



EUROPEAN COMMISSION
DG Competition

***Case M.8440 - DUPONT / FMC (HEALTH AND
NUTRITION BUSINESS)***

Only the English text is available and authentic.

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

Decision on the implementation of commitments - Purchaser
approval
Date: 22.5.2018



Brussels, 22.5.2018
C(2018) 3251 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party

Dear Sir/Madam,

**Subject: Case M.8440 – DuPont / FMC (Health and Nutrition Business)
Approval of Josef Rettenmaier Holding Europa GmbH as purchaser
of DuPont’s global alginates business following your letter of
16 March 2018 and the Trustee’s opinion of 23 March 2018**

I. FACTS AND PROCEDURE

1. By decision of 27 July 2017 (the “Decision”) based on Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings¹ (the “Merger Regulation”), the Commission declared the operation by which E. I. du Pont de Nemours and Company (“DuPont”) acquired sole control over the Health and Nutrition (“H&N”) business of FMC Corporation (“FMC”) compatible with the internal market subject to full compliance with the commitments submitted by DuPont, which were annexed to the Decision (the “Commitments”).
2. In particular, pursuant to the Decision, the Commitments provide that in order to address the serious doubts raised by the acquisition of sole control by DuPont of FMC’s H&N business in the market for alginates for food applications and some non-meat applications such as bakery and dairy, DuPont would divest its global alginates business (including all pectin-alginates mixtures) manufactured at the

¹ OJ L 24, 29.01.2004, p. 1. 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.

Landerneau plant (France). The Commitments include, at the option of the purchaser, a transitional supply agreement of pectin between DuPont and the purchaser and a global licence to use DuPont's GRINSTED® Alginate brand and any associated trademarks and product names for a limited duration (the "Divestment Business").

3. The First Divestiture Period in respect of the Divestment Business would have expired on 27 January 2018. By letters of 6 December 2017 and 22 January 2018, DuPont requested two extensions of the First Divestiture Period under clause 42 of the Commitments. The first extension lasted until 27 February 2018 and the second extension ended on 27 March 2018.
4. Against this background, by letter of 16 March 2018, DuPont proposed Josef Rettenmaier Holding Europa GmbH (an affiliate of the Josef Rettenmaier & Söhne Group) (collectively and individually "JRS" or the "Proposed Purchaser" and, together with DuPont, the "Parties") for approval by the Commission as purchaser of the Divestment Business and submitted the proposed Put Option Agreement and related agreements (the "Proposed Agreements").
5. On 23 March 2018, the monitoring trustee supervising the implementation of the Commitments, ING (the "Trustee"), separately submitted an assessment of JRS' suitability as a purchaser (the "Reasoned Opinion"). In particular, the Trustee indicated that JRS fulfils the criteria of the purchaser requirements in paragraph 16 of the Commitments. In its assessment, the Trustee also indicated that, on the basis of the Proposed Agreements, the Divestment Business would be sold in a manner consistent with the Commitments.

II. ASSESSMENT OF THE PROPOSAL

(a) Legal framework

6. Pursuant to paragraph 17 of the Commitments, the Commission has to verify that the purchaser fulfils the purchaser criteria and that the Divestment Business is being sold in a manner consistent with the Commitments.
7. According to paragraph 16 of the Commitments, in its assessment of the Proposed Purchaser, the Commission should ensure in particular that:
 - a. The purchaser is independent from and unconnected to DuPont and its affiliated undertakings.
 - b. The purchaser has the financial resources, proven expertise and incentives to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors. In particular, the purchaser shall have expertise in the hydrocolloid business, capability to source independently sufficient volumes of raw materials such as pectin and seaweed to enable the Landerneau facility to operate at full capacity, and proven commercial expertise with regard to food and/or pharmaceutical applications of hydrocolloid products.

- c. The acquisition of the Divestment Business by the purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

(b) Description of the Proposed Purchaser

8. JRS is a German company founded in 1878 that manufactures products from plant-based raw materials which are sold into a broad range of markets including the pharmaceuticals, food and pet care industries.
9. JRS operates [> 50] production sites, seven research and development (“R&D”) centres and sales locations across North America, South America, Africa, Europe and Asia.
10. JRS is organised in three divisions: (i) life science, (ii) fibre solutions, and (iii) consumer products. In particular, the life science division develops, manufactures and distributes health and nutrition ingredients used within human and veterinary products. It operates through five business units including the food unit, the pharma unit, and the home and personal care unit. JRS plans to offer alginates through its food and pharmaceutical business units and to explore the potential to develop alginates to sell through its home and personal care business unit.

