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***Case No IV/M.984 -
DUPONT / ICI***

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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 002/10/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2.10.1997

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties :

Dear Sirs,

Subject: **Case No IV/M.984 - DUPONT/ICI**
Notification of 1.9.1997 pursuant to Article 4 of Council Regulation N° 4064/89

1. On 01.09.1997 the Commission received the notification of a proposed concentration through which DuPont de Nemours and Company ("DuPont") will acquire the polyester and titanium dioxide businesses of Imperial Chemical Industries Plc. ("ICI").

I. THE PARTIES AND THE OPERATION

2. DuPont is a global, U.S. based corporation, headquartered in Delaware (US), which has been present in Western Europe for over 40 years. DuPont is engaged in the research, development, production, distribution and sale of a variety of chemicals and energy products, man-made fibres, plastics and other materials.
3. ICI is an international chemical company, incorporated in the United Kingdom, active in coatings, speciality chemicals, materials, explosives and industrial chemicals.
4. DuPont will acquire the polyester and titanium dioxide ("TiO₂") businesses of ICI in Western Europe. ICI's polyester businesses consist of Pure Terephthalic Acid ("PTA"), Polyester Packaging Resin ("PPR") and Polyethylene Terephthalate Film ("PET film").

II. CONCENTRATION

5. The transaction, involving the acquisition of sole control by DuPont of ICI's polyester businesses and its TiO₂ business, is a concentration within the meaning of article 3(1) (b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The combined aggregate worldwide turnover of the undertakings concerned exceeds ECU 5000 million. The aggregate Community wide turnover of each party exceeds ECU 250 million. They do not achieve more than two-thirds of their turnover in one and the same Member State. The operation has therefore a Community dimension, but does not constitute a cooperation case under the EEA Agreement.

IV. ASSESSMENT

7. The four sectors concerned are: A) PTA, B) PPR, C) PET film and D) TiO₂.

A. PTA

8. PTA is a white, powdered chemical. It is obtained from paraxylene, an aromatic derive from oil and gas. As well as another terephthalic acid, the dy-methyl terephthalate ("DMT"), PTA is used to produce polyester. The parties submit that PTA users are unlikely to regard DMT as an adequate substitute for PTA. The product market appears therefore to include PTA only, and its geographical scope appears to be limited to the EEA, due to transportation costs and tariffs. However, it is not necessary to delineate neither the product nor the geographic market definition. DuPont is not present on this market neither at EEA, nor at world-wide level, thus there is no horizontal overlap between the parties. ICI has a market share in the EEA of 28%. As regards vertical relationships between ICI's PTA production and DuPont's downstream PET-film activity, the concentration does not appear to be significant. DuPont PET-film production in the EEA only uses DMT. Whilst DuPont uses PTA in its US-Production facilities this combination is not likely to raise concerns, since ICI's market share for PTA on a world-wide level is just 6%.

B. PPR

9. PPR is largely used (90%) in a variety of packaging applications, including soft drink bottles, mineral water bottles and rigid packaging (e.g. for cosmetic products, household chemicals, edible oils and other foods). The remaining 10% of PPR produced in Western Europe is used in other forms of semi-rigid packaging. The parties submit that the relevant market includes all PPR resins and is as broad as the EEA. However, it is not necessary to delineate neither the product nor the geographic market definition. DuPont has no activities in PPR production, nor upstream or downstream PPR. Only ICI is present on the EEA, with a market share of around 12%. ICI is also a producer of PTA, that is one of the raw materials used for PPR production. However, as said above, DuPont relations to ICI's PTA production are not likely to raise any

competition concerns. Therefore, there are no markets which are horizontally or vertically affected by the operation.

