

Summary

1. On 16 July 2004, the Office of Fair Trading (the OFT) referred the proposed acquisition by Taminco NV (Taminco) of certain assets representing the European Methylamines and Derivatives Business (EM&D Business) of Air Products and Chemicals Inc (APCI) and its subsidiary Air Products (Chemicals) Teesside Ltd (APCT) to the Competition Commission (CC) for investigation and report. The reference was made under section 33 of the Enterprise Act 2002 (the Act). We are required to decide whether the proposed merger would give rise to a relevant merger situation, and whether or not we expect a substantial lessening of competition (SLC) as a result of the proposed merger. We are required to publish our final report by 30 December 2004. This report (together with its appendices) constitutes the provisional findings that we are required to publish under the CC's *Rules of Procedure* and does not represent a final decision by the CC.
2. Methylamines are chemicals that are used as feedstocks for the production of methylamine derivatives (derivatives). Methylamines are gaseous under atmospheric conditions and are transported under pressure or in aqueous solutions. Derivatives are used in a diverse variety of products, including gas treatment, water treatment, solvents, coatings and animal nutrition.
3. The focus of this inquiry has been on those methylamines and derivatives that were, until September 2004—see paragraph 9, produced by Air Products'¹ EM&D Business and are also produced by Taminco. Both Taminco and Air Products (the main parties) produced all three methylamines: monomethylamine (MMA), dimethylamine (DMA) and trimethylamine (TMA). They also both produced the following derivatives: dimethylformamide (DMF), choline chloride, monomethylethanolamine (MMEA),

¹We use the term Air Products to describe the Air Products group of companies, of which Air Products and Chemicals Inc is the parent.

methyldiethanolamine (MDEA) and dimethylaminoethanol (DMAE). MMEA, MDEA and DMAE belong to a class of derivative known as Alkylalkanolamines (AAAs).

4. Taminco is majority owned by NIB Capital Private Equity, a Dutch private equity investor which in 2003 acquired from Union Chimique Belge (UCB), the latter's methylamines and derivatives business, known as Taminco. Its headquarters are in Ghent, and it employs approximately 500 people worldwide. Taminco specializes in the production of methylamines and derivatives. In 2003 it generated worldwide revenues of €182 million.
5. APCI is a publicly owned company traded on the New York Stock Exchange with a market capitalization of approximately US\$12 billion. APCI was founded in 1940. Its headquarters are in Pennsylvania and it has approximately 17,200 employees worldwide. Its principal activities include production of gases, chemicals and equipment. In 2003, Air Products' worldwide annual revenues were approximately US\$5.4 billion.
6. Air Products had acquired its EM&D Business from ICI in 1998. That acquisition included the production facility at Billingham, Teesside, in the UK, primarily producing methylamines, DMF and choline chloride. ICI also produced AAAs at its facility at Chocques in northern France, using as a feedstock methylamines shipped from Billingham. The acquisition did not include ownership of the Chocques facility; instead Air Products entered into a toll manufacturing agreement with ICI under which ICI agreed to produce certain derivatives for Air Products using methylamines supplied by Air Products from its Billingham facility.
7. On 20 April 2004, APCT and APCI entered into a business sale agreement with Taminco. The assets being sold under that agreement are:

- intellectual property, information and know-how, and goodwill in relation to the business;
 - stock (raw materials and finished goods), up to a certain monetary amount;
 - all contracts and arrangements for the sale or swap of methylamines and derivatives, including sales agreements with the customers of the business, swap agreements with two large chemical producers and the benefit and burden of the toll manufacturing agreement; and
 - business records in relation to the business, with certain exclusions.
8. We concluded that the acquisition would result in the enterprises concerned ceasing to be distinct, and that the share of supply test is met in respect of the supply of methylamines and derivatives. We found that arrangements are in progress which, if carried into effect, would result in a relevant merger situation.
9. In early September 2004, during the course of the CC's inquiry, Air Products announced the closure of the Billingham facility.
10. We analysed the substitutability of the three methylamines. We found that there was no demand-side substitution between these products but that there was some scope for supply-side substitution. We examined price and margin data; this was consistent with the view that methylamines were part of the same product market, which had put been forward by the main parties and others. We conclude that there is one product market for methylamines.
11. We also considered the geographic market for methylamines. These products are hazardous and costly to transport. Although there is considerable trade within the EEA, there is little trade over longer distances. We conclude that the geographic market for methylamines is EEA-wide.

12. We analysed the substitutability of the three relevant AAAs (MMEA, MDEA and DMAE). We found that although there were demand-side substitutes for some applications of these chemicals, these would only provide a weak constraint on pricing and did not indicate that the product market was wider than the relevant AAAs. However, we found that the production processes gave scope for supply-side substitution between these products. We conclude that there is one product market for the relevant AAAs.
13. We considered supply-side and demand-side substitution for both DMF and choline chloride. For each of these chemicals, we found that although there were substitutes for some applications, these would only provide a weak constraint on prices and did not indicate that the product market was wider than the product itself. We conclude that there is one product market for DMF and one product market for choline chloride.
14. We considered the geographic markets for the AAAs, DMF and choline chloride. In each case, we conclude that due to the current levels of international trade, and the scope for such trade, the relevant geographic markets are worldwide.
15. In considering competition within the relevant markets, we were told that in each of the markets the products of each manufacturer are almost identical and that whilst service levels are very important they are not the current focus of competition; competition is almost entirely based upon price.
16. The main parties, and others, told us that it was very common for larger customers to have contractual arrangements with several suppliers. We were told that it was easy for customers to switch between suppliers. The only significant barrier appeared to

be where the products are destined for pharmaceutical use. In these cases, there is a rigorous process of customer accreditation for new suppliers.

17. We assessed what would be likely to happen in the absence of the merger (the counterfactual). Air Products told us that it had taken a decision to withdraw from its EM&D Business and would do so even if it were unable to sell any of the assets which formed part of that business. We examined the financial performance of Air Products' EM&D Business and the various reviews that Air Products had conducted of its viability. We considered that in the absence of the merger Air Products would have closed the Billingham facility and exited its EM&D Business.
18. We considered that it might be worthwhile for Air Products, as part of its exit from the EM&D Business, to sell all or some part of the business to a third party, if one showed interest. We considered that we did not expect a party other than BASF to be a likely purchaser.
19. We therefore conclude that the appropriate counterfactual is that, in the absence of the merger, Air Products would have closed the Billingham facility and exited the EM&D Business; it might have sold assets, including the benefits and burden of the toll manufacturing agreement, to BASF, but not to another party.
20. The assessment of whether the merger would result in an SLC involves comparing the expected competitive situation in the relevant markets if the acquisition were to take place, with the counterfactual, which might involve a sale of assets to BASF. Our conclusion on the counterfactual indicates that the number and identity of the competitors is the same with the merger as compared with what would have happened in the absence of the merger.

21. We examined the market shares and market concentration expected as a result of the merger. We did not find these to be significantly different from the situation under the counterfactual. We also considered whether the merger would be expected to have an adverse effect on the level of capacity in the relevant markets. We conclude that it would not.

22. We considered the possibility of coordinated effects. We conclude that the acquisition would neither be sufficient to increase the likelihood of coordinated effects where none existed before, nor would it increase the effectiveness of any pre-existing coordinated effects, relative to the counterfactual which would still see Air Products exiting the markets.

23. We therefore conclude that as a result of the proposed merger we do not expect there to be any substantial lessening of competition.