

***Case No COMP/M.1831 -
DEUTSCHE BANK /
CIBA***

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

Article 6(1)(b) NON-OPPOSITION
Date: 06/03/2000

*Also available in the CELEX database
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06.03.2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description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 IV/M.1831-Deutsche Bank/CIBA

Notification of 04.02.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 04.02.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ by which Deutsche Bank AG ("Deutsche Bank") acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of the Performance Polymers Division ("Division") of Ciba Specialty Chemicals Holding, Inc. ("Ciba") by way of purchase of shares and assets.
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 with the EEA Agreement.

¹ 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).

I. THE PARTIES AND THE OPERATION

3. Deutsche Bank is a German bank active in international banking. Division manufactures and markets polymer resin systems for a wide range of industrial applications. Division's products include hardeners, coatings, structural composites, adhesives, and other products for use in the aerospace, electronics, and other industries. The acquisition is being effected through Deutsche Bank's European buyout fund "DEP IV" which is managed and controlled by Morgan Grenfell Private Equity Ltd., the wholly owned private equity arm of Deutsche Bank.

II. CONCENTRATION

4. The operation is a concentration within the meaning of Article 3(1)b of the Merger Regulation, since it consists in the acquisition by Deutsche Bank of Division.

III. COMMUNITY DIMENSION

5. The combined aggregate worldwide turnover of Deutsche Bank and Division exceeds EUR 5000 million². Each of Deutsche Bank's and Division's 1998 EU-wide turnovers exceeded EUR 250 million but it was not the case that more than two thirds of the aggregate EU-wide turnover of both undertakings was achieved within one and the same Member State. The notified operation therefore has a Community dimension. It does not constitute a cooperation case under the EEA agreement.

IV. COMPETITIVE ASSESSMENT

6. There are no affected markets within the meaning of the Merger Regulation. Deutsche Bank and Division are neither active in the same product market, nor in any product market located upstream or downstream of another product market in which the other party is active. There are no horizontal or vertical relations between Deutsche Bank and Division.

Relevant product markets

7. The six product lines of Division are to a large extent distinct: coating systems; structural composites; adhesives; tooling; heavy electrical and passive device packaging; and photopolymers. However, as there is no overlap in activity between these product types with the activities of Deutsche Bank, there is no need to define the markets precisely in this case, as there will be no change in market structure as a result of this concentration.

Relevant geographic market

8. According to the notifying party, for each of the product lines, the relevant geographical market is at least as wide as the EEA; there is significant intra-Community trade between member states, price levels are similar across the EEA and

² 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.

there are no technical or regulatory barriers to trade between member states. However, there is no need to define the markets precisely in this case, in view of the above mentioned lack of overlap between the activities of the two parties.

Assessment

9. There is no overlap between the merging parties. Moreover, Division faces strong competition in all of its product lines, from companies such as Shell, Dow Chemicals, BM, Bakelite and so on.

Conclusion

10. In light of the above information, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market and in the EEA or in a substantial part of it.

V. ANCILLARY RESTRAINTS

11. The Transaction Agreement includes a clause that states that Ciba will not for a period of [...] years after completion engage or participate, directly or indirectly, in the ownership, management or control of any business that competes with Division. In addition Ciba agrees for a period of [...] years after completion not to interfere with the relationships between Division and any customer or supplier, or actively solicit any employee of Division. The Agreement contains a reciprocal non-solicitation clause on the buyer.
12. This non-compete agreement protects Deutsche Bank against any possible moves by Ciba to re-enter the relevant markets, and protects Deutsche Bank's investment in Division. Accordingly, this clause is directly related to and indispensable to the implementation of the concentration.

VI. CONCLUSION

13. In view of the above the proposed concentration does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA agreement. 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,