EN

Case No IV/M.1230 - GLAVERBEL / PPG

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07.08.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifiying parties

Dear Sirs,

<u>Subject</u>: Case No IV/M.1230 – Glaverbel/PPG
Notification of 03.07.1998 pursuant to Article 4 of Council Regulation N/ 4064/89

1. On 3 July 1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No. 4064/89 ("Merger Regulation") by which Glaverbel SA ("Glaverbel") will acquire within the meaning of Article 3(1)(b) of the Merger Regulation control over the European float glass activities of PPG Industries ("PPG").

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 and with the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. Glaverbel is a company principally engaged in the production, processing and sale of glass for building, transport and electronic industries. It belongs to the Japanese Asahi Glass Group. Glaverbel has float glass plants in Belgium, the Netherlands, Russia and the Czech Republic.

4. PPG is a company active in the production, processing and sale of glass in the building and transport industries. PPG is a strategic business unit of PPG Industries Inc., a US producer of coating, glass, fiber glass and chemicals. PPG has float glass

Rue de la Loi 200, B-1049 Bruxelles/Wetstraat 200, B-1049 Brussel - Belgium
Telephone: exchange 299.11.11
Telex: COMEU B 21877. Telegraphic address: COMEUR Brussels.

plants in France and Italy, has further activities in the UK and Germany in automotive replacement and has sales offices in various other countries. […][1]

5. The operation consists in Glaverbel acquiring sole control of PPG by means of purchasing shares and assets of this company.

II. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate worldwide turnover in excess of ECU 5,000 million (Glaverbel, ECU 8,700 million, PPG, ECU 421 million). Each of them has a Community-wide turnover in excess of ECU 250 million (Glaverbel, ECU 762 million, PPG, ECU 410 million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension. It does not constitute a co-operation case under the EEA Agreement.

III. COMPETITIVE ASSESSMENT

A. Relevant product markets

7. The parties' activities overlap in the production and sale of raw float glass as well as several downstream products. In the notification the parties follow the market definition that the Commission has given in its decision of 21 December 1993 in case No. IV/M.358 – Pilkington-Techint/SIV[2]. In this decision the float glass sector has been analysed at two levels: Level 1 corresponds to the production of raw float glass whereas at level 2 most of the raw float glass is subject to further processing.

8. The relevant product market at level 1 is raw float glass. The raw float glass market consists of the production and sale of primary float glass, using a process that was invented by Pilkington in 1959. This process is highly capital intensive. There are currently six float glass manufacturers in the EU (Saint-Gobain, Pilkington, Glaverbel, PPG, Guardian, and Euroglass). Each of these producers is active to different degrees in further processing and distribution of float glass.

9. Within level 2 the main distinction is between the sectors of automotive trade and general trade.

10. Automotive trade glass is a kind of safety glass. It comprises laminated glass, which is mainly used in windscreens, and toughened glass, which is mainly used in side and rear windows. Pursuant to the Commission's conclusions in Pilkington-Techint/SIV the parties have distinguished two separate product markets, namely automotive glass supplied to the original equipment manufacturers ("OEM") and original equipment suppliers ("OES") on the one hand, and automotive glass replacement equipment which is sold to the independent aftermarket ("IAM") on the other hand. Of the global automotive trade sector in the Community the parties estimate that the first market represents approximately 85% by value and the second 15%.

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[1] deleted for publication

[2] OJ L158 of 25.06.1994

11. In conformity with the Commission’s position in Pilkinton/SIV the parties submit that the sector for general trade glass comprises the following separate relevant product markets:

- unprocessed glass (single glazing),
- sealed units (double or multiple glazing),
- silvered glass (mirrors),
- laminated glass (safety glass),
- toughened glass (safety glass).

Of all general trade glass in the Community the parties estimate that approximately 25% is unprocessed, 50% is sealed units and the remainder is divided in equal parts between laminated, toughened and silvered glass.

