Opinion of the advisory committee on mergers given at its meeting of 17 December 2018 concerning a preliminary draft decision relating to Case M.8674 — BASF/Solvay's EP and P&I Business

Rapporteur: Denmark

(2019/C 325/03)

Jurisdiction

1. The Advisory Committee (7 Member States) agrees with the Commission that the notified transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

2. The Advisory Committee (7 Member States) agrees with the Commission that the notified transaction has an EU dimension within the meaning of the Merger Regulation.

Market definition

3. The Advisory Committee (7 Member States) agrees with the Commission's definitions of the relevant product and geographic markets as stated in the draft decision. More specifically:

   a. ADN

   b. HMD

   c. Adipic Acid

   d. AH Salt

   e. Co-Polyamide PA 6/6.6

   f. PA 6.6 BP

   g. PA 6.6 EP

   h. PA6 3D printing powders

   i. HDI and HDI derivatives

Competitive assessment

4. The Advisory Committee (7 Member States) agrees with the Commission's assessment that the competitive concerns identified with respect to the EEA-wide market for ADN C4 are merger specific.

5. The Advisory Committee (7 Member States) agrees with the Commission's assessment that the notified transaction is likely lead to a significant impediment of effective competition as a result of

   a. horizontal non-coordinated effects arising in in the following affected markets (i) ADN, (ii) HMD, (iii) Adipic Acid, (iv) AH Salt, (v) PA 6.6 BP, (vi) PA 6.6 EP in the EEA and PA6 3D printing powders globally

   and

   b. vertical non-coordinated effects due to input foreclosure for (i) the upstream market for ADN and the downstream market for HMD; (ii) the upstream market for HMD and the downstream PA (AH Salt, PA 6.6 BP and PA 6.6 EP) and HDI (HDI and HDI derivatives) value chains; (iii) the upstream market for Adipic Acid and the downstream PA value chain (AH Salt, PA.6.6 BP and PA 6.6 EP); (iv) the upstream market for AH Salt and the downstream market for Co-Polyamide PA 6/6.6 and (v) the upstream market for PA 6.6 BP and the downstream market for PA 6.6 EP in the EEA.

6. The Advisory Committee (7 Member States) agrees with the Commission's assessment that the notified transaction is unlikely to give rise to horizontal non-coordinated, or vertical non-coordinated effects due to input foreclosure that would lead to a significant impediment of effective competition in the remaining horizontally or vertically affected markets identified in the draft decision.

7. The Advisory Committee (7 Member States) agrees with the Commission's assessment that the notified transaction is unlikely to give rise to vertical non-coordinated effects due to customer's foreclosure that would lead to a significant impediment of effective competition in the EEA?

8. The Advisory Committee (7 Member States) agrees with the Commission's assessment that the notified transaction is unlikely to give rise to conglomerate effects that would lead to a significant impediment of effective competition in the EEA.

Commitments

9. The Advisory Committee (7 Member States) agrees with the Commission that the final commitments offered by the notifying party on 31 October 2018 (*) address the competition concerns identified by the Commission (question 4a and 4b).

10. The Advisory Committee (7 Member States) agrees with the Commission that, subject to the full compliance with the final commitments offered by the notifying party on 31 October 2018, the notified transaction is not likely to significantly impede effective competition in the internal market or in a substantial part of it.

Compatibility with the internal market and the EEA Agreement

11. The Advisory Committee (7 Member States) agrees with the Commission that the notified transaction must therefore be declared compatible with the internal market and the functioning of the EEA Agreement in accordance with Article 2(2) and 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.

(*) On 31 October 2018, revised commitments taking into account the feedback received in the market test were submitted to the Commission. The Parties submitted a final set of Commitments (the 'Final Commitments') on 11 December 2018.