

6 Views of third parties

Contents

	<i>Page</i>
Introduction	129
Manufacturers.....	129
Aventis Animal Nutrition SA	129
Roche	130
Traders	130
AMC Chemicals	130
Orffa UK Ltd	131
Customers.....	131
Premix manufacturers	131
A premixer	131
Trouw UK Ltd.....	133
Others.....	133
AB Pharmaceuticals Limited	133
Bio-Health Limited	134
Blue Green Planet Ltd.....	134
Britvic Soft Drinks Ltd.....	134
Custom Pharmaceuticals Ltd.....	134
Eurocaps Limited	134
Peter Black Healthcare Ltd	135
The Boots Company PLC	135
Thompson & Capper Ltd	135

Introduction

6.1. We invited views from manufacturers, traders and customers. Some customers were premix manufacturers.

Manufacturers

Aventis Animal Nutrition SA

6.2. AAN is part of the Aventis group, an amalgamation of Rhone-Poulenc and Hoechst. AAN currently produces vitamins A and E for the animal feed industry and vitamin B2 in a joint venture with ADM. AAN told us that the Aventis group had now decided to sell AAN. The potential buyers did not include BASF.

6.3. AAN said that it currently considered the vitamins market to be global and pricing to be transparent, without any cartel activity. With regard to vitamin B2 for animal feed, AAN had a joint venture with ADM whereby ADM undertook production and AAN undertook marketing. Its principal competitors were BASF and then Roche. It mentioned two Chinese companies which competed in the vitamin B2 animal feed market.

6.4. AAN said that the price of vitamin B2 for animal feed had fallen since 1995 primarily because of the entry of Chinese producers into the market and also because of competition from AAN itself. AAN did not comment on the effect of the breakup of the alleged cartel.

6.5. AAN said that it sold vitamins to UK premix manufacturers. It did not itself manufacture premixes for the UK market. It thought that possibly BASF and Roche might endeavour to squeeze it out of the UK animal feed market. AAN said the merger did not affect it directly but it considered that the merger led to the strengthening of BASF as a competitor. It thought that the merged entity might possibly increase its vitamin portfolio by a joint venture with other vitamins producers.

Roche

6.6. Roche said that it operated in over 100 countries; its business was primarily in healthcare. It manufactured vitamins around the world; its vitamin C plant at Dalry, Scotland, was the largest in the world. It produced vitamin B2 in Grenzach, Germany. Roche said that its strategy with regard to vitamins was to maintain its share of the market and to continue to supply high-quality products. It considered itself to be the leader in terms of R&D in the vitamins area. It was about to launch a new vitamin B2 product. Roche said that prices for water-soluble vitamins had fallen in the last two years but had now levelled out.

6.7. Concerning competition in the market, Roche said that its competitors in the vitamins market had been primarily BASF, Takeda, ADM/Aventis, and the Chinese. It did not think that TCI had offered any service to customers along with the Takeda vitamin products, as these had been sold through Forum.

6.8. Roche said that the price drop in vitamin C since 1995 had been triggered by the Chinese. As a response to Chinese lower prices, Roche had reduced its prices and 15 out of 20 Chinese producers had ceased production. At the same time, Roche said, the Chinese Government had stopped internal subsidies to vitamins producers because it wished to join the World Trade Organisation which did not permit such subsidies. Roche said that the price of vitamin B2 started to decline long before the breakup of the cartel. There was no causal relationship between the two.

6.9. We asked Roche if the Chinese were likely to remain competitors in the vitamins market in the long term. Roche thought that they would and that Roche would be able to counter Chinese competition.

6.10. Roche said that, following the breakup of the cartel (see Appendix 3.1), there had been changes in its company culture and the senior staff involved in the cartel had now left the company. Roche provided copies of its code sent to its employees on competition law compliance and said that staff training on this subject was ongoing.

6.11. Roche said that one of the barriers to entry to the market was the cost of capital to set up a factory or factories. Roche said that, following the merger, BASF would be a stronger competitor and be able to offer a wider portfolio of products. Roche was, however, not greatly concerned about the merger because it considered its own products and technology to be highly competitive. It said that, in respect of vitamin C, BASF and Takeda had largely been serving different segments of the market before the merger. Roche added that it sold most of its vitamins in the UK through premixes and its premix customers tended to be loyal because of the service that Roche provided.

Traders

AMC Chemicals

6.12. AMC is a division of Amalgamated Metal Corporation PLC, a wholly-owned subsidiary of Preussag AG. AMC said that it dealt largely with vitamin C. Its function was to source raw materials from China, India and Indonesia which it sold into the food, flavour and fragrance industries in Europe, North America and Asia. AMC said that it traded about 5 per cent of the vitamin C world market.

6.13. AMC said that the market was highly competitive at the moment and its customers sourced from a number of suppliers including BASF, Takeda and Roche. The quality of vitamin C products from

China was good. AMC said that ADM had been rumoured to be entering the market but had not done so, possibly because of the reduction in price levels. AMC said that Merck might be about to leave the market because of price pressures. There was surplus capacity in China.

6.14. AMC said that its main Chinese suppliers were Northeast General, Hebei Welcome, Shijinzhuang and Jiangsu Jiangshan. AMC said that the cost pressures in the market were particularly difficult at the present time and prices were low as a result. AMC said that the Chinese Government was no longer controlling exports in the way it had previously; individual companies were coming to the fore. There was considerable price competition within China and the Chinese were likely to remain a competitive force with regard to raw vitamin C for the time being.

6.15. AMC said that the merger was likely to affect DC vitamin C and increase the demand for Chinese products. AMC said that it understood there were two or three producers of vitamin B2 in China. AMC thought that the impact of the merger was likely to be more critical for consumers of vitamin B2 than for consumers of vitamin C because there was less competition from China on vitamin B2.

6.16. AMC said that there were several premix manufacturers in the UK. Two were owned by vitamins producers. The others would be at a greater disadvantage in terms of cost as a result of the merger.

6.17. AMC said that, as far as vitamin C was concerned, it did not view the merger as being problematic because prices were at an all-time low. However, AMC considered that duopoly behaviour might occur in the premix market and the merger might increase the likelihood of cartel behaviour.

Orffa UK Ltd

6.18. Orffa considered itself to be a major supplier of certain vitamins within the UK feed market, including vitamin B2. Orffa said that it bought vitamins B2 and C from two Chinese companies. Its prime focus was to supply vitamins to the UK premix industry. Its main competitors were BASF and Roche. Competition was fierce.

6.19. Orffa's main concerns were to buy material at a fair price and supply it to the market. To do this, it needed sources other than BASF; namely the Chinese. Orffa said that the merger would give the merged entity a bigger global presence. Some of the premix customers might have greater reservations about this than Orffa. Orffa did not expect the merger to affect it directly with regard to vitamins C and B2 but overall saw the merger as strengthening its competitor BASF. Orffa was opposed to any merger which created a market monopoly and therefore generally disapproved of this merger. Orffa believed that its Netherlands parent company had opposed the acquisition in Europe.

Customers

Premix manufacturers

A premixer

6.20. A premixer said that it was an animal feed supplement manufacturer in the UK, and one of the largest purchasers of vitamins. Its two largest competitors were Roche Vitamins, part of Roche, and Frank Wright, a subsidiary of BASF, who between them had more than 50 per cent of the feed supplement market. Roche and BASF were also the largest suppliers of vitamins in the UK with a combined market share of over 60 per cent for some vitamins. They had a record of price fixing and the premixer believed that they abused their position to manipulate and control the market in the UK.

6.21. The premixer said that there were relatively few companies in the premix business. It was not an easy business in which to be successful.

6.22. The premixer said that in the USA there were four sources of vitamin supply to the premix market: Roche, BASF, Rhône-Poulenc (now Aventis) and others including the Chinese. Below the supplier level, there was vertical integration in that BASF and Roche supplied to their own premix manu-

facturing subsidiaries. Manufacturers also supplied to what might be called ‘approved’ independent companies; ‘non-approved’ independents had been subjected to predatory pricing and removed. The premixer said that the UK market appeared to be following the US market model.

6.23. The premixer said that, once the cartel in the USA had been revealed, vitamin prices fell sharply so that there was a period of three years or so when prices were dropping on a monthly basis. This was probably due because of the breakup of the cartel but also the entry of the Chinese.

6.24. The premixer said that both BASF’s and Roche’s reluctance to supply it at competitive market prices had severely limited its choice of suppliers for a number of key ingredients, but particularly vitamins. In the premixer’s opinion the acquisition of Takeda by BASF would reduce competitiveness and lead to further abuse and so should not be allowed to proceed, given BASF’s track record and the way BASF and Roche had structured the feed supplement and vitamin markets in the UK. It urged the CC to look at the behaviour and track record of BASF in rigging markets and to look closely at the way the UK feed supplement market was now structured. Allowing BASF to consolidate its hold over vitamins manufacture would result in less choice, and its past and present behaviour suggested that it would abuse its dominant position.

6.25. The premixer said that BASF’s takeover of Takeda was not a good move for competitiveness in the long term. The merger gave BASF more power in the market. There had been active collusion between BASF and Roche in the past.

6.26. Currently, there was a major shortage of vitamin B2, because of production difficulties at Roche’s factory, and future problems for customers were likely. There was also an extreme shortage of biotin. The end result was likely to be increases in vitamin prices.

6.27. The premixer responded to the Issues and Remedies Statement (see Appendix 2.2), making the following points:

- (a) Premixes formed a separate market from vitamins and could not be regarded simply as a delivery route for the supply of those vitamins. Premixes incorporated other ingredients as well as vitamins and were often supplied with a high level of technical support. Allowing vitamin companies such as BASF to control premix supply also gave them control over the other ingredients used in premixes.
- (b) As to appropriate geographic market definition, the premixer considered that the market consisted of Great Britain. For the purposes of vitamin supply, Northern Ireland formed part of the Republic of Ireland market. There were differences in how various EC markets were supplied. The UK vitamin and premix markets were different from some other markets because of the dominance of Roche and BASF in premixes, through vertical integration, and the control they were therefore able to exert through their premix companies.
- (c) The merger would result in a decrease in competition in the UK market for vitamins and premixes. BASF and Roche already had a dominant position in the premix market and were able to put other premixers under severe pressure by exploiting their dominant position in the supply of a number of key vitamins and other additives. BASF’s impending control over vitamin B supply would increase that dominance and the track record suggested that BASF would abuse its dominance.
- (d) In the last 15 years, the premixer had seen no evidence of BASF and Roche competing against each other, and neither company had ever offered the premixer competitive prices. The merger with Takeda giving BASF control over vitamin B supply was not likely to change this position.
- (e) The merger would increase barriers to entry and expansion in the supply of vitamins and premixes. The more control BASF and Roche had over vitamin supply, the greater the control they would have over premixing. This limited the customer base for other vitamins suppliers. Control of the distribution system also gave control over the supply of other feed additives.
- (f) The premixer’s ability to source raw materials controlled by Roche and/or BASF was already adversely affected, and the merger would exacerbate this problem. The existing dominance of

BASF and Roche meant that it was already difficult for a new entrant to enter the market, and the merger would increase BASF's control and make entry more difficult.

- (g) Premix and vitamin prices would ultimately be less competitive as a result of the merger. Provimi and Nutreco were large customers of Roche and BASF and the premixer did not believe that companies with close trading relationships could at the same time be aggressive competitors.
- (h) The merger would restrict the ability of traders to source B vitamins. In Great Britain, the merger would give BASF even more control over the premix industry and further restrict the outlets for traded vitamins.
- (i) The merger would give BASF control over vitamin B supplies and would increase the joint dominance of Roche and BASF in the premix market. This dominant position would be used to restrict the sale of Chinese vitamins in Great Britain. Chinese producers could only provide an effective competitive discipline to BASF and Roche in Great Britain if there were premixers to buy vitamins from them.
- (j) BASF would use its position to squeeze out independent competition and eventually put upward pressure on prices. The structure of the British premix industry would be adversely affected by the merger because there was a danger that the premixer would be eliminated.

Trouw UK Ltd

6.28. Trouw (UK) Ltd trading as Trouw Nutrition is a premix manufacturer owned by Nutreco, a Dutch-based animal and fish feed company. Trouw said that it sold its products to the compound feed industry, to integrators and to farmers and merchants.

6.29. Trouw said sales were in decline at the present time because of overproduction, BSE, swine fever and foot-and-mouth disease. Trouw said that it carefully monitored the price of vitamins purchased from BASF: it was difficult to know whether BASF supplied vitamins to Frank Wright at prices that allowed it to undercut the market. It also bought from the Chinese when quality and price were right. Trouw said that it was a nutritionist, servicing its customers with application advice as well as the physical product. Trouw said that the merger between BASF and Takeda was bound to have some effect on the supply of vitamins C and B2 because there were only a few suppliers. It did not expect the Chinese to be significant competitors in vitamin B2 in the short term.

6.30. Trouw said that if it were a medium-sized independent premixer it would have greater concerns because such a company would lack the economy of scale in negotiations with vitamins suppliers. It had not experienced the price bundling of products. Volume was an important factor. The decline in prices since the mid 1990s was because of the breakup of the cartel, overcapacity in the industry, the volumes bought and producer relationships. Trouw said that there was always a risk that the cartel might start up again, but this was not very likely in the short term.

6.31. It saw the premix market as being a British market with Northern Ireland as part of the Republic of Ireland market. Trouw said that entry into the market in terms of equipment was not difficult. However, the process required expertise and scale.

6.32. Trouw said that the effect of the merger would be that BASF would have a stronger portfolio because vitamin C had been added to its portfolio. It thought that there was always a danger that BASF and Roche would start to behave in a duopolistic fashion. However, Trouw said that it negotiated firmly with suppliers and did not feel that its business was likely to be harmed. It was more influenced by the strength of retailers in the market.

