

Summary of Commission Decision**of 27 March 2017****declaring a concentration compatible with the internal market and the functioning of the EEA Agreement****(Case M.7932 — Dow/DuPont)***(notified under document C(2017) 1946)***(Only the English version is authentic)****(Text with EEA relevance)**

(2017/C 353/05)

On 27 March 2017 the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ⁽¹⁾, and in particular Article 8(2) of that Regulation. A non-confidential version of the full Decision, as the case may be in the form of a provisional version, can be found in English on the website of the Directorate-General for Competition, at the following address: http://ec.europa.eu/comm/competition/index_en.html

I. INTRODUCTION

- (1) The attached draft Decision declares the merger between The Dow Chemical Company ('Dow', United States) and E.I. du Pont de Nemours and Company ('DuPont', United States) compatible with the internal market and the functioning of the EEA Agreement, in accordance with Article 2(2) and Article 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.

II. PROCEDURE

- (2) On 22 June 2016, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which Dow and DuPont enter into a full merger within the meaning of Article 3(1)(a) of the Merger Regulation by way of an Agreement and plan of merger of 11 December 2015 (the 'Transaction'). Dow and DuPont are collectively referred to as the 'Parties', whilst the undertaking that would result from the Transaction is referred to as 'the merged entity'.
- (3) By Decision dated 11 August 2016, the Commission found that the Transaction raised serious doubts as to its compatibility with the internal market and initiated proceedings pursuant to Article 6(1)(c) of the Merger Regulation.
- (4) The in-depth investigation confirmed the competition concerns preliminarily identified.
- (5) The Parties submitted the final commitments on 17 February 2017 ('Final Commitments') that render the Transaction compatible with the internal market.
- (6) The draft Decision was consulted with the Member States during the Advisory Committee on Concentrations on 14 March 2017, which provided a favourable opinion. The Hearing Officer provided its favourable opinion on the proceedings in his report which was submitted on 16 March 2017.

III. THE PARTIES AND THE TRANSACTION

- (7) On 11 December 2015, Dow and DuPont announced a 'merger of equals'. The combined Dow-DuPont entity would have a market capitalisation of approximately USD 130 billion. At a later stage, Dow and DuPont intend to create from their combined activities three separate publicly traded companies focusing on agriculture, material science and specialty products.
- (8) **Dow** is a diversified chemicals company headquartered in the US. It is active in plastics and chemicals, agricultural sciences, and hydrocarbon and energy products and services. In 2015, Dow generated sales of approximately EUR 46 billion.
- (9) **DuPont** is a diversified company headquartered in the US. It produces a variety of chemical products, polymers, agro-chemicals, seeds, food ingredients, and other materials. In 2015, DuPont generated sales of approximately EUR 23 billion.

⁽¹⁾ OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').

IV. UNION DIMENSION

- (10) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million ⁽¹⁾ [Dow: EUR 45 654 million; DuPont: EUR 21 382 million ⁽²⁾]. Each of them has a Union-wide turnover in excess of EUR 250 million [Dow: EUR [...]; DuPont: EUR [...]] ⁽³⁾, but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.

V. ASSESSMENT

V.1. Relevant market definition

V.1.1. Crop protection

- (11) Agrochemical companies mainly sell formulated products to crop protection distributors or cooperatives of farmers. In addition, R&D agrochemical companies sell their technology on the upstream market through the licensing of active ingredients ('AIs') to competing crop protection players. Finally, it is also necessary to consider the innovation efforts of R&D agrochemical companies to discover and develop new AIs which will then feed into sales of AIs and of formulated products.

V.1.1.1. Crop protection formulated product markets

- (12) The Commission has found that the relevant product market for formulated products correspond to segmentations by crop/pest combination. This is because farmers buy a formulated crop protection product to address their particular needs based on the crop, pest(s), timing, etc., they want to target.

- (13) The Commission further considered that the markets for formulated products are national in their geographic scope given that (i) customer needs, habits, and preferences are dependent on geography and differ across EEA countries, (ii) there are national differences in price levels and evolutions for the same products, and (iii) authorisations have remained national.

