

***Case No COMP/M.3467 -  
DOW CHEMICALS / PIC  
/ WHITE SANDS JV***

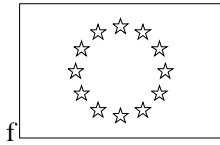
Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 28/06/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28/06/2004

SG-Greffe(2004) D/202531/2

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No COMP/M.3467 – DOW CHEMICALS / PIC / WHITE SANDS JV  
Notification of 27.05.2004 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 27 May 2004, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 139/2004 by which the Dow Chemical Company (“Dow”) and Petrochemical Industries Company K.S.C. (“PIC”) acquire, within the meaning of Article 3(1) (b) of the Council Regulation, joint control of a newly created company constituting a joint venture (“White Sands”), by contribution of the relevant assets and rights.
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. Dow, a U.S. Corporation, is the ultimate parent company of the Dow group of companies, which are active in plastics and chemicals, agricultural sciences, and hydrocarbon and energy products and services.
4. PIC, a wholly owned subsidiary of Kuwait Petroleum Corporation (“KPC”). A diversified energy company owned by the Government of Kuwait. PIC is active in

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

the processing of raw materials provided by other members of the KPC group into ammonia, urea, and polypropylene.

## **II. THE OPERATION**

5. The proposed operation consists of the creation of a full function joint venture, White Sands, which will be active in the manufacture, marketing and sale of ethylene glycols (“EG”).
6. The parties intend to structure White Sands around two joint venture companies: (i) Canadian Newco, which will be active in the manufacture, marketing, and sale of mono-ethylene glycol (“MEG”) and di-ethylene glycol (“DEG”); and (ii) MEGlobal B.V., which will be active in the marketing and sale of MEG and DEG, but not have productive assets of its own. The establishment of White Sands is conditional upon the incorporation of both Canadian Newco and MEGlobal B.V. It is therefore ensured that neither of the two will happen independently.
7. Dow is currently active in the manufacture and sale of ethylene glycols, which includes its facilities in Canada which will be contributed to White Sands, a Canadian joint venture with Mitsui and FETL (Alberta & Orient, “A&O”), a Malaysian joint venture with State-owned Petronas (Optimal Glycols), and a Kuwaiti joint venture with State-owned PIC (EQUATE). PIC’s activities in the manufacture and sale of EG are limited to its interests in the existing EQUATE joint venture with Dow. In essence, PIC acquires a 50% interest in Dow’s independent ethylene glycols merchant business.

### *Joint control*

8. Following the transaction, Dow and PIC will each have a 50% interest in the Canadian and European legal entities that together will form the White Sands joint venture. Both legal entities will have common management and will operate as a single integrated unit.
9. Each of Dow and PIC will have three board members, who will take decisions by simple majority. In addition, any board action must first be reviewed by an executive committee comprised of one PIC-appointed and one Dow-appointed member. Executive committee decisions will be adopted by unanimous consent. As a result, Dow and PIC will jointly control White Sands.

### *Full-functionality on a lasting basis*

10. White Sands will have its own management, production, sales, and marketing personnel. It will own Dow’s existing ethylene glycols production facilities in Canada as well as the sale and marketing rights for any excess production of MEG and DEG from Dow’s plants in the Netherlands, the United Kingdom, and the United States (which produce mostly for captive use and are being retained by Dow).
11. White Sands will also act as the exclusive distributor (outside Malaysia) for Dow’s Optimal Glycol venture with Petronas and as exclusive worldwide agent for Dow’s and PIC’s EQUATE joint venture in Kuwait. In sum, White Sands will have all the necessary tangible and intangible assets to perform on a lasting basis all of the functions of an autonomous economic entity.

### III. CONCENTRATION

12. After the completion of the transaction, DOW and PIC will have joint control over White Sands, a newly created joint venture. It follows that the notified transaction constitutes a concentration pursuant to Article 3 (1) (b) of the Merger Regulation.

