EN

Case No IV/M.1363 - DUPONT / HOECHST / HERBERTS

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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, 05.02.1999

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Dear Sirs,

Subject: Case No IV/M.1363 – DuPont/Hoechst/Herberts
Notification of 4 January 1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 4 January 1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (Merger Regulation) by which the U.S. American undertaking E. I. Du Pont de Nemours & Co. (DuPont) acquires sole control of the German undertaking Herberts GmbH and participation in former subsidiaries of Herberts AG (collectively, Herberts), at present owned by Hoechst AG.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I. The Parties and the Operation

3. DuPont is a diversified U.S. chemical and energy corporation with a worldwide presence. The company is engaged in the research, development, production, distribution and sale of a variety of chemicals and energy products, man-made fibres, plastics, agro-chemicals, pharmaceuticals and other materials such as coatings.

4. Herberts is currently owned by the German Hoechst AG (Hoechst). In the course of its focussing on its core activities Hoechst intends to divest Herberts, a subsidiary engaged in the development, production and sale of coatings for various end-use applications, in particular the automotive industry.

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.

II. Concentration

5. DuPont will acquire sole control of Herberts. Therefore, the proposed transaction is a concentration within the meaning of Article 3 (1)(b) of the Merger Regulation.

III. Community dimension

6. The combined aggregate worldwide turnover of the parties to the concentration exceeded EUR 5,000 million in 1997 (DuPont: EUR[1] 39,751 million, Herberts: EUR 1,359 million) and each of the undertakings concerned had a Community-wide turnover of more than EUR 250 million ([…]). The companies concerned did not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. Hence, the proposed operation has a Community dimension.

IV. Relevant product markets

7. The operation concerns coatings supplied for automotive and other industrial applications. The parties define the following five relevant product markets: (i) the manufacture and supply to original equipment manufacturers (OEMs, i.e. car manufacturers) of coatings applied to vehicle bodies; (ii) the manufacture and supply to OEM of coatings used to coat automotive plastic components; (iii) the manufacture and supply of coatings for after-market applications (AM); (iv) the manufacture and supply of industrial coatings and (v) the manufacture and supply of powder coatings.

(i) OEM coatings for vehicle bodies

8. After pre-treatment of the vehicle body to remove grease, oils and dust four generic types of finish are typically applied, to match the specifications of an individual OEM, i.e. electrocoat, primer-surfacer, basecoat and clearcoat.

9. Electrocoat provides corrosion protection and a surface to which subsequent layers may adhere. Electrocoating is performed by immersing the vehicle body in a tank containing electrically conductive electrocoat solution, which coats the internal and external surface of the vehicle body by electrodeposition. The next layer is the primer-surfacer, a polyester film that ensures a smooth layer on which to apply subsequent coatings. It provides chip resistance and gives additional rust protection. The basecoat and subsequently the clearcoat are the visible layers of the automotive coatings. Basecoat adds colour and, in case of metallic colours, a metallic finish. Basecoat may contain acrylic and/or polyester-based resin and may be either solvent or water-based. Clearcoat protects the basecoat, provides a glossy finish and acts as the outward protection for the paintwork. It protects the vehicle body from ultraviolet light, chemical attack such as acid rain, abrasion and damage such as that caused by stone chips. In some applications, mainly to create plain colours as white and black, the functions of basecoat and clearcoat are performed by a single finish, referred to as monocoat. Monocoat represents approximately 7% of coatings supplied to OEMs for coating vehicle bodies. For the

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[1] 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.

purpose of assessing the market position of undertakings active on the relevant markets, the Commission regarded monocoat as part of the basecoat.

10. All above-mentioned coating products are produced by using the same four principal ingredients, i.e. resins, pigments, solvents and additives. In essence, the different ingredients are mixed, the result is quality tested and then filled into containers. The properties of the various coating products are determined by the chemical composition and characteristics used in the production process. The same production line can be used to manufacture coatings used for OEM and AM applications, as well as to manufacture the different above-mentioned coating products. A switch in production could be made overnight or at least in no longer than 24 hours.

11. The parties state that all OEM coating products belong to the same relevant product market. They argue that the products are sold together, often as part of a system and invariably to the same customers. Furthermore, the competing undertaking PPG Industries International Inc. (PPG) argues that car manufacturers require coating suppliers to supply the whole range of products.