V.1.1.2. Technology markets

- (14) The exact scope of the product and geographic market for the sale and licensing of AIs is left open because the Transaction does not raise competition concerns at the level of the technology markets or the supply of AIs.

V.1.1.3. Innovation spaces

- (15) The Commission considered that innovation should not be understood as a market in its own right, but as an input activity for both the upstream technology markets and the downstream formulated product markets. This however did not prevent the Commission to assess the impact of the Transaction at the level of innovation efforts by the Parties and their competitors.

- (16) First, the assessment of innovation competition requires the identification of those companies which, at an industry level, have the assets and capabilities to discover and develop new AIs.

- (17) Second, it is also relevant to identify and analyse those spaces in which innovation competition occurs in the crop protection industry. R&D players do not innovate for all the product markets composing the entire crop protection industry. They also do not innovate randomly without targeting specific spaces within that industry. When setting up their innovation capabilities and conducting their research R&D players have specific discovery targets. A discovery target is based on lead crops and lead pests and may thus comprise AIs that can be used in several downstream formulated product markets.

⁽¹⁾ Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

⁽²⁾ 2015 figures: Dow: EUR 45 592 million; DuPont: EUR 22 589 million.

⁽³⁾ 2015 figures: Dow: EUR [...]; DuPont: EUR [...].

- (18) The Commission further considered that competition between R&D companies within innovation spaces happens at a global level, with strong differentiation between the different regions, or at least at an EEA level.

V.1.2. *Seeds and gene editing*

- (19) As regards seeds, the Commission has found that a distinction should be made between (i) the upstream market for the trading of seed varieties and (ii) the downstream market for the commercialisation of seeds, with a further segmentation for each type of crop seeds. The Commission left open whether the market could be further segmented on the basis of whether seeds are genetically modified because the Transaction would not raise competition concerns for any possible additional segmentation. The Commission further considered that the markets for the trading of seed varieties are EEA wide and the markets for the commercialisation of seeds are national.

- (20) As regards gene editing, the exact scope of the relevant product market was left open since the Transaction would not raise competition concerns at the level of gene editing irrespective of whether the different families of engineered nucleases are considered to belong to the same relevant product market. For the same reason, the Commission considered that the exact scope of the relevant geographic market for the gene editing can be left open.

V.1.3. *Material science*

- (21) The Transaction concerns notably low density polyethylene products manufactured by high pressure processes, in particular, acid co-polymers ('ACP') and ionomers.
- (22) ACP are produced through high pressure polymerization of ethylene and a monomer, either (i) glacial acrylic acid, which results in ethylene acrylic acid ('EAA') co-polymers; or (ii) glacial methacrylic acid, which results in ethylene methacrylic acid ('EMAA') co-polymers.
- (23) The Commission has found that the relevant product market is the overall ACP market. However, the Commission left open whether such market could be further segmented based on different product applications, on the monomer on which the ACP is based or on the level of acid content of the ACP. The Commission considered that the relevant geographic market is at least EEA-wide.
- (24) Ionomers are polymers containing inter chain ionic bonding. Ionomers are produced based on ACP. DuPont produces and sells EMAA-based ionomers. Dow produces and sells EAA-based ionomers.
- (25) The Commission has found that the relevant product market is the overall ionomer market. The Commission further considered that the relevant geographic market is the EEA, in particular, due to the trade flows and origin of the products purchased in the ionomers market.
- (26) The exact scope of the product and geographic markets for other material science products that result in affected markets was left open because the Transaction would not raise competition concerns at that level.

V.1.4. *Speciality products*

- (27) The Transaction also combines the Parties' activities in relation to the so-called specialty products (i.e. DuPont's activities in Electronics & Communications, Safety & Protection, Nutrition & Health and Industrial Biosciences and Dow's activities in Electronic Materials). The exact product and geographic market definition in relation to the relevant products has been left open because the Transaction would not raise competition concerns irrespective of the market definition.

