

***Case No COMP/M.1599 -  
DUPONT / TEIJIN***

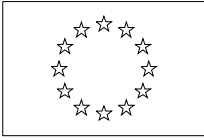
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**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 24/11/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.11.1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sirs,

**Subject: Case No COMP/ M.1599 - DuPont / Teijin**

Notification of 20.10 pursuant to Article 4 of Council Regulation No 4064/89

1. On 20.10.1999, the Commission received a notification of a proposed concentration by which the undertakings E.I. du Pont de Nemours and company (DuPont) and Teijin Limited (Teijin) acquire joint control of a newly created company constituting a joint venture.
2. After examining 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 any serious doubts as to its compatibility with the common market and with the EEA agreement.

**I. THE PARTIES**

3. DuPont is a global, diversified U.S. based corporation. The company is engaged in the research, development, distribution, and sale of a variety of chemical products, man-made fibres, plastics, agro-chemicals, paints, seeds, pharmaceuticals and other materials.

4. Teijin is a Japanese multinational company engaged in research, development, manufacture, distribution and sale of a variety of fibres, chemicals, plastics and pharmaceuticals.

## **II. CONCENTRATION**

5. The transaction concerns the formation of a world-wide joint venture by the parties to research, develop, manufacture, market and sell polyethylene terephthalate film (PET film) and associated products (ex. PEN film). DuPont and Teijin acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control by way of purchase of shares in a newly created company constituting a full function joint venture.

## **III. COMMUNITY DIMENSION**

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2,500 million<sup>1</sup> (DuPont EUR: 22,900 million; Teijin EUR: 3 944 million). In each of three Member States, the combined aggregated turnover of the undertakings was more than EUR 100 million in 1998 (Germany, Italy and U.K.). In each of the same three Member States, the aggregated turnover of each of the undertakings was more than EUR 25 million in 1998. The aggregated Community-wide turnover of each of the two undertakings was more than EUR 100 million in 1998 (DuPont EUR: [...]; Teijin EUR: [...]). Furthermore, the parties do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. In conclusion, the notified operation has a Community dimension according to Article 1(3) of the Merger Regulation, but it does not constitute a co-operation case pursuant to article 57 of the EEA Agreement.

## **IV. RELEVANT PRODUCT MARKETS**

### Relevant product markets

7. As mentioned the joint venture concerns research, development, manufacturing, marketing and sale of polyethylene terephthalate film (PET film) and associated products (ex. PEN film). PET film is derived from PET polymer, which is produced by reacting either dimethylterephthalate (DMT) or pure terephthalic acid (PET) with mono-ethylene glycol. PET is produced in a wide variety of forms and types and is employed for a large range of end-use applications. PET film is produced in various types of lines, which are differentiated by a number of technical features including the film thickness and width, the feeding process etc. Mainly depending on the combination of the line capabilities, PET film can be produced as commodity-type and speciality type.
8. There appears to be a straight relation between film thickness and intended use. In general, production lines are designed to cover certain ranges of PET film which are

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<sup>1</sup> 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.

intended for one or more specific application fields. In previous decisions the Commission's has identified seven main categories of PET film end-use application<sup>2</sup>:

- Packaging
  - Magnetic media
  - Industrial
  - Imaging
  - Electrical
  - Photographic
  - Capacitor/TTM
9. Third parties have largely supported the product definitions suggested by the Commission, but it cannot be excluded that some narrower relevant product markets could be identified within the above mentioned categories. However, for the purpose of the present case it is not necessary to finally decide the product market definition, since the operation does not raise issues of dominance under any definition.
10. PEN film has similar qualities to PET film and is produced using nearly by identical technology and on the same production lines. It shares similar characteristics with PET film and is supplied for similar end-use applications. According to the parties PEN film is normally used in very small quantities and generally only as a niche-product. In several of the following end-use applications it competes with other products in the end-use application with the exception of APS for which PEN film is specified as a component:
- Advanced Photographic System (APS )
  - Electrical
  - Capacitor
  - Magnetic media
  - Industrial
11. However, for the purpose of the present case it is not necessary to finally decide the product market definition, since the operation does not lead to the creation or strengthening of a dominant position under any market definition.

#### Relevant geographic markets

12. In previous Commission decisions it was considered whether the scope of the geographic market for PET film was at least as broad as Western Europe. However, this question was left open, since the operation did not raise issues of dominance under either definition<sup>3</sup>.
13. The parties submit that the seven PET film end-use segments mentioned and the five PEN end-use applications are Western European in scope. The Commission's investigation tended to confirm that the geographic scope is at least as wide as Western Europe with a trend towards a global scope for some of the product areas mentioned

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<sup>2</sup> COMP/ M.984 – DuPont /ICI of 2.10 1997.

<sup>3</sup> COMP M.984 – DuPont/ICI of 2.10.1997

above. However, this question can be left open, since the notified operation does not raise issues of dominance under any geographic market definition.

