

*Case No COMP/M.2133 -  
HICKS / BEAR  
STEARNS / JOHNS  
MANVILLE*

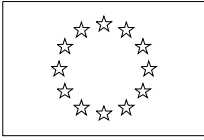
Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 25/09/2000

*Also available in the CELEX database  
Document No 300M2133*



## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25-09-2000  
SG(2000)D/107004

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No COMP/M.2133 – Hicks/Bear Stearns/Johns Manville**

Notification of 22.08.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 22.08.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>1</sup> by which Mr Thomas O. Hicks through various investment vehicles (“Hicks”) (USA) and The Bear Stearns Companies Inc. (“Bear Stearns”) (USA) acquire within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Johns Manville Corporation (“Johns Manville”) (USA).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that the concentration does not raise serious doubts as to its compatibility with the common market and with the EEA agreement.

#### **I. THE PARTIES**

3. Mr. Hicks is a resident of Texas who controls through a variety of intermediate entities six investment funds that are engaged in leveraged buy-out transactions, recapitalisations and other forms of direct private equity investments. These investment funds control companies that are engaged in Europe primarily in the production and/or sale of foods and beverages, printed circuit boards and assemblies, children’s leisure/activity products,

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<sup>1</sup> 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).

furniture, horticultural seeds, and automotive directories and various other software products. In addition, Mr Hicks has controlling interests in real estate, sports teams, a television station and a rodeo, all situated in the USA.

4. Bear Stearns is an investment banking and securities trading and brokerage firm.
5. Johns Manville is engaged in the development, production and sale of insulation material, roofing systems and engineered products such as fibres, mats, glass fabrics and filtration products.

## **II. THE OPERATION**

6. The transaction constitutes a recapitalization of Johns Manville by means of a merger. HB Merger LLC<sup>2</sup>, a new entity formed for the purpose of this transaction by Hicks, Muse, Tate & Furst, Incorporated (“HMTF” controlled by Mr Hicks) and Bear Stearns Merchant Fund Corp., a subsidiary of Bear Stearns, will be merged with and into Johns Manville with Johns Manville remaining as the surviving corporation.
7. Following the transaction, H[icks] will hold, on a fully diluted basis, approximately 58.8%, Bear Stearns 25.2%, Manville Personal Injury Settlement Trust<sup>3</sup> 8.5% (currently holding 76.4% of the shares) and the Johns Manville management 7.6% of the shares of Johns Manville.
8. Pursuant to Article 6 of a Stockholders Agreement, certain transactions such as the approval of Johns Manville’s annual budget and the replacement of the CEO, CFO or President require the affirmative vote of HMTF and Bear Stearns.

## **III. CONCENTRATION**

9. As a result of the above operation, the veto rights provided to both Hicks and Bear Stearns with regard to the annual budget and the management gives them joint control over the whole of Johns Manville. Therefore, the operation constitutes a concentration in the sense of Article 3(1)(b) of the Merger Regulation.

## **IV. COMMUNITY DIMENSION**

10. The combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5000 million (Hicks [...] million; Bear Stearns 1289 million; Johns Manville 2028 million) and the aggregate Community-wide turnover of all the undertakings concerned is more than EUR 250 million (Hicks [...] million; Bear Stearns [...] million; Johns Manville [...] million). Hicks and Bear Stearns achieve more than two-thirds of their Community-wide turnover in the United Kingdom. Johns Manville did not achieve more than two-thirds of its Community wide-turnover in any Member State. The concentration therefore has a Community dimension pursuant to Article 1(2) of the Merger Regulation. The concentration does not qualify for co-operation under the EEA Agreement.

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<sup>2</sup> Prior to closure, Mr Hicks and Bear Stearns will transfer their respective interest in HB Merger LLC to other funds controlled by them.

<sup>3</sup> The trust is established in the resolution of bankruptcy procedures to pay actual and potential product liability claims for Johns Manville’s past manufacture and trade of products containing asbestos.

## **V. COMPETITIVE ASSESSMENT**

11. None of the undertakings concerned are engaged in business activities in the same product and geographic markets or in a product market which is upstream or downstream of a product market in which any other party is engaged. There do, therefore, not arise any competition concerns from this transaction.

## **VI. CONCLUSION**

12. 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,

Mario MONTI  
Member of the Commission