V.2. **Competitive assessment**

- (28) The Commission has reached the conclusion that the Transaction would lead to a significant impediment of effective competition in the markets for (i) herbicides for cereals, oilseed rape, sunflower, rice and pasture, (ii) chewing and sucking insecticides, (iii) fungicides for rice blast, (iv) ACP and (v) ionomers in the EEA as well as in relation to innovation competition in crop protection, including products in the discovery stage for herbicides, insecticides and fungicides.

V.2.1. Crop protection

V.2.1.1. Product and price competition

(A) Herbicides

- (29) The Commission has found that the Parties are strong players in cereal herbicides in most EEA countries, both with an extensive and successful range of products for spring applications against broadleaf weeds. In oilseed rape, rice and pasture herbicides, Dow is a leading player in many EEA countries with DuPont a smaller but close competitor. The Parties' combined portfolio is set to become even stronger and closer as Dow is about to roll out Arylex and Rinskor, two promising new products that are likely to capture significant market share. [Arylex will strengthen Dow's offering for cereals and oilseed rape, and Rinskor for rice]. The Parties, especially DuPont, are also developing various innovative herbicide products, many of which are exceeding industry standards.
- (30) The Commission has further found that competing herbicide suppliers would be unlikely to be able to constrain the merged entity in the markets concerned. The few remaining R&D-integrated competitors in herbicides mainly focus on different product areas while competition from generic companies is limited due to the Parties' successful defence strategies. The Commission's investigation did not reveal any products in competitors' pipelines that would be able to change future competitive dynamics in their favour.
- (31) The Commission has concluded that the Transaction would significantly impede effective competition in the markets for cereals (pre- and post-emergence broadleaf and post-emergence cross-spectrum), oilseed rape (post-emergence broadleaf), sunflower (post-emergence broadleaf), rice (post-emergence cross-spectrum) and pasture (selective).
- (32) In products for cereals the Commission has found that the Transaction would create a dominant position, strengthen a dominant position and/or eliminate an important competitive constraint in the markets for post-emergence broadleaf herbicides in 21 EEA countries ⁽¹⁾; in the markets for pre-emergence broadleaf herbicides in four EEA countries ⁽²⁾; and in the markets for post-emergence cross-spectrum herbicides in five EEA countries ⁽³⁾.
- (33) In products for oilseed rape the Commission has found that the Transaction would strengthen a dominant position due to the elimination of an actual or potential competitor in the markets for post-emergence broadleaf herbicides in all EEA countries except Austria and potentially in seven EEA countries ⁽⁴⁾.
- (34) In products for sunflower the Commission has found that the Transaction would strengthen a dominant position for post-emergence broadleaf herbicides in 12 EEA countries ⁽⁵⁾.
- (35) In products for rice the Commission has found that in the markets for post-emergence cross-spectrum herbicides the Transaction would create a dominant position in three EEA countries ⁽⁶⁾.
- (36) In products for pasture the Commission has found that the Transaction would create a dominant position or would strengthen a dominant position in the markets for selective herbicides in five EEA countries ⁽⁷⁾.
- (37) In addition, the Commission has reached the conclusion that the Transaction would not significantly impede effective competition in the markets for pre-emergence cross-spectrum cereal herbicides, post-emergence broadleaf beets herbicides and post-emergence broadleaf corn herbicides despite the Parties' overlaps there.

⁽¹⁾ These include Ireland, Germany, Sweden, France, the United Kingdom, Portugal, Greece, Slovakia, Cyprus, Finland, Belgium, the Czech Republic, Italy, Luxembourg, Norway, the Netherlands, Lithuania, Romania, Hungary, Bulgaria and Spain.

⁽²⁾ These include France, Cyprus, Germany and Ireland.

⁽³⁾ These include Slovakia, the Czech Republic, Poland, Belgium and Denmark.

⁽⁴⁾ These include Belgium, Estonia, Greece, Luxembourg, Malta, Portugal and Spain.

