



DETERMINATION OF MERGER NOTIFICATION M/06/010 – DuPont/Syngenta

Section 21 of the Competition Act 2002

Proposed acquisition by E.I. du Pont de Nemours and Company of the Picoxystrobin Business of Syngenta Limited

Dated 24/03/06

Introduction

1. On 3rd March 2006, the Competition Authority, in accordance with Section 18(1) of the Competition Act, 2002 (“the Act”), was notified on a mandatory basis of the proposed acquisition by E.I. du Pont de Nemours and Company (“DuPont”) of the Picoxystrobin Business of Syngenta Limited (“Syngenta’s Picoxystrobin Business”).

The Undertakings Involved

2. DuPont, the acquirer, is a USA-based company and is active, globally, in the research, development, manufacture and sale of a variety of chemical products, plastics, agro-chemicals, paints, seeds, and other materials. DuPont’s production activities in relation to fungicides are based in France, where it produces the active ingredient flusilazole. It supplies flusilazole under the brand names “Colstar”, “Charisma”, and “Punch” for use as cereal fungicides. Flusilazole is a member of the chemical class triazoles, which provides both preventive and curative activities to certain crops.
3. In 2005, DuPont generated worldwide turnover of approximately €21.41 billion. In the same year, in Ireland, it generated turnover of approximately [less than €100] million of which sales of fungicides amounted to [less than €5] million.
4. Syngenta Limited is a Swiss-based company active in the research, development, production and sale of crop protection products. Syngenta Limited is a global manufacturer and seller of a large portfolio of seeds and plant protection products, including herbicides, fungicides, and insecticides.
5. Syngenta’s Picoxystrobin Business, the target, is dedicated to the worldwide production and distribution of cereal fungicides

containing the active ingredient, picoxystrobin, under the brand name "Acanto". Picoxystrobin is a member of the chemical class, strobilurins, which provides preventive control to certain crops. In Ireland, these products are only used for applications to barley. Syngenta Limited owns another strobilurins based product, azoxystrobin, which does not form part of the proposed transaction.

6. In 2005, Syngenta's Picoxystrobin Business generated worldwide turnover of approximately [less €100] million. In the same year, in Ireland, it generated turnover of [less than €1] million.

Analysis

7. For the purpose of this determination, the activities of both DuPont and Syngenta's Picoxystrobin Business overlap in connection with the sale of cereal fungicides in the State. However, DuPont is currently not active in the production and sale of strobilurin-containing fungicides in the State or elsewhere.
8. Table 1 below, shows estimates of DuPont's and Syngenta's value of sales and market share data as well as those of their competitors in the State. This table shows that BASF is the leading supplier of cereal fungicides in the State followed by Bayer and Syngenta Limited.

Table 1: Estimated sales of Cereal Fungicides in Ireland, 2005

Company	€(000)	Share (%)
BASF	[..]	[30-40]
Bayer	[..]	[20-30]
*Syngenta Limited¹	[..]	[20-30]
Syngenta's Picoxystrobin Business	[..]	[0-10]
DuPont	[..]	[10-20]
Others	[..]	[0-10]
Total	[..]	100

Source: The Parties

* Excluding the Picoxystrobin Business.

9. DuPont is placed fourth with an estimated market share of approximately [10-20]%. The acquisition by DuPont of Syngenta's Picoxystrobin Business will increase its share of cereal fungicides sales to [10-20]%, in the State.

¹ It will retain the following cereal fungicides currently sold in Ireland:

- Amistar (azoxystrobin)
- Amistar Opti (azoxystrobin and chlorothalonil)
- Amistar Pro (azoxystrobin and fenpropimorph)
- Bravo (chlorothalonil)
- Tilt (propiconazole)
- Menara (propiconazole and cyproconazole)
- Unix (cyprodinil)
- Stereo (cyprodinil and propiconazole)
- Radius (cyprodinil and cyproconazole)
- Tern (fenpropidin)

10. The Parties cited two recent decisions of the European Commission (“EC”) concerning fungicides:

- In *Bayer/Aventis Crop Science*,² the EC identified a distinct cereal fungicides market comprising all cereal fungicides. The EC also noted that it is possible to further segment the market by individual type of cereals, for example, barley, wheat etc.
- In *Astra Zeneca/Novartis*,³ the EC suggested that it may be further possible to segment the market by the chemical classification of active ingredients contained in the fungicides. Three chemical classifications of active ingredients (a) morpholines, (b) triazoles and (c) strobilurins were identified.

11. The Parties submitted that if the Authority considers a narrower fungicides market, that is, by active ingredient, there would be no horizontal overlap between the Parties’ activities. Alternatively, if the Authority considers a wider cereal fungicides market as the relevant market for this determination, DuPont’s share would only increase by [less than 5%].

12. The Authority, however, considers that it is not necessary to make a final determination with respect to the appropriate fungicide market in this case. The Authority considers that regardless of which fungicide market is deemed appropriate to this determination, there would be minimal or no horizontal overlap between the Parties’ activities.

13. Therefore, the Authority considers that the proposed transaction does not raise competition concerns as (a) it gives rise to minimal or no overlap; and (b) there remains a sufficient number of large competitors to the combined DuPont/Syngenta’s Picoxystrobin Business entity.

Ancillary Restraints

14. The Authority also reviewed restrictive arrangements agreed by the Parties contained in their Sales and Purchase Agreement (“SPA”). The SPA contains a non-compete section and co-formulants and supply arrangements as well as a confidentiality section.

15. The Authority considers that these arrangements are in line with its approach in respect of ancillary restraints in mergers and are directly related and necessary to ensure the implementation of the proposed acquisition.

² Comp/M.2547, *Bayer/Aventis Crop Science*, Commission Decision, April 17, 2002.

³ Comp/M.1806, *Astra Zeneca/Novartis*, Commission Decision, July 26, 2000.

Determination

The Competition Authority, in accordance with Section 21(2) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by E.I. du Pont de Nemours and Company of the Picoxystrobin Business of Syngenta Limited will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect.

For the Competition Authority

Dr Paul K. Gorecki

Member of the Competition Authority