Others

AB Pharmaceuticals Limited

6.33. AB Pharmaceuticals Limited (AB Pharmaceuticals) said that it had no concerns about the proposed merger. As a regular purchaser of vitamins, it believed that there would still be strong competition across the full range of products.

6.34. AB Pharmaceuticals gave us information about its suppliers. It said that it bought vitamin C from the Chinese through a German-based trading company.

6.35. As regards a possible duopoly involving Roche and BASF, AB Pharmaceuticals said that it would become concerned only if either party moved to buy out substantial production in China. Such was the complexity and variety of the indigenous Chinese pharmaceutical industry that AB Pharmaceuticals believed that such a development was unlikely.

Bio-Health Limited

6.36. Bio-Health Limited (Bio-Health) said that it was disturbed by the news of the BASF/Takeda transaction as it believed that this would create a monopoly in the supply of vitamins and, in particular, Vitamin C. Bio-Health said that it had been purchasing from Takeda for many years and it would not like to see disruption to its business, or power placed in the hands of a single manufacturer. Bio-Health sought assurance that fair competition would still be apparent following the merger. It expressed concerns that this would not be the case given BASF's previous involvement in the vitamins cartel. Bio-Health said that, as a small company, it was vital that it had access to reasonable quantities of raw material because the purchase of large quantities could put the viability of its operation in jeopardy. Forum, which Bio-Health dealt with as a broker of Takeda vitamins, had indicated that it could give no guarantees about the future supply of vitamins.

6.37. Bio-Health said that it did not intend to purchase vitamins from China but, if that became the only alternative source, it would have to reconsider its position, providing the Chinese companies could prove that the material they produced met the European pharmacopoeia specification.

Blue Green Planet Ltd

6.38. Blue Green Planet Ltd said that it had no objections to the merger.

Britvic Soft Drinks Ltd

6.39. Britvic said that it did not wish to make any representation in opposition to the proposed merger. At present it did not have any commercial business with Takeda; however, it believed that the merger would increase competition and the availability of Western-sourced vitamin C within the marketplace. This statement was made in view of the fact that neither supplier had been able to offer competitive quotations to Britvic in recent years. If the merger were to result in the realization of synergistic cost benefits which were to be passed onto the customers, then this might increase competition and availability of Western-sourced vitamin C within the marketplace.

Custom Pharmaceuticals Ltd

6.40. Custom Pharmaceuticals said that it was concerned that the proposed merger would further erode the competition available to the purchaser. Whilst it had no immediate concerns, there was always a possibility that if the merger were approved the market might be exploited with pricing levels which did not reflect either manufacturing costs or currency movements.

Eurocaps Limited

6.41. Eurocaps Limited (Eurocaps) said that, on the positive side, the merger would provide customers of BASF with a full range of products, as opposed to a reduced selection as was currently the case. Eurocaps' main reservation would be the potential duopoly situation that BASF/Roche might enjoy. This could have adverse effects on the pricing of raw materials.

Peter Black Healthcare Ltd

6.42. Peter Black said that it was a prime supplier of vitamins, minerals and healthcare supplements in the UK. It was the major supplier to all retail own brands for vitamins and supplements. It supplied the major supermarkets. It also had some branded businesses and was a contract manufacturer.

6.43. Peter Black said that it was supplied with vitamins both by BASF, which it dealt with directly, and with Takeda, through its UK distributor, Forum.

6.44. Peter Black said that vitamin prices had been falling over the last three or four years because of increased competition, including from China.

6.45. Peter Black said that, prior to the merger, it had been concerned as to what TCI would do with its vitamins business. Takeda had told Peter Black that price levels had been driven down to a level such that it was doubtful if certain vitamins or grades of vitamins were worth producing. If BASF decided to continue to produce Takeda vitamin products, that would be the best outcome from Peter Black's perspective. Its main concern was the continuing availability of specific grades of vitamins for its use. It was particularly concerned about vitamins B2 and DC vitamin C. Peter Black said that the more competition there was in the marketplace, the more likely it was to obtain lower prices. Thus if it had a choice of two suppliers rather than three plus certain importers, then there would be less competition. For that reason it would prefer that the merger were not allowed to stand. Peter Black said that a duopoly between Roche and BASF was quite likely to develop in certain products.

The Boots Company PLC

6.46. Boots said that it had no objection to the merger.

Thompson & Capper Ltd

6.47. Thompson & Capper said that it did not object to the merger. Roche had held a dominant position in the vitamins market by offering a complete range of materials. This had not been the case with BASF or Takeda, and a merger would redress this. It could be argued that the merger would aid competitiveness by leading to the existence of two balanced sources of supply.

D P B KINGSMILL (*Chairman*)

D PARKER

J A REES

R FOSTER (*Secretary*)

4 May 2001