

***Case No IV/M.994 -
DUPONT / HITACHI***

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/10/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24/10/1997

PUBLIC VERSION

**MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION**

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.994 DUPONT/ HITACHI

Notification of 23.09.1997 pursuant to Article 4 of Council Regulation N° 4064/89

1. On 23 September 1997 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings Du Pont de Nemours and Co ('DuPont') (US) and Hitachi Chemical (HCC) (Japan), acquire within the meaning of article 3 (1) (b) of the Council Regulation joint control of Hitachi Chemical DuPont MicroSystems L.L.C. (JVCO)(US), 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 Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA agreement.

I. THE PARTIES

3. DuPont' is a US company active in the R&D, production, distribution and sale of various chemical and energy products, man-made fibres, plastics and other materials.
4. HCC is a subsidiary of Hitachi Ltd. (Japan), active in the production and sale of chemicals, including electronics-related products, housing products and other. These activities are organised among three groups: electronics-related products,

chemical-related products and housing and lifescience products. The business of JVCO will fall within the first group.

5. JVCO, will be organised under the laws of the State of Delaware, USA, and will be active in the areas of the R&D, manufacture, marketing and sale of liquid polyimide, and any other business or activity necessary to fulfil this purpose.

II. THE OPERATION

6. The proposed operation consists in the creation of JVCO, a new worldwide joint venture between DuPont and HCC. The JV agreements include: the Joint Venture Agreement, which sets forth the operating rules for the JV; the Limited Liability Company Agreement, which creates the new JVCO between DuPont and HCC's wholly-owned subsidiary, Hitachi Chemical Company America Ltd. (HCA); and the Japanese Company Operating Agreement, which creates, in Japan, a wholly owned subsidiary of the JVCO, Hitachi Chemical DuPont MicroSystems, Ltd.

III. CONCENTRATION

Joint control

7. DuPont and Hitachi Chemical (through HCA) will each hold 50 % of the shares of JVCO. Each of them will retain veto powers over the strategic policy and direction of JVCO. They will have the right to appoint an equal number of members in the management structure of the JV. The right to appoint the Chief Executive Officer and the Chief Operating Officer will rotate between the parent companies. Consequently, the JVCO will be jointly controlled by HCC and DuPont.

Full function

8. JVCO will be established for an indefinite period. It will receive substantial capital contribution from the outset, as well as the control over all R&D activities relating to products transferred to the JV and the access to trademarks and licences for these products. The parties decided to second rather than to transfer the personnel to the JV by reason of the difficulty of agreeing in the short term on the appropriate employment conditions. However, this personnel will be controlled by the JV's management. Furthermore, the notifying parties envisage that in the medium term the JV will employ all or most of its personnel.
9. The parties will also make available to the JV their respective liquid polyimide production facilities, which will pay to its parent companies for this transfer no less than [...] ¹ million over the period of five years during which DuPont and Hitachi Chemical will retain the ownership of the facilities. This transitional period was adopted in view of the relatively short remaining lifetime of the production

¹ Deleted business secrets.

facilities and because of the difficulty of separating HCC's liquid polyimide facilities which are integrated within the larger Yamazaki Works complex. However, the JV will construct during the transitional period its own facilities in the US, starting the construction soon after closing of the agreement and completing them by the end of 1998. It will also build new facilities in Japan within five years.

10. In any case, during this transitional period, the parents will transfer control of the facilities to the JV, even if they will remain the legal owners by the reasons above mentioned. Thus, JVCO will acquire from the outset strategic control of these facilities and they will be dedicated to the JV. This is not in contradiction with the full-function character of the JV, in line with the Commission's Merger Regulation and previous practice².
11. The parties envisage that the sales subsidiaries of the parent companies in Europe may initially act as sales intermediaries, in order to ensure the continuation of customer relationships and because they do not consider economically viable for JVCO to have its own distribution structure in Europe from the start, given the limited sales foreseen in this area (around [...] mECU). However, JVCO will be entirely free from the outset to organise its sales, marketing and distribution activities in any other different way it may choose. Besides, the parties will also transfer from the outset the goodwill associated with their polyimide business. Furthermore, the JV will have from the beginning its own distribution network in most of the world, and the parties estimate that within three years, no more than [...] ⁴ of the JVCO worldwide sales will be distributed through its parent companies. Accordingly, this fact does not preclude the full-function character of the JV⁵.
12. Taking into account the above explanations provided by the parties with respect to the points that could otherwise conflict with the full function character of the joint venture, the Commission has concluded that JVCO will perform on a lasting basis all the functions of an autonomous economic entity.

Absence of coordination of competitive behaviour

13. The concentration will concern only those assets pertaining to the development, manufacture, marketing and sale of liquid polyimides within the scope of the JV. The parties have stated that they will not compete within the scope of JVCO. Hitachi Chemical, however, will continue to manufacture and sell liquid polyimide for optical lightwave applications, where the JV will not be active, as well as other highly functional materials that would compete, according to the parties, with liquid polyimide.
14. Nonetheless, the notifying parties have confirmed to the Commission that DuPont will not be active in the market for highly functional chemical materials for

² See Cases IV/M.283 Waste Management Int. / Société Auxiliaire d'Entreprise and IV/M.707 BP / Mobil.

