

***Case No COMP/M.4146 -
GE / BAYER / OSi
Europe Business***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 04/05/2006

***In electronic form on the EUR-Lex website under document
number 32006M4146***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04/05/2006

SG-Greffe(2006) D/202383/202384

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4146 – GE/Bayer/OSi Europe Business
Notification of 29.03.2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 29 March 2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings General Electric Company (“GE”, USA) and Bayer AG (“Bayer”, Germany) acquire joint control within the meaning of Article 3(1)(b) of the EC Merger Regulation, partly through the existing joint venture GE Bayer Silicones GmbH & Co KG (“GEBS”), partly through a newly created joint venture, of the undertakings GE Specialty Materials (Suisse) Sarl, GE Silicones (Benelux) BVBA and GE Specialities Sarl (together: “OSi Europe Business”) which are currently controlled by GE, by way of purchase of shares.

I. THE PARTIES

2. GE is a USA registered independent public company incorporated in New York. A global diversified technology and services company, GE is made up of a broad range of primary business units, including GE Infrastructure; GE Industrial; GE Commercial Financial Services; NBC Universal; GE Healthcare; and GE Consumer Finance.

¹ OJ L 24, 29.1.2004 p. 1.

3. Bayer is a German registered independent public company. It is a diversified, international chemical and pharmaceutical corporation that offers a wide variety of products and services in areas ranging from health care and crop science to polymer products.
4. GEBS is a joint venture created by GE and Bayer in 1998². In GEBS, GE and Bayer pooled all their silicone business in the EEA and certain other territories³ (the “JV Region”). The parties agreed in the Foundation Agreement setting up GEBS to contribute to GEBS any further silicone businesses to be acquired by the parties in the JV Region. Outside of the JV Region, GE is also active in silicones through its subsidiaries GES and GETOS.
5. OSi Europe Business is comprised of the undertakings GE Specialty Materials (Suisse) Sarl, GE Silicones (Benelux) BVBA and GE Specialties Sarl. OSi Europe Business was acquired by GE in 2003 and is to date fully owned by GE. It is active in the production of silanes, certain urethane additives and silicone products (fluids and specialties) used in a broad range of industrial applications.

II. THE OPERATION

6. The operation consists of one transaction with two arms, which will be completed simultaneously under the same agreement. The first arm of the transaction consists of the transfer of GE Specialty Materials (Suisse) Sarl and GE Silicones (Benelux) BVBA (two parts of the OSi Europe Business) from GE’s sole control to the joint control of GE and Bayer via GEBS, a pre-existing full function joint venture. The second arm of the transaction consists of the transfer of GE Specialties Sarl (the Italian business and remaining part of the OSi Europe Business) from GE’s sole control to the joint control of GE and Bayer in a newly founded joint venture, comprised of two new entities – GE Bayer Specialties Verwaltungs GmbH and GE Bayer Specialties GmbH & Co KG. The operation is in compliance with GE’s obligations stemming from the GEBS Foundation Agreement.

III. CONCENTRATION

7. The operation is a concentration within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004. Under the first arm of the transaction, there will be a transfer from GE’s sole control to the joint control of GE and Bayer via the pre-existing full function joint venture GEBS. GE owns 50.1% of GEBS’ capital, Bayer owns the remaining 49.9% of its capital, but due to the nature of veto rights conferred on the parties, they each hold co-decision rights on all major issues concerning the joint venture. Under the second arm of the transaction, there will be a transfer of GE’s sole control to the joint control of GE and Bayer in a newly founded joint venture. The new joint venture will be owned equally (50/50) by both GE and Bayer.
8. Both arms of the transaction will be completed simultaneously under the same agreement. Since both arms of the transaction are legally and economically fully interdependent, they are treated as one and the same concentration.

² Approved by the Commission in COMP/M.1162 – GE/Bayer

³ The JV Region is defined in the GEBS foundation agreement as (i) [...]

IV. COMMUNITY DIMENSION

9. The parties concerned have a combined aggregate world-wide turnover of more than €5 billion⁴ (€120.3 billion for GE and €23.3 billion for Bayer). Each of them have a Community-wide turnover in excess of €250 million ([...] for GE and [...] for Bayer). There is no Member State in which these parties achieve more than two thirds of their turnover. The concentration therefore has a Community dimension.