⁽⁵⁾ These include Austria, Bulgaria, Croatia, Cyprus, France, Germany, Greece, Hungary, Poland, Romania, Slovakia, and Slovenia.

⁽⁶⁾ These include Greece, Italy, and Spain.

⁽⁷⁾ These include Germany, the United Kingdom, Poland, Belgium and the Netherlands.

(B) Insecticides

- (38) The Commission has found that the Parties sell several successful insecticides, including recent products that are efficient against various different insects in many types of crops and have generally good toxicological profiles. These include DuPont's blockbuster Rynaxypyr and Dow's spinosyn-based products. The Parties are also in the process of developing or launching a number of promising insecticide products.
- (39) The Commission has further found that while competing insecticide suppliers are present on a number of markets, their ability to constrain the merged entity would likely be limited in many occasions. Some of the competitors' products (such as neonicotinoids) are subject to significant regulatory pressure that is likely to limit their marketability in the future. The Commission's investigation did not reveal that the competitors would have any potential blockbusters in their development pipelines.
- (40) The Commission has concluded that the Transaction would significantly impede effective competition for certain markets related to the control of chewing insects (such as lepidoptera, coleoptera and diptera) and sucking insects (such as hemiptera).
- (41) For chewing insects control in a number of crops (fruits, vegetables, corn and cotton) the Commission has found that the Transaction would result either in the creation of a dominant position with high market shares or in the elimination of an important competitive force in a number of EEA countries⁽¹⁾.
- (42) In sucking insects control in certain fruit and vegetable crops the Commission has found that the Transaction would result in the elimination of an important competitive force in particular in Spain and Italy.
- (43) Finally, the Commission has reached the conclusion that the Transaction would not significantly impede effective competition in the markets for insecticides for oilseed rape despite the Parties' overlaps there, because the market share increment brought about by the merger would be small [...].

(C) Fungicides

- (44) For rice blast fungicides, the Commission has found that Dow currently has a dominant position with tricyclazole in Italy, Greece and Spain. DuPont has just registered an effective product for rice blast control: picoxystrobin. The Transaction would thus strengthen Dow's current dominance. Moreover, the limited number of competing products would likely not be able to countervail this strengthened dominance. The Commission thus concluded that the Transaction would significantly impede effective competition in the markets for rice blast control in Italy, Greece and Spain.
- (45) For cereal fungicides, the Commission raised objections in its Statement of Objections on the basis that Dow and DuPont have important and closely competing forthcoming pipeline AIs with new MoAs. However, in light of the additional evidence produced by the Parties, the Commission considered that the Parties are currently very small players and would be unlikely to acquire sufficient additional market power to impede effective competition. Moreover, competitors would be likely to continue to constitute a countervailing competitive force which would constrain the Parties.
- (46) Therefore, on balance and in light of the results of the market investigation and the evidence available to it, the Commission has found that the Transaction would not significantly impede effective competition with respect to these markets.
- (47) The Commission has also found that the Transaction would not significantly impede effective competition in the internal market with respect to the other fungicide affected markets (cereal powdery mildew fungicides in the Czech Republic, Slovakia and the United Kingdom; cereal fungicides in Slovenia; rice sheath blight control in Italy, Spain and Greece; vegetable and flower fungicides in the Czech Republic and Slovakia; grape/vine fungicides in Austria, Hungary and the United Kingdom).

⁽¹⁾ These include for instance Greece, Italy, Spain, Hungary, France, Germany, Austria, the Netherlands, the United Kingdom, Bulgaria, Poland, Slovakia and the Czech Republic.

(D) Nematicides

- (48) The Commission raised objections in its Statement of Objections on the basis that Dow and DuPont are the current leaders in their respective segments of the nematode control market, namely fumigants and non-fumigant chemical nematicides. Moreover, DuPont's forthcoming pipeline AI [product name] would be likely to strengthen the Parties' combined market position when it reaches the market. However, in light of the additional evidence produced by the Parties, the Commission considered that Dow's and DuPont's products are strongly differentiated and that their overlapping applications only represent a minimal part of the overall market.
- (49) Therefore, on balance and in light of the results of the market investigation and the evidence available to it, the Commission has found that the Transaction would not significantly impede effective competition with respect to nematode control in the EEA, including all national and crop segmentations.

