

***Case No IV/M.1512 -
DUPONT / PIONEER
HI-BRED
INTERNATIONAL***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/06/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.06.1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.1512 - DUPONT/PIONEER HI-BRED INTERNATIONAL
Notification of 17.05.1999 pursuant to Article 4 of Council Regulation 4064/89

1. On 17.05.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, as amended by Council Regulation (EEC) No 1310/97, by which the undertaking E.I. du Pont de Nemours & Co. ("DuPont") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Pioneer Hi-Bred International Inc. ("Pioneer") by way of purchase of shares.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

2. DuPont is active in development, production and distribution of biological and chemical products, in particular in the field of crop protection. DuPont is also engaged in molecular biology research for the development of new plant traits to produce "transgenic" seeds. Pioneer is engaged in the research and development, the production and distribution of seeds.
3. The notified transaction involves the acquisition by DuPont of a 80% stake in Pioneer. It follows the formation, in 1997, of a research alliance between both companies, in the context of which DuPont had acquired a 20% shareholding in Pioneer.

II. COMMUNITY DIMENSION

4. DuPont and Pioneer have a combined aggregate world-wide turnover in excess of EURO 5 000 million (DuPont : 23 billion, and Pioneer EURO 1.7 billion). Each of them has a Community-wide turnover in excess of ECU 250 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.

III. COMPATIBILITY WITH THE COMMON MARKET

5. The concentration does not lead to horizontal overlaps between the parties' activities. DuPont does not produce or sell noteworthy quantities of seeds in the EU¹. Pioneer is not active in crop protection. Moreover, the parties argue that the merger will not lead to significant overlaps in the biotechnology area of new transgenic plants.
6. Nevertheless, in view of the close relationship between the agro-industrial businesses of the parties, the concentration appears to affect the maize seeds sector, since Pioneer is a leading supplier of maize seeds, whilst DuPont supplies maize herbicides on one hand, and provides biotechnology for the development of transgenic seeds on the other hand. Therefore, the market for maize seeds, where the concentration is most likely to produce an impact, has been examined in particular.

Seeds

Product market

7. The research, production and breeding of seeds varieties involve two principal areas: the development and breeding of seeds varieties and the production and sale of seed. Seeds producers are active along these different stages of production. In previous cases², the Commission considered these different stages of production as part of one single relevant market, on which seed companies supply farmers cooperatives and other users. However, as the various kinds of seeds are not mutually substitutable, they each constitute separate product markets. Pioneer's principal products are maize seeds and soybean seeds.
8. The breeding of seed varieties involves developing new plants with desirable characteristics. The breeding material used to develop new plant varieties is commonly referred to as "germplasm". Seed producers may exchange or licence their breeding material or germplasm through foundation seed houses. However, neither Pioneer nor DuPont does license its own germplasm collection to third parties and neither of them is active as a foundation seed house.
9. From the demand point of view, farmers have to choose between various types of seed for the cultivation of the crops selected. Depending on the climate and the conditions of the soil, seeds used in one region are not interchangeable with seeds used in another. Concerning maize, the Food and Agriculture Organisation has furthermore established a standard for determining and rating relative maturities for different varieties. Every variety can therefore be associated with a maturity index ("FAO number") which allow to classify them, although this index can vary according to the result of the tests performed for the registration in the different Member states. In any event, since most of the competitors produce seeds for all regions, and supply in particular maize seeds in the various maturity classes, it is sufficient for the purpose of this case to delimit a market for maize seeds, without differentiation according to regional seed types or FAO classes.

¹ Marginal quantities of wheat hybrid seed varieties are produced and sold in France through DuPont's subsidiary Hybrinova

² IV/M.737 – Ciba-Geigy/Sandoz. IV/ M.556. Zeneca/ Vanderhave

Geographic market

10. The parties refer to previous cases³, where the Commission mentioned a number of facts suggesting that the relevant geographic dimension of markets for seeds might be national. Some third parties estimate that the market for maize seeds is wider than national in scope. However, it is not necessary to conclude on this for the purpose of the present assessment, since on the basis of the inquiry conducted by the Commission, the operation does not lead to the creation or the strengthening of a dominant position, even on a national basis.

Competitive assessment

11. Pioneer owns a large collection of maize germplasm and is the strongest maize seeds supplier in the world. According to own estimates, it accounts for around 20-25% of the total EU sales, with a significantly stronger position, varying from [35% to 60%], in a few Member states mainly located in Southern Europe (Austria, Greece, Italy, Portugal, Spain).
12. However Pioneer has to compete with large suppliers at EU level, among which in particular Limagrain [15-25%], Monsanto [10-15%], Novartis [5-15%] and KWS [5-15%]⁴ can be mentioned. At Member state level, even where Pioneer has high market shares (around 40% in average on the above mentioned countries), there are several competitors with significant market shares amounting to around 10%, except in Italy where Pioneer enjoys a clear leadership with a market share of at least [55-60]%. Pioneer's strong position in Italy seems to result in particular from the successful implementation of certain of its maize seed varieties, which were first developed in North America. According to some third parties, those seed varieties have specific characteristics which permit a significant higher yield.
13. Pioneer estimates that its share of the Italian market for maize seeds amounts to approximately [55-60]%. This figure differs significantly from the estimate in a publicly available survey, which allocates a market share of [65-70]% to Pioneer. Customers' and competitors' opinions recorded by the Commission tend to confirm the latter estimate. Nevertheless, the parties argue that their method to calculate the total market size as well as their own market share is more accurate than the one applied in the survey. However, even on the basis of the parties estimates, Pioneer's market share in Italy can be assessed as being very strong.
14. According to some third parties, Pioneer's would use commercial practices reflecting a dominant position. Those third parties state that Pioneer would be able to impose, to some extent, certain commercial conditions, such as higher prices. On the contrary, the parties submit that current market shares offer only limited guidance to future sales, since the seed market is characterised by continuous product development and farmer's willingness to switch to better performing seed varieties. However, it is not necessary for the present case, to conclude whether or not Pioneer already has a

