

*Case No IV/M.1558 -
CINVEN /
INVESTCORP /
ZENECA CHEMICALS*

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/06/1999

*Also available in the CELEX database
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.06.1999

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M. 1558-CINVEN/INVESTCORP/ZENECA CHEMICALS

Notification of 21.05.1999 pursuant to Article 4 of Council Regulation No 4064/89

Date of notification: 21.05.1999

Legal deadline: 25.06.1999

1. On 21.05.1999 the Commission received the notification of a proposed operation by which the U.K. company, Cinven Limited (« Cinven») and Investcorp International Limited (“Investcorp”), will, through a newly formed subsidiary, acquire joint control of the Zeneca Specialties business of Zeneca Limited, a U.K company and a subsidiary of Astra Zeneca plc.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No. 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. Cinven is a wholly-owned subsidiary of Cinven Group Limited which is itself owned by the individuals responsible for the management of the Cinven group of companies. The Cinven group is a venture capital business which is engaged in the provision of investment management, advice and services to a number of investment funds (including pension funds and private equity funds) comprising inter alia those investing in the proposed concentration.

4. Investcorp is a financial holding company and part of the Investcorp group, which is an international financial institution acting as a principal and as an intermediary in international investment transactions. Investment products are offered to institutional and individual clients, both in the Arabian Gulf and internationally.
5. Zeneca Limited and AstraZeneca PLC are UK companies whose interests in Zeneca Specialties will be acquired by Cinven and Investcorp. Zeneca Specialties is the Specialties chemicals business division of Zeneca Ltd and its subsidiaries. This division operates in the chemicals specialties areas of specialist colours, biocides, life science molecules, performance, intermediate and other speciality chemicals, resins and leather finishes and coatings. The businesses involved in this division are carried on by approximately 59 corporate vehicles worldwide.
6. The acquisition of Zeneca Specialties will be made through a group of newly created vehicle companies, ultimately controlled by a Joint Venture company ("JV"), constituted for the purposes of the operation. The acquisition will be effected in part by acquiring the shares of certain companies within Zeneca Specialties and in part by acquiring the assets of businesses operations of Zeneca Specialties.

II. FULL FUNCTION JOINT VENTURE

7. The proposed concentration is an acquisition under which Cinven and Investcorp will, through JV, acquire joint control of Zeneca Specialities. Both have the right to appoint the same number of directors to the Board and it is agreed that JV will not take any major business decisions without the prior approval of both Cinven and Investcorp.
8. The joint venture will on a lasting basis perform all the functions of an autonomous economic entity.

III. CONCENTRATION OF A COMMUNITY DIMENSION

9. The combined aggregate world-wide turnover of the undertakings concerned is more than EUR¹ 5000 million. The aggregate Community-wide turnover of at least two of the undertakings is more than EUR 250 million and not each of the undertakings concerned attains more than two-thirds of its aggregate Community-wide turnover within the same Member State. Hence the concentration has a Community-wide dimension.

IV. ASSESSMENT

10. The business to be acquired from Zeneca Limited is active on a world wide scale in the Specialty Chemicals field. However, the Parties state that there are no product market overlaps since neither Cinven nor Investcorp, nor any of the investee companies that are controlled by Cinven or Investcorp, are engaged in the same product market or the

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

same upstream or downstream product market nor in any closely related product market as the product markets in which Zeneca Specialties Chemicals is active.

11. The Commission has not received any information contradicting the parties' position on the issue of overlapping product markets. As to the geographic market of specialty chemicals, it can be considered to be at least EEA-wide; however in the absence of product market overlaps, the geographic market needs not to be defined. Hence it is considered that the proposed operation does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

V. ANCILLARY RESTRICTIONS

12. The parties request an assessment by the Commission of a number of intellectual property licence agreements containing exclusive and sole licences and an agreement related to transfer of data for regulatory purposes (dealing with governmental approvals) as being ancillary. These agreements have been entered into because of the division of Zeneca's businesses into the part to be acquired by the purchaser on the one hand and the part retained by Zeneca on the other hand. The purchaser purchased the intellectual property rights of all types used in the Zeneca Specialties business; certain of these were prior to the acquisition shared between Zeneca's agro-chemicals, pharmaceuticals and specialties businesses. Where these shared rights were predominantly used by Zeneca Specialties, they were acquired by the purchaser, subject to licences being granted back to Zeneca Limited. Where these rights were predominantly used in Zeneca's retained businesses, they were retained by Zeneca but licences were granted to the purchaser to enable continued use of these rights.
13. Insofar as the licence agreements grant the (reciprocal) licences as such, they appear to be necessary to the transfer of the full value of the Zeneca Specialty Chemicals business to the purchaser and to enable the vendor to continue its retained businesses. To that extent, these can therefore be considered to be directly related to and necessary to the implementation of the concentration and thus ancillary in nature.
14. The same is valid for the agreement transferring vendor's data to the purchaser for regulatory purposes, enabling the purchaser to continue the business acquired by him.

VI CONCLUSION

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

For the Commission,