ACQUISITIONS (CROP CONTROL) THE BAYER / AVENTIS CASE

Subject: Acquisitions
Divestitures

Industry: Crop control and protection; pest control; animal health products
(Some implications for other industries)

Parties: Bayer AG
Aventis Crop Science (ACS)

Source: Commission Statement IP/02/570, dated 17 April 2002

(Note. Although the layman may be put off by the welter of technical names used in this report, there is no gainsaying the fact that the divestitures being made by Bayer, in the interests of securing Commission approval of its acquisition of Aventis, are remarkably far-reaching. They may well reflect the trend towards a more selective business approach to mergers and acquisitions, based on a careful assessment of the commercial areas in which a given corporation is likely to excel.)

The Commission has decided to clear Bayer's acquisition of Aventis Crop Science (ACS), subject to substantial divestitures. As initially notified, the operation would have led to the creation or strengthening of dominant positions on about 130 markets for crop protection, professional pest control and animal health products. But Bayer has offered a comprehensive set of commitments, including the sale, in one single package, of best-selling insecticide Fipronil and a number of fungicides, which together constitute ACS's entire European seed treatment business. The commitments fully resolve the Commission's competition concerns.

Bayer AG is an international, publicly quoted company with headquarters in Leverkusen, Germany. The company is active in four business segments: health care, agricultural business, polymers and chemical business. The agricultural business segment comprises the crop protection and animal health business groups. The crop protection business group develops, produces and markets crop protection products to control plant diseases, pests (insects and other little animals) and weeds in crops. The animal health business group produces a wide range of veterinary medicines and vaccines to maintain the health of livestock and companion animals as well as a variety of grooming products.

Aventis Crop Science was formed in 1999 as the combination of AgrEvo (the former Hoechst/Schering joint venture) and the Rhône-Poulenc agriculture division. ACS has its headquarters in Lyon, France, and comprises four business segments. The crop protection business is active in the development, production and marketing of agricultural crop protection agents including herbicides, insecticides, fungicides, plant growth regulators and seed treatments. ACS's

environmental science business develops, produces and distributes non-agricultural products, including household insecticides, industrial weed agents, and products for lawn and garden. The seed business is active in the research, production and breeding of field seeds and vegetable seeds. Finally, the bioscience business of ACS is active in the development of technologies to enhance plant value using input traits, agronomic traits and output traits.

After an initial investigation of one month, the Commission decided on 4 December 2001 that it would further investigate the impact of the transaction on competition conditions in several crop protection and animal health markets. The in-depth investigation revealed that the transaction as notified would have led to many competition problems within agricultural insecticides, herbicides, fungicides as well as in seed treatment, molluscicides, professional pest control products and certain animal health products (anti-fleas for cats and dogs).

Clearance conditions

Bayer has offered a complex set of commitments, which allows the Commission to conclude that no dominant position will be created or strengthened on any of these markets. The most important of these is the sale to a single purchaser of a group of ACS's insecticides and fungicides businesses (namely Fipronil, Ethiprole, Iprodione, Prochloraz, Pyrimethanil, Triticonazole and Fluquinconazole). The two insecticides in this group, Fipronil and Ethiprole, are both from the new pyrazole chemistry class. While Ethiprole has not yet been introduced in the European Economic Area, Fipronil is a very successful insecticide in Europe as well as in many other parts of the world. Bayer has undertaken to divest the whole of the Fipronil business world-wide, including the European production facilities, except for non-agricultural uses, where the divestiture is Europe-wide. For Ethiprole Bayer will grant a Europe-wide exclusive licence. The divestment of Fipronil will also alleviate the competition concerns in professional pest control and animal health.

In addition, Bayer will divest the Europe-wide businesses of five fungicides, which together with Fipronil constitute the bulk of ACS's seed treatment business. These five fungicides are Iprodione, Prochloraz, Pyrimethanil, Triticonazole and Fluquinconazole. The purchaser of Fipronil, Ethiprole and the five fungicides will, in effect, take over ACS's entire European seed treatment business. Seed treatment is a highly specialised area within the agrochemical industry, where at present only Bayer, ACS and Syngenta have significant operations. The package of undertakings will ensure that the current level of competition is preserved in this concentrated area.

In insecticides Bayer has undertaken to divest Acetamiprid, which is a promising insecticide in another new chemistry class, the neonicotinoids, where Bayer has by far the strongest portfolio. Acetamiprid is developed jointly by ACS and the Japanese company Nippon Soda. Furthermore, Bayer will divest the following insecticides Europe-wide: Cyfluthrin, Beta-Cyfluthrin, Fenamiphos, Oxydemeton-Methyl, Phosalone and Cypermethrin and grant a Europe-wide exclusive license for Acrinathrin.

In molluscicides Bayer will grant a Europe-wide exclusive license of ACS's snail bait formulation "Skipper", based on the active ingredient Thiodicarb.

In herbicides Bayer will divest the Europe-wide business of Metamitron, sold as a beet herbicide under the "Goltix" brand name. Bayer will also divest the Europe-wide business of Linuron, which is used as a potato and vegetable herbicide. Finally, Bayer will give a co-exclusive Europe-wide licence to develop mixture products with Propoxycarbazone, which is used as a cereal herbicide against grasses.

Over and above the Europe-wide undertakings mentioned above, Bayer will give a number of exclusive licences for various products in one or more Member States and will discontinue several third party distribution agreements.

The Commission has come to the conclusion that these undertakings are sufficient to guarantee that no dominant position will be created or strengthened on any market. Therefore, subject to the fulfilment of the undertakings, the Commission has decided to clear the transaction.

Co-operation with the United States

On the basis of the bilateral agreement on antitrust co-operation between the European Community and the United States of America, the Commission and the Federal Trade Commission have co-operated closely in their analysis of the acquisition of ACS by Bayer. The investigation in still going on in the United States. ■

Cooperation with the United States

Both in the foregoing report and in the report on the Carnival / P & O Princess case, on page 110, the Commission Statements quoted as the source of the information refer to the "agreement between the European Commission [sic: see page 109] and the United States Government" on cooperation in competition and anti-trust matters. It is true that there was such an agreement; but it was held by the Court of Justice to be invalid. The situation was rectified by an act of the Council, which alone was responsible for concluding agreements with the governments of non-member states. Since the Council act, the practical arrangements have been entrusted to the Commission of the European Communities on the one hand and to the Department of Justice and Federal Trade Commission for the United States on the other. Except in the GE / Honeywell case, cooperation between the two authorities appears to have worked well and may provide a model for bilateral or multilateral agreements among other states.