

***Case No IV/M.1201 -
DUPONT / MERCK***

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

Article 6(1)(b) NON-OPPOSITION
Date: 23/06/1998

*Also available in the CELEX database
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.06.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sirs,

Subject: Case No IV/M.1201 - DUPONT/MERCK

Notification of 25.05.1998 pursuant to Article 4 of Council Regulation No 4064/89

1. On 25.05.1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking E.I. du Pont de Nemours & Co. ('DuPont') acquires the whole of the The DuPont Merck Pharmaceutical Company ('DMPC'), a 50% joint venture with Merck & Co. ('Merck'), by the purchase of Merck shareholding. All of the three companies are incorporated in the USA.
1. After examining the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 but does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

2. DMPC, the joint venture between DuPont and Merck, is an independent, research-based pharmaceutical and radiopharmaceutical company which markets its products in many countries. They have research facilities in Wilmington, Delaware, USA, involving more than 800 scientists, but have only a small clinical team based in Europe.
4. DuPont, the acquiring company, is a global and diversified chemical and energy company. It is engaged in the research, development, production, distribution and sale of a variety of chemical and energy products, man-made fibres, plastics, and other materials.
5. Merck is a global and diversified pharmaceutical company.

6. The concentration concerns the acquisition by DuPont of sole control of DMPC, a company formed in 1991 through a jointly control partnership between DuPont and Merck.

II. COMMUNITY DIMENSION

7. The operation concerned meets the thresholds laid down in Article 1(3) of the amended Regulation: a) The undertakings concerned have a combined aggregate world-wide turnover significantly exceeded ECU 2,500 million. (DuPont: ECU 39,750.80 million; DMPC: ECU [...] ¹ million). b) In five Member States (France, Germany, Italy, Spain and United Kingdom) the combined aggregate turnover of both the undertakings is more than ECU 100 million. c) In all of the above five Member States, each undertaking has a aggregate turnover more than ECU 25 million. d) Both undertakings have a Community-wide turnover in excess of ECU 100 million (DuPont: ECU 12,890.25 million; DMPC: ECU [...] ² million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.
8. The notified operation therefore has a Community dimension, but does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

III. COMPETITIVE ASSESSMENT

3. There are no overlapping activities of the parties to the concentration in the community. DMPC sells pharmaceuticals (mainly for Parkinson's disease, hypertension, pain relief and opiate and alcohol addition) and radiopharmaceuticals. Their sales in this sectors accounted for less than 1% of European sales. DuPont is not active in the pharmaceutical or radiopharmaceutical sectors or in any upstream, downstream, or neighbouring activities other than through its shareholding in DMPC.
4. Given the absence of an increased combined market share in this case, it is not necessary to give a precise market definition, neither for products nor for geographic areas.
5. In view of the above, the notified operation will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

IV. CONCLUSION

6. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,

¹ Deleted. Business secret: between ECU 1,000 and 1,200 million.

² Deleted. Business secret: between ECU 150 and 200 million.