12. The investigation involving all major car manufacturers as well as all competitors to the parties concerned produced a different result. Most OEM still purchase their different coating products from different suppliers. Although there had been indications that there is a certain tendency towards purchasing at least base- and clearcoat as a package, all OEMs confirm that coating products from different producers can easily be combined. In the application of coatings there is no need to stick to the product range of one supplier, since a combination of coating products does not affect the quality of the coating work. Thus, almost all OEMs confirmed that their purchasing strategy still consisted of buying the different coating products from separate suppliers. Ford altered its purchasing strategy in the course of the last three years. The undertaking now appoints sole suppliers for its plants, but has on the other hand directed its suppliers to source certain coating products from other suppliers.

13. The result that each coating product constitutes a separate product market is further backed by a table handed in by the parties that indicates OEM switches amongst suppliers during 1998. This table clearly shows that each OEM sources coating products from different suppliers. This view is further supported by the fact that Blancomme-Soudée (Blancomme) and Hemmelrath Lackfabrik GmbH (Hemmelrath) as niche producers do not offer the whole range of products but concentrate on one (Hemmelrath: primer-surfacer) or several coating products (Blancomme: all but electrocoat). Moreover the market shares (see below: paragraph 26) are quite differentiated, confirming that suppliers do not have the same strength in the manufacture of each product.

14. A further distinction has to be drawn in the case of the distribution channels for the coating products. In accordance with prior decisions identifying separate markets for OEM and AM applications, similar reasons apply to the coating sectors. Although AM refinishes use the same basic ingredients as those used to produce OEM coatings, and although they are produced on similar equipment to OEM finishes and employ nearly identical production processes, there are certain differences between products supplied for OEM and after-market applications. First, vehicles undergoing repair cannot be immersed in electrocoat tanks, so electrocoat is not used in the after-market. In addition, oven-drying of vehicles undergoing repair at high temperatures is not possible as they would be damaged by temperatures exceeding approximately 60° C. Accordingly, 2 component systems, which mix an activator with the finish shortly before spray

application, prevail in the after-market. Second, the colour range required for after-market applications exceeds that required by OEMs. Supplies for the after-market must replicate all colours applied by OEMs for any vehicle that may require refinishing. This requires a very large range, which is expanded by the need to take account of the alteration of a vehicle's appearance with age. Finally, packaging requirements for after-market applications differ from the OEM. Independent body shops handle small volumes and their task is generally to repair small parts of the vehicle body to match existing paintwork. Therefore, products are usually available in sizes ranging between 0.25 – 5 litres in the after-market. Therefore products manufactured for the use of OEM form a product market distinct from the after-market.

15. In consequence, it is considered that each coating product used by OEMs to coat vehicle bodies, i.e. electrocoat, primer-surfacer, basecoat and clearcoat, constitutes a relevant product market.

(ii) OEM coatings for plastic components

16. Coatings for plastics are produced using the same basic manufacturing processes as are used for other automotive coating products. There are, however, certain differences between products used to coat plastic components and those supplied for coating vehicle bodies. In particular a coating product such as electrocoat is not used to coat plastic components. Plastic components, furthermore, often cannot withstand the high temperatures used in coating vehicle bodies so the finishes must be formulated accordingly. Plastics may require special properties. Coatings used to coat non-rigid plastics must withstand flexing and they must be specifically formulated to adhere to different types of plastic. There are indications that the market should be further subdivided into coatings for internal plastic components, an area where neither DuPont nor Herberts are active, and coatings for external plastic components. Some competitors have drawn this clear distinction. The Commission however considers that it is not necessary to provide a precise definition of the product markets involved as the competitive assessment will not be modified in alternative (broader) market definitions. Similarly, the markets for coatings for vehicle bodies for sale to OEMs has to be considered a market distinct from after-market applications. This product market delimitation has been confirmed by most of the competitors and customers.

(iii) Coatings for after-market applications (AM)

17. Automotive finishes are used mainly for repainting used cars and repairing accident damage. The principal AM customers are independent bodyshops and OEM franchisees. As outlined above, coating products supplied for OEM and the after-market constitute different relevant product markets. Six principal products are supplied to the after-market: primer, basecoat, clearcoat, thinners, activators and putty. Primer, base- and clearcoat perform the same basic functions as the products used by OEMs. Thinners are high-volume, low-value solvents used to enhance the fluidity of products for handling and application, and to clean spraying equipment. Thinners are supplied by a large number of companies, including firms who are not active in the supply of other coating products. Activators are isocyanate-based polymers used in all stages of the AM refinishing process to encourage refinishes to react with the vehicle surface to enhance adhesion and to ensure rapid drying at low temperatures. Putty or stopper is a paste-like material used beneath a primer in order to fill deep dents, scratches or rippling in the car body.