V.2.1.2. Innovation competition

- (50) **First**, the Commission has found that the market features of the crop protection industry suggest that rivalry is likely an important factor driving innovation, and that a merger between important rival innovators is likely to lead to a reduction in innovation. This is because: (i) individual crop protection product markets are contestable on the basis of innovation; (ii) given the strong Intellectual Property Rights (IPR) the original innovator can be expected to reap the benefits from its innovation, by preventing rivals from imitating the successful innovation; (iii) innovation is mostly based on product innovation; (iv) consolidation between rival innovators is unlikely to be associated with efficiencies; and (v) the fear of cannibalisation of own existing products is a disincentive to innovate which is likely to be reinforced by a merger between rival innovators.
- (51) Under these circumstances the economic literature on competition and innovation supports a theory of harm based on the fact that a merger between competing innovators by reducing rivalry in the industry and increasing cannibalisation of existing and future sales is likely to result in a decrease in the incentive to innovate by the merging parties. The above features of the market may also explain the fact that, in the past, concentration in the industry was accompanied by a decrease in innovation.
- (52) **Second**, there are a number of elements which indicate that the Transaction would take place in an industry already characterised by oligopolistic innovation competition, as notably indicated by the following:
- Following successive waves of consolidation there are now only five global R&D integrated players, namely BASF, Bayer, Dow, DuPont and Syngenta.
 - Barriers to entry and expansion are very high at both discovery and development level.
 - Other players such as the Japanese innovators, Monsanto, Sumitomo or FMC do not have similar capabilities and incentives.
- (53) The Commission further considered that due to differentiated assets, capabilities and strengths, limited capacity and differentiated incentives, the number of players with similar capabilities and incentives at each level of innovation space is likely to be even lower than the five global R&D integrated players.
- (54) **Third**, the Commission has found that pre-Transaction the Parties would be more active and important competitors as regards innovation competition than the mere analysis of their downstream industry shares and their innovation expenditure shares would suggest. This is even more the case for DuPont.
- (55) **Fourth**, the Commission has found that, in many innovation spaces, the Parties have been in the past, and are likely to continue to be in the future, close and important innovation competitors. There are a number of markets in which the Parties have launched or are launching/currently developing competing products to take away revenue from each other. They have also a number of early pipeline products resulting from their lines of research which would be likely to take away revenue from each other in the future. In the innovation spaces targeted by these early pipeline products there are few alternative equally effective competitors present or developing pipeline projects.

- (56) **Fifth**, the Commission has looked at the Parties integration planning documents, namely, (i) post-Transaction R&D budget plans for crop protection vs. combined R&D budget of the Parties absent the Transaction, (ii) post-Transaction headcount plans vs. combined headcount of the Parties absent the Transaction; and (iii) post-Transaction new AIs targets vs combined targets of the Parties absent the Transaction. Based on these, the Commission has [ascertained the Parties' plans as regards the level of crop protection R&D spent and headcounts as well as regards the merged entity's targets in terms of number of new AIs].
- (57) Given the above factors, the Commission concluded that the Transaction would be likely to significantly diminish innovation competition in a number of innovation spaces within the crop protection industry as well as at the industry level overall. The Commission concluded that the reduced innovation incentives and capabilities would be likely to manifest themselves in the form of:
- immediate reduction of incentives to continue with some existing innovation efforts (either by discontinuing, redirecting or delaying early pipeline products or lines of research) in the case of overlapping lines of research and early pipeline products between the Parties, and
 - reduced incentives to develop in the longer term the same number of new products as the combined targets of the Parties absent the Transaction.
- (58) The Commission has found that the presence of R&D players active at discovery stage and of companies with discovery capabilities would be unlikely to offset the reduction of innovation output brought about by the Transaction. As regards the remaining three R&D integrated players, the Commission considers that they would be unlikely to increase their innovation efforts so as to profitably offset the reduction of innovation competition from the Parties because (i) they have differentiated assets, capabilities and strengths, (ii) they face capacity limitations at pre-development and development level, and (iii) they do not have the incentives to compete aggressively in the market.

