the concentration would neither create a dominant position nor would it lead to oligopolistic dominance.

(64) In the case of finished reagents there is no addition of market shares, and consequently no strengthening of Degussa's market position, as Hüls/Servo does not operate in this area.

VI. CONCLUSION

(65) For these reasons, then, it can be concluded that, provided the undertaking given by Veba (see recital 56) is fulfilled, the concentration will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it. In order to enable the Commission to verify the fulfilment of the condition, Veba should be required to report to the Commission on compliance with the condition. The concentration should accordingly be declared compatible with the common market pursuant to Article 2(2) of the Merger Regulation and pursuant to Article 57 of the EEA Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The concentration between Veba and Degussa is hereby declared compatible with the common market and with the EEA Agreement, subject to compliance with the condition set out in Article 2.

Article 2

This decision is subject to the condition that Veba complies with the following undertakings:

(a) Veba's stake in Cabot Hüls GmbH shall be sold by [. . . . .] at the latest to a buyer which does not belong either to the Veba group or to the Degussa group, or in which Veba and/or Degussa have no interest, and with which there is no relevant cross-tenure of directorships.

(b) If there has been no such disposal as referred to in point (a) by the date given there, Veba shall transfer all its voting and management rights to a neutral and independent trustee. The appointment of the trustee shall be approved by the Commission.

(c) The trustee shall be given an irrevocable mandate to dispose of Veba's shares by [. . . . .] at the latest to a buyer which does not belong either to the Veba group or to the Degussa group, which has no capital holding in either Veba or Degussa, and with which there is no relevant cross-tenure of directorships.

Article 3

Veba is hereby instructed to report to the Commission at the beginning of every month on the steps taken to give effect to the undertaking described in Article 2.

Article 4

This Decision is addressed to:

Veba AG
Bennigsenplatz 1
D-40474 Düsseldorf.

Done at Brussels, 3 December 1997.

For the Commission
Karel VAN MIERT
Member of the Commission