18. The parties submit that all refinishes including refinishes used to repair damaged plastic components belong to the same relevant product market. This product market

delimitation has been confirmed by most of the competitors and customers during the investigation. Customers confirmed that in practice, although it is possible to combine the products of several suppliers, the customers tend to buy the entire range from one supplier. The main reason why customers buy each product as part of a system from one and the same supplier is the guarantee. When problems in the application arise, the end-user likes to have one contact person to turn to for complaints. Some distributors voiced that they do not recommend combining products from different suppliers, due to the fact that paintwork is considered a system. Maximum quality and durability could be ensured only where products of one supplier are used.

(iv) Industrial coatings

19. Industrial coatings include electrocoat (for automotive accessories, agricultural machinery, construction elements, and other metal articles), metal coatings, electrical insulation systems, special adhesives, and protective coatings. There are six principal industrial coating end-use applications, namely electrodeposition coatings, metal coatings, electrical insulation systems, special adhesives, protective coatings and wood coatings. There have been indications that the different end-use applications constitute separate markets. It is not necessary to make a further assessment of the exact definition of the product market, as even on narrower markets the impact of the operation will not be such to lead to competition concerns (see below: paragraph 53).

(v) Powder coatings

20. The investigation, which involved a survey of all major coatings producers and car manufacturers, resulted in the view that powder coatings cannot be regarded as being a separate product market. The competitors stressed the technology utilised by powder coatings. Powder coatings have replaced conventional fluid based technology in many coatings product markets such as the market for OEM coatings for vehicle bodies and the market(s) for industrial coatings. From the demand-side this technology is perfectly substitutable by other coating technologies. Therefore from the demand-side perspective the Commission concludes that the manufacture and supply of powder coatings does not constitute a separate relevant market. Even if powder coatings constituted separate product markets in each application, the competitive assessment would not alter. DuPont does not produce powder coatings. Thus, the operation does not lead to an increment in Herberts' market share.

V. Relevant geographic markets

21. The relevant geographic market to consider for all of the above products sold on an OEM basis is the EEA. According to the parties the main reasons are the following:

- there are no obstacles to intra-EEA trade;
- prices are similar throughout Europe, given that OEM sales are usually made to the European production sites of the automobile manufacturers;
- suppliers tend to serve the entire EEA from only a few plants located within the EEA;
- transportation and packaging cost represent a relatively small proportion of average sales value (i.e. 5%).

The Commission shares this view. Actual purchasing to meet the coating demands of European manufacturing sites is still effected at European level. The coatings used in Europe are produced on the continent due to the fact that longer transportation could

spoil their quality. Even more important is the fact that a longer duration of transportation could hinder just-in-time production. Thus, and in line with previous Commission decisions[2], the geographic market for automotive supplies is the EEA.

22. Most competitors, along with the parties, considered the AM coating market as being EEA-wide. The following reasons support this assumption:

    - AM coatings are manufactured to almost identical technical and product specifications across the EEA. There are no tariffs or other obstacles to intra-EEA trade;
    - AM suppliers use the same brands across the EEA with packaging that bears multilingual labelling. Suppliers also undertake uniform advertising and marketing campaigns throughout the EEA. Bodyshops in all EEA member states receive the same basic services, training and customer support;
    - the after-market in the EEA is supplied largely by several European-based undertakings, each of which has built-up its presence in almost all EEA member states on the basis of production sourced primarily from one or two plants;
    - unlike other previous cases concerning the after-market[3], there are no national consumer preferences for specific brands;
    - transportation costs within the EEA are not significant;
    - distributors are not dependent on importers for supplies of AM coatings and may source products from AM coating suppliers located in other countries.

23. There are, however, indications such as a non-uniform price level throughout the EEA member states and significantly diverging market shares for the market participants throughout the EEA that suggest that the geographic market might be narrower than the EEA, i.e. national. As shown below (paragraph 49 and following) no risk of dominance would arise on any of these potential national markets. Consequently, there is no need to discuss further whether – against strong arguments for an EEA-wide scope of the geographic market – the market for coatings for AM applications might be national.

24. There is no need to discuss further the scope of the geographical market for industrial coatings as no risk of dominance would arise post-transaction on any of these potential markets (see below: paragraph 53).