V. MARKET DEFINITION

Relevant product markets

10. The notified merger affects the silicones sector.
11. The parties recognise that from an end-use point of view, it is possible to distinguish thousands of silicones “micro markets” on the demand-side, depending on the specific application for which the silicones are used. However, they submit that supply-side considerations support a division of the market into five bigger product groups that are generally used in the industry to analyse silicones markets, namely: (i) intermediates, and, further downstream, (ii) standard silicone fluids (“fluids”), (iii) specialty fluids (“specialties”), (iv) elastomers and (v) sealants. Supply side considerations support this division of the market because each of the product groups in question is manufactured using a distinct set of plant and equipment.
12. Intermediates are produced out of the raw materials silicone metal and methanol in ‘upstream plants’. They are then further processed in polymerisation units into different types of basic polymers. Since the chemical structure of each of these polymers is different, they must be made in different polymerization kettles.
13. There are four main product lines that result from processing these basic polymers at the second stage of production: fluids, specialties, elastomers and sealants. Units for the production of a fluid, a specialty, an elastomer or a sealant product are dedicated to the particular product type.
14. Fluids are either sold onto the market or converted into specialties, using another set of equipment and plant.
15. Specialties are more highly processed, higher value-added products than standard fluids and are more complex to produce.
16. Elastomers have the key characteristic of being elastic. Through different processing steps at the polymerisation stage, three types of elastomers may be produced (« HCR », « LSR » and « RTV-2C »).
17. Finally, sealants can be differentiated from elastomers because they have specialised applications which cannot be substituted by elastomers in general. They are used for sealing joints or spaces.

⁴ 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.

18. This assessment corresponds with the product market definition deemed to be sufficient by the Commission when it examined the foundation of GEBS by GE and Bayer in 1998⁵, although it decided in that case that a precise market definition was not needed.
19. Of the five product groups mentioned, only fluids and specialties as measured by value would be affected product markets in the EEA in this case.
20. Ultimately, the definition of the relevant product markets can be left open, since, regardless of the precise market definition, the transaction will not give rise to competition concerns.

Geographic market

21. The parties take the view that the respective relevant geographic markets for standard silicone fluids and for specialty silicone fluids are at least EEA-wide. In particular, it is submitted that there are only a limited number of fluids and specialties production sites throughout the EEA from which the whole European market is supplied. It is submitted that the EEA-wide nature of the market is underlined by the fact that many of the customers themselves operate EEA-wide. Further, transportation costs are low and there are no significant barriers to trade. The parties submit that the same reasoning applies for the non-affected markets of intermediates, elastomers and sealants.
22. Therefore, the relevant geographic markets for silicones seem to be at least EEA wide. This is in line with previous Commission's decisions.⁶
23. Ultimately, the definition of the relevant geographic markets can be left open, since, regardless of the precise market definition, the transaction will not give rise to competition concerns.

VI. COMPETITIVE ASSESSMENT

24. The proposed transaction does not lead to a significant structural change on the silicone markets in the EEA. GE's market position within the EEA does not change, as it already has sole control of OSi Europe Business and joint control of GEBS and therefore of all relevant silicone activities within the EEA. Furthermore, because GES and GETOS, which comprise all of GE's other silicone activities outside the EEA, are not affected by the transaction, GE's position on any potential global market would also remain unchanged. Whatever competitive constraint OSi Europe Business may have exercised over GEBS prior to 2003, was effectively eliminated when GE acquired sole control of OSi Europe Business in that year. The only structural change effectuated by the proposed transaction would concern Bayer, which through this transaction acquires joint control over OSi Europe Business. However, apart from its share in GEBS, Bayer is not active in any silicone business, within or outside of the EEA. In consequence, the operation will not change the structure of the market for fluids or specialties at either the EEA or world-wide level.
25. The market shares of the parties and any increments which would result from the transaction are in any case relatively small. Market shares used for the analysis are

⁵ COMP/M.1162 – GE/Bayer

⁶ COMP/M.1162 – GE/Bayer

based upon the parties' best estimates, but have been largely confirmed by the results of the market investigation.