V.2.2. *Seeds*

- (59) The Commission has found that the Transaction would not significantly impede effective competition with regard to the markets for trading of seeds and trading of seed varieties as well as with regard to the vertical relation between the upstream markets for the trading of seed varieties and the downstream markets for the trading of seeds.
- (60) The Commission has found that the Transaction would not significantly impede effective competition with respect to gene editing technologies.

V.2.3. *Material science*

- (61) The activities of the Parties result in three horizontally affected markets, namely (i) ACP, (ii) ionomers, and (iii) maleic anhydride ('MAH') grafted polymers. However, in the light of the market investigation and the information available to it, the Commission has found that the Transaction would only significantly impede effective competition in the market for ACP and ionomers.
- (62) *ACP*. The Transaction would lead to a reduction of the number of suppliers of ACP in the EEA from four to three. The loss of competition between the Parties would lead to an increase of market power of the merged entity due to the closeness of the Parties, and the inability of the two remaining competitors to influence the incentives of the Parties to raise prices.
- (63) As a result of the Transaction, customers would have limited possibilities of switching suppliers. Moreover, there is limited competitive pressure from not in-kind competition (i.e. from products other than ACP); there are high barriers to entry and expansion, and buyer power would not be sufficient to counterbalance the significant non-coordinated effects derived from the Transaction.
- (64) Therefore, the Commission has found the Transaction would significantly impede effective competition in the market for ACP due to non-coordinated effects, in particular, by eliminating an important competitive constraint.
- (65) *Ionomers*. DuPont holds more than a [80-90] % market share by revenue and volume both in the EEA and worldwide. The Horizontal Merger Guidelines state that according to well-established case-law, very large market shares — 50 % or more — may in themselves be evidence of the existence of a dominant market position.

- (66) Dow's ionomers appear to be an important and close alternative to those of DuPont, with a potential to grow in their competitive influence absent the merger. Therefore, the Commission considered that Dow constitutes an appreciable competitive constraint on DuPont with respect to ionomers despite its market share ([0-5] %). Additionally, the market investigation did not indicate a significant competitive constraint exerted by suppliers of ionomers other than Dow.
- (67) Moreover, the Commission considered that ionomers are not subject to sufficient competitive constraint from other polyolefin products in the relevant applications. Furthermore, the market is characterised by high barriers to entry and expansion; and there is no sufficient buyer power that would offset the negative effects resulting from the Transaction with respect to ionomers.
- (68) Therefore, the Commission has found that the Transaction would significantly impede effective competition in the market for ionomers due to non-coordinated effects, in particular, by strengthening DuPont's dominance.
- (69) The Transaction also gives rise to several vertically affected markets. However, according to the market data provided by the Parties, there are no competition concerns, and the market investigation did not indicate that competition would be significantly impeded with regard to the following products: (i) Polyolefin elastomers (upstream) – MAH grafted polymers/Polyamide nylon resins/Polyoxymethylene (downstream); (ii) Methyl acrylate (upstream) – Ethylene acrylic elastomer (downstream); (iii) Glycidyl methacrylate/Butyl acrylate (upstream) – Ethylene ter-polymers: E/nBA/GMA (downstream); (iv) Glacial methacrylic acid (upstream) – ACP (downstream).

