

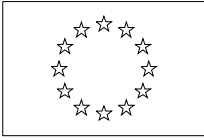
***Case No COMP/M.2004 -
INVESTCORP / CHASE
CAPITAL
INVESTMENTS /
GERRESHEIMER GLAS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 27/06/2000

*Also available in the CELEX database
Document No 300M2004*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.06.2000
SG (2000) D/104486

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2004 - INVESTCORP/CHASE CAPITAL INVESTMENTS/GERRESHEIMER GLAS.

Notification of 19.05.2000 pursuant to Article 4 of Council Regulation No 4064/89.

1. On 19.05.2000, the Commission received the notification of a proposed operation by which the undertakings Investcorp group and Chase Capital Investments acquire a majority participation in the share capital of Gerresheimer Glas Aktiengesellschaft.
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

3. Investcorp Financial and Investment Services S.A., Switzerland ("Investcorp") belongs to 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 internationally. Investcorp pursues three lines of businesses: corporate investments, real estate investments and asset management.
4. Chase Capital Investments, LP ("Chase", a Delaware, U.S.A. limited partnership) and its general partner Chase (i.e. Chase Capital Partners) belong to The Chase Manhattan Corporation group. Chase is a global private equity organization which provides equity and mezzanine capital financing to private and public companies.

5. Gerresheimer Glas Aktiengesellschaft ("Gerresheimer") of Germany has been a member of the VIAG group since 1990. The company manufactures high-quality packaging and systems based on tubing glass, specialty glass, container glass and plastics for various applications in the fields of pharmaceuticals, laboratory-ware and cosmetics.

II. THE OPERATION AND CONCENTRATION

6. The proposed concentration concerns the acquisition of 72,96% of the shares of Gerresheimer by the Investcorp and Chase. The shares will be purchased directly by Acquisition KG, an acquisition vehicle specifically created for this transaction, from VIAG AG. Investcorp owns 60% of this vehicle, and Chase owns 40%. They can each block actions that determine the strategic commercial behaviour of Gerresheimer. Investcorp and Chase will thus exercise joint control over the acquisition vehicle and, through this vehicle, joint control over Gerresheimer. The operation therefore constitutes a concentration within the meaning of article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The combined aggregate world-wide turnover of the undertakings concerned is more than € 5,000 million. (Investcorp € 7,028 million; Chase € 22,126 million, Gerresheimer €752). The aggregate Community-wide turnover of at least two of the undertakings is more than € 250 million (Investcorp € [...] million; Chase € [...] million and Gerresheimer €[...] million) and the undertakings do not each attain more than two- thirds of their aggregate Community-wide turnover in one and the same Member State. Hence the concentration has a Community-wide dimension.

IV. ASSESSMENT

8. The transaction concerns the sector of packaging and systems based on tubing glass, specialty glass, container glass and plastics for various applications in the segments of pharmaceuticals, laboratory-ware and cosmetics, in which Gerresheimer is active.
9. However, according to the Parties, neither Investcorp, its controlling company CP Holdings Limited nor its ultimate controlling parent company SIPCO Limited are engaged in any business in relation to the Gerresheimer business. The same applies for the portfolio companies of Investcorp. Thus, no Investcorp affiliates or controlling companies are active in packaging and systems based on tubing glass, specialty glass, miniature glass and plastics, and none of these companies are engaged in the same upstream or downstream product market or in any closely related product market.
10. Also, according to the notification, neither Chase Capital Investments LP (the acquiring entity) nor Chase are engaged in any business activity related to the Gerresheimer business. Chase's sole connection to the glass business is a [...] % minority financial interest in the Gujarat Glass Limited, a producer of glass containers and pharmaceutical

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.

glass located in India with very limited exports to the EU (less than €[...] million). Consequently, no Chase affiliates or controlling companies are active in packaging and systems based on tubing glass, specialty glass, miniature glass and plastics, and none of these companies are engaged in the same upstream or downstream product market or in any closely related product market.

11. The Parties submit that as a result of the proposed concentration there are thus no affected markets. The Commission has not received any information contradicting the parties' position on the issue of overlapping activities or product markets. Under these circumstances, where there are no overlaps between the parties on any product market, for the purpose of this Decision the definition of the relevant product market can be left open. For the same reason, 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 common market or the EEA or any substantial part of those.

V. ANCILLARY RESTRICTIONS

12. The Parties submit that two clauses in the Share Sale and Purchase Agreement containing non-competition clauses are directly related to the concentration and necessary for its implementation:
13. Section 15 paragraph 2 provides that "(e)ach of the Sellers undertakes [...] for a period of [...] years following the Closing Date, without the prior written consent of the Purchaser, not to cause or influence, directly or indirectly, any senior employees and executives now or since January 1, 2000 employed or retained by the Companies (i.e. Gerresheimer Glas and its subsidiaries) to work in any way whatsoever for any of them, for an enterprise in which any of them holds an interest or for a competitor or to terminate an existing relationship with the Companies". This clause can be held to protect the transfer to the acquirers of the full value of the Gerresheimer business and can therefore be considered as directly related to the concentration and necessary for its implementation.
14. Section 15 paragraph 3 provides that "(e)ach of the Sellers undertakes from today for a period of [...] years following the Closing Date not to manufacture, distribute or render in any part of the world any products or services which are of the same kind as, or compete with, products or services manufactured, distributed or rendered by the Companies in the past or at present or planned to be manufactured, distributed or rendered by the Companies, nor to assist third parties, directly or indirectly, in the manufacturing, distribution or rendering of such products or services, nor to hold in any way whatsoever an interest in a company which manufactures, distributes or renders such products or services". This clause intends to protect the transfer to the acquirers of the full value of the Gerresheimer business. Consequently, but only insofar as it relates to products and services which formed the economic activity of Gerresheimer upon completion of the sale, and insofar as it relates to geographic markets where Gerresheimer is active, this non-compete clause can be considered as directly related to the concentration and necessary for its implementation.
15. Within the meaning of the Merger Regulation, the above clauses can therefore be considered to be restrictions directly related to and necessary to the implementation of the concentration and thus ancillary in nature.

VI. CONCLUSION

16. 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 (EEC) No. 4064/89.

For the Commission,

Mario Monti
Member of the Commission