## V. COMPETITIVE ASSESSMENT

14. DuPont is one of the largest producers in the world of polyester for different end-use applications and a large producer of polyester intermediates. DuPont is in the process of restructuring its polyester business. According to the parties the main purpose of the restructuring is to reduce costs. This will be achieved by combining the existing DuPont polyester activities with a number of low cost joint venture partners in different geographic regions of the world. Each of these joint ventures are expected to operate as independent and autonomous entities. The proposed joint venture is part of this restructuring.
15. Other joint ventures may be notified in the future as part of this restructuring. Three other downstream polyester markets are the subject of the notification of COMP M.1538 - DuPont/Sabancı.
16. In particular it is DuPont's intention within the next six month to establish a global research and development joint venture between DuPont and its various joint venture partners as an overlaying structure to the production joint ventures. The purpose is to co-ordinate research and development activities in the area of polyester technology among DuPont and its various joint ventures. In particular, its function will be to co-ordinate the development and licensing of polyester technology and manage research and development.
17. The present joint venture follows a 1991 joint venture between the parties to manufacture, market and sell PET film for magnetic media applications. That joint venture, called Teijin – DuPont Films (TDF) was assessed by the Commission in 1991<sup>4</sup>. While DuPont has extensive PET film activities outside of TDF, Teijin's Western European PET film activities are confined largely to its participation in TDF. DuPont is the largest producer of polyester film in the world with a [15-25%] share worldwide and major presence in US, Europe and China. It has small markets shares in Japan and the other Asian countries. According to DuPont this is basically the reason to enter into a joint venture with an Asian counterpart. Teijin has a strong presence in Asia and is the second largest producer in Japan.

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<sup>4</sup> It was notified pursuant to Council Regulation 17/62 on March 27, 1991 and a comfort letter was issued on September 17, 1991.

### PET film

18. The merger will not lead to any significant increments of market shares in Western Europe measured by volume due to the fact that Teijin has none or only insignificant market shares in the different end-use applications. Teijin has almost no Western European PET film business outside TDF, which represents 85-90% of Teijin's 1998 Western European PET film sales. In the area of magnetic media Teijin has no activity but TDF has [20-25%] in Western Europe. In addition, DuPont has 0,2 % and the combined entity will obtain [20-25%] in this product area in Western Europe.
19. In a) industrial, b) imaging and c) capacitor/TTM the combined entity will obtain between app. [20-40%] of the Western European PET film sales but in all three areas Teijin's shares are < 1 % and TDF has no activities in the area in question. For electrical and photographic end-use applications DuPont already has a share of [50-55%] and [45-50%] respectively but neither Teijin nor TDF is active in these product areas so the merger does not result in any overlap between the parties. In view of DuPont's strength in the sector it cannot be considered that the joint venture with Teijin will reinforce its position in these markets.
20. The parties have a combined market share of [25-30%] of the world-wide sales and sales PET film by volume. In the subcategories mentioned above the combined market share of DuPont and Teijin is either below 30 % or the presence of Teijin is so limited that it cannot be considered that the joint venture will reinforce the position of DuPont in these subcategories. Furthermore, third parties have broadly confirmed that several Asian suppliers are significant globally (Toray (Japan), Mitsubishi (Japan), SKC (Korea) and Saehen (Korea)). Accordingly, the operation does not lead to the creation or strengthening of a dominant position under any market definition.

### PEN film

21. The description by the parties of the PEN film business and the five end-use applications have broadly been confirmed by third parties. The parties are the only merchant suppliers of PEN film in Western Europe. At present, Teijin is the only merchant supplier in the APS segment and DuPont is the only merchant supplier in the Electrical and Capacitor segments. In addition, TDF is the only merchant supplier in the magnetic media segment. Third parties have confirmed for some segments that there is no overlap between the parties' activities and in their view the merger will not change the current market situation.
22. The Commission's investigation also confirmed that PEN-film is a niche product mainly used for very specific end-use applications. According to third parties, the sale of PEN film would rise if new special end-use applications developed which required PEN films specific characteristics. Others have submitted that if this was the situation many other companies already make PEN-film for their internal and captive use. Consequently, several of these companies are just as capable as the parties to produce PEN-film for merchant sale and would then be expected to do so. However, at present the different markets for PEN film end-use applications are at too small to be interesting for these companies. According to some PET-film competitors the parties are constrained by the few end-use applications that requires PEN film. On basis of the

investigation, the operation does not lead to the creation or strengthening of a dominant position under any market definition.

#### Vertical effects.

23. DuPont is a main producer of PTA, one of the raw materials for PET film production. DuPont also uses DMT outside Europe. Teijin is a producer of both DMT and PTA. DuPont accounted for around 20 % of the PTA sales in Western Europe and [5-10%] globally in 1998. The parties' combined capacity shares of PTA and DMT respectively were below [10-15%] on a world-wide basis.

Based on these market shares it can be concluded that the vertical integration of the parties upstream does not give rise to any competition concerns. Therefore, it can be concluded that the operation will not lead to the creation or strengthening of a dominant position due to the combination of the parties activities in polyester intermediates.

#### **VI. ANCILLARY RESTRAINTS**

24. The parties have agreed that Teijin should not make any material change in its PET business prior to completion of the transaction. This agreement can be considered ancillary to the extent it restricts competition.
25. The parties will transfer technical expertise and property rights related to Teijins PET film business. This agreement is an integral part of the operation, and therefore not ancillary.
26. The parties have agreed a restrictive covenant whereby the parent companies agree not to compete with the joint venture in the PET film business anywhere in the world for the duration of the joint venture. The purpose of the non-compete clause is to secure the value of the assets transferred to the joint venture and avoid situations resulting in one party continuing the business of the joint venture on its own and thus benefiting from the key assets made by both parties. This clause is considered as directly related to and necessary to the implementation of the concentration.
27. The parties have agreed that Teijin will continue to manufacture PET film at two specific plants for two years, during which Teijin will supply PET film exclusively to the joint venture. This agreement is necessary for a transitional period and can be considered ancillary to the operation to the extent it restricts competition.

#### **VII. CONCLUSION**

28. 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,