

ANALYSIS TO AID PUBLIC COMMENT

In the Matter of Cytec Industries Inc., File No. 0410203

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Cytec Industries Inc. (“Cytec”). The Consent Agreement is intended to resolve anticompetitive effects stemming from Cytec’s proposed acquisition of the Surface Specialties Business of UCB S.A. (“UCB”). The Consent Agreement includes a proposed Decision and Order (“Order”) that would require Cytec to divest UCB assets relating to the research, development, marketing, sale, and production of amino resins (“UCB Amino Resins Business”). The Consent Agreement also includes an Order to Hold Separate and Maintain Assets, which requires Cytec to preserve the UCB Amino Resins Business as a viable, competitive, and ongoing operation until the divestiture is achieved.

The Consent Agreement, if finally accepted by the Commission, would settle charges that Cytec’s proposed acquisition of UCB’s Surface Specialties Business may have substantially lessened competition in the markets for amino resins for: (1) industrial liquid coatings; and (2) adhesion promotion in rubber. The Commission has reason to believe that Cytec’s proposed acquisition of UCB’s Surface Specialties Business would have violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

The proposed Order has been placed on the public record for thirty (30) days to receive comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the Consent Agreement and comments received and decide whether to withdraw its agreement or make final the Consent Agreement’s proposed Order and Order to Hold Separate and Maintain Assets.

I. Amino Resins for Industrial Liquid Coatings and Adhesion Promotion in Rubber

According to the Commission’s proposed complaint, the relevant product markets in which to analyze the effects of Cytec’s proposed acquisition of UCB’s Surface Specialties Business are the manufacture and sale of amino resins for: (1) industrial liquid coatings; and (2) adhesion promotion in rubber. The types of amino resins that Cytec and UCB manufacture are used as cross-linking agents in thermoset surface coatings for a variety of applications, including automotive coatings, coil coatings, can coatings, appliance coatings, and general maintenance coatings. These types of resins are also used, primarily in tires, to promote the adhesion of rubber to materials such as steel or fiber. As the proposed complaint describes, there are no effective substitutes for amino resins in the applications in which they are used. The proposed complaint also alleges that the relevant geographic market in which to assess the impact of the proposed acquisition is no broader than North America and is potentially limited to the United States.

The proposed complaint alleges that the markets for amino resins for industrial liquid coatings and adhesion promotion in rubber are highly concentrated, that Cytec and UCB have been for many years the two major competitors in these markets, and that these companies compete with one another across a wide range of amino resin grades and applications in which customers have qualified their resins for use. As the proposed complaint describes, customers have relied on the competition between these companies to maintain competitive amino resin prices. The proposed complaint alleges that the proposed acquisition of UCB's Surface Specialties division by Cytec would reduce competition by eliminating the direct competition that has existed between these two companies. The proposed complaint further alleges that entry into the relevant markets would not be timely, likely, or sufficient to deter or offset the acquisition's adverse competitive effects. Other firms would not in the foreseeable future be able to offer the range of grades that Cytec and UCB have developed over the years, nor would they be able to meet the requirements necessary to commercially qualify their resins for use in demanding customer applications.

II. The Consent Agreement

The proposed Order requires that Cytec divest the UCB Amino Resins Business to an acquirer approved by the Commission within one-hundred and eighty (180) days from the date upon which the Commission accepts the proposed Order for public comment. The divested business includes two manufacturing facilities, in Massachusetts and in Germany, where UCB manufactures amino resins, together with UCB's rights to obtain amino resins pursuant to a tolling agreement between UCB and Solutia Canada, Inc. The divested business also includes certain lines of additives that are the only other products that UCB manufactures at the plant in Germany. In connection with the divestiture, Cytec is required to divest to an acquirer the set of assets that comprise UCB's amino resins business. In addition to the manufacturing assets, for example, Cytec is required to divest the patents and other intellectual property that UCB has relied upon in its amino resins business, the sales and marketing materials, including customer information, that UCB has relied upon, and the other books and records of the business. Further, Cytec is required to assign the different contracts relating to the amino resins business, and to secure all consents necessary for the divestiture. Cytec is also required, until the divestiture is completed, to take the steps necessary to maintain the viability of the UCB Amino Resins Business. The acquirer of the divested assets would have the opportunity, without interference from Cytec, to interview and potentially hire key UCB personnel who have been involved in supporting all aspects of the company's amino resins business.

The proposed Order also provides that if Cytec does not complete its divestiture within the specified six-month period, the Commission may appoint a Divestiture Trustee to divest the UCB Amino Resins Business in a manner acceptable to the Commission. The proposed Order also provides for the Commission to appoint a Monitor Trustee to oversee Cytec's compliance with the terms of the proposed Order and the divestiture agreements that Cytec enters pursuant to the proposed Order.

The proposed Order to Hold Separate and Maintain Assets that is also included in the

Consent Agreement requires that Cytec hold separate and maintain the viability and marketability of UCB's Amino Resins Business as a viable and competitive operation until the business is transferred to the Commission-approved acquirer. Furthermore, it contains measures designed to ensure that no material confidential information is exchanged between Cytec and the UCB Amino Resins Business (except as otherwise provided in the Order to Hold Separate and Maintain Assets) and measures designed to prevent interim harm to competition in the relevant markets pending divestiture. The Order to Hold Separate and Maintain Assets provides for the Commission to appoint a Hold Separate Trustee who is charged with the duty of monitoring Cytec's compliance with the Order to Hold Separate and Maintain Assets.

The proposed Order requires Cytec to provide the Commission, within thirty (30) days from the date the Order becomes final, a verified written report setting forth in detail the manner and form in which Cytec intends to comply, is complying, and has complied with the provisions relating to the proposed Order and the Order to Hold Separate and Maintain Assets. The proposed Order further requires Cytec to provide the Commission with a report of compliance with the Order every thirty (30) days after the date when the Order becomes final until the divestiture has been completed.

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement, the proposed Order, or the Order to Hold Separate and Maintain Assets, or in any way to modify the terms of the Consent Agreement, the proposed Order, or the Order to Hold Separate and Maintain Assets.