VI. Competitive assessment

(i) OEM coatings for vehicle bodies

25. The market for OEM coatings is – prior to the merger – highly concentrated. The only suppliers offering the whole range of OEM coating products besides the parties are the multinational undertakings PPG Industries International Inc. (PPG) and BASF coatings AG (BASF), belonging to the BASF group. The parties argue that the operation – looking at geographical markets – has a complementary effect due to the strength of DuPont in the US, whereas Herberts is mostly active in Europe. Other (niche) suppliers

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2 E.g. case IV/M.768 - Lucas/Varity (Commission decision of 11 July 1996; case IV/M.1245 – Valeo/ITT Industries (Commission decision of 30 July 1998).

3 E.g. case IV/M.12 – Varta/Bosch (Commission decision of 31 July 1991).

for certain OEM coating products are the French manufacturer Blancomme-Soudée (Blancomme) and the German Hemmelrath Lackfabrik GmbH (Hemmelrath).

26. The market share of DuPont and Herberts and their main competitors on the EEA market, on the basis of the Commission's investigation, is as follows. The investigation involved the main competitors PPG, BASF, Blancomme and Hemmelrath, thus covering almost all market players.

EEA shares (in value) of OEM coatings in 1997

Product	Herberts	DuPont	DuPont/ Herberts	PPG	BASF	others
Electrocoat	[15-20%]	[5-10%]	[20-30%]	(55-65%)	(10-15%)	---
Primer-surfacer	[25-30%]	[5-10%]	[30-40%]	(25-30%)	(20-25%)	(15-20%)
Basecoat	[25-30%]	[10-15%]	[35-45%]	(30-35%)	(20-25%)	(0-5%)
Clearcoat	[30-35%]	[20-25%]	[50-60%]	(10-15%)	(25-30%)	(0-5%)
Total coatings	[25-30%]	[10-15%]	[35-45%]	(35-40%)	(20-25%)	(0-5%)

27. The client base on the market consists of automobile manufacturers, which normally purchase large quantities of coatings for the use in their manufacturing plants. The purchase agreements are usually contracted for a duration of no longer than two to three years. Car manufacturers source products from several suppliers looking for an even allocation of contracts not least to ensure competition on the supply side. That explains the relative stability of market shares during the last few years (the investigation covered 1995 – 1997).

28. From the above it appears that DuPont/Herberts will become market leader on the above-defined markets for OEM coatings. The only exception is the market for electrocoat, on which PPG remains especially strong due to the fact that the undertaking developed and introduced this technology in the early 1980s and that other suppliers commenced production of electrocoat using PPG's technology.

29. New entry by producers into the automotive coatings market for OEM sales is restricted by the fact that cost-effective production increasingly requires large plants. Accordingly, any market entrant would be obliged, from the outset, to manufacture relatively large quantities to generate the efficiencies necessary to compete effectively on the OEM market. Therefore, for any new entrant the investment costs are significant. There are, however, some suppliers that have withdrawn from the OEM market recently such as Akzo, or that are solely active on the after-market such as ICI. They might consider

market entry where either a car manufacturer asks them to do so or if they envisage that market entry will become lucrative.

30. Nevertheless, the merger will not create a position of single dominance with regard to the parties concerned. This finding is based on the following reasons.

31. On the demand side, in the automotive coatings for OEM sales sector, the customer base is concentrated and consists of a small group of large clients, i.e. the major car manufacturers, which generally purchase high volumes of a particular product. This client base will become even more concentrated in the future, with further consolidation taking place on the demand-side, and due to a trend towards global sourcing. Typically, when an OEM intends to introduce a new colour or technology for a vehicle model, it provides specifications to suppliers for the required coatings, and seeks offers based on these specifications from several suppliers. The investigation has proved that OEMs use these initial quotations to determine a price objective and to bargain for lower prices with potential suppliers before choosing amongst them. Since each tender represents an important share of available new business and R & D has to be carried out and financed by each of the suppliers, regardless of whether or not a supplier is successful in securing a contract, competition for every supply opportunity is intense.