V.2.4. *Speciality products*

- (70) The Commission has reached the conclusion that the Transaction would not significantly impede effective competition in the internal market due to the horizontal overlaps between the Parties in (i) post-etch residue removal ('PERR') products and (ii) breathable membranes for building applications; as well as due to the vertical links involving the Parties' activities in (i) 248 photoresist polymers and 248 nm photoresists; (ii) breathable membranes for building applications and inverted roof insulation systems; (iii) (hydroxypropyl)methylcellulose and food ingredients; (iv) propylene glycol in food, industrial bioscience and agricultural applications; and (v) isopropanolamines and PERR products.

VI. REMEDIES

- (71) In order to render the Transaction compatible with the internal market in relation to the price and product competition in the markets for (i) herbicides for cereals, oilseed rape, sunflower, rice and pasture, (ii) chewing and sucking insecticides, (iii) fungicides for rice blast, (iv) ACP and (v) ionomers in the EEA as well as in relation to innovation competition in crop protection, including products in the discovery stage for herbicides, insecticides and fungicides, the Parties submitted the First Commitments. The Commission market tested the First Commitments. In order to address the issues raised in the market test, the Parties submitted the Final Commitments on 17 February 2017.
- (72) The Final Commitments submitted by the Parties consist essentially in the divestment to a single buyer of a large part of DuPont's assets on crop protection (the 'Crop Protection Divested Business'). In addition the Final Commitments include the divestments to a single buyer of Dow's ACP and ionomer businesses (the 'Polyolefins Divested Business').

VI.1. **Crop protection**

- (73) According to the Final Commitments, the Parties commit to divest a Crop Protection Divested Business consisting of (i) the Herbicide Division and the Insecticide Division and (ii) the R&D Division, with the sole exception of assets retained by the merged entity.
- (74) In particular the Herbicide Division consists of DuPont's products in the downstream markets for herbicides where the Commission has identified concerns, namely thifensulfuron, tribenuron, metsulfuron, chlorsulfuron, ethametsulfuron, triflursulfuron, flupyrsulfuron, azimsulfuron and lenacil.
- (75) The Insecticide Division consists of DuPont's products in the downstream markets for insecticides where the Commission has identified concerns, namely Rynaxypyr, Cyazypyr and indoxacarb.

- (76) The R&D Division consists of the Divested R&D Organisation and Divested Pipeline:
- Divested Pipeline: all DuPont's crop protection pipeline in herbicides and insecticides as well as discovery pipeline in fungicides. The Divested Pipeline also includes DuPont's library of [...] compounds.
 - Divested R&D Organisation: DuPont's global R&D organisation, excluding assets and personnel expressly listed under the retained business.
- (77) The Crop Protection Divested Business includes several production facilities as well as formulation and packaging facilities from DuPont. For the R&D Division it includes (i) DuPont's Stine discovery facility; (ii) 14 field biology facilities or development centres and (iii) DuPont's crop protection laboratory facility [...].
- (78) The Crop Protection Divested Business includes [300-400] employees for the Herbicide Division and [1 200-1 300] employees for the Insecticide Division. These include manufacturing employees, employees in sales and marketing, employees performing technical functions and employees performing supply functions. The R&D Division includes [400-500] employees which correspond to all the personnel in the DuPont's R&D organisation except for the retained personnel.
- (79) The Herbicide and Insecticide Divisions include also all DuPont's products, brands, customers, customer lists, registrations, any studies and results of tests that DuPont has undertaken, or has on-going at closing, to support renewal of divestment registrations and products, labels, regulatory data, trademarks, patents, and other IP related to the Herbicide and Insecticide Divisions or necessary to ensure the viability and competitiveness of these divisions. The R&D Division includes all patents as well as know-how and any other IP owned by DuPont related to its global R&D organisation and pipeline.
- (80) The Crop Protection Divested Business includes several transition supply agreements ⁽¹⁾. DuPont additionally commits to transfer to the purchaser, with the R&D Division, contracts that DuPont currently has with third parties. The transferred contracts include the Licence Agreements and Supply Agreements with Syngenta for Rynaxypyr and Cyazypyr.
- (81) Finally, the Crop Protection Divested Business includes the Picoxystrobin licence. This consists in the supply of this product to the purchaser, under an exclusive licence, for use solely for rice in the EEA. Supply will be [...] for a period of [< 10 years] and [...] thereafter.