26. Of the five bigger product groups that are generally used in the industry to analyse silicones markets, intermediates, elastomers and sealants are not affected markets. On the EEA markets for elastomers and sealants, in 2005 GEBS had a market share of [40-50] % and [20-30] % respectively. However, OSi Europe Business is not active on these markets. On the EEA merchant market for intermediates, the GEBS' market share in 2005 was below 15%. OSi Europe Business is again not active on the market for intermediates. Consequently, the proposed transaction does not give rise to any horizontal overlaps on the markets for elastomers, sealants and intermediates.
27. There are no vertical relationships between the parties, since neither party is engaged in business activities in a product market, which is upstream or downstream of a product market in which any other party to the concentration is engaged, and in which any of their individual or combined market shares at either level is 25% or more. As such, the rest of this decision focuses on the horizontally affected product markets, i.e. the markets for fluids and specialties.
28. Shares of fluids and specialties sales in the EEA and world-wide by value indicate who the main players on the silicone markets are.

Table 1: Share of Fluid Sales by value, 2005

Players 2005	EEA Sales (%)	World-wide Sales (%)
Dow Corning	[30-40]	[30-40]
GES and GETOS ⁷	N/A	[10-15]
Wacker	[20-30]	[10-15]
GEBS ⁸	[15-20]	[5-10]
Rhodia	[5-10]	[5-10]
Degussa	[2-5]	[2-5]
Shin-Etsu	[0-2]	[15-20]
OSi Europe Business	[0-2]	[0-2]
Others	[10-15]	[2-5]

29. As regards fluids in 2005, the parties' combined EEA market share was [15-20] % (GEBS [15-20] %, OSi Europe Business [0-5] %). The parties' combined global market share amounted to [20-30] % in 2005 (GES and GETOS [10-15] %, GEBS [5-10] %, OSi Europe Business [0-2] %).
30. Post-merger, the parties would continue to face effective competition both on an EEA wide and on a global market. Dow Corning and Wacker are the leading suppliers in the EEA, with shares of [30-40] % and [20-30] % respectively. The parties combined shares post-transaction ([15-20] %) would thus not make any difference to their current placement, through GEBS, as the third strongest competitor on the fluids market in the EEA.

⁷ GE's subsidiaries outside the EEA and other defined territories within the JV Region.

⁸ GE's and Bayer's joint venture

31. Based on a global market, Dow Corning is the leading supplier in the world, with a market share of [30-40] %. GE (through GES and GETOS) is the second leading supplier in the world, with a much smaller share of [10-15]%. The parties' combined shares post-transaction would thus increase to [20-30] %. However, this would not change GE's current placement, through GES and GETOS, as the second strongest competitor on the fluids market at the world-wide level.

Table 2: Share of Specialty Sales by value, 2005

Players 2005	EEA Sales (%)	World-wide Sales (%)
Dow Corning	[30-40]	[30-40]
GES and GETOS	N/A	[10-15]
Wacker	[10-15]	[5-10]
Degussa	[10-15]	[5-10]
OSi Europe Business	[5-10]	[2-5]
GEBS	[5-10]	[2-5]
Rhodia	[5-10]	[2-5]
Shin-Etsu	[5-10]	[5-10]
Others	[15-20]	[5-10]

32. As regards shares for specialties, in 2005, the parties' combined market share in the EEA was [15-20] % (GEBS [5-10] %, OSi Europe Business [5-10] %). World-wide, the parties' combined market share was [20-30] % (GEBS [2-5] %, OSi Europe Business [2-5] %, GES and GETOS [10-15]%).

33. Post-merger, the parties will continue to face effective competition both on an EEA wide and on a global market. Dow Corning, Wacker and Degussa are the leading suppliers in the EEA with shares of [30-40] %, [10-15] % and [10-15] % respectively.

34. Based on a global market, Dow Corning is the leading supplier world-wide, with a [30-40] % market share. GE, through GES and GETOS, is second with a share of [10-15] % and is closely followed by Wacker with a share of [5-10] % and to a lesser extent by Degussa with a share of [5-10] %.

35. Hence, the notified transaction does not significantly impede competition in the relevant markets.

VI. CONCLUSION

36. 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
Neelie KROES
Member of the Commission