

***Case No COMP/M.3341 -  
KOCH / INVISTA***

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: 21/01/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.01.2004

SG-Greffe(2004) D/200151

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.3341 – KOCH/INVISTA  
Notification of 8.12.2003 pursuant to Article 4 of Council Regulation  
No 4064/89<sup>1</sup>**

1. On 08.12.2003, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking Koch Industries, Inc. ("Koch", USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Invista, Inc. ("Invista", USA) previously controlled by the undertaking E.I. du Pont de Nemours and Company ("DuPont", USA) 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 the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

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

3. Koch is a privately held U.S. corporation and is active worldwide in refined petroleum products, chemicals, gas liquids, crude oil services, mineral services, energy services, capital services, road and construction materials and chemical technology.

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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).

4. Invista was formerly known as DuPont Textiles and Interiors and is composed of the worldwide textiles and interiors businesses of DuPont. In February 2002 Dupont announced the separation of its textiles and interiors businesses. These businesses together represent approximately 20% of DuPont's overall revenues. For purposes of effecting the separation, these businesses were contributed to a new entity, Invista.

## **II. THE OPERATION**

5. Upon closing of the Transaction, Koch will own the entire equity interest and all voting rights in Invista.

## **III. CONCENTRATION**

6. As a result of the proposed transaction Koch will acquire 100 % control over Invista. It follows that the notified transaction constitutes a concentration pursuant to Article 3 (1) (b) of the Merger Regulation.

## **IV. COMMUNITY DIMENSION**

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>2</sup> (Koch: EUR [...] million; Invista: EUR [...] million). Each of them (Koch: EUR [...] million; Invista EUR [...] million) have a Community-wide turnover in excess of EUR 250 million, but they 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.

## **V. COMPETITIVE ASSESSMENT**

8. The transaction brings together two distinct man-made fibre businesses: Koch's polyester businesses and Invista's nylon and elastane businesses. Invista competes in nylon fibres for textile, carpet and industrial applications. Koch is not active in any of these areas in the EU.

### **- RELEVANT PRODUCT MARKETS**

9. The Commission has in the past identified distinct markets for each such application of man-made fibre (textile, carpet and industrial)<sup>3</sup>. This reflects differences in market dynamics, demand and supply-side considerations and, on the demand side, the physical properties of the fibres used in each end-use application market.
10. The notifying party argues that, within each application, nylon, polyester and elastane are not substitutable to any meaningful extent, given the marked differences in production processes and raw materials, prices and properties. The parties submit therefore that nylon

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<sup>2</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.

<sup>3</sup> Cases M.214 - DuPont/ICI; M.206 - Rhone Poulenc/SNIA; M.1182 – Akzo Nobel/Courtaulds

and polyester form separate product markets even when used within the same application. The transaction would not bring about, on this basis, any horizontal or vertical overlap.

11. However, if nylon and polyester are considered to be part of the same markets when used for the same applications, the transaction brings about a horizontal overlap in the area of industrial fibres.

- Industrial fibres

12. Within nylon industrial fibres, the parties distinguish the following three broad categories of end applications: rubber reinforcement, airbags and “other industrial applications” (such as coated and laminated fabrics and further applications like ropes and nets, cordage, sewing thread and trade off-spec product).

13. The transaction does not include rubber reinforcement applications. DuPonts nylon will retain its industrial fibre business in this area.

14. The parties justify the distinction between airbags and “other industrial applications” in that, although industrial nylon fibre destined for airbags and other applications is generally priced similarly, a distinction may be made on the supply-side, due to the onerous qualification procedures imposed on nylon fibre suppliers in this sector. If separate markets are defined in this way, the parties would only overlap in “other applications”. In any case, the product market definition can be left open in this case as the operation will not create or strengthen a dominant position in any of the alternative market definitions considered.

- RELEVANT GEOGRAPHIC MARKETS

15. In line with Commission precedent,<sup>4</sup> the parties take the view that the geographic market for man-made fibres is at least as broad as the EU. The parties’ justification for this position is that these products are commodity products with some minor variations in purity, prices are similar across the EU, all major suppliers are present across the region, transport cost account for 1 % to 3% of sales prices, the absence of tariffs to intra-European trade.

16. Given the absence of competitive concerns on the EU market or on the world-wide market, there is no need to decide on a specific geographic market for the purposes of assessing the transaction.

- ASSESSMENT

17. Invista is active in the EU carpet and textile fibres business, but Koch is not present in these areas. No overlap is brought about therefore by the transaction in these segments. As stated before, the transaction does not bring about any overlap in the market for industrial applications if polyester and nylon are considered to belong to different markets. There would be an overlap if the market for industrial applications is

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<sup>4</sup> Cases M.214 - DuPont/ICI; M.206 - Rhone Poulenc/SNIA; M.1337 - Koch/Saba/Hoechst

considered to comprise both the polyester and nylon products. The market shares would be in that case as follows:

<b>POLYESTER AND NYLON INDUSTRIAL FIBRES SALES (2002)</b>						
<b>EUROPEAN UNION</b>				<b>WORLD-WIDE</b>		
<b>Application</b>	<b>Koch</b>	<b>Invista</b>	<b>Total</b>	<b>Koch</b>	<b>Invista</b>	<b>Total</b>
	Share (%)	Share (%)	Share (%)	Share (%)	Share (%)	Share (%)
<b>Airbags</b>	-	[40-50]	[40-50]	-	[40-50]	[40-50]
<b>Others</b>	[10-20]	[0-10]	[10-20]	[10-20]	[0-10]	[10-20]
<b>All applications</b>	[10-20]	[10-20]	[20-30]	[0-10]	[0-10]	[10-20]

18. At EU level, if a distinction is made, as proposed by the parties, between Airbags applications and other industrial applications, an overlap appears as a result of the transaction in the market of other industrial applications. In that market, the combined market share amounts to [10-20]% (Koch: [10-20]%; Invista: [0-10]%). The parties do not overlap in the market for Airbag applications at any geographic scale, as only Invista is active in this segment.
19. Even if a broad definition of industrial applications is retained, any anticompetitive effect shall be excluded since the combined market share is [20-30]% (Koch: [10-20]%; Invista: [10-20]%) in the EU.
20. In a world-wide scale, there is also an overlap in the market of other industrial applications following the distinction between Airbags and other industrial applications. The combined share totals [10-20]% (Koch: [10-20]%; Invista: [0-10]%). In the case of a definition including all industrial applications, the combined market share is estimated to be [10-20]% (Koch: [0-10]%; Invista: [0-10]%). The notified transaction does not lead to the creation or strengthening of a dominant position as result of which effective competition would be significantly impeded in the common market or a substantial part of it.

## **VI. CONCLUSION**

21. 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