COMMISSION

COMMISSION DECISION

of 13 July 2005

declaring a concentration compatible with the common market and the functioning of the EEA Agreement — Case No COMP/M.3625 — Blackstone/Acetex

(notified under document number C(2005) 2672)

(Only the English text is authentic)

(2005/839/EC)

On 13 July 2005 the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings [1], and in particular Article 8(1) of that Regulation. A non-confidential version of the full Decision can be found in the authentic language of the case and in the working languages of the Commission on the website of the Directorate-General for Competition, at the following address: http://europa.eu.int/comm/competition/index_en.html

(1) On 20 January 2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Regulation (EC) No 139/2004 by which the undertaking Celanese Corporation ('Celanese', US) controlled by Blackstone Crystal Holdings Capital Partners ('Blackstone', Cayman Islands) acquires within the meaning of Article 3(1)(b) of that Regulation the whole of the undertaking Acetex Corporation ('Acetex', Canada) by way of purchase of shares.

(2) Blackstone is a private merchant-banking company based in the U.S., active mainly in financial advisory services, private equity investment and property investment. As described below, one of the companies controlled by Blackstone, 'Celanese', is active on the same product markets as Acetex.

(3) Celanese is a chemicals company active globally in four main sectors: chemical products, acetate products, technical polymers and food ingredients. In the chemical products sector, Celanese manufactures basic chemicals such as acetic acid, acetic anhydride and vinyl acetate monomer ('VAM'); performance chemicals such as polyvinyl alcohol ('PVOH') and emulsions; and specialty chemicals including carboxylic acids, alcohols, amines and esters.

(4) Acetex is active in the acetyls and plastic business. The principal products of Acetex's acetyls business are acetic acid and VAM, which together represented more than 70 % of Acetex's acetyls sales of 2003. Acetex's acetyls products also include the following acetic acid derivatives: acetic anhydride, PVOH and polyvinyl acetate ('PVAc').

(5) The Advisory Committee on Concentrations, at its 132nd meeting on 22 June 2005, delivered a favourable opinion on a draft Decision granting clearance submitted to it by the Commission [2].

(6) The Hearing Officer, in a report dated 29 June 2005, took the view that the right of the parties to be heard had been respected [2].

I. THE RELEVANT MARKETS

Relevant product markets

(7) The Commission's investigation showed that the relevant product markets were the following: acetic acid, VAM, acetic anhydride and PVOH.

(8) Acetic acid is an intermediate chemical product used in the production of various other chemicals including VAM, PVOH, acetic anhydride, acetate esters and monochloroacetic acid. The Commission's investigation showed that acetic acid constitutes a separate product market as there are no substitutable products available on the market.

[1] OJ L 24, 29.1.2004, p. 1.

[2] OJ C 297, 29.11.2005.

(9) VAM is a commodity chemical derived from acetic acid. VAM can be produced in several ways: (i) by adding acetic acid to acetylene; (ii) by adding acetic acid to ethylene; (iii) by reaction of acetic anhydride with acetaldehyde. The Commission's investigation showed that VAM constitutes a separate product market that does not need to be further fragmented.

(10) Acetic anhydride is a basic chemical used primarily (approximately 75 %) for the production of cellulose acetate flake, which in turn is used as raw material for acetate tow (used to make cigarette filters, yarn and some engineering plastics). Other uses of acetic anhydride include the manufacture of pharmaceuticals and detergents. The Commission's investigation showed that acetic anhydride should be considered as a separate product market given the fact that there are no substitutes for acetic anhydride.

(11) PVOH is a water-soluble synthetic polymer belonging to a broader group of High Barrier Polymers. PVOH is obtained from polymerized VAM. The Commission's investigation has shown that there are no substitutable products available. Therefore, for the purpose of this decision, PVOH constitutes a separate relevant product market.

Relevant geographic markets

(12) The key issue in this case was to define the relevant geographic scope for acetic acid, VAM and acetic anhydride. The parties submitted that the geographic markets were global and based their view on five main points:

— Imports satisfy more than 20 % of Western European demand.

— Neither transport costs, nor import duties nor national regulations inhibit the worldwide trade of the products concerned.

— Major global producers supply Western Europe solely through imports.

— The global trade flows seem to shift freely among Asia, Eastern Europe, Western Europe and North America in response to changes in local supply and demand.

— Prices appear to be highly correlated across geographic regions worldwide.

(13) During the market investigation, the parties' arguments were verified and generally confirmed. In particular, the Commission analysed the trade flows of acetic acid, VAM and acetic anhydride between the different world regions, the average price charged in the different regions, the structure of the price, and the importance of production and transaction (transport, storage and duties) costs as well as capacity developments. Furthermore, the majority of respondents to the investigation indicated that they considered the relevant geographic markets to be global for all three products.

(14) To support their claims concerning the definition of the geographic markets for acetic acid and VAM, the parties also submitted a number of econometric studies (price correlation analysis and analysis of the impact of unexpected plant outages on trade flows), which in their view point towards global markets. The Commission carefully reviewed and replicated these studies. It furthermore conducted its own study with more accurate data. According to its results, the geographic market of both acetic acid and VAM includes at least the EEA and North America wide but might also be global.

