MERGERS (PETROCHEMICALS): THE TOTAL/PETROFINA CASE

Subject: Mergers
Undertakings by parties

Industry: Petrochemicals, oil, speciality chemicals, rubber products

Parties: Total (France)
PetroFina (Belgium)

Source: Commission Statement IP/99/197, dated 26 March 1999

(Note. Both in the United States and in the European Union, there is a strong tendency for oil companies to merge; and this merger is the latest on the European side. The parties have offered undertakings in respect of petroleum storage depots.)

The Commission has cleared a concentration by which the French oil company Total acquires the control of the Belgian oil and petrochemical company PetroFina. The clearance is subject to conditions, following the undertakings proposed by the parties in view of eliminating competition concerns in the market for non-forecourt sales of fuels in the Northern part of France. Moreover, part of the operation, notably the concentration of petroleum storage infrastructure in the Southern part of France, will be reviewed by the French competition authorities, following their request for a partial referral of the case. The transaction will be effected through the acquisition by Total of 40.9% of PetroFina's capital, as well as through a public bid launched by Total on the remaining shares of PetroFina, currently held by the public.

Total is a French limited company active in the production of hydrocarbons, refining, distribution of petroleum products, and speciality chemicals, including coatings. PetroFina is a Belgian limited company active in the oil and petrochemical industry. The economic sectors concerned by the operation are those of oil and gas, including the upstream, that is, exploration, production, refining, logistics and distribution of refined products to end users and resellers; petrochemicals (only PetroFina being active in this field in Europe); speciality chemicals such as inks, coatings, adhesives et resins (only Total being active in this field, except for PetroFina's presence in coatings); and technical and home products made of rubber (only Total).

The operation raised competition concerns in the market for non-forecourt sales of refined petroleum products (gasoline, diesel, heating oil) in five areas of the Northern part of France (Pas-de-Calais, Nord, Aisne, Ardennes, Somme). As opposed to sales through gas stations owned by Total or PetroFina, non-forecourt sales are those made to either resellers (hypermarkets and unbranded gas stations) or large end users (such as transport groups, industry and so on). These areas depend mainly on fuels supplies from Total's refinery in Dunkirk and PetroFina's storage depot in Feluy (Belgium).

To remedy this problem, the parties undertook to divest part of their shares in

petroleum storage depots. The undertakings aim at making alternative supplies available. The divested storage capacity is enough to enable the acquirer to market quantities of refined products corresponding to, or exceeding, Fina's historical sales on this market. Given the high cross price elasticity of refined petroleum products, the freed storage capacity is expected to have constraining effects on the offer of refined products from Dunkirk and Feluy. On top of these structural undertakings, the parties undertook to offer their regular clients of the storage depots at Valenciennes and Feluy contracts for the purchase of refined petroleum products for a duration of three years under PLATT'S-ARA conditions. This measure is of a transitional nature, aiming at enabling the current customers of the parties to satisfy their needs in refined petroleum products without any rupture resulting from the transaction. The parties' undertakings have been tested and have qualified for a clearance decision.

In addition, following a reasoned request by the French competition authorities (DGCCRF), part of the file has been referred to France. More precisely, the DGCCRF will review the effects of the operation on the petroleum storage infrastructure in the area between the West of the Rhone river and Perpignan, including the city of Toulouse. In this area the operation creates significant overlapping in the parties' petroleum storage facilities. The merger review procedure in France does not have the effect of suspending the operation, which can therefore go ahead, even while the review by the DGCCRF is taking place.

The Imetal / ECC Case

ACQUISITIONS (CHINA CLAY): THE IMETAL / ECC CASE

Subject: Acquisitions
Undertakings by parties
National laws
US / EC Agreement

Industry: China clay, kaolin, molochite

Parties: Imetal SA
English China Clay

Source: Commission Statement IP/99/263, dated 27 April, 1999

(Note. The main interest in this case lies in the interest shown by the US and French governments respectively.)

The Commission has decided to approve the acquisition of English China Clays plc (ECC) by Imetal SA subject to certain changes. The operation had an impact on the markets for fused silica, kaolin and certain refractory clays. Imetal has addressed the Commission's concerns by undertaking to divest an Imetal kaolin plant in the US, ECC's activities in fused silica, and Imetal's stake in AGS-BMP in France. Imetal will also submit an acceptable structural solution to the problem arising from its simultaneous presence on both the

market for Molochite, a unique refractory clay, and the market for kiln furniture, whose manufacturers need Molochite. mis transaction was also subject to US anti-trust approval. The Commission and the Department of Justice have worked in close cooperation on this case.

On 11 January 1999, Imetal made a public offer for the entire issued share capital of ECC which is still pending. Imetal's operations include: building materials; industrial minerals; and metal processing. The ECC group is principally focused on mineral products (primarily kaolin - China Clay - and calcium carbonates). The market investigation by the Commission revealed the existence of a number of affected markets. These include: fused silica, kaolin for paper applications, kaolin for ceramics, high value refractory clays. For fused silica the transaction was found to give rise to a significant overlap, both parties being active in this market. After investigation it appeared that a high market share would arise from the concentration. Imetal has therefore proposed to divest ECC's activities in fused silica, which were acquired by ECC in late 1998.

On the basis that coated kaolin is imported into Europe, for example from the USA, due to Its significantly higher price, it was concluded that the geographic market was world-wide in scope. As to the impact of the operation, the Commission considered that there were serious competition concerns arising from the merger due to the strength of both Imetal and ECC in world-wide markets for this product. To meet these concerns, Imetal has agreed to divest a kaolin plant in the US by way of a remedy.

The Commission considered the horizontal and vertical effects in the market for refractory clays. The concentration would have a significant horizontal impact on high value refractory clays which are used in two value added applications (investment castings and kiln furniture). Imetal has a strong worldwide position in the production of these clays for both applications. ECC produces one high value special calcined refractory clay (named Molochite). The Commission concluded that the operation would have serious competition effects on these high value refractory clays. Imetal proposes therefore to divest its stake in the French group AGS-SMP.

As to vertical concerns, the Commission noted that, following this acquisition, Imetal would own a monopoly supply of a critical raw material for all kiln furniture manufacturers while simultaneously being active as a competitor in this same industry. With this in mind Imetal has proposed to meet the Commission's concerns through structural remedies (either a divestiture or an alternative solution equally satisfactory to be agreed with the Commission). The Commission has decided therefore in accordance with Article 6(I)(b) of the EC Merger Regulation to allow this concentration to be completed subject to the undertakings Imetal has offered.

As many of the affected product markets have been worldwide in scope and Imetal has worldwide production facilities, the Commission's examination has involved close liaison with the US Department of Justice. This liaison has helped in the identification of, and agreement with Imetal on, common remedies. □