C. PET FILM

Relevant product market

10. PET is produced in a wide variety of forms and types which are employed for a large range of end-use applications. PET film are produced in various types of line, which differentiate by a number of technical features including the film thickness and width, the feeding process and the formula of fillers, the production environment conditions as well as certain specific capabilities such as in-line coating or co-extrusion. Mainly depending on the combination of line capabilities, PET film can be produced as commodity-type and speciality type.
11. There appears to be a straight relation between film thickness and intended use, but other production parameters are also relevant in respect of the individual application fields. In general, production lines are designed to cover certain ranges of PET film which are intended for one or more specific application fields. Therefore, supply-side substitutability considerations lead to segment the PET film market into various categories of PET film applications. The industry trade association, the Association of Manufacturers of Polyester Film (AMPEF), identifies five main categories of PET film applications:
 - **Magnetic media** applications, which comprise audio and video tape, as well as computer tape and floppy discs.
 - **Packaging** applications, which comprise commodity films, as well as higher-end coated speciality film used primarily for food packaging.
 - **Industrial** applications, of which there are hundreds, including hot stamping foils, photo-resist, labels, and release films.
 - **Imaging** applications, which include printing films, such as layout base, masking film, and printing plates, as well as reprographic, microfilms and business graphics.
 - **Electrical** applications, including wire and cable wrap for insulation and moisture resistance, membrane touch switches, flexible printed circuits, capacitors, and motor insulation.
12. Two further segments, not identified individually by AMPEF, have been treated separately for purposes of this case, i.e. capacitor/thermal transfer media films and photographic films. These films are typically manufactured on dedicated production lines and involve specific technology.
13. It cannot be excluded that some narrower relevant product market could be identified within the above categories. However, for the purpose of this case, this question can be left open, since in any possible market definition the concentration does not raise serious doubts as to its compatibility with the common market.

Relevant geographic market

14. According to the notification, the relevant geographic market for PET film is at least as broad as Western Europe. PET film for each product category is sold in

identical form across Western Europe and technical and qualitative requirements for PET film are common throughout Western Europe. Furthermore, PET film is easily transported and may be shipped economically over long distances. Transport costs are relatively insignificant as a proportion of average sales value. According to the parties, within the EU, transportation costs average 4% of final PET film prices.

15. Western European PET films producers tend to supply customers from one or two plant sites within Western Europe. DuPont supplies the vast majority of its Western European customers from its Luxembourg facility, while ICI supplies customers from two Western European facilities - Dumfries in the United Kingdom and Rozenburg in the Netherlands.
16. The various PET film products are sold at similar prices across Western Europe. To the extent that differences exist, these are largely attributable to variations in the product mix of customers.
17. The enquiry with customers and competitors tends to confirm that the geographic market is at least as broad as Western Europe. Some customers source PET film from outside Western Europe. They have also confirmed that prices for PET film tend to be homogeneous within Western Europe and are also affected by prevailing prices worldwide. There is a significant import duty for PET film into the EU, but this duty does not prevent imports to reach a penetration of almost one third of sales in the EU at present. Customers have also confirmed that they regularly obtain quotations from PET film producers outside Western Europe, and that they could increase supplies particularly from Asia. Producers in this areas have also confirmed that they could meet additional orders from Western European customers.
18. In any case, the question of whether the scope of the geographic market for PET film is Western European or broader can be left open, since the notified transaction does not raise issues of dominance under either hypothesis.

Competitive Assessment

19. Post-merger, DuPont would account for around 15% of the worldwide capacity to manufacture PET film, and for 40% in Western Europe. The largest capacity is located in the Asia/Pacific region, with a total of 761KT. DuPont accounts for a share of 3% of this capacity, with SKC, Toray and Cheil being the leaders.
20. The shares of total Western European sales by volume, as provided by the parties in their notification and broadly confirmed by competitors and customers, were in 1996 as follows:

	DuPont	ICI	Combined
Magenetic media	[10-20%] ¹	[0-10%] ¹	[10-20%] ¹
Packaging	[10-20%] ¹	[30-40%] ¹	[40-50%] ¹
Industrial applications		[20-30%] ¹	[10-20%] ¹
Imaging	[0-10%] ¹	[40-50%] ¹	[40-50%] ¹

¹ Deleted business secret, ranges indicated.

