



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 the commitments - Review
of key personnel
Date: 13.12.2018



Brussels, 13.12.2018
C(2018) 8942 final

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Dear Sir/Madam,

Subject: Case M.8440 – DuPont / FMC (Health and Nutrition Business)

Your request of 9 October 2018 for modifications, under Clause 8(c) of the Commitments annexed to the Commission decision of 27 July 2017, of the Key Personnel listed in Appendix II to the Commitments.

1. By decision of 27 July 2017 (“the Clearance Decision”)¹ adopted in application of Article 6(1)(b) and (2) of Council Regulation (EEC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (“the Merger Regulation”),² the Commission declared the operation by which the undertaking E. I. du Pont de Nemours and Company, USA (‘DuPont’ or the ‘Notifying Party’), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over the Health and Nutrition (‘H&N’) business of FMC Corporation, USA (‘FMC’) comprising food texturants and pharmaceutical excipients (but excluding FMC’s Omega-3 business) compatible with the internal market and with the EEA Agreement, subject to full compliance with the commitments submitted by the Notifying Party annexed to the Clearance Decision (“the Commitments”).
2. In particular, pursuant to the Commitments, 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 Landerneau plant (France). The Commitments include, at the option of the purchaser, a transitional supply agreement of pectin between DuPont

¹ OJ C 327/03, 17.09.2018, p.2.

² OJ L 24, 29.1.2004, p. 1.

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. Pursuant to Clause 8(c) of the Commitments, "*[The Parties undertake] to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to the Parties' remaining business. Where, nevertheless, individual members of the Key personnel exceptionally leave the Divestment Business, the Parties shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Parties must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.*"
4. By decision adopted on 22 May 2018, the Commission approved Josef Rettenmaier Holding Europa GmbH (JRS) as a suitable purchaser of the Divestment Business. The Schedules to the Purchase Agreement listed the key personnel to remain with the Divestment Business within the meaning of Clause 8(c) of the Commitments. The closing of this transaction (the "Divestment Transaction") took place on 31 October 2018.

Reasoned proposal by DuPont

5. By letter of 9 October 2018, DuPont submitted a reasoned proposal for a modification regarding the list of persons considered as Key Personnel included in the divestment of the DuPont plant at Landerneau (France). Most notably, Point I.2 of Appendix II to the Commitments currently lists [...], the Production/Unit Manager, as Key Personnel of the Divestment Business.
6. In its reasoned proposal, DuPont submits that [...] resigned from his position as Production/Unit Manager at the Divestment Business [...] for [...] reasons unconnected to the Divestment Transaction [...].
7. DuPont requests that the Commission approves the replacement of [...] by [...] as Production/Unit Manager at the Landerneau plant, effective 1 January 2019. [...], currently acts as the Safety, Health and Environment manager at the Divestment Business and is also listed among the Key Personnel. DuPont understands that [...], who has been with the Divestment Business for over ten years, is deemed to be suitable to act in this role by the Hold Separate Manager (HSM), [...]. DuPont submits that, given her long tenure, [...] is viewed as capable of managing the overall Divestment Business operations, and as being well versed in all aspects of the facility, production equipment, and employees.
8. With respect to backfilling [...] role once she takes up her new position, DuPont understands that [...].

Opinion of the Monitoring Trustee

9. On 10 October 2018, the Monitoring Trustee, ING Bank N.V., submitted a report on this request for a modification of the Key Personnel, on the basis of information obtained from DuPont, the HSM and JRS.

10. The HSM has informed the Trustee that [...] had indicated for some time that [...]. [...] was the HSM's first choice replacement for [...], on the basis that she has been employed at the Landerneau facility for about 10 years, and, through her current role, has established a good understanding of the requirements of the role of production manager. The Trustee met with [...] in September 2018.
11. The Trustee understands that [...] will remain employed by the Divestment Business until the end of 2018, which the HSM considers will be sufficient time to enable an effective handover of the production manager role to [...].
12. The Trustee explained that JRS has been informed of the resignation of [...] and is supportive of replacing him with [...].

Assessment of the requested modifications

13. The Commission takes note that [...] tendered his resignation [...] and that the Monitoring Trustee was informed of this resignation shortly thereafter.
14. The Commission finds that in its reasoned proposal of 9 October 2018 DuPont has shown good cause for the replacement of the Production/Unit Manager at the Divestment Business and that there is no reason to oppose the replacement of [...] by [...] as key personnel to remain with the Divestment Business within the meaning of Clause 8(c) of the Commitments. The above conclusion is based on the following considerations.
15. First, it appears that [...] departure from his current assignments as Key Personnel is intended in order to [...]. It therefore seems that [...] has decided to leave his current position for [...] reasons which bear no relation with the Divestment Transaction.
16. Second, as regards the replacement as Key Personnel, [...] appears to have the technical and management experience, as well as the incentives, to take up the position of Production/Unit Manager. Through her employment at the Divestment Business for about 10 years, including her current role, she has developed the necessary insight into, and suitability for, the role of the Production/Unit Manager at the Divestment Business.
17. Third, the Monitoring Trustee supports the proposed replacement. The findings of the Monitoring Trustee are in line with the opinion of the HSM and of JRS as an approved Purchaser for the Divestment business.
18. The Commission therefore considers that the replacement of [...] by [...] as key personnel to remain with the Divestment Business within the meaning of Clause 8(c) of the Commitments, and accordingly a modification of the Key Personnel listed under point I.2 of Appendix II to the Commitments should be allowed.

Conclusion

19. The Commission decides to authorise the replacement of [...] by [...], as the new Production/Unit Manager at the Divestment Business as from 1 January 2019, in the list of Key Personnel referred to in point I.2 of Appendix II to the Commitments.

For the Commission

(Signed)
Johannes LAITENBERGER
Director-General