

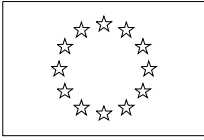
***Case No COMP/M.1748 -
INDUSTRI KAPITAL
LIMITED / SUPERFOS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/11/1999

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

Brussels, 24.11.1999
Sg (99) D/9440

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No COMP/M. 1748 – Industri Kapital 97 Ltd/Superfos A/S

Notification of 20 October 1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 20 October, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ (“the ECMR”) as last amended by Regulation (EC) No 1310/97² according to which Industri Kapital 97 Ltd (“IK 97 Ltd”) acquires, within the meaning of Article 3(1)(b) of the Regulation, sole control of Superfos A/S (“Superfos”).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Council Regulation 4064/89 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

¹ OJ L 395, 30.12.1989, p.1; corrigendum, OJ L 257, 21.9.1990, p.13.

² OJ L 180, 9.7.1997, p.1; corrigendum OJ L 40, 13.2.1998, p.17.

I. THE PARTIES

3. IK 97 Ltd is an investment management company. It administers the investments of Industri Kapital 97 Fund (“IK 97 Fund”), an investment vehicle which is one of the funds offered by the Industri Kapital group. Other funds offered by the group are the Industri Kapital 89 Fund (“IK 89 Fund”) and the Industri Kapital 94 Fund (“IK 94 Fund”). These funds are administered respectively by Industri Kapital 89 Ltd (“IK 89 Ltd”) and Industri Kapital 94 Ltd (“IK 94 Ltd”). All the investment management companies are owned by Industri Kapital Europe B.V. which in turn is owned by Industri Kapital N.V, the ultimate parent company in the Industri Kapital group.
4. IK 97 Fund is not a legal entity, but a contractual arrangement between IK 97 Ltd and the investors in the Fund. There are two kinds of investors in the Fund: limited partners and the Consortium investors.
5. IK 97 Ltd will have sole control over Superfos after the proposed transaction. It will exercise that control on behalf of all the investors in the IK 97 Fund.
6. Superfos is an internationally active company with activities in the following four business areas: (i) asphalt production and road construction in the United States (ii) production and distribution of plastics packaging primarily in Europe, (iii) contract filling and distribution of aerosols in Europe, and (iv) distribution of chemical products in Northern Europe.

II. THE OPERATION AND THE CONCENTRATION

7. The notification concerns the acquisition by IK 97 Ltd of all the shares of Ashland Inc (“Ashland”), the seller, in Superfos. The notified operation will therefore result in the acquisition of sole control within the meaning of Article 3(1)(b) of the ECMR.
8. The acquisition by Ashland of the shares in Superfos was cleared by the Commission on 23 September 1999 (Case IV/M.1682 – Ashland/Superfos). Ashland’s primary intent was to acquire only Superfos’ construction business in the US. IK 97 Fund, represented by IK 97 Ltd, and Ashland have therefore entered into an agreement pursuant to which the shares of Superfos will be transferred to IK 97 Ltd. Thereafter, IK 97 Fund shall cause Superfos to re-sell the US construction business to Ashland.

III. COMMUNITY DIMENSION

9. The undertakings concerned have a combined worldwide turnover in excess of €2,500 million (IK 97 Group €2,411.7 million; and the Superfos Group €464 million). The combined turnover of the IK 97 Group and the Superfos Group exceed €100 million in Denmark, Finland, France, Germany, the Netherlands, Sweden and the United Kingdom (For IK 97: 246.9 million, 149.1 million, 54.7 million, 895.7 million, 92.5 million, 287.2 million and 206.1 million respectively. For Superfos: 146.1 million, 16.7 million, 57.7 million, 26.2 million, 41.2 million, 132.4 million and 35.1 million respectively). The turnover of each of the IK 97 Group and the Superfos Group exceeds €25 million in Denmark, France, Germany, the Netherlands, Sweden and the United Kingdom (cf. above). The aggregate Community-wide turnover of each of the undertakings concerned is more than € 100 million (IK 97 Group: 2,068.4 million, the Superfos Group 474 million). They do not achieve more than two-thirds of their

aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

IV. COMPETITIVE ASSESSMENT

A. Relevant Product and Geographic markets

10. There is no horizontal overlap in the activities of the Superfos Group and the companies within the IK 97 Fund or any other company within the Industri Kapital N.V Group of companies. The parties have informed the Commission of the IK Group's intention to acquire another company, which manufactures and distributes N-butanol and who engages the Superfos Group as its distributor of N-butanol in Denmark. The parties have also identified the market for manufacturing of N-butanol as an affected market. However, considering that this transaction has not yet been implemented, the Commission has decided that an assessment concerning this market is not necessary in this case.
11. There are also some vertical links between the Superfos Group and companies within the Industri Kapital Group of companies. However, it is not necessary to define the relevant product markets, as regardless of the definition there is no competition problem.
12. Furthermore, it is not necessary to define the relevant geographic market for the products since whatever the geographic market, national, EEA-wide or global, the concentration does not give rise to a competition problem.

B. Assessment

13. No company within the Industri Kapital Group of companies is active on the same product markets as any of the companies in the Superfos Group. Consequently, there are no horizontal overlaps.
14. As stated above, there are certain vertical relations between Superfos and some of the portfolio companies in the IK 94 Fund. MSC Metsa Speciality Chemicals ("MSC") is a producer of carboxymethyl cellulose (CMC). MSC engages Superfos as its distributor and agent in Denmark. MSC's sales made through Superfos and the agent commission constitutes approximately €[...] million, which corresponds to approximately [...] % of MSC's total turnover in Denmark. Superfos' market share on the Danish market for distribution of chemicals is between 5-10%. Furthermore, Addtek sells specialised machinery used in the manufacturing of precast concrete. This kind of equipment could be utilised in Superfos' construction business in the US. Finally, Addum lets machinery, equipment and movable premises to the industry, construction companies and the governmental sector. The Superfos group rents machinery from Addum to a value of less than €[...] million.
15. Considering Superfos' low market share on the market for distribution of chemicals in Denmark and the limited proportion of MSC's sells that are made through Superfos there is no competition concern stemming from this vertical link. As regards the relationship with Addtek and Addum, it should be noted that Superfos Construction is only active on the US market. Thus, there is no impact on competition in the EEA.

16. Consequently, the proposed concentration does not lead to the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in the common market and the EEA or a substantial part thereof.

V. CONCLUSION

17. 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,

Signed by
Mario Monti
Member of the Commission