Electrical	[30-40%] ¹	[10-20%] ¹	[40-50%] ¹
Photographic	[30-40%] ¹	[0-10%] ¹	[30-40%] ¹
Capacitor/TTM	[20-30%] ¹	-	[20-30%] ¹
TOTAL PET FILM	[10-20%]¹	[10-20%]¹	[30-40%]¹

21. The areas of significant overlap and higher market shares are therefore in the packaging, industrial and electrical applications. With regard to **magnetic media**, DuPont is active in the applications for audio and video tapes. According to the notification, ICI does not have the technology or production facilities necessary to produce PET film for the large audio and video segments. It only manufactures some PET film for floppy disks applications, where DuPont is not active. The parties claim therefore that there is no competitive relation between DuPont and ICI in this market.
22. With regard to **imaging film**, DuPont is active in Western Europe only to a limited extent, with current sales of product imported from the US amounting to [...] million Ecus in 1996 ([...] share in the EEA in 1996). ICI's share in this application has been declining since 1994, where it had a share of [...] of sales in Western Europe, to become [...] in 1995 and [...] in 1996 according to the notification. Toray (share of [...] in 1996) Hoechst ([...]⁷) Agfa ([...]⁸) and 3M ([...]⁹) are presented as the main competitors.
23. In the above applications, customers have confirmed that they do not consider DuPont and ICI as competing suppliers. ICI principally produces coated film, while DuPont supplies a few customer, mainly with clear film.
24. With regard to **photographic and Capacitor TTM**, ICI does not add significantly to DuPont's pre-merger share. Photographic film is mostly produced captively by the customers (Agfa, Kodak and 3M).
25. The main areas of focus would then remain in the applications of **packaging**, and **industrial** and **electrical** applications. In these areas, the parties claim that the overlap between DuPont and ICI is limited. DuPont's activities in Western Europe are focused on ultrathin films, which ICI does not manufacture. Furthermore, DuPont's lines in Luxembourg are based on old assets using a continuous feed process. This would imply that it sells mostly commodity films, whereas ICI (using a more flexible chip fed technology) would sell mostly coated speciality films which would not be in direct competition with DuPont's products.

Competitors

² Deleted business secret, between 0-10%

³ Deleted business secret, between 0-10%

⁴ Deleted business secret, between 50-60%

⁵ Deleted business secret, between 40-50%

⁶ Deleted business secret, between 0-10%

⁷ Deleted business secret, between 0-10%

⁸ Deleted business secret, between 10-20%

⁹ Deleted business secret, between 10-20%

26. The shares of the main competitors of Western European sales, as estimated by the parties, are:
- Hoechst-Diafoil: with a share of [...] ¹⁰ of non-captive Western European sales of PET film in 1996. According to the parties, Hoechst-Diafoil is expanding capacity, and is present in all segments.
 - Toray, the leading Japanese producer of PET film, with a [...] ¹¹ share of non-captive sales of PET film in Western Europe. Toray acquired Rhone-Poulenc's PET film business, and is said to be planning capacity expansion in France. Toray focuses in Western Europe in magnetic media, packaging and industrial applications and PET film for electrical applications. The group as a whole is present in all applications worldwide, excepting photographic and PEN films.
 - SKC, a leading Korean producer with a [...] ¹² share in Western Europe, with no manufacturing facilities in this area.
 - Other competitors are Cheil, a subsidiary of Samsung, with a [...] ¹³ share. (It is also said to be planning capacity expansion in Europe), 3M, which produces photographic and imaging film, and Caffaro ([...] ¹⁴ share) and NuRoll Films ([...] ¹⁵).
27. The table attached as Annex 1 contains Western European market shares of the parties and the main competitors in the different PET film categories, as submitted by the notifying parties. Other competitors have broadly confirmed these shares.

Main characteristics

28. According to the notification, PET film capacity has more than doubled since the 1970's. Increased demand for PET film has induced an expansion of capacity, in particular low-cost Asian producers from Korea and India. The enquiry has confirmed that most producers expect capacity expansion and are indeed in process of setting up new production lines. All new lines are based on chip feed process, a superior manufacturing technology which DuPont does not own in Western Europe. DuPont's European facilities are based on continuous feed process, which restricts the range of film that can be produced on a given line, limits the possibility to produce small batches of specialized film and restricts flexibility in switching production to different film types.
29. Imports into Western Europe represent a major source of competition. Imports mostly from Asia, now account for around 30% of non-captive sales, having grown from a 15% share in 1987.
30. Customers follow a multisourcing policy, and most customers do have multiple suppliers of PET film. As a consequence of the notified concentration, certain customers will increase their purchases from the competitors of the merged entity. These competitors are also expecting to gain sales and therefore increase their shares as a consequence of the merger.