32. Furthermore, the investigation proved that OEMs do contract with several suppliers to ensure technical and price competition amongst their suppliers. In some cases car manufacturers single-source for several plants. The concept of single sourcing does not mean that one supplier is able to sell its whole range of products to one OEM, rather it denotes that the OEM has only one contact company, which can be made liable if there are problems. The supplier procures products from competitors at the request of the OEM. This purchasing policy explains the relatively stable and balanced market share allocation. Prior to the merger, DuPont was the smallest of the suppliers offering the whole range of products. Herberts, PPG and BASF on the other hand, all had a comparable market position on each of the coating markets. […]

33. Moreover, on the supply-side, if one considers the position of suppliers on an overall market for OEM coatings, DuPont/Herberts will catch up with the market position of PPG, each accounting for around one-third of EEA OEM coatings sales. Although the parties will become market leader on all OEM coating product markets but the market for electrocoat, they will be constrained in all markets due to the competitive relationship between the various coating products.

34. The Commission has noted that, although some clients have pointed out the restriction of competition being brought about, the merger does not generally raise concerns. In conclusion, even though the parties will become market leader on the markets for primer-surfacer, basecoat and clearcoat following the merger, it seems unlikely that the transaction will lead to the creation or strengthening of a dominant position for DuPont/Herberts, as a result of which competition would be significantly impeded.

Oligopolistic dominance

35. On the markets for primer-surfacer, basecoat and clearcoat the leading two players will have a market share exceeding 60%, the strongest three players accounting for 80% or more. Therefore, the issue of joint dominance of these competitors should be considered.

36. Despite the high post-merger market shares of the main suppliers, it is considered that a situation enabling the competitors to jointly control the market is unlikely to occur.

37. The market for OEM coatings is characterised by the car manufacturers' significant buying power, through product differentiation and significant innovation. Whilst the car manufacturers have a clear overview of the market, the transparency of the OEM market is limited in as far as the competing suppliers are concerned, since coating products are purchased through a bidding process, so suppliers' prices are not transparent to their competitors. Each year the suppliers need to carry out significant R & D to develop new colours required by the car manufacturers. In so doing suppliers act independently from one another, at most simultaneously. The car manufacturers choose one coating producer for a specific car model or a specific plant as their first supplier and at least one other supplier as a back-up supplier. The car producers therefore, have a significant influence on the competitive process surrounding the manufacture of OEM coatings. Furthermore, coatings are diversified and heterogeneous products. A coating producer has to cover up to 2,500 different colours. There is also continuous innovation, in particular with respect to the quality of the coatings and increasing environmental standards. All these factors indicate that it would be difficult for OEM coatings suppliers to act in parallel on the OEM market and a position of collective dominance is therefore unlikely to occur.

(ii) OEM coatings for plastic components

38. Several specialised companies are active on this market, besides the parties concerned. In order to calculate the market volume for OEM coatings for plastic components on an EEA level, the parties relied on data sourced from the Global Market Data Book 1998 published by Price Waterhouse. This study estimated the total number of vehicles manufactured in Europe and the volume of coatings needed to coat plastic components for each vehicle. The survey estimates that 2 kg of finish are needed to coat the internal plastic components of a vehicle, and 3.2 kg to coat the external plastic components. All those competitors consulted agreed with this methodology as a basis for estimating market volume.

39. On this basis, the parties estimate that their combined share of sales is less than 15%. If one uses the narrower market for external coatings defined above, the combined market share would be roughly [25-30%]. DuPont has only been active in the production and supply of coatings used to coat plastic components in Western Europe since 1997, when it acquired the British Carrs Paints Limited. Through this acquisition DuPont has reached an EEA-wide market share of [5-10%].

40. Given the limited overlap of market shares and the presence of all major and smaller specialised suppliers on this market, the merger is unlikely to create or strengthen a dominant market position.

(iii) Coatings for after-market applications (AM)

41. The market for AM coatings is less concentrated than the market for OEM coatings. Besides the parties concerned the major producers are PPG, BASF, ICI Autocolour (ICI) and AKZO Nobel Coatings BV (AKZO). The parties named other producers offering the whole range of refinishes such as DeBeer, Beerkens, Palinal, Lechler, Skandiakjems, Masons, Pymro, AIRO, Voss, Akemi and Prestolith. Other suppliers only produce individual refinishes, i.e. thinners, activators and putties.

42. The market position of the parties and their main competitors is as follows. These market shares are based on the result of the investigation encompassing the major suppliers. They largely confirm the estimations submitted by the parties.

EEA shares (value) of AM coatings in 1997

Supplier	Market share
DuPont	[5-10%]
Herberts	[25-30%]
DuPont/Herberts	[25-35%]
PPG	(10-15%)
BASF	(15-20%)
ICI	(10-15%)
AKZO	(10-15%)
Others	(10-15%)

43. Given the above market structure, it has to be recognised that the combined market shares of the parties in this market are significantly lower than in the OEM market for base- and clearcoat. There are also more competitors on this market, mostly large chemical companies.