³ Deleted business secrets.

⁴ Deleted business secrets.

⁵ See Case IV/M.855 BT/NS/Telfort

electronic components. Given this absence of activity in the market in which the JV will be operating, it is considered that the operation will not give rise to any coordination of competitive behaviour between the parties.

III. COMMUNITY DIMENSION

15. The combined aggregate worldwide turnover of the undertakings concerned exceeds 5 000 million ECU (DuPont 34,5 bECU, Hitachi Ltd. 54,1 bECU in 1996) The aggregate Community wide turnover of each party exceeds 250 million ECU (DuPont 10.74 bECU, Hitachi Ltd. around 3 bECU in 1996). 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.

IV. THE RELEVANT MARKETS

A. Relevant Product Market

16. The notifying parties defined a product market consisting in all ‘highly functional chemical materials used in electronics applications’, which would include the liquid polyimide products to be manufactured by JVCO.
17. Liquid polyimide is a polyamic acid supplied in solution form. This solution is applied to semiconductor chips according to the chip’s end-use as well as to [...] (LCDs) and light wave-guides. There are two types of liquid polyimide: non-photodefinable and photodefinable. Both types share common demand and supply considerations and are to be considered as being part of the same relevant product market.
18. Liquid polyimide has 6 principal end-use applications related to its applications to chips, LCDs and light wave-guides. The JV will be active in 5 of these areas but it will not sell liquid polyimide for this later application. Liquid polyimide supplied for each end-use is essentially the same and the supply and demand considerations are common also in this case; consequently, it is not appropriate to identify separate markets by end-use application.
19. The parties argued that liquid polyimide competes with other materials, namely highly functional chemical materials used for electronics applications, given the product characteristics and price and their use substitutability. The arguments given by the parties seemed to be reasonably demonstrated, and the results of the Commission’s enquiry are in line with this definition.
20. Nonetheless, in view of the absence of competition concerns even adopting the narrowest market definition, this question can be left open for the purposes of the assessment of the operation.

B. Relevant Geographical Market

⁶ Typing error it should read “Liquid crystal displays”.

21. According to the notification, the relevant geographical market for these products comprises at least all Western Europe and it is probably a global market. Among the arguments supplied by the parties in support of this definition are the high level of trade flows (imports in all Member States represent the majority of sales for these products), the similarity of prices and the existence of common global prices in some cases, the absence of barriers to trade, the relatively low transport costs and the similarity of requirements and forms of supply. All the parties' customers contacted confirmed that they sourced these products, sometimes to a very large extent, from producers located outside their country.
22. Thus, the geographical market to be considered for the assessment of the impact of this operation consists of at least all Western Europe.

V. ASSESSMENT

23. In the market for all 'highly functional chemical materials used in electronics applications', the operation would not give rise to any competitive problem, given the very low market shares of DuPont ([...]⁷ and HCC [...]⁸ (Western Europe, 1996). It has also to be noted that JVCO is expected to have *de minimis* sales in Western Europe (i.e. ECU [...]⁹ million) and that no Western European assets will be transferred to it.
24. If the narrower product market definition of Polyimides-only was to be considered, the market shares would be higher, with a [...]¹⁰ for HCC and a [...]¹¹ for DuPont. However, even adopting this narrow market definition, the JVCO would still be second to the firm Olin ([...]¹²) in Western Europe and there would remain other significant competitors such as Asahi or Toray and others.
25. There are other factors that militate against any possibility of creation or reinforcement of a dominant position even with this narrowest market definition. Among these, the relative easiness of market entry and the high level of purchasing power of customers in this market are to be mentioned.
26. With respect to the first point, it is clear, and this is confirmed by the market players contacted, that market entry could be achieved at least to a certain extent through the supply of similar materials for certain applications. Many manufacturers have also entered this market as an ancillary activity to their other businesses. The notifying parties have also identified a significant number of potential new entrants, some of them already active in closely related markets. The

⁷ Deleted business secrets.

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technology and the raw materials are readily available and there are not legal or regulatory barriers to entry.

27. The customers' purchasing power was also investigated by the Commission. Most of the customers contacted sourced their requirements from more than one supplier and were ready to switch in the case of a significant price rise, and most of them confirmed that they had actually adopted such a measure in the past. The decline of DuPont sales in certain Member States has been pointed out as an example of the increasingly vigorous competition in this market.
28. It follows from the above that the concentration will not create or strengthen a dominant position in the EEA territory or a substantial part of it.

VI. ANCILLARY RESTRAINTS

29. The parties requested that a non-competition clause in the JV agreements be considered as an ancillary restraint within the meaning of the Merger Regulation and the Commission notice on restrictions ancillary to concentrations. This clause is of unlimited duration for as long as each of the parents own 33,3 % and reflects the permanent withdrawal of the parents from the market assigned to the JV. It and can therefore be considered as ancillary to the concentration.

VII. CONCLUSION

30. In the light of all the above, and in particular the relatively modest market shares of the parties, the existence of strong competitors, the absence of barriers to entry and the significant level of buying power typical of this industry, it was concluded that the operation will not result in the creation or reinforcement of any dominant position.

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 No 4064/89.

For the Commission,