¹⁰ Deleted business secret, between 10-20%
¹¹ Deleted business secret, between 10-20%
¹² Deleted business secret, between 0-10%
¹³ Deleted business secret, between 0-10%
¹⁴ Deleted business secret, between 0-10%
¹⁵ Deleted business secret, between 0-10%

31. Finally, the parties argue that entry into the market is relatively easy, as illustrated by the success of Asian companies in developing sales. They point out that lines used to produce magnetic media and photographic film could be used to produce film for packaging, industrial and electrical applications. Furthermore, it is possible to obtain currently, turn-key facilities such as those produced by Brückner and Dornier. New entrants would also enjoy a competitive advantage over incumbents in that they can benefit of the significant technological progress undergone by the industry in relation to flexibility in the production lines and wider and faster lines.
32. For the above reasons, the notified concentration does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA agreement with respect to the PET film business.

D. TITANIUM DIOXIDE

Relevant product market

33. TiO₂ is an inorganic chemical used as a raw material to whiten, brighten and opacify paints and coatings, plastics, and a variety of miscellaneous speciality products, including paper laminates, paper, cosmetics, toiletries, fibres, inks, food, and food packaging.
34. TiO₂ is derived from ilmenite and rutile ores, and assumes two crystalline forms, Rutile and Anatase. TiO₂ production follows the original ilmenite-based sulphate process and the more recently developed chloride process (70% and 30% of the Western European capacity respectively). Anatase TiO₂ can only be generated by sulphate process. Whilst for the majority of end-use application both sulphate and chloride-produced TiO₂ can be used, there are certain specific applications where either chloride or sulphate-produced TiO₂ is preferred. For most speciality applications, in particular fibres and inks, sulphate-produced TiO₂ (generally in the Anatase form) cannot or only to a very limited extent be substituted by chloride-produced TiO₂. The distinction between the two manufacturing processes characterises the essence of the transaction, as DuPont's facilities are all using the chloride process. ICI's capacity is largely sulphate process based.
35. TiO₂ is produced in a number of different grades, by varying eg. additives employed, production process, particle size. Although they generally have the same basic properties, TiO₂ grades differentiate by certain technical characteristics and by intended use. TiO₂ suppliers all establish their own assortment of grades to cover the broadest range of uses (eg. DuPont offers about 20 TiO₂ grades, Kronos more than 40).
36. Three main categories of application can be identified, being paint/coating, plastics, and various miscellaneous speciality products. Within these three categories, further segmentation is possible into more specific application fields. So coatings may be subdivided into decorative, automotive, industrial durable and general industrial applications; plastics into masterbatches, PVC and other plastics applications; specialities into inks, paper, laminates and fibres applications.
37. There is no straight relation between TiO₂ grades and end use, since the same grade can be used for several application.

38. Customers' sourcing policy for TiO₂ is primarily based on the need to obtain the specific grade which matches the technical requirements for their production. In general, one or more grades from one or more suppliers are tested and "qualified" by the customer according to the formulation of its final product. Once the customer's product has been formulated on one or more "qualified" TiO₂ grades, their substitution by other grades becomes problematic, involving new R&D and testing (i.e. costs and time) for the reformulation of the product. In particular for certain uses such as automotive and industrial durable, substitution may be impossible for a certain time period (up to some years), because the final product's specific coating characteristics must be kept until this final product will be replaced by a new one or cease its technical life. This inflexibility in demand switching varies by the different productions. In terms of time, whilst a major part of TiO₂ grades appear to require less than one year to find adequate substitutes, for some grades 2-3 years or perhaps more could be necessary before a complete substitution be allowed. For these reasons, customers generally tend to establish medium or long term supply arrangements (up to two years) at least for those grades where substitution is difficult.
39. Difficult demand-switching conditions do not appear to be sufficient to divide the TiO₂ market into different submarkets corresponding to individual grades or group of grades. Consideration on both the demand and supply side appear to support the definition of one market including all TiO₂ grades and types (as also broadly stated by the Commission in its previous decision on case IV/M/023 - ICI/Tioxide), with the possible exception of those sulphate-produced speciality TiO₂ grades which are not substitutable by chloride TiO₂.
40. On the demand side, although certain grades or group of grades may not be substituted for certain specific productions, there is always an effect of chain substitution between grades. One grade is generally used for a large range of uses and several grades of several suppliers compete within each category of application. Thus the question of demand substitutability should be better placed at the level of categories of application. Prices of the different TiO₂ grades do not vary substantially and customers are often priced the same for all grades sources from the same supplier.
41. On the supply side, all suppliers can relatively easily switch production from one grade to another. The downtime in production during grade changes is typically no longer than a few hours. Moreover, suppliers active on the EEA market offer a full range of grades, presenting varying performances and characteristics. The same grades normally cover a large number of end-use applications. As to the differences in manufacturing processes, it is noted that chloride or sulphate-produced TiO₂ can be used interchangeably for around 80% of all applications. Therefore, the only significant exception to demand-side substitutability regards those sulphate TiO₂ grades for speciality applications, which cannot be substituted by chloride grades. However, the question whether these speciality grades do amount to a separate market can be left open, since DuPont has no capacity to manufacture sulphate-based TiO₂.
42. Finally, in spite of the above, the question whether some particular categories of application as mentioned above constitute separate markets can also be left open, since as has been shown by the investigations, in non of these categories the