12. The Commission investigation in this case has confirmed the above described product market definition.

B. Relevant geographic markets

13. In Pilkington-Techint/SIV the Commission defined the geographic market for level 1 as the Community as a whole. In reaching this conclusion the Commission observed that the various supply areas can be seen as a series of overlapping circles with their centres at the float glass plant. The Commission found that given the dispersion of the individual plants and the varying degrees of overlap for the natural supply areas, so that effects can be transmitted from one circle to another, it seems appropriate to consider that the geographic reference market is the Community as a whole. The parties concur with this definition of the market, and it has also been largely confirmed by the investigation in the present case.

14. The investigation in the present case has turned up some indication that the nordic countries (Norway, Sweden and Finland) may constitute a separate geographic market, notably that prices seem to be considerably higher in those countries. However, this question can be left open as no competition problem would arise even if these countries formed a distinct geographic market.

15. As regards level 2 the Commission concluded in Pilkington-Techint/SIV that for automotive glass the geographic market is at least Community wide both for OEM/OES and for IAM. The reasoning for this conclusion was that the higher value added in automotive glass reduces the percentage of transport cost in the overall product cost and vehicle manufacturers frequently purchase automotive glass from other Member States. The parties endorse the Commission’s view.

16. In respect of general trade in the Pilkington-Techint/SIV case the Commission left the precise definition of the geographic market open. In particular, on silvered and laminated glass the Commission noted that these products were transported over long distances by the large producers. Therefore, the parties hold that there is a strong argument for defining these markets as EU-wide as well. The parties submit that the same conclusion is valid for toughened glass and sealed units as all major producers are operating at least on an EU-wide basis and market conditions in the different Member States are sufficiently homogeneous. The Commission’s investigation in the present case has confirmed that the markets for silvered glass (mirrors) and laminated glass are EU-wide. For the other product markets in the

general trade segment the results are not as clear. However, for these products it is not necessary to decide on the exact geographic scope of the market as no competition problems arise on the basis of the narrowest possible market definition.

C. Assessment

1. Level 1 - Raw float glass

17. According to the Commission's investigation the market shares for raw float glass in the European Union in 1997 are distributed as follows[3]:

Producer	Glaverbel	PPG	Saint Gobain	Pilkington	Guardian	Euroglass	Others/ Imports
Market share EU	10-15%	8-10%	30-35%	25-30%	10-15%	1-5%	5-10%
Market share nordic countries	c. 10%	<5%	20-25%	>50%	<5%		

18. The parties will achieve an added market share around 20-25%. With this market share they will be the third-largest supplier after Saint-Gobain and Pilkington. In the nordic countries the parties' added market share would be less than 15%, and Pilkington is the clear market leader. Therefore it can be excluded that the merger will lead to the creation of a single dominant position for raw float glass in the European Union or the nordic countries, if they constitute a separate geographic market.

19. However, the market for raw float glass within the European Union is highly concentrated. After the operation, the four leading suppliers together will hold more than 85% of the market shares. Under these circumstances it has to be examined whether the merger will lead to the creation or strengthening of a joint dominant position of the leading suppliers.

20. The question of possible oligopolistic dominance in the market for raw float glass was examined in depth in the Pilkington-Techint/SIV case. In that case the Commission concluded that there was insufficient evidence the market structure after that concentration would allow anti-competitive parallel behaviour. This conclusion was based on several arguments. The asymmetries in the market position of the (then) five EU float glass producers would render anti-competitive parallel behaviour difficult. Excess capacity in the industry and the high marginal profits earned on additional sales combined with the inadequate market transparency undermined the creation and stability of any possible anti-competitive parallel behaviour.

