

***Case No COMP/M.2175 -
DOW CHEMICAL /
GURIT-ESSEX***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 08/12/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.12.2000
SG(2000) D/109118

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject: Case No. COMP/M.2175 – Dow Chemical/Gurit-Essex

Notification of 07.11.2000 pursuant to Article 4 of Council Regulation (EEC) No 4064/89

1. On 07.11.2000, the Commission received notification of a proposed concentration pursuant to Article 4 of the Council Regulation (EEC) No 4064/89 by which Essex Specialty Products Inc., USA, a wholly-owned subsidiary of The Dow Chemical Company (“Dow”), intends to acquire sole control of Gurit-Essex AG (“GEX”) and Gurit-Essex Trading AG (“GEX Trading”). GEX and GEX Trading are currently controlled jointly by Dow and the Swiss company Gurit-Heberlein AG (“Gurit-Heberlein”).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. Dow is a US company active world-wide in the areas of science and technology, in particular as an integrated producer of chemicals. It develops and produces a portfolio of chemicals, plastics, agricultural chemicals and other specialised products. The company has 123 manufacturing sites in 32 countries and supplies

more than 3,500 products. Dow is in the process of merging with Union Carbide Corporation following the Commission's clearance decision earlier this year.¹

4. GEX and GEX Trading are both Swiss-based 50:50 joint ventures between Gurit-Heberlein and Essex Speciality Products. The company serves the automotive industry with solutions in the field of scaling, bonding, acoustics, reinforcement and corrosion protection. GEX Trading sells products in countries where GEX has no sales organisation of its own.

II. CONCENTRATION

5. The transaction will be carried out by way of the acquisition by ESCP of the outstanding shares of GEX and GEX Trading from Gurit-Heberlein. As such, the transaction will result in a change of control from joint control of GEX and GEX Trading by Dow and Gurit-Heberlein to sole control by Dow. The notified operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2 500 million (Dow EUR 17,7 billion and GEX and GEX Trading EUR 264 million in 1999)². In each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million (Belgium, Finland, France, Germany, Italy, the Netherlands, Spain, Sweden and the UK). In each of at least three Member States mentioned above, the aggregate turnover of each of the undertakings concerned is more than EUR 25 million (France, Germany and Spain). The aggregate Community-wide turnover of each the undertakings concerned is more than EUR 100 million (Dow EUR [...] billion and GEX and GEX Trading EUR [...] million in 1999). Dow and GEX and GEX Trading 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 according to Article 1(3) of the Merger Regulation.

IV. THE RELEVANT MARKETS

Relevant product market

7. The notifying parties submit that the relevant markets for this transaction are those for several products supplied to the automotive industry by both Dow and GEX, namely glass bonding systems, structural adhesives and reinforcement composites. The parties also identify the markets for several chemicals produced by Dow, namely polyether polyol, epoxy resin and methylene diphenylene di-isocyanate (MDI), which are raw materials used in the production of glass bonding systems, structural adhesives and reinforcement composites. Nevertheless, only a small proportion of the demand for these chemicals consists of the manufacture of the

¹ Case COMP/M.1671 - Dow Chemical/Union Carbide, Commission decision of 03.05.2000.

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.

above-mentioned products supplied to the automotive industry. During the market investigation, it was suggested that the market for glass bonding systems could be segmented to differentiate between sales to original equipment manufacturers (OEMs) and the aftermarket.

8. For the purpose of this case, however, the precise definition of the relevant product markets can be left open, since, irrespective of the market definition chosen, the notified operation would not lead to the creation or strengthening of a dominant position.

Relevant geographic market

9. The parties submit that the relevant geographic market for glass bonding systems, structural adhesives and reinforcement composites is Western Europe. They note that there are no technical standards or other regulatory barriers to trade within the EEA, European car manufacturers tender for supply contracts at a European level, and imports from outside the EEA are negligible. A European definition for the geographic markets would also be in line with the position taken by the Commission in previous decisions involving the markets for automotive systems and components.³
10. The Commission's market investigation generally confirmed this European market definition, with third parties citing, in particular, similar prices across the EEA. Some third parties suggested that the market is wider, possibly even world-wide, though here the evidence was not conclusive, with some suggestion of differing price levels and technical barriers.
11. The parties submit that the relevant geographic market for polyether polyols, epoxy resins and MDI is at least EEA wide. They note that for these products, the general conditions of competition are homogeneous. Indeed, the Commission has previously defined the market for polyether polyols as being at least EEA wide.⁴ This view was generally confirmed by the Commission's market investigation. Transportation costs are not very significant (less than 5%), suppliers are typically present throughout the EEA and customers source these raw materials on at least a pan-European basis.
12. For the purpose of this case, however, the definition of the geographic markets can be left open, since, irrespective of the geographic market definition chosen, the notified operation would not lead to the creation or strengthening of a dominant position.

V. ASSESSMENT

13. GEX has significant market shares in the EEA for glass bonding systems ([60-70%]), structural adhesives ([35-45%]) and reinforcement composites ([55-65%]). Dow, however, produces and sells these products exclusively outside of the EEA (primarily in the US). According to the parties, these high market shares should be seen in the context of the customers for these products, which are almost

³ Case IV/M.666 – Johnson Controls/Roth Frères, Commission decision of 05.12.1995 and Case IV/M.1196 – Johnson Controls/Becker, Commission decision of 24.06.1998.

⁴ Case IV/M.1796 – Bayer/Lyondell, Commission decision of 21.02.2000.

exclusively large car manufacturers⁵, each possessing significant countervailing buyer power. The Commission's market investigation confirmed that most OEMs require at least two possible sources of supply and that there is widely perceived to be strong competition between suppliers of these automotive products. In addition to several competitors being active on an EEA-wide basis (Henkel, EFTEC and SIKA) in these markets, there also appears to be a significant number of smaller players operating on a local basis.

14. Vertical relationships exist between GEX and Dow in that the latter produces polyether polyols, MDI and epoxy resins. Dow's market shares in 1999 for these products in the EEA were [10-20%], [15-25%] and [15-25%] respectively. Currently, GEX purchases only [...] from Dow, preferring to source its requirements of [...] from other players in the chemical industry. Dow [...] could meet all of GEX's requirements for these products. The parties claim that these vertical relationships do not weaken the market position of GEX's competitors since the amounts of these raw materials purchased by GEX and sold by Dow [...] are very small compared to the overall size of the markets involved. In any case, the parties maintain that polyether polyols and epoxy resins are commodity products that can easily be sourced from chemical producers other than Dow. The Commission's market investigation confirmed this view.
15. In light of the above, the proposed transaction will not result in any changes in the structure of the markets for the automotive solutions or chemicals in question. The proposed concentration does not therefore raise serious doubts as to its compatibility with the common market.

VI. CONCLUSION

16. 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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,
signed:
Mario MONTI
Member of the Commission

⁵ E.g. DaimlerChrysler, Volkswagen, Fiat, Renault, Peugeot, Ford, BMW, General Motors, Volvo.