

***Case No COMP/M.6050 -
DUPONT / DSM /
ACTAMAX JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/02/2011

***In electronic form on the EUR-Lex website under
document number 32011M6050***



EUROPEAN COMMISSION

Brussels, 21.2.2011

SG-Greffe(2011) D/2465, 2466
C(2011) 1161 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.6050 – DSM/Dupont/Actamax JV
Notification of 17 January 2011 pursuant to Article 4 of Council
Regulation No 139/2004¹
Publication in the Official Journal of the European Union No C 23,
25.01.2011, p.8**

1. On 17 January 2011, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("the Merger Regulation") by which the undertaking DSM PTG, Inc., belonging to the group Royal DSM N.V. ("DSM", The Netherlands) and E.I. du Pont de Nemours and Company ("DuPont", USA) acquire within the meaning of Article 3(4) of the Merger Regulation joint control of the undertaking Actamax Surgical Materials LLC ("Actamax" or "the JV", USA) by way of purchase of shares in a newly created company constituting a joint venture.
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 EEA Agreement.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

I. THE PARTIES

3. DSM is engaged in the research, development, production, distribution, and sale of a variety of nutritional and pharmaceutical products, performance materials, polymer intermediates, and base chemicals and materials.
4. DuPont is a multinational diversified company engaged in the research, development, production, distribution, and sale of a variety of chemical products, plastics, agro-chemicals, paints, seed, and other materials.
5. The proposed transaction will result in the creation of a full-function joint venture, Actamax, which will develop and commercialise advanced biocompatible surgical materials (notably adhesion barriers, tissue adhesives, and hemostatic and ophthalmic sealants).

II. THE OPERATION

6. On 21 September 2010, DSM and DuPont signed a principal agreement effecting the JV's creation as a full-function joint venture. Actamax will be jointly controlled by its parents, which will each possess 50% of the voting rights and board members. A number of strategic decisions will require board unanimity [...]. Accordingly, each of DSM and DuPont will have a veto over decisions of fundamental importance to the JV's operations.
7. The JV will perform all the functions of an autonomous economic entity active in the development and commercialisation of advanced biocompatible surgical materials. It will have access to sufficient resources, an independent management, and sufficient personnel in order to conduct its activities and will be formed for an indefinite period.

III. CONCENTRATION

8. As a result of the proposed transaction, DSM and DuPont will thus exercise joint control over the new entity, which will be performing on a lasting basis all the functions of an autonomous economic entity. The operation therefore constitutes a concentration within the meaning of Article 3(1)(b) and 3(4) of the Merger regulation.

IV. EU DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million² (DuPont EUR 18 719 million, DSM EUR 7 732 million). Each of them has an EU-wide turnover in excess of EUR 250 million (DuPont EUR [...], DSM EUR [...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

COMPETITIVE ASSESSMENT

1. Market definition

10. Actamax will develop and manufacture advanced biomedical surgical materials based on biodegradable hydrogel technologies, and notably surgical adhesion barriers, surgical adhesives, and surgical sealants. Surgical adhesion barriers are bioresorbable "implants" that can be used to reduce abnormal adhesions following surgery by separating the internal tissues and organs while they heal. Surgical adhesives are high-strength securement products used during certain types of surgery in order to attach organs, structures, or tissues to each other or to effect repair. Finally, surgical sealants are biocompatible products used during various types of surgery to prevent the leakage of gas, fluids or solids following surgical incisions.
11. DSM and DuPont have horizontal overlaps in engineering polymers (i.e. engineering plastics), an area wholly unrelated to the transaction. Engineering polymers are petro-based polymers that possess certain characteristics, in terms of strength, impact resistance, and heat resistance that allow them to replace metal in a number of highly demanding end-use applications.
12. While it is submitted that the relevant geographic market of the JV's activities is at least EEA-wide in scope, the product and geographic delineation of the relevant market can be left open for the purpose of this decision as the concentration does not raise serious doubts under any alternative definition.

2. Assessment

13. Neither of the parent companies carries on any business activities in the markets in which the JV operates nor is engaged in such activities in a product market which is upstream or downstream of such markets.
14. For these reasons, the Commission concludes that the concentration will not lead to a significant impediment of competition in those markets.
15. Furthermore, spill-over effects in the meaning of Article 2(4) of the Merger Regulation as a result of the proposed transaction can be discarded.
16. None of the parents has activities in the same market as the joint venture or in a market which is up- or downstream from that of the joint venture or in neighbouring markets closely related to this market.
17. Indeed, the joint venture and the parent companies perform different types of activities. In particular, the JV's polymers are specifically designed to be resorbable for use in the human body whereas engineering polymers are designed for industrial uses. Furthermore the joint venture only represents a small part of the parents' portfolio, so that coordination between independent undertakings that restricts competition within the meaning of Article 101(1) of the TFEU is highly unlikely.

CONCLUSION

18. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission

(signed)

*Joaquín ALMUNIA
Vice-President*