### IV. COMMUNITY DIMENSION

13. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>2</sup> (Dow: EUR 28,609 million; KPC: EUR [...] million). Each of them (Dow: EUR [...] million; KPC: 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

#### *Relevant product market*

14. White Sands will be active in the manufacturing, marketing, and sale of ethylene glycols.
15. Ethylene glycol is a colourless, odourless, relatively non-volatile liquid. It has a low vapour pressure and is completely miscible in water and many organic liquids. Various forms of EG may be distinguished, which result from a single production process. This process generally produces 90% of MEG, 8-9% of DEG, 1% of triethylene glycol ("TEG"), and a negligible volume of tetraethylene glycol ("TTEG"). White Sands will not be active in the marketing and sale of TEG (the TEG produced by White Sands will be sold to Dow).
16. Demand-side conditions may to some extent distinguish the two products. In particular, MEG is used primarily in the production of PET and fibre grade polyesters, antifreeze and coolant products. DEG, on the other hand, has a higher boiling point, viscosity and specific gravity and cannot be used in the production of the primary products manufactured using MEG as a raw material. Nevertheless, despite these differing applications, supply-side conditions lead the industry to recognize a single market comprising all ethylene glycols. The parties therefore submit that there is a single relevant product market for ethylene glycols along the lines of a previous Commission decision<sup>3</sup>. However, the exact definition of the market may be left open because in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

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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> See *Deutsche BP/Erdölchemie*, Case No. COMP/M.2345, and see also *Shell/DEA*, Case No. COMP/M.2389.

### *Relevant geographic market*

17. As suggested in a previous Commission decision concerning ethylene glycols,<sup>4</sup> the parties submit that the relevant geographical market is at least EEA-wide, but most likely global in scope.
18. This reflects the following considerations: (i) EG is not a hazardous product and is easily transported; (ii) there are no tariffs or other obstacles to intra-EU trade; (iii) suppliers typically have a limited number of production sites in Europe from which they supply the whole EEA market; (iv) there are similar conditions of competition throughout the EEA; and (v) prices are similar across the EEA and in neighbouring countries.
19. However, the exact definition of the geographical market may be left open as the transaction would not give rise to competition concerns under any of the alternative market definitions.

### *Assessment*

20. The parties submit that the transaction does not result in any affected markets. Dow's existing global and EEA+-wide<sup>5</sup> shares of the EG merchant supply market are [5-15]% and [5-15]%, respectively. The existing global and EEA+-wide shares in EG of EQUATE, which is already jointly controlled by Dow, are [0-5]% and [0-5]% respectively. Accordingly, White Sands' aggregated global and EEA+-wide shares in EG will be [10-20]% and [10-20]%, respectively.<sup>6</sup>
21. Should MEG and DEG constitute separate product markets, the parties' share of the merchant supply, of DEG globally and EEA+-wide is [10-20]% and [20-30]% respectively.<sup>7</sup> The parties' share of the merchant supply of MEG is [10-20]% globally and [10-20]% in the EEA+.<sup>8</sup>
22. In addition, the ethylene glycols sector is relatively fragmented, with strong competitors such as BASF ([10-20]%), BP ([5-15]%), Shell ([5-15]%), Ineos ([5-15]%) and Clariant ([5-15]%) in the EEA+. In case MEG and DEG would be considered separate markets, the main competitors remain the same (for MEG: BASF ([15-25]%), BP ([5-15]%), Shell ([5-15]%), Clariant ([5-15]%) and Ineos ([5-

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<sup>4</sup> See *Deutsche BP/Erdölchemie*, cited above.

<sup>5</sup> The term "EEA+" refers to the 28 EEA States as of 1 May 2004 plus Switzerland.

<sup>6</sup> White Sands market share of the EG merchant supply market remains largely similar when considering sales on a basis of the "old EU" (15 Member States) [10-20]%, "old EEA+" (19 States) [10-20]%, and an enlarged EU (25 Member States) [10-20]%.