operation would lead to the creation or strengthening of a dominant position on the common market.

Relevant geographic market

43. In its previous decision on case IV/M.23 - ICI/Tioxide, the Commission found the relevant geographic market to be at least Community wide. Factors pointing to this conclusion are: the absence of national barriers of technical, regulatory or other nature, the limited incidence of transport costs, the capability of main TiO₂ supplier's to serve Western European customers from a few plants, the limited variation of prices across the member states.
44. On a world-wide scale, it is noted that imports into the EEA account to more than 20%, despite duties at 6% (4.8% for certain developing countries). A large part of imports comes from Northern America (approx. 16%), DuPont being by far the major importer (12%). Other importers are mainly Eastern European producers, whereas penetration from Asia/Pacific and other world areas has been less significant, so far. This suggests that the market tends to become larger than the EEA, including Northern America. However, the trade flow seems for the moment mainly driven by currency fluctuations or by the Northern America lack of sulphate based capacity. DuPont seems the only major player committed to import into the EEA and accounts for the major part of EEA imports. Also, conditions of competition in the EEA appear to be different from those in Northern America. Prices still show differences in structure and evolution. Chloride-based TiO₂ accounts for the major part of the Northern America market, whereby the EEA market is still mainly served by sulphate-based TiO₂. Local distribution and large stocks held by suppliers suggest that the EEA is still a separate market.

Competitive Assessment

45. TiO₂ is a large-volume, mature chemical. It is generally sold into mature markets, and is considered as a strategic raw material for most customers. In 1996, approx. 878 MTons were sold in the EEA for a value of 1,349 MECU.
46. The present operation results in the world largest TiO₂ supplier, DuPont, acquiring EEA's market leader, ICI/Tioxide.
47. The market for TiO₂ is rather concentrated, in particular as regards North America and Western Europe, where about 10 producers cover the large majority of the demand. Other producers have started to sell in Western Europe in the last years, mainly from Eastern Europe and Asia.
48. Apart from DuPont and ICI, the major TiO₂ producers world-wide are the USs Kronos Millennium and Kerr McGee, the Finnish Kemira, the French Thann et Mulhouse, the Germans Bayer and Sachtleben and the Japanese Ishibhara. Most of them have facilities in different world regions. In particular Millennium, Kronos and Kemira have extensive presence in both largest markets, Northern America and Western Europe.
49. On the contrary, DuPont has so far not had any production capacity in Western Europe, its plants being mainly located in Northern America. This has not

prevented DuPont from achieving important market shares in Europe importing from its US plants.

50. The following tables resume 1996 capacities of the main competitors world-wide as well as capacities and market shares at EEA level.

