

***Case No COMP/M.2461 -
OM GROUP / DMC2***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 05/07/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5/07/2001

SG (2001) D/289534

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject: Case No COMP/M.2461 – OM Group/dmc²

Notification of 01.06.2001 pursuant to Article 4 of Council Regulation No 4064/89¹

1. On 01/06/2001 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, by which the OM Group (US) acquires control of the whole of the business activities of Degussa Metals Catalysts Cerdec AG “dmc²” (Germany) 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.

I. THE PARTIES

3. The OM Group (OMG) is active in production and marketing of value-added metal-based speciality chemicals and powders. dmc² is a company incorporated in Germany and is a 100% subsidiary of Degussa-Hüls AG. dmc² is an international chemical producer and is active in chemicals & catalysts, advanced materials and precious metals management.

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).

II. THE OPERATION

4. All the current business activities of dmc² in Germany (including its German based subsidiaries) will in an initial step be transferred to a newly created company, Newco. OMG will purchase all shares of Newco and all the shares of dmc²'s subsidiaries outside of Germany.
5. In addition to the proposed operation OMG has also entered into an agreement with the American Ferro Corporation, by which Ferro will purchase certain of the assets to be acquired by OMG from dmc². However, the first operation can take place without the second. According to this second transaction, OMG has an obligation to sell and Ferro an obligation to purchase assets from OMG. These assets are those mainly related to the Advanced Material section of dmc² (including the pigment business mentioned below). The second transaction would not have a Community dimension and will consequently not be notified to the Commission.

III. CONCENTRATION

6. The OMG acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the business activities of dmc².

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than € 5 billion² (OMG: € [...]; dmc²: € [...]). Each of the undertakings concerned have a Community-wide turnover in excess of EUR 250 million (OMG: € [...]; dmc²: € [...]). However none of the undertakings 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.

V. COMPETITIVE ASSESSMENT

8. OMG manufactures four main product categories; 1) metal organics, 2) metal inorganics, 3) metal powders and 4) metal products. dmc² is active in the following three main product categories; 1) precious metals management, 2) advanced materials and 3) chemicals and catalysts.
9. The activities of the parties are complementary and the transaction does not result in any horizontal overlaps between the activities of the parties. Therefore, there is no horizontally affected market.
10. However, the transaction does give rise to a vertical integration between the parties with reference to the relationship between certain metal inorganic powders produced by OMG and some specific inorganic pigments produced by dmc². Inorganic pigments form part of the business segment of advanced materials produced by dmc².

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.

11. The vertical relationship exists due to the fact that OMG produces metal inorganic powders that are used in the production of pigments and colour products. OMG does not manufacture the actual colour pigments/products themselves but the metal salts sold by OMG to the pigment industry are combined by the pigment producers with other chemicals to form the colour pigments. In particular OMG produces cobalt oxide which is primarily used for the production of blue pigments. The parties claim that in certain production processes only few products can substitute cobalt oxide.
12. OMG submits that the geographic scope of a possible narrow product market for cobalt oxide would be Western Europe if not the entire world. The Commission's market investigation has confirmed that the narrow market for cobalt oxide for the manufacture of blue pigments is at least EEA-wide. On an EEA wide level OMG would have a market share of approximately [55-65] % on this market and on a world-wide level the market share of OMG would amount to about [35-45] %.
13. dmc² is active in production of cobalt oxide based (blue) pigments. Competitors have stressed that, due to the transaction, dmc² become vertically integrated with OMG and would purchase all its future requirements of cobalt oxide from OMG. Competitors argue that OMG thereby would obtain significant sales of cobalt oxide to dmc².
14. However, the transaction would not foreclose competing suppliers of cobalt oxide to the blue pigment industry to any appreciable extent. In 2000, dmc²'s requirements for cobalt oxide accounted only for [15-25] % of the EEA demand and less than 15% of world-wide demand. In addition, OMG already supplies one third of dmc²'s current EEA and world-wide requirements for this product. Consequently, the effect of the operation could be that OMG would additionally obtain [5-15] % of the total EEA demand and/or additionally [10-20] % of the world-wide demand for cobalt oxide. Furthermore, dmc² has a market share of below 25% on the market for cobalt oxide based pigments in both EEA and world-wide.

VI. CONCLUSION

15. 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

(Signed)

Mario MONTI,
Member of the Commission