

*Case No COMP/M.2074 -
TYCO /
MALLINCKRODT*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/09/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.09.2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party

Dear Sir/Madam,

Subject: Case No COMP/M.2074- Tyco/Mallinckrodt

Notification of 17.8.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. The operation consists of the acquisition by the Bermuda-based company, Tyco International Limited ("Tyco"), of sole control over the US company, Mallinckrodt Inc ("Mallinckrodt").
2. After examination of the notification, the Commission has concluded that the proposed 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 the functioning of the EEA Agreement.
3. On 8.9.2000, Tyco offered remedies designed to resolve possible competition concerns in one of the affected markets. This undertaking was, however, withdrawn at a later stage of the procedure, on 22.9.2000, as it was not deemed to be necessary since the operation does not raise competition concerns.

I. THE PARTIES AND THE OPERATION

4. Tyco is a publicly listed company on the New York, London and Bermuda stock exchanges. It is a diversified manufacturing and service company, active in four main business sectors: fire detection/suppression systems and electronic security devices, flow control products, undersea cable communication systems, and disposable medical supplies.

5. Mallinckrodt is a publicly listed company on the New York Stock Exchange. It is a global healthcare company active in three main areas: diagnostic imaging, analgesic pharmaceuticals, and respiratory care.
6. Through the acquisition of 100% of the voting shares in Mallinckrodt, Tyco will acquire sole over control over that company.

II. CONCENTRATION OF A COMMUNITY DIMENSION

7. The operation constitutes a concentration within the meaning of Article 3.1.b. of the Merger Regulation.
8. Tyco and Mallinckrodt have a combined aggregate worldwide turnover in excess of €5,000 million (Tyco €20,982 million; Mallinckrodt, €2,309 million). Each of them has a Community-wide turnover in excess of €250 million (Tyco €[...] million; Mallinckrodt, €[...] million), and they do not achieve more than two-thirds of their respective aggregate Community-wide turnovers within one and the same Member State. The notified operation, therefore, has a Community-wide dimension. It does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

III. COMPETITIVE ASSESSMENT

A. Relevant product market

9. The overlap between the parties' respective activities occurs in the field of medical devices. Within this field, the notifying party has identified four product areas in which the overlap would result in affected markets: 1) airway (endotracheal) tubes, used to create and maintain a patient's airway, comprising standard tubes, speciality tubes, and airway tube accessories, 2) continuous temperature monitoring probes, 3) chest drainage catheters, and 4) suction catheters and accessories (used to suction secretions from the lungs) divided into closed and open suctioning catheters.
10. As regards the first affected market, airway tubes, the notifying party contends that the product market could in fact be a broader one, which would englobe laryngeal masks (LMA's), given the increasing use of LMA's for certain surgical operations, in replacement for airway tubes. Neither Tyco nor Mallinckrodt produces laryngeal masks. The market investigation carried out by the Commission confirms that LMA's are more and more considered as substitutes for tubes, especially for speciality tubes.
11. In the case of the second affected market, continuous temperature monitoring probes, the notifying party has identified possible alternative product markets, depending on whether reusable probes are included or not in the same market as disposable probes. The notifying party submits that an overall market comprising both disposable and reusable probes could be justified, given the availability of both forms for the most widely used probes, and given that the higher initial price of reusables is discounted against their longevity. Both Tyco and Mallinckrodt produce disposable probes, while Tyco alone produces reusable probes, of which a small number are sold in the EEA. The results of the market investigation carried out by the Commission support the market definition proposed by the notifying party.

12. In conclusion, competitors and customers, consulted by the Commission in its market investigation, largely agree with the different product markets proposed by the notifying party. In fact, the proposed product markets seem to be in line with the calls for tender launched by hospital purchasers. However, as the Commission does not consider that the proposed operation will lead to the creation or strengthening of a dominant position on any of the alternative markets, it has not found it necessary to define more precisely the product markets in this case.

B. Relevant geographic market

13. The notifying party takes the view that the geographic scope of all of the alternative markets considered above is at least EEA-wide, based mainly on the following factors: i) the lack of regulatory barriers at a national level, given the existence since 1993 of a Medical Devices Directive (Council Directive 93/42/EEC) which requires manufacturers of medical devices to obtain regulatory approval on an EEA-wide basis; ii) the prevalence of the use of EEA-wide tendering procedures by hospitals to award supply contracts, with the participation of the main players regardless of their country of origin; iii) the presence of the parties and their main competitors across the EEA; iv) relatively low transport costs; and v) the use of centralized distribution facilities for supplying products across the EEA.
14. The Commission's market investigation has largely confirmed the above factors and their significance in the sector. An EEA-wide scope has therefore been retained by the Commission for the purposes of its assessment of the competitive impact of the operation in the present case.

C. Assessment

15. As no reliable independent statistics describing the market positions in the affected markets seem to exist, the Commission has based its assessment largely on the market share information provided by the parties to the operation.
16. In the market for airway tubes and accessories, the parties would have a combined market share of [less than 40 %] in the EEA, if LMA's (laryngeal masks) were considered to belong to the same market. If, however, LMA's were excluded from the product market, the combined market share would be higher; [40 – 50 %]. It must be noted that the resulting market share is mainly due to the pre-existing position of Mallinckrodt in this product market, the market share of Tyco being generally less than [0 – 10 %]. Competitors, such as Rüsç (approximately [15 – 25 %]), Sims Portex (approximately [10 – 20 %]) and Hudson RCI (approximately [10 – 20 %]) also hold important market positions in the EEA.
17. In the market for temperature monitoring probes, the parties' combined market share would be [15 – 25 %] in the EEA, if reusable probes were included in the same market with disposables. If, however, disposable probes were considered to constitute their own distinct product market, the combined market share would amount to [less than 40 %] in the EEA. The resulting market share is again mainly based on Mallinckrodt's current market position. Competitors, such as Sims Portex, hold important positions in this market as well.
18. In the market of chest drainage catheters, the combined market share of the parties would be [30 – 40 %] in EEA, Mallinckrodt's market share being slightly above [0 – 10

%). Competitors, including Sims Portex (close to [25 – 35 %] market share), Deknatel and Baxter ensure the level of competition in this market.

19. In the market of suction catheters and accessories, the parties' combined market share in the EEA would be less than [15 – 25 %] in open suction catheters. If, however, open *atraumatic* catheters were considered as a distinct market, the parties would in this product have a combined market share of [25 – 35 %] in EEA. The parties' combined market share for closed suction catheters is less than [10 – 20 %]. As regards the open atraumatic catheters, major competitors, such as Maersk Medical (approximately [25 – 35 %] market share) ensure competition.
20. The existence of a number of strong competitors in each of the affected markets ensures significant competition and the proposed transaction would not change the competitive situation. As regards the medical devices market in general, Tyco and Mallinckrodt would become the third largest supplier in Europe after Johnson & Johnson and Baxter. As supported by the Commission market investigation, there don't seem to be appreciable barriers which would prevent a hospital switching between different suppliers, if a supplier intended to increase prices.
21. For the analysis of this case, it must also be taken into account that the hospital market is very competitive with profit margins getting lower all the time. In general, prices of medical products have been falling during the last years. Pressure on hospitals to reduce costs has forced hospitals to become more sophisticated purchasers applying multi-source procurement procedures. The Commission market investigation confirms that hospitals consider themselves as having a good bargaining position. Some hospitals have also formed purchasing groups in order to increase their bargaining power.

IV. CONCLUSION

22. 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,
Mario MONTI
Member of the Commission