

***Case No COMP/M.2244 -
ROYAL VOPAK / ELLIS
& EVERARD***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 16/01/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.01.2001

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

Subject: Case No COMP/M.2244 – ROYAL VOPAK / ELLIS & EVERARD

Notification of 4 December 2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 4 December 2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ as last amended by Regulation (EC) No 1310/97² (“the Merger Regulation”) by which the Dutch undertaking Koninklijke Vopak N.V. (“Vopak”) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the British undertaking Ellis & Everard plc (“E&E”) by way of a public bid announced on 10 November 2000.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. Vopak was formed by the merger of Koninklijke Van Ommeren and Koninklijke Pakhoed in November 1999³ and is active in the fields of oil and chemicals logistics and the distribution of chemicals. Vopak is listed on the Amsterdam Stock Exchange.

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

² OJ L 189, 9.7.1990, p. 1, corrigendum: OJ L 40, 13.2.1998, p. 17.

³ Case IV/M.1612 – Pakhoed/Van Ommeren.

4. E&E is a UK company listed on the London Stock Exchange and active in the sales, marketing and distribution of chemicals.

II. THE OPERATION

5. The operation consists in a public offer for all of E&E's issued and to be issued share capital by Vopak through a wholly owned subsidiary, Vopak Distribution Holding UK plc. The Offer was announced on 10 November 2000, and the first date of closing was 1 December 2000.

III. CONCENTRATION

6. The notified operation constitutes an acquisition of sole control by Vopak over E&E and, therefore, a concentration within the meaning of Article 3(1)b of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than €5 billion⁴ (Vopak [...] million, E&E [...] million). Each of Vopak and E&E have a Community-wide turnover in excess of €250 million (Vopak €[...]million, