

*Case No COMP/JV.42 -
ASAHI GLASS /
MITSUBISHI / F2
CHEMICALS*

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 21/03/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21/03/2000
SG(2000) D/02543

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No COMP. JV.42 ASAHI GLASS /MITSUBISHI / F2 CHEMICALS

Notification of a concentration pursuant to Article 4 of Council Regulation No 4064/89

1. On 21/02/2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) N°4064/89¹ (Merger Regulation) by which Asahi Glass Company Limited (“AGC”) and Mitsubishi Corporation (“Mitsubishi”) and the Mitsubishi subsidiary Miteni acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of F2 Chemicals Limited (“F2”) by way of purchase of shares from British Nuclear Fuels plc.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the Common Market.

I. THE PARTIES

3. AGC is a global company operative in the development, manufacture, marketing and sales of glass, chemicals, electronics components and ceramics.
4. Mitsubishi is a general trading company active in a broad range of fields, including information systems and services, fuels, metals, machinery, chemicals, textiles and materials. Miteni manufactures fine chemicals, in particular fluorinated intermediates.

¹ O.J. L 395 of 30 December 1989, p.1; corrected version O.J. L 257 of 21.9.1990, p.13; as last amended by Regulation (EC) No. 1310/97, O.J. L 180 of 9.7.1997, p.1; corrigendum in O.J. L 40 of 13.2.1998, p.17.

Mitsubishi acts as a distributor in Japan for Miteni's products but also sells products from other fine chemical companies.

5. F2 is a small speciality fluorochemicals company. It is primarily active in the manufacture of perfluorocarbons ("PFCs") in the form of gas and liquids (part of a chemical group commonly described as inert fluids). Furthermore, it manufactures fluorinated compounds by using patented Selective Direct Fluorination ("SDF") technology, a business which is still in development.

II. CONCENTRATION

6. AGC will hold 51% and Mitsubishi 49% (Miteni: 15% of it) of F2. Since business decisions of strategic importance (approval and adoption of the management plan including capital expenditure plan, major capital expenditure, execution and termination of contracts, delegation of powers and authority to the President and Vice President) require a two-third majority, the parent companies will have joint control.
7. The joint venture will perform on a lasting basis all the functions of an autonomous economic entity. The operation thus constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

8. AGC, Mitsubishi (including Miteni) and F2 have a combined aggregate worldwide turnover² in excess of € 5,000 million (AGC € 8,837 million, Mitsubishi € 96,917 million and F2 € 3.3 million). Two of the undertakings concerned have each a Community-wide turnover in excess of EUR 250 million (AGC € [...] million, Mitsubishi €[...] million and F2 €[...] million). The undertakings concerned do not achieve each more than two third of their aggregate Community-wide turnover in one and the same Member State. Therefore, the operation has a Community dimension.

IV. THE RELEVANT MARKET

A. Relevant Product Market

9. The parties identified two markets which are affected by the notified operation, inert fluids and fluorinated intermediate chemicals.
10. Inert fluids are a class of chemical product containing fluorine and have the characteristics of being chemically stable, non reactive and non corrosive. They exist as gases or liquids. The end-applications are largely determined by their boiling point. The largest use of inert fluids is in the high technology electronics industry. Other major applications are the use of refrigerant and ultrasound imaging agent. If end-applications are to be taken into account a segmentation could be made according to the specific boiling point ranges. Another segmentation may be made according to the different types of inert fluids produced by the relevant manufacturers. For the purposes of the present

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

procedure, however, it can be left open whether there are separate markets according to the different end-applications of the relevant inert fluids or according to the different types of inert fluids produced by the relevant manufacturers. In any possible product market the notified operation does not create or strengthen a dominant position.

11. Fluorinated intermediate chemicals are chemicals with a fluorine base which are used in the manufacture of an end chemical, pharmaceutical or agrochemical product or in the manufacture of an advanced intermediate product or in the manufacture of dye-stuffs and liquid crystal compounds. There are essentially three types of fluorinated intermediate chemicals, organic compounds, inorganic compounds and polymers. There are a variety of methods of producing fluorinated intermediate chemicals, each of them produces compounds with differing characteristics. The method of manufacture can thus determine the suitability of the compound for its end use. For the purposes of the present procedure, however, it can be left open whether there are separate markets according to the different methods used for producing fluorinated intermediate chemicals. Even in these narrower markets, the notified operation does not create or strengthen a dominant position.

B. Relevant Geographic Market

12. Strong indications exist that the market for inert fluids is worldwide. Inert fluids are sold worldwide. Transport costs account for about 2% only of the average final selling price. Trade or regulatory barriers which could restrict international trade do not exist. However, for the purposes of the present procedure it can be left open whether the relevant geographical market may be narrower in its scope, i.e. European-wide. Even in this narrower market the notified operation does not create or strengthen a dominant position.
13. There are also strong indications that the market for fluorinated intermediate chemicals is worldwide. Customers purchase from manufacturers regardless of location. Transport costs are not a decisive factor when a purchase decision is made. However, for the purposes of the present procedure it can be left open whether the relevant geographical market may be narrower in its scope, i.e. European-wide. Even in this narrower market the notified operation does not create or strengthen a dominant position.

V. ASSESSMENT

A. Dominance

14. In the worldwide market for inert fluids the parties' combined market shares (in particular, the combined shares of Mitsubishi/Miteni and F2, AGC's position being negligible³) are well below [...] %, except for the segment of inert liquids - electronics (76-102°C), in which the parties' combined market shares account for [...] % (Mitsubishi/Miteni: [...] %, F2: [...] %). In the European market for inert fluids F2 has a market share of [...] % in the segment PFC gases - refrigerants. However, none of the other parties is present in this particular segment. Mitsubishi/Miteni and F2 have a

³ AGC manufactures one particular refrigerant gas only (a segment in which Mitsubishi is not active) and has a market share in this segment of less than 1%.

combined European market share of [...] % in the segment PFC liquids (Mitsubishi/Miteni: [...] %, F2: [...] %). In the other segments the parties' European market shares are negligible. There are strong competitors present in all segments of production. The leading supplier for inert fluids is the American Company 3M with an estimated share of 70% (electronics segment over 65%). Ausimont, an Italian company, has a market share of about 15%.

15. In the worldwide market for fluorinated intermediate chemicals the parties' combined market shares are around [...] % (AGC: [...] %, Mitsubishi/Miteni: [...] %, F2: [...] %). In the European market for fluorinated intermediate chemicals the parties' combined market shares are below [...] %. In case of a narrower product market (which may be defined according to the method which is used for production), there is no significant overlap between the business activities of AGC, Mitsubishi/Miteni and F2. Each of them mainly uses different technologies and produces different compounds. F2 currently has very limited commercial activities. It is principally working to develop the possible applications of the patented SDF technology, which is particularly designed to enable the production of novel isomers which cannot be produced using the existing technology. So far only a pilot plant for the manufacture of fluorinated intermediate chemicals exists. There are a large number of strong companies manufacturing fluorinated intermediate products. The customers for fluorinated intermediate products are generally large pharmaceutical and agrochemical companies.
16. The parties' aggregated market shares both in the inert fluids market and in the fluorinated intermediate chemicals market are still relatively small. Furthermore, the parties face strong competition in both markets. Therefore, the notified operation will not create or strengthen a dominant position.

B. Co-ordination of Competitive Behaviour

17. Pursuant to Article 2(4) of Merger Regulation a joint venture having as its object or effect the co-ordination of the competitive behaviour of undertakings that remain independent has to be appraised in accordance with the criteria of Article 81(1) and 81(3) EC. In order to establish a restriction of competition in the meaning of Article 81(1), it is necessary that the co-ordination of the parent companies' competitive behaviour is likely and appreciable and that it results from the creation of the joint venture, be it as its object or its effect.
18. According to Article 2(4)(2) of the Merger Regulation, the Commission shall, when making the said appraisal, take into account in particular whether two or more parent companies retain to a significant extent activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to the relevant market. Therefore candidate markets for co-ordination are those on which the joint venture and at least two parent companies are active or on an upstream, downstream or closely related neighbouring market where at least two parent companies remain active.
19. AGC and Mitsubishi (Miteni) are both active in the joint venture's (developing) market for the manufacture of fluorinated intermediate chemicals. However, there is little direct overlap between their respective businesses. AGC and Miteni mainly use different technologies and produce different product lines.

20. There is no evidence for the conclusion that the joint venture has the object of co-ordinating the competitive behaviour of AGC and Mitsubishi in the market for fluorinated intermediate chemicals. However, it might be the effect of the operation to give way to co-ordination of their competitive behaviour.
21. In making the assessment whether co-operation between the parent companies in the joint venture might have the effect to give rise to co-ordination, the structure of the candidate market, the parties' shares of sales and the structural change resulting from the creation of the joint venture are relevant.
22. There are a large number of companies (e.g. Honeywell, Rhodia, Solvay, Atochem, Central Glass, Dow Chemicals, Bayer, Clariant, Ausimont) active in the market for fluorinated intermediate chemicals. The technologies used and the characteristics of the compounds produced by the various companies differ. On the demand side manufacturers have to face strong customers, in particular large pharmaceutical and agrochemical companies.
23. As the parties' combined shares of roughly [...] % worldwide are still rather modest and due to the relatively large amount of competitors, a co-ordination of the parents' competitive behaviour appears to be unlikely.
24. For the above reasons, the notified operation has not as its object or effect the co-ordination of the competitive behaviour of the parent companies in the market for fluorinated intermediate chemicals.

VI. ANCILLARY RESTRAINTS

25. Clause 17 of the Joint Venture Memorandum between AGC and Mitsubishi contains a non-compete clause. According to this provision, AGC and Mitsubishi shall not engage in, or have any third party engage in [...]. The parties argue that the clause is necessary to protect the investment of each of the parent companies during the whole period when the parties are shareholders. The value of one party's investment would be diminished if the other party were to take advantage of know-how and goodwill connected with F2's business. In addition, the parties refer to Case Comp/JV.36 TXU Europe/EDF-London Investment in which the Commission considered a non-compete clause as directly related and necessary to the operation in so far as it is limited to the duration of the parties' shareholding.
26. The Commission's conclusion in Case Comp/JV. 36 TXU Europe/EDF-London Investment cannot be generalised. In each single case the duration of a non-competition clause must be duly justified by the parties. In the present case the Commission considers that the non-compete clause is directly related and necessary in order to protect the parents' interests in the joint venture only in so far as it concerns the parents' activities (and not third parties) and it is limited to the products and territories in which F2 is active or is called to operate. Furthermore, the duration of the relevant clause must be limited to the period which is absolutely necessary to guarantee the value of the parties' investment. This period may be estimated to be [...] years. In so far as the relevant clause exceeds the criteria outlined above it is not covered by the present decision.
27. Clause 12 of the said Joint Venture Memorandum provides that when AGC or Mitsubishi undertakes a Derivative Business (according to Clause 3 of the Joint Venture

Memorandum, [...]. When such a Derivative Business is established, AGC and Mitsubishi are to [...]. Also, when such a Derivative Business is established, the Group (AGC or Mitsubishi) which is the vehicle for this [...].

28. The full scope and the effect of Clause 12 remain vague. In any event, in so far as Clause 12 may restrict competition, the notifying parties have not provided adequate reasons to justify considering it as directly related and necessary to the implementation of the concentration. This clause is, therefore, not covered by the present decision.

VII. CONCLUSION

29. In the light of the above, the setting up of the notified joint venture does not raise serious doubts as to its compatibility with the Common market.
30. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the Common Market. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No. 4064/89.

For the Commission,

(Signed by)

Mario MONTI

Member of the Commission