Table 1. World capacity

Producer	Capacity (KT)	% of Capacity	Location
DuPont	927	24%	mainly America
ICI (EU)	410	10%	EEA
ICI (non EU) ^(*)	108	3%	America, Asia/Pacific
Millennium	472	12%	EEA, America, Asia/Pacific
Kronos	369	9%	EEA, America
Kemira	295	7%	EEA, America
Kerr McGee	192	5%	America, Asia/Pacific
Ishibhara	170	4%	Asia/Pacific
Thann et Mulhouse	125	3%	EEA
Bayer	120	3%	EEA
Sachtleben	80	2%	EEA

^(*)= not included in the transaction

Table 2. EEA capacity and market shares

Producer	Capacity (KT)	% of Capacity	% of Sales
DuPont			[10-20%] ¹⁶
ICI	410	33%	[20-30%] ⁶
Millennium	105	8%	[10-20%] ⁶
Kronos	246	20%	[10-20%] ⁶
Kemira	150	12%	[0-10%] ⁶
Kerr McGee			[0-10%] ⁶
Thann et Mulhouse	125	10%	[0-10%] ⁶
Bayer	120	10%	[0-10%] ⁶
Sachtleben	80	7%	[0-10%] ⁶

51. The above shares do not appear to support the conclusion that the operation would risk to create a dominant position of DuPont/ICI on the EEA market. There are a number of other competitors which still maintain significant shares in the EEA. The customer base includes large paints and plastics companies which have substantial buyer power. It is customary for these companies to select a limited number of suppliers to which they assign the whole of their annual TiO₂ sourcing.

52. These general considerations apply to a large extent to the different categories of applications (coating/paints, plastics and specialities) as well as to the specific application fields such as eg. decorative, automotive, masterbatches, etc. Within these segments, the EEA market shares of the parties do not vary significantly from those of Table 2. Also, the overall consistency of the competitors does not change significantly. The only exceptions are certain speciality applications like inks and

¹⁶ Deleted business secret, ranges indicated

fibres, where however chloride-produced TiO₂ may not be used i.e. DuPont has not manufacturing capacity. Only for plastic applications (in particular masterbatches) there appears to be a higher degree of concentration, with DuPont/ICI and Kronos accounting together to [...] ¹⁷ of the EEA market. However, indications from customers and competitors have not supported the conclusion that the operation would cause the risk that the merging entity becomes dominant. Demand of TiO₂ for masterbatches appears to be rather concentrated on a limited number of customers with substantial countervailing power. In respect to masterbatches as well as in general terms, any serious concern about the creation of oligopolistic dominance should also be dismissed. TiO₂ grades are differentiated products which in the medium to long term are chosen by the customers according to the technical formulation of their products. Whilst demand switching may be difficult in the short term, on a wider time horizon it gives to the customer substantial negotiating power. Supplier will have to compete to obtain supply arrangements which are expected to last for some years.

53. In addition, the investigation has shown that several customers would consider contacting producers from outside Europe (Eastern Europe and the Far East) as an alternative, at least partial, should the merging entity intervene to a significant extent on prices or availability of TiO₂.
54. The above arguments coupled to some general characteristics of the market such as the slow pace of demand growth, the overall declining trend shown by prices, some available new capacity for the major producers, can be taken to exclude the possibility that an individual or collective dominant position is created or strengthened on the EEA market.

V. ANCILLARY RESTRICTIONS

55. The notifying parties submitted a number of agreements as restrictions ancillary to the concentration.
 - 1) *Conduct of business.* For all the businesses involved in the operation ICI has agreed not to make any material change in its business prior to completion of the Transaction. These provisions ensures that the acquired businesses will not carry on business other than in a normal course between the agreement's signature and its completion. In line with previous practice of the Commission these agreements can be considered as ancillary restraints.
 - 2) *Protective covenants* (non-competition clauses). ICI has undertaken not to compete in the four sectors involved world-wide (with an exception of N- and S-America for the TiO₂ market) for a period of [...] ¹⁸. The Commission considers these agreements as ancillary restrictions insofar as they affect the conduct of the business within the EEA.
 - 3) *Intellectual property licences.* ICI has granted DuPont certain exclusive licences for the intellectual property rights related to the operation of ICI's PTA, PPR, PET film and TiO₂ businesses. The Commission considers that

¹⁷ Deleted business secret, between 50-60%

¹⁸ Deleted business secret, maximum 5 years

these rights are part of the business transferred. The relevant licensing agreement are therefore part of the operation, and not ancillary to it.