<sup>7</sup> On the basis of the "old EU" (15 Member States), the parties' share of the DEG merchant supply market would be [20-30]%, "old EEA+" (19 States) [20-30]%, and an enlarged EU (25 Member States) [20-30]%.

<sup>8</sup> On the basis of the "old EU" (15 Member States), the parties' share of the MEG merchant supply market would be [5-15]%, "old EEA+" (19 States) [5-15]%, and an enlarged EU (25 Member States) [5-15]%.

15]%) in the EEA+, and for DEG: Ineos ([5-15]%), BP ([0-10]%), Clariant ([0-10]%), Shell ([0-10]%) and BASF ([0-10]%) in the EEA+).<sup>9</sup>

23. Following the transaction, neither Dow nor PIC will be independently active in the merchant supply of ethylene glycols.<sup>10</sup> Dow will retain ethylene glycols production capacity, but only for captive use or for existing or future swap agreements (with any excess to be sold through White Sands). Thus, White Sands will market any ethylene glycols produced by Dow in its retained ethylene glycols production facilities in excess of its requirements for captive use or swap agreements. However it should be noted that the parties intend to expand their existing jointly owned manufacturing facilities in Kuwait (EQUATE) by constructing a new ethylene glycols plant, with an annual capacity of [...] tons (the “Olefins II” project). It is expected that this new plant will start production in December, 2007. The parties intend that the exclusive marketing and sales rights related to the EG production of the Olefins II plant will be contributed to White Sands, although no definitive agreement has been reached at this time.
24. The parties submit that it is too early to determine what proportion of the capacity that will be used for MEG and DEG respectively, however, it may be expected that total nominal EG capacity at Equate and Olefins II will amount to [...] kilotons in 2008. Equate’s normal production capacity of EG is currently 490 kilotons, and the total world-wide production capacity of EG is around 18,482 kilotons. Thus, considering the relatively small increase of production capacity of the parties compared to the total production capacity world-wide, and that the parties also project that other players (particularly in the Middle East and Asia) will increase their production capacity, the parties’ capacity increase is not likely to affect competition.
25. Except for the controlling stake that it is acquiring in Dow’s downstream PET business through a separate transaction (see Case COMP/M.3468 – DOW CHEMICALS / PIC / PLANET JV), neither PIC nor its parent company KPC, have any upstream, downstream, or neighbouring activities. Dow’s global and EEA-wide shares of merchant sales of PET resins (which will be attributed to the Planet JV) amount to [0-5]% and [5-15]%, respectively. Upstream, Dow remains active in ethylene supply (with global and EEA-wide shares of sales of [5-15]% and [0-10]% respectively). Dow is also active in ethylene oxide (used in the production of EG), however, Dow does not sell this product on the merchant market and thus Dow’s production is entirely for its captive use.
26. Downstream, Dow will remain active in the supply of automotive engine coolants (with global and EEA-wide shares of sales of [0-5]% and [0-5]%, respectively), industrial coolants (with global and EEA-wide share of [15-25]% and [5-15]% respectively), polyester polyols (with EEA-wide shares of sales on the 5 to 10% range) and polyols used for insulation material (on which merchant market Dow has

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<sup>9</sup> On the basis of the “old EU” (15 Member States), “old EEA+” (19 States) and an enlarged EU (25 Member States), the market shares of the main competitors remain largely similar.

<sup>10</sup> Dow will retain an independent presence in the sale of TEG, which is produced in the same process as MEG and DEG, and part of the market for ethylene glycols. PIC, through EQUATE, is not active in the production or sale of TEG.

EEA-wide shares of sales of [15-25]%). This will not allow the parties to leverage any of their existing businesses to strengthen White Sands' position in the ethylene glycols supply, or to leverage White Sands to strengthen the market position of any of their retained upstream, downstream, or neighbouring businesses.

27. In view of the above, it appears that the notified concentration would not significantly impede effective competition in the EEA or in a substantial part of it.

## **VI. CONCLUSION**

28. 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 (EC) No 139/2004.

For the Commission

*Signed*

Stravros DIMAS

Member of the Commission