21. The present concentration will reduce the asymmetries in the market position of the leading suppliers, as Glaverbel/PPG will come closer to the leading suppliers Saint-Gobain and Pilkington. But even after the merger their respective market shares will differ by at least 5-10%. Saint-Gobain will remain the clear market leader and Pilkington clearly the second-largest market player. Since the Pilkington-Techint/SIV

[3] The data in all the following tables is based on information given by the parties in their notification and on information given by third parties in response to questionnaires.

decision, there have been shifts in market shares between the leading producers as well as with others. Saint-Gobain has lost 5-10% market share, Pilkington has gained up to 5%, PPG has lost up to 5%, Guardian has gained around 5%. These changes are indicative of past competition after the Pilkington-Techint/SIV merger. Another indication of past competitive behaviour is that prices for raw float glass have further decreased since the Pilkington-Techint/SIV decision.

22. Furthermore in 1995 a new producer entered the market, Euroglass, a subsidiary of the Swiss glass producer Glas Troesch Holding AG. At least two other companies that are active on level 2 have publicly stated their intention to become involved in the manufacture and sale of raw float glass (Scheuten Glasindustrie BV and Sangalli Vetro SpA). In the last five years Guardian has built a new float glass plant in Germany. There exist announced projects for new float glass plants in Italy, Spain, Greece and United Kingdom (mainly by the existing float glass producers, but also by the potential new entrant Sangalli). The future increase in capacity will reduce the likelihood of anti-competitive parallel behaviour as every producer has a considerable incentive to sell as much of his raw float glass as possible because of the high marginal profits.

23. The market developments since the Pilkington-Techint/SIV decision confirm the competitive structure of the market for raw float glass. Therefore the notified operation will not lead to the creation or strengthening of a joint dominant position in this market.

<u>2. Level 2 – Automotive glass</u>

24. The distribution of market shares in the automotive glass markets in the European Union in 1997 is as follows[4]:

Producer	Glaverbel	PPG	Saint Gobain	Pilkington	Guardian	Others/ Imports
Market share EU OEM/OES	[7-20%]	[5-15%]	[30-50%]	[30-40%]	[<10%]	[<10%]
Market share EU IAM	[<10%]	[5-15%]	[30-40%]	[20-30%]	[<10%]	[15-25%]

25. The parties will achieve an added market share of […][5] in the OEM/OES market and below 20% in the IAM market. In both markets they will be the third largest supplier with a still considerably lower market share than the market leaders Saint Gobain and Pilkington. Therefore the possibility of the creation of a single dominant position on these markets can be ruled out.

26. The automotive glass markets are even more concentrated than the market for raw float glass. Nevertheless the Commission does not consider that the notified transaction will give rise to a dominant oligopoly for the following reasons. Purchasers of OEM/OES automotive glass are vehicle manufacturers. These are large companies with considerable purchasing power, which they regularly use to

4 For publication the figures in the following table have been deleted and substituted by ranges in square brackets

5 deleted for publication, between 15-30%

exert pressure on their suppliers to lower prices. Furthermore there is excess capacity also in the market for automotive glass. These factors will prevent the emergence of anti-competitive parallel behaviour. In the automotive glass IAM market there are a number of independent suppliers in addition to the OEM/OES suppliers who maintain effective competition. The customers of the IAM market do not enjoy the same purchasing power as those in the OEM/OES market. Nevertheless it would not be in the interest of the automotive glass producers to weaken the position of IAM outlets because that would submit them to an even greater extent to the purchasing power of the vehicle manufacturers.

3. Level 2 - General trade glass

27. The markets for general trade glass are less concentrated than those for raw float glass and automotive glass. In addition to the producers active in these markets, a large number of independent producers are active in the various markets for general trade glass.

a) Silvered glass (mirrors) and laminated glass

28. The market shares for silvered glass (mirrors) and laminated glass respectively in the EU in 1997 are laid down in the following table[6]:

Producer	Glaverbel	PPG	Saint Gobain	Pilkington	Guardian	Others/ Imports
Market share EU silvered glass	[15-25%]	[<10%]	[20-30%]	[15-20%]	[10-15%]	[10-20%]
Market share EU laminated glass	[8-20%]	[<5%]	[25-35%]	[20-30%]	[5-10%]	[15-25%]

29. For mirrors the parties will have added market shares of […][7] in the EU. There is one equally strong competitor (Saint Gobain) and two others with considerable market shares. For laminated glass the market share of the parties will be below 20% with Saint Gobain and Pilkington having considerably higher market shares. Under these circumstances the merger will not lead to the creation of a single dominant position of the parties in any of these markets.