(15) For the reasons set above, the decision concludes that for the purpose of this case, the relevant geographic markets for acetic acid, VAM and acetic anhydride are global.

(16) In a past decision [1], the Commission considered that the relevant geographic market for all types of High Barrier Polymers, including PVOH, was worldwide. This has broadly been confirmed by the Commission's market investigation. Therefore, the decision concludes that the relevant geographic market for PVOH is global.

II. **ASSESSMENT**

(17) In the global market for acetic acid, the market shares of the new entity will amount to [20-30] (*) % (Celanese, [20-30] %; Acetex, [0-5] %) in terms of capacity and [20-30] % (Celanese, [15-25] %; Acetex, [5-10] %) in terms of merchant sales. The combined entity will face competition from the current largest player on the market, BP (capacity [20-30] %; merchant sales [25-35] %) and other strong players such as Millennium (capacity [1-10] %; merchant sales [1-10] %) and Daicel (capacity [1-10] %; merchant sales [1-10] %).

[1] Commission Decision of 2 June 1999 declaring a concentration to be compatible with the common market (Case No IV/M.1469 — Solvay/BASF) according to Council Regulation (EEC) No 4069/89 (OJ C 197, 14.7.1999, p. 2).

(*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets.

(18) The Commission has analysed whether competitors have enough capacity to restrain an anti-competitive price increase and whether customers can easily switch suppliers in the event of a price increase. Given the level of concentration in the market, it was also necessary to examine the possibility that the proposed operation could give rise to coordinated effects.

(19) The decision concludes that unilateral effects are unlikely because the capacity will increase faster than projected demand and there will therefore be sufficient capacity to defeat a potential price increase. Furthermore, it appears to be easy for customers to change their suppliers, particularly as a large majority of the customers obtain their supplies from multiple sources. With regards to coordinated effects, the decision also concludes that such effects are unlikely, having carefully examined the market structure, the market transparency, the credible retaliation mechanisms, and the reaction of customers and current and potential competitors.

(20) In the global market for VAM, the market shares of the new entity will amount to [25-35] % (Celanese [20-30] %; Acetex [0-5] %) in terms of capacity and [35-45] % (Celanese [30-40] %; Acetex [5-10] %) in terms of merchant sales. The parties will face competition from several large players such as Dow (capacity [5-15] %; merchant, [5-15] %), Millennium (capacity [5-15] %; merchant [10-20] %), DuPont (capacity [10-20] %), Dairen (capacity [1-10] %; merchant [1-10] %) and BP (capacity [1-10] %; merchant [5-15] %).

(21) For similar reasons as those set out for the acid acetic market, and after a careful examination of the characteristics of the VAM market, the decision concludes that unilateral effects are unlikely. The decision also concludes that coordinated anticompetitive effects are unlikely on the VAM market mainly because of the substantial gap between the parties' merchant market shares and those of the largest competitor. In addition, the different levels of integration and the use of different technologies give rise to different cost structures and incentives for the various producers, which further reduce the likelihood of successful co-ordination.

(22) In the global market for acetic anhydride, the market shares of the new entity will amount to [15-25] % (Celanese [15-25] %; Acetex [0-5] %) in terms of capacity and [30-40] % (Celanese [25-35] %; Acetex [5-10] %) in terms of merchant sales. The parties will face competition from BP, Eastman, Jilin and Daicel with market shares on the merchant sales market of [15-25] %, [10-20] %, [5-15] % and [1-10] % respectively. Considering the strong competition that the combined entity will face from these competitors, which currently produce at competitive cost, the decision concludes that the notified operation will not significantly impede effective competition on the global market for acetic anhydride. The likelihood of coordinated effects is also examined in the decision, which concludes that such effects are excluded.

(23) In the global market for PVOH, the market shares of the new entity will amount to [5-15] % (Celanese [5-10] %; Acetex [0-5] %) in terms of capacity and [5-15] % (Celanese [5-10] %; Acetex [0-5] %) in terms of merchant sales. This combined market share would not allow the parties to exercise market power; therefore the decision concludes that the operation will not significantly impede effective competition on the global PVOH market.

(24) Finally, the Commission has assessed the potential effects of the transaction on vertically related markets. Both Celanese and Acetex are downstream vertically integrated companies in the sense that they use acetic acid to produce both acetic anhydride and VAM, and VAM to produce PVOH. Celanese is active on the downstream markets for emulsions and emulsion powders, cellulose acetate and acetate esters. Acetex is a consumer of ethylene vinyl acetate resin copolymers and PVAc resins. However, given the low market shares of the parties and the relatively small increment brought about by the transaction on the relevant markets, the decision concludes that the transaction is unlikely to affect the vertically related markets.

III. **CONCLUSION**

(25) For the reasons set out above, the Commission concluded that the proposed concentration does not significantly impede effective competition in the common market or a substantial part of it, in particular as a result of the creation or strengthening of a dominant position. The concentration is therefore to be declared compatible with the common market and the EEA Agreement, in accordance with Article 8(1) of the Merger Regulation and Article 57 of the EEA Agreement.