³ IV/M.737 – Ciba-Geigy/Sandoz ; IV/M.556 - Zeneca/Vanderhave.

⁴ Business secrets of third parties

dominant position on the market for maize seeds in Italy, since in any event, the concentration will not strengthen its position to a measurable extent.

15. First of all, it has to be observed that, as DuPont is not active on the markets for seeds in Italy, the only possible effect of the concentration can either result from DuPont's activity in the crop protection sector, or from DuPont's R&D activity in the biotechnological area. Concerning the crop protection, DuPont is the largest supplier of maize herbicides in Italy, with a market share of [15-20]%. However other plant protection manufacturers have comparable market shares. In addition customers mention a number of alternative suppliers to DuPont on the markets concerned. Insofar as the concentration could lead to joint marketing of maize seeds and herbicides, this possible competitive advantage would rather benefit DuPont than Pioneer, although there is no general evidence, that companies in Europe have gained market shares in the crop protection markets, due to the fact that they have a strong seed platform. In any event, there are no indications that the parties could impose tied sales to their Italian customers to buy DuPont's crop protection products as part of package deals imposed. Moreover, in this Member State, the next competitor of the parties (Novartis) is also active on both markets to a significant extent. Therefore, even if DuPont could increase its herbicides sales through joint selling, there is no evidence that this possibility would conversely lead to a perceptibly strengthened market position of Pioneer on the market for maize seeds. Taking into account the limited market share of DuPont on maize herbicides, it can thus be concluded that no creation or strengthening of a dominant position on the market for maize seeds or maize herbicides can likely result from bundled offers by the parties.
16. Concerning the effects of DuPont's biotechnology on plant breeding, it has to be noted that in 1997, the parties set up a joint venture⁵ active in the R&D of improved quality traits for seeds. Through the concentration, the parties will therefore increase existing synergies by combining R&D programs in particular in the field of transgenic traits and thus strengthen DuPont's current competitiveness in the area of agri-technology. The new entity will for instance be able to bring new technologies quicker to the market and exploit them to its advantage. It can be observed that market shares in general move to technology companies at the expense of classic plant breeders. Therefore, should the current R&D activity of the parties lead to the production of biotech enhanced maize germplasm, the new entity can expect to maintain its strong commercial position in a changing market. However, even if these developments were to take place, the Commission does not see a sufficient likelihood that this would lead to a creation or a strengthening of a dominant position.
17. The parties state that the main synergies produced by the concentration result from complementary skills of the parties, in particular in the field of "output traits", which is not as advanced as the one of "input traits"⁶. For instance, DuPont and Pioneer have developed high lysine maize traits on two different ways. However, the parties face competition from other companies such as Dow, DeKalb, or Monsanto, which are

⁵ Optimum Quality Grain

⁶ Input traits modifying the genes of seeds aim to improve the performances of the seeds (e.g. non selective herbicide resistance), whereas output traits aim to improve the quality of resulting seeds, such as increased oil content of soybeans.

developing similar traits. According to the parties, the earliest possible date for commercial sales of this technology would be the year [2000-2005]. As regards genetically modified maize, the parties have no application for a regulatory approval pending or already granted in the EU until now, unlike one of their main competitors, which already markets a genetically modified crop (GMC) variety.

18. According to the Commission's investigations, the concentration therefore benefits DuPont as a crop protection company. This acquisition of a seed producer takes place, as value tends to shift from chemicals to higher value seeds. With Pioneer, DuPont acquires a large seed producer, able to offer large commercialisation opportunities and to leverage the profit expected from new developed traits. Furthermore, Pioneer will not be available to the same extent, as an outlet for other suppliers of traits. In addition, the operation may allow the parties to increase their general capabilities in the bio-molecular research. Nevertheless, there is still a large degree of uncertainty as to acceptance of GMCs in Europe. Moreover, other integrated competitors such as Novartis, Monsanto or AgrEvo have more advanced R&D programs than the parties, in the field of transgenic maize, given that they already have approvals granted for such products. In any event, competition in the biotechnology programs appears to be fierce, as the numerous litigation between life science companies tend to indicate. Therefore, in the light of these facts, it appears unlikely that the vertical relationships or conglomerate aspects described above could, as a result of the concentration, give rise to serious competition concerns as regards their effects on the markets for maize seeds or on any other market closely related, such as maize herbicides.

VI. CONCLUSION

19. For the above reasons, the Commission decides 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) N°4064/89.

For the Commission,