

***Case No COMP/M.1911 -  
DOW / BSL***

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 27/04/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.4.2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party.

Dear Sirs,

**Subject: Case No COMP/M.1911 – DOW/BSL**

Notification of 23.03.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On the 23.03.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No. 4064/89, whereby the Dow Chemical Company (Dow) will acquire the remaining 20% of the shares in BSL Buna Sow Leuna Olefinverbund GmbH (BSL).
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89<sup>1</sup> that it does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

**I. THE PARTIES**

3. DOW is a global science and technology based company and integrated producer of chemicals. It develops and manufactures a portfolio of chemicals, plastics, agricultural chemicals and other specialised products. Its annual sales were about US \$ 18,4 billion in 1998. The company has 123 manufacturing sites in 32 countries and supplies more than 3.500 products.
4. BSL is company based in Germany it is engaged in the production of chemicals and plastics. Dow already holds 80% of its shares the remainder are held by Bundesanstalt für vereinigungsbetdingte Sonderaufgaben (BvS).

## **II. THE OPERATION**

5. The transaction was notified on 23.03.2000. The proposed operation consists of the exercise by Dow of its call option to purchase the remaining 20% of the shares of BSL from the BvS. Dow acquired its original 80% share holding in 1995<sup>2</sup> at the time the BvS kept the remaining 20% of the shares and certain veto rights for the duration of the five year restructuring period. These veto rights gave BvS joint control over BSL.

## **III. CONCENTRATION**

6. With the exercise of Dow's call option, or indeed of BvS's corresponding put option, Dow will acquire all the shares it does not already own in BSL and BvS's veto rights are extinguished. There is thus a change from joint to sole control by DOW over BSL and therefore a concentration in the sense of Article 3(2) of the Merger Regulation.

## **IV. COMMUNITY DIMENSION**

7. The operation has a Community dimension pursuant to Article 1(2) of the Merger Regulation as the combined aggregated world wide turnover of all the undertakings concerned exceeds €5 000 million (DOW: €[...] million; BSL: €[...] million). The aggregate Community wide turnover of each of the undertakings exceeds €250 million (DOW: €[...] million; BSL: €[...] million). Furthermore, the parties do not achieve more than two-thirds of their turnover in one and the same Member State.
8. The operation does not qualify for co-operation with the EFTA Surveillance Authority pursuant to the EEA Agreement.

## **V. COMPETITIVE ASSESSMENT**

9. This Commission cleared the original acquisition of 80% of the shares of BSL from BvS in 1995<sup>3</sup>. It was accepted in that decision that Dow clearly had the industrial leadership of BSL.
10. The operation will have no commercial or market impact. Dow already has 80% of the shares of BSL and the industrial leadership in the joint venture. Furthermore under the Marketing and Sales Agreement Dow has had the commercial responsibility for the sale of almost all ([more than 90]%) of the production of BSL.
11. The proposed operation will not therefore have any significant effect and will not create or strengthen a dominant position. In this context it should be noted that the Commission takes full account of the sales of BSL in its analysis in Case N° M.1671 – DOW/UCC in that in its examination of the market position of Dow it has included all the sales of BSL.

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<sup>1</sup> OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

<sup>2</sup> Case N° M.591 - Dow/Buna, 4 July 1995

<sup>3</sup> Case N° M.591 - Dow/Buna, 4 July 1995

## **VI. CONCLUSION**

12. 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) Council Regulation (EEC) No 4064/89 and Article 57 of the EEA Agreement.

For the Commission,  
Signed  
Mario MONTI  
Member of the Commission