44. As far as the EEA-wide market for AM coatings is concerned, the merger does not raise competition concerns. Herberts' market share will increase by [5-10%] to [25-35%]. The parties will be constrained post-transaction by several large chemical companies, which offer a complete AM range that is fully substitutable for that of the parties concerned.

45. They are further constrained by competition among distributors and importers. Distributors compete among each other for the business of end-users in their locality. The parties estimate that between 50% and 60% of distributors typically carry at least one competing brand of another supplier. Distributors sell coating products to independent body shops (accounting for 55% of AM sales to end-users) as well as to OEM franchisees. Given that they carry competing brands, competiting distributors have every incentive at least to increase sales of all brands so as to maximise their returns. For such

distributors, price increases would result in a distributor pushing another brand more than a DuPont or Herberts brand.

46. The end-user group of independent bodyshops, furthermore, can switch easily from one supplier to an alternative supplier in case of a price increase for DuPont's or Herberts' AM products. This is due to the fact that suppliers and distributors of AM coatings offer bodyshops significant incentives to switch brands. Such incentives may include free colour matching equipment (mixing machine, electronic weighing scales and microfiche system), free initial stock and, in the case of larger bodyshops, financial contributions for investment in new equipment.

47. Further competitive influence is exerted by OEMs and their franchised bodyshops, which account for over 30% of AM sales. Although they are generally indifferent as to which AM coating brand they use, they typically require a supplier of AM coatings to obtain product approval from that OEM before its coatings can be used in its franchised bodyshops.

48. DuPont and Herberts will be constrained in their ability to behave independently of this end-user group, because they still need product approvals at OEM level. This approval, however, offers no guarantee that the OEM's franchised bodyshop will actually use their particular brand. As a number of brands are approved, the franchisees are free to source products from other approved suppliers. Thus, it is unlikely that the merger creates or strengthens a market position that impedes effective competition.

49. If one defines the geographical market as national, the market position of the parties in some countries strengthens, and in some cases exceeds 40%. The parties explain these differences in national shares of sales mainly in terms of the historical position of suppliers.

50. The parties' combined market share is relatively strong in the following countries (market volume in relation to the EEA market volume in brackets):

Austria	[35-40%]	(2%)
Denmark	[45-50%]	(2%)
France	[35-40%]	(12,6%)
Germany	[35-40%]	(18%)
Luxembourg	[45-50%]	(0,1%)
Portugal	[45-50%]	(2%)

51. Herberts has production facilities in Austria and Germany as well as historical links with approvals from local OEMs. DuPont, on the other hand, only achieves a market share of [less than 5%] in Austria and [less than 2%] in Germany. In France, Herberts has a share of approximately [25-30%] of AM coating sales […]. The market share in Denmark and Luxembourg largely reflects the success of importers of Herberts products. Over half of Herberts' AM sales in Portugal are attributable to older AM technology manufactured by its recent acquisition, Valentine. This company has historically held a strong position on the Portuguese market.

52. Although the parties reach a high market share in some EEA member states, the merger is unlikely to create or strengthen a dominant position in any of the above-mentioned

countries, to the extent that they constitute separate geographic markets at all. First, DuPont only has a minor share of the European market, accounting only in Denmark for a significant increment in market share ([5-10%]). Second, the parties remain subject to constraints from both their competitors and their customers (see above). If prices increase, customers can easily switch to other suppliers. Each of these countries' markets are open to all AM suppliers. A new entrant would face little difficulty in establishing an efficient distribution network since a large proportion of AM coating distributors carry a number of competing brands and have every incentive to increase returns by so doing. No tariffs or other obstacles impede intra-EEA-trade.

(iv) Industrial coatings

53. In Western Europe, DuPont has virtually no industrial coatings activities. Herberts is active in this sector, but accounts for only around 5% of Western European sales, if the six principal industrial coating end-use applications are considered to belong to the same relevant product market. However, even if one treats the different end-use applications as separate relevant markets, Herberts' share of sales does not exceed 25% in any of these markets. Thus, given the lack of an overlap in the parties' market shares and the modest position of Herberts in all of these markets, it is considered that the operation is not likely to lead to the creation or strengthening of a dominant position.

VII. Conclusion

54. 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,