VI.2. Polyolefins

- (82) According to the Final Commitments, the Parties commit to divest Dow's (i) ACP and (ii) ionomer businesses.
- (83) ACP. Dow's ACP business includes: (i) the Freeport ACP Facility and (ii) the Tarragona ACP Facility. Both facilities are [...] ACP production facilities with a maximum asset capability of [...] and [...] per year, respectively.
- (84) With regard to the Tarragona ACP Facility, during the initial transition period ([up to 2 years]) and, if required, a supplemental transition period (up to [< 2 years]), the merged entity will continue to operate the facility on behalf of the purchaser [...] under a transitional operating service agreement ('OSA'), with the merged entity employees subject to strict firewalls and confidentiality agreements.

⁽¹⁾ These agreements include: (i) Transition Supply Agreement for up to [< 3 years] to supply to the purchaser [...] products that are currently being manufactured by DuPont at the retained facilities; (ii) Toll Supply Agreement for the supply [...] to the purchaser of products made at the retained facilities; (iii) Service Provision Agreement to provide toxicology services from the Haskell facility to the purchaser [...] for a period of [< 5 years]; and (iv) Transitional Services Agreement for the provision of IT support related to sales processing for products included in the Herbicide and Insecticide Divisions, for [< 3 years] [...].

- (85) Dow also commits to cover [...] any investment, up to a maximum of [...], that the purchaser makes within [< 4 years] from the effective date [...].
- (86) In the case of the Freeport ACP Facility, at the option of the purchaser, the divestiture would be accompanied by an OSA under which operational personnel of the Parties would continue to operate the Freeport ACP Facility for the benefit of the purchaser. The purchaser will solely control and make all commercial and other strategic decisions. The Parties' involvement would be limited to operate this facility, according to the purchaser's instructions, with firewalls in place to prevent the leakage of any commercially sensitive information.
- (87) All Dow's ACP products and customer records, as well as the Primacor trademark, will be transferred to the purchaser; together with customer contracts in place specifically for ACPs that can be legally assigned. For contracts requiring consent, Dow will use reasonable best efforts to obtain such consents.
- (88) Dow commits to take reasonable steps to transfer [20-30] employees in operational roles for the Tarragona ACP Facility; and [5-15] additional employees for the Freeport and Tarragona ACP Facilities.
- (89) Additionally, at the purchaser's option, the Parties are prepared to enter into an agreement of up to [< 15 years] to supply ethylene and GAA, [...] and on fair and reasonable terms to be negotiated with the purchaser, for the Freeport ([...]) and the Tarragona ACP Facilities ([...]). Dow also commits to use reasonable best efforts to transfer all contracts with third-party suppliers of products and services, [details on supply arrangement with third party].
- (90) *Ionomers.* Dow does not manufacture ionomers itself but uses [company name] to manufacture ionomers pursuant to an external manufacturing agreement (the '[Company name] Agreement'). The [Company name] Agreement, which also covers other products outside the scope of the Polyolefins Divested Business, will be assigned to the purchaser as far as it relates to ionomers.
- (91) The Parties will also grant the purchaser an exclusive royalty-free right to use the Amplify IO trademark for EAA-based ionomers for a period of [< 3 years] for re-branding purposes.
- (92) All Dow's ionomer products and customer records will be transferred to the purchaser; together with customer contracts in place specifically for ionomers that can be legally assigned. For contracts requiring consent, Dow will use reasonable best efforts to obtain such consents.

VII. CONCLUSION

- (93) The attached draft Article 8(2) Decision concludes that, subject to full compliance with the Final Commitments of 17 February 2017, the Transaction would not significantly impede effective competition in the internal market or in a substantial part of it. Consequently, the Commission proposes to declare the concentration compatible with the internal market and the EEA Agreement, in accordance with Articles 2(2) and Article 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.
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