ACQUISITIONS (VITAMINS): THE DSM / ROCHE CASE

Subject: Acquisitions
Undertakings

Industry: Vitamins; animal feed additives; pharmaceuticals

Parties: DSM
Roche (Vitamins and Fine Chemicals Division)

Source: Commission Statement IP/03/712, dated 20 May 2003

(Note. Past experience of the world market for vitamins has led both the Commission of the European Communities and the United States Federal Trade Commission to be wary of the activities of the principal operators in this market, so that their suspicions of any substantial regrouping of those operators are at least understandable. The acquisition in this case is complicated by the existence of vertical alliances, to which each of the parties to the acquisition already belongs. In the ordinary way, the undertakings offered by DSM - namely, to dissolve its alliance with BASF, - might have been expected to suffice and may still do so; but the Commission and the FTC are clearly going to need further reassurance.)

The Commission has launched a detailed investigation into the planned acquisition of the Vitamins and Fine Chemicals division of Swiss company Roche by Dutch-based company DSM. At this stage of the investigation, the Commission has competition concerns in the market for feed enzymes, which are animal feed additives and only a small part of the overall transaction. During the first-phase review, the parties have submitted a package of undertakings, which will be considered further during the detailed evaluation. The decision to start an in-depth review does not prejudge the final outcome in a merger.

On 31 March 2003, DSM notified the Commission of an agreement under which it would acquire sole control of Roche Vitamins and Fine Chemicals (RV&FC). DSM and RV&FC are active in a broad range of product areas, however, the only overlaps regard feed enzymes added to animal feed, in particular non-starch polysaccharide degrading enzymes (NSP degrading enzymes) and phytase. NSP-degrading enzymes help animals release nutrients in their feed. Phytase is an enzyme used to increase the amount of digestible phosphorus in animal feed.

In this respect, it is pertinent that DSM and RV&FC belong to two different vertical alliances. DSM has an alliance with BASF, and RV&FC with Novozymes, a Danish producer of industrial enzymes. In their respective alliances DSM and Novozymes are mainly responsible for research and development and production while BASF and RV&FC are mainly responsible for sales and distribution. Both alliances provide for a high level of economic integration and mutual interdependence.

The acquisition of RV&FC by DSM will create a structural link between the two alliances and lead to near monopolies on the market for phytase at both the production and distribution levels. In the course of the first-phase review of the case, DSM offered undertakings to terminate the DSM/BASF alliance and to establish BASF as an effective competitor, but the Commission could not determine in a clear-cut manner, as it must do in order to be able to grant first-phase clearance, whether that solution would fully restore effective competition. However, the Commission does not rule out the possibility that the proposed undertakings could form the basis of a solution, in which case it may not need to use the full four-months available in second-phase merger proceedings.

DSM is incorporated in The Netherlands as a public limited liability company with its corporate seat in Heerlen. It is active worldwide in the development and production of a broad range of chemical and life science products including feed enzymes, performance materials and polymers and industrial chemicals. It has subsidiaries in Europe and in the United States. RV&FC is principally active in the production and sale of vitamins and carotenoids. In addition, RV&FC distributes feed enzymes, certain vitamins and amino acids.

The operation is also being reviewed by the United States Federal Trade Commission, with which the Commission is closely co-operating. ■

Copper Concentrate: Inspections

Following press inquires, the Commission's spokesman for Competition has confirmed that, on 13 May 2003, Commission inspectors, assisted by officials from the national competition authorities of the Member States concerned, launched simultaneous unannounced inspections at the premises of some of the major European producers of copper concentrate, located in the United Kingdom and Portugal. The purpose of these inspections is to ascertain whether there is evidence of a cartel agreement and related illegal practices concerning the fixing of sales prices and sales conditions, customer allocation and market sharing for this product. (Copper concentrate is an intermediate product, transformed into the finished product, generally referred to as copper cathode - 99% pure copper, - by a smelting and refining process. These inspections have been coordinated with the US Department of Justice and the Canadian Competition Bureau, who have enforced investigation measures simultaneously. International cooperation is a high priority area of the Commission in the field of anti-cartel policy. Surprise inspections are a preliminary step in investigations into suspected cartels. The fact that the Commission carries out such inspections does not mean that the companies are guilty of anti-competitive behaviour nor does it prejudge the outcome of the investigation itself. The Commission respects the rights of defence, in particular the right of companies to be heard in antitrust proceedings.

Source: Commission Memorandum MEMO/03/107, dated14 May 2003