30. It will also not lead to the creation of collective dominance of the leading producers. In the market for mirrors, Pilkington and Guardian, whose market position is weaker than that of the parties and Saint Gobain, and also the other independent producers will exercise competitive pressure on the two leading suppliers. Mirrors and laminated glass are not homogeneous products, prices are negotiated individually, and in both markets there are a number of independent producers active. Market entry at level 2 is much easier than at level 1 as investment costs are far lower to further process raw float glass in comparison to the production of raw float glass.

6 For publication the figures in the following table have been deleted and substituted by ranges in square brackets

7 deleted for publication, between 20-35%

b) Unprocessed glass, sealed units and toughened glass

31. The market share distribution for unprocessed glass in the EU in 1997 is as follows[8]:

Producer	Glaverbel	PPG	Saint Gobain	Pilkington	Guardian	Euroglass	Others/ Imports
Market share EU	[5-20%]	[5-15%]	[20-40%]	[20-30%]	[5-20%]	[<5%]	[5-10%]

The parties achieve an added market share of […][9] and will be the third-largest supplier. Therefore it can be excluded that they will achieve a single dominant position in this market. The merger will also not lead to the creation of a joint dominant position for similar reasons as explained in paras 18-22 above.

32. Market shares for unprocessed glass on level 2 are difficult to determine as this glass is not physically different from raw float glass and producers not always keep records that differentiate level 1 and level 2 for this product. Therefore it was not possible to establish exact market shares for individual Member States. The market share distribution tends to be very similar to that of raw float glass. Therefore the only Member States where the parties may have higher market shares than on average in the EU are Belgium and the Netherlands. However, in these countries there is sufficient competitive pressure from Saint Gobain, Pilkington and Guardian who all have float glass plants in bordering regions of France and Germany. In all other Member States the market shares of the parties are not higher (and mostly lower) than on EU level. Therefore the merger will not lead to the creation of a dominant position in any Member State.

33. On an EU-wide level the added market share of the parties for sealed units in 1997 is less than 10%, that for toughened glass less than 5%. In both markets there are at least two competitors with higher market shares and numerous other competitors. Therefore the concentration will not lead to the creation or strengthening of a dominant position in either of these markets if the geographic market is EU-wide.

34. If the markets are national, the only Member State with market share additions for sealed units as well as toughened glass will be France. The added market share of the parties for sealed units in France is […][10], that for toughened glass […][11]. After the merger the parties will be the second-largest supplier on both markets, well behind the market leader Saint Gobain with […][12] market share for sealed units and […][13] for toughened glass. Therefore there is no danger that the concentration will lead to the creation of a single dominant position. In view of the considerable market share differences between the market leader and the next-biggest suppliers and a large

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8 For publication the figures in the following table have been deleted and substituted by ranges in square brackets

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12 deleted for publication, between 30-50%

13 deleted for publication, between 40-55%

number of other independent suppliers it can also be excluded that the concentration will lead to a joint dominant position.

35. In Belgium/Luxembourg and the Netherlands, Glaverbel has market shares of […][14] for sealed units, as these countries are Glaverbel's home markets. However, PPG is not active in these countries. Therefore the merger will not lead to the creation of a dominant position.

IV. ANCILLARY RESTRAINTS

36. The notified agreements contain a non-competition clause , which guarantees the transfer of the full value of the business being acquired. The non-competition clause prohibits the seller to engage in activities in the same field of business as PPG European Glass in any EU Member State for a period of two years following the effective date of the notified transaction. In scope and in duration the non-competition clause is in line with the Commission notice regarding restrictions ancillary to concentrations[15]. This provision is covered by the present decision.

V. CONCLUSION

37. 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,

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[15] OJ C 203, 14.08.1990, p. 5