In addition, DuPont has granted a perpetual, non-exclusive licence of its finishing technology to ICI's Canadian TiO₂ business, which is excluded from the current operation. The Commission does not consider this agreement as ancillary restriction as it falls outside the scope of the concentration.

4) *Purchase/supply agreements.*

- a) ICI has agreed to supply DuPont with paraxylene, a hydrocarbon oil used in the manufacture of PTA. As ICI's PTA plants at Wilton presently receive paraxylene directly by pipeline from ICI's paraxylene facility, the arrangement is claimed to be necessary to ensure continuity of supply. The minimum duration of the agreement is [...] ¹⁹ years, no maximum duration is fixed. No exclusivity is conferred by the arrangement, but DuPont has undertaken to buy a fixed quantity annually (about [...] ²⁰ of its needs). The Commission considers that, given the circumstances of the case and the industrial practice for supply arrangements of this kind, the agreement is directly related and necessary to the implementation of the transaction. However, no objective justification has been submitted that such an agreement is necessary for any period exceeding three years. Therefore, the Commission considers that this agreement is an ancillary restriction up to a duration of three years.
- b) The parties have also entered into arrangements for the supply by ICI to DuPont of various services for varying, limited, periods of time. The Commission considers that these arrangements do not restrict competition.
- c) ICI has agreed to supply DuPont with certain raw materials used in the production of TiO₂. The duration of these arrangements is limited (the longest being a [...] ²¹ contract for the supply of chlorine) and the arrangements are not exclusive. The Commission considers that these arrangements do not restrict competition.
- d) ICI has agreed that, until [...] ²² ICI's paint/coating division will source TiO₂ from DuPont. This arrangement represents the continuation of a [...] ²³ supply agreement between ICI and ICI's paints division entered into prior to the present transaction. The agreements are non-exclusive, but ICI will buy from DuPont [...] ²⁴ of its TiO₂ needs, i.e. an amount which corresponds to [...] ²⁵ of the Western European TiO₂ sales. The Commission considers that no objective justifications have been submitted that this agreement - which was originally concluded between two divisions of the same group - is still needed between two independent entities in order to protect pre-existing supply relationships. Neither

¹⁹ Deleted business secret, 2 - 7 years
²⁰ Deleted business secret, more 50%
²¹ Deleted business secret, maximum two years.
²² Deleted business secret; after 1.1.2000
²³ Deleted business secret; 2-7 year
²⁴ Deleted business secret, more than 50%.
²⁵ Deleted business secret, between 0-5%

objective justifications have been submitted on the duration of this agreement, which largely exceeds commercial practice. The Commission therefore considers that this agreement is not an ancillary restriction.

VI. CONCLUSION

56. 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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,

WESTERN EUROPEAN PET FILM SHARES OF SALES (1996)

	Magnetic Media	Packaging	Industrial	Imaging	Electrical	Photographic	Capacitor/TTM	TOTAL
ICI	[0-10%] ²⁶	[30-40%] ¹¹	[10-20%] ¹¹	[40-50%] ¹¹	[10-20%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[10-20%] ¹¹
Toray (RPF)	[20-30%] ¹¹	[20-30%] ¹¹	[10-20%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[40-50%] ¹¹	[10-20%] ¹¹
DuPont	[10-20%] ¹¹	[10-20%] ¹¹	[20-30%] ¹¹	[0-10%] ¹¹	[30-40%] ¹¹	[30-40%] ¹¹	[20-30%] ¹¹	[10-20%] ¹¹
Hoechst Diafoil	[20-30%] ¹¹	[10-20%] ¹¹	[10-20%] ¹¹	[0-10%] ¹¹	[30-40%] ¹¹	[0-10%] ¹¹	[20-30%] ¹¹	[10-20%] ¹¹
SKC	[10-20%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹
Cheil	[10-20%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹
3M	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[10-20%] ¹¹	[0-10%] ¹¹	[60-70%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹
Teijin	[10-20%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹
Snia	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹
NuRoll	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹
Agfa Gevaert	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[10-20%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹
Garware	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[10-20%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹
Kolon	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹
Others	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹	[0-10%] ¹¹
TOTAL	100%	100%	100%	100%	100%	100%	100%	100%

²⁶

Deleted business secret, ranges indicated