(c) Independence from the Parties

11. Pursuant to paragraph 16(a) of the Commitments, in order to be approved by the Commission, a suitable purchaser must be independent from and unconnected to DuPont and its affiliated undertakings.
12. According to the information provided by DuPont and the Trustee, DuPont and its affiliates do not have any cross-shareholdings or directors in common with JRS, and JRS can be considered independent from and unconnected to DuPont in terms of equity and corporate links, ownership or commercial agreements.
13. Two transitional agreements between JRS and DuPont would remain after the acquisition of the Divestment Business by JRS. Those agreements will be signed after Closing: (i) a trademark licence agreement for the transitional global use of DuPont’s GRINDSTED® and GRINDSTED® Alginate brand for a period up to [...] that can be extended for multiple [...] periods up to a maximum period of [...] in the aggregate, and (ii) a supply agreement for the transitional supply of pectin, for a period up to [...] that can be extended at the Purchaser’s option by [...] periods.
14. Moreover, the Trustee considers that the pre-existing commercial relationships and the economic links between DuPont and JRS should not impede the independence of JRS from DuPont and do not raise material connectedness or independence concerns because they relate primarily to ordinary course trading activities, they are

not material in terms of magnitude and they are carried out on an arm's length basis.

15. On the basis of the information provided by DuPont and taking into account the Reasoned Opinion submitted by the Trustee, the Commission considers that JRS is, and will continue to be post-Transaction, independent and unconnected to DuPont and its affiliated undertakings.

(d) Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

16. Pursuant to paragraph 16(b) of the Commitments, in order to be approved by the Commission, a suitable purchaser must have the financial resources, proven expertise and the incentives to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.
17. In the present case, the purchaser shall have expertise in the hydrocolloid business, capability to source independently sufficient volumes of raw materials such as pectin and seaweed to enable the Landerneau facility to operate at full capacity, and proven commercial expertise with regard to food and/or pharmaceutical applications of hydrocolloid products.
18. Against this background, the Commission considers that JRS has significant financial resources. In 2017, it achieved total sales of approximately EUR [...] worldwide. This compares to a purchase price of EUR [...] for the Divestment Business.
19. In terms of proven expertise, JRS is an established manufacturer of products from plant-based raw materials for *inter alia* the pharmaceutical and food markets. The Trustee considers that JRS has proven expertise (including commercial expertise) in the hydrocolloid business and a proven track record in developing, manufacturing and selling hydrocolloids for both food and pharmaceutical applications through its established global sales network.
20. In particular, in 2016, JRS was the number one competitor in the microcrystalline cellulose ("MCC") market in the EEA.² It also produces other hydrocolloids such as methyl cellulose, [...] * cellulose, hydroxypropyl methyl cellulose, sodium starch glycolate and polyvinylpyrrolidone. The first three are used in the food industry.
21. Moreover, JRS purchases a number of hydrocolloid products, including sodium alginate, which it blends with other products for use in the food and pet food markets.
22. Furthermore, the Trustee considers that JRS appears to have the capability to independently source sufficient volumes of raw materials such as Pectin and

* Should read: dispersible.

² Commission decision of 27 July 2017, M.8440 – *DuPont/FMC (Health and Nutrition Business)*, recital 165.

seaweed to enable the Landerneau facility to operate at full capacity. JRS intends to source fresh seaweed through the direct relationships of the Divestment Business with local fishermen in Brittany.

23. In addition, JRS has experience in making acquisitions and integrating these into its group. Over the last 3 years, JRS has completed [> 10] acquisitions.
24. In terms of incentives, the Trustee considers that JRS appears to have the incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors. The Trustee indicates that the acquisition of the Divestment Business fits in well with JRS' strategy of supplying naturally sourced food and excipients ingredients to pharma and consumer products manufacturers.
25. The acquisition will allow JRS to offer a wider portfolio of hydrocolloids to its customers, as well as to provide JRS with an opportunity to build relationships with new customers. Moreover, the Trustee indicates that the business plan of JRS demonstrates volumes and revenue growth over the course of the first five years, generating a positive EBITDA contribution. Furthermore, JRS has outlined plans to invest in the Landerneau facility and has provided information supporting its ability to execute these plans.
26. On the basis of the information provided by DuPont and taking into account the Reasoned Opinion submitted by the Trustee, the Commission considers that JRS has sufficient financial resources, proven expertise and the incentives to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.

(e) Absence of prima facie competition problems

27. Pursuant to paragraph 16(c) of the Commitments, the acquisition of the Divestment Business by the Purchaser must neither be likely to create *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.
28. In the present case, the Transaction does not give rise to horizontal overlaps. JRS does not produce any alginates products and it only purchases sodium alginates which it blends with other products. JRS is not active in the market of alginates for food applications or non-meat applications such as bakery and dairy. The Transaction only triggers one merger control filing in Ukraine, in which JRS does not sell alginates [...]. JRS submitted its filing to the Ukrainian competition authority on 18 May 2018.
29. On the basis of the above and taking into account the Reasoned Opinion submitted by the Trustee, the Commission considers that the acquisition of the Divestment Business by JRS does not create *prima facie* competition concerns, nor does it give rise to a risk that the implementation of the Commitments will be delayed.

30. This prima facie assessment is based on the information available for the purpose of this buyer approval and does not prejudice the competition assessment of the acquisition of the Divestment Business by JRS by a competent competition authority under applicable merger control rules.

(f) Conclusion on the purchaser criteria

31. In light of the above considerations, taking into account the Reasoned Opinion submitted by the Trustee, and taking into account the information available to it, the Commission concludes that JRS meets the purchaser criteria, as laid down in paragraph 16 of the Commitments.

III. ASSESSMENT OF THE TRANSACTION DOCUMENTS

32. The Proposed Agreements comprise:
- a. a Put Option Agreement, which grants DuPont an option (exercisable in its sole discretion) to sell the divested business to JRS on the terms of the Purchase Agreement, subject to completion of a consultation process with the works councils of Danisco Landerneau and Danisco France; and
 - b. a Purchase Agreement, which sets out the terms and conditions of the sale by DuPont to JRS of equity interests and assets related to DuPont's business of sourcing, developing, manufacturing, packaging, marketing and selling Alginate singles products, buffered Alginate products and Pectin-Alginate Blends manufactured at the Landerneau facility.
 - c. Fifteen (15) Exhibits attached to the Purchase Agreement together with the Parent Disclosure Schedules. In particular, Exhibit F includes a Trademark Licence Agreement to be signed at Closing for the transitional global use of DuPont's GRINDSTED® and GRINDSTED® Alginate brand; and Exhibit G includes a Supply Agreement between DuPont and JRS for the transitional supply of pectin (the "Pectin Supply Agreement").
33. The Trustee reviewed the Proposed Agreements and confirmed that they fulfil the condition of the Commitments to transfer the Divestment Business to a Suitable Purchaser. In general, the Trustee considered that the terms of the Proposed Agreements reflect DuPont's obligations set out in the Commitments.
34. The Trustee also identified six modifications from the Commitments:
- a. the language of the Purchase Agreement with regard to Closing. The EU Commitments require Closing within [...] from approval of a purchaser and the terms of sale; however, the Purchase Agreement allows the Closing to be postponed [...], each time by [...], beyond [...];
 - b. the pricing terms of the Pectin Supply Agreement, which should be [...]; however, the Pectin Supply Agreement references instead [...] and this price would be subject to movements in the price of [...];

- c. the confidential information of the Divestment Business should be eliminated prior to the Effective Date and it should not be used by DuPont; however, the Purchase Agreement does not appear to require elimination of the confidential information by DuPont;
 - d. the personnel of Danisco Landerneau SAS and the Key Personnel. Section 2.22(k) of the Parent Disclosure Schedules does not include two employees of Danisco Landerneau SAS and one Key Personnel; and
 - e. customers, contact persons and pricing information is not included in the Proposed Agreement.
35. Against that background, the Commission considers that with regard to:
- a. the Closing date, that the obligations of DuPont are clear, extensions of the Closing period must be formally requested to the Commission in accordance with paragraph 42 (Review Clause) of the Commitments and would at such time be submitted for the Commission's consent, subject to an assessment by the Trustee and the Commission, if the Parties show good cause;
 - b. the pricing terms of the Pectin Supply Agreement, that [...] is materially in line with what the Divestment Business is currently paying [...];
 - c. the deletion of confidential information, DuPont indicated to the Trustee that it could only retain books and records not containing know-how, trade secrets or other competitive sensitive information and may use these only for normal business, tax, accounting, compliance, and administrative purposes. DuPont further explained that it has established retention processes that would also be applied in this context;
 - d. the personnel and Key Personnel not included in the Purchase Agreement, that one of those three employees only dedicated 15% of its working time to the activities of the Divestment Business and the other two, included the Key Personnel, resigned and they have already been replaced or a replacement is being sought. [...]; and
 - e. customers, contact persons and pricing information, that it will be shared with JRS after antitrust approvals of the transaction (in particular from the Commission) have been received. The Trustee would closely oversee that such information is effectively transferred and delivered to JRS before Closing.
36. In light of the above considerations and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that the Proposed Agreements are consistent with the Commitments and that, accordingly, the Divestment Business is being sold in a manner consistent with the Commitments.

IV. CONCLUSION

37. On the basis of the above assessment, the Commission approves JRS as a suitable purchaser of the Divestment Business.

38. On the basis of its review of the Proposed Agreements, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
39. This decision only constitutes approval of the Proposed Purchaser identified herein and of the Proposed Agreements. This decision constitutes neither a confirmation that DuPont has complied with its Commitments, nor that DuPont has complied with its obligations regarding timing of closing of the sale of the Divestment Business.
40. This decision is based on paragraph 17 of the Commitments attached to the Commission Decision of 27 July 2017.

For the Commission

(Signed)

*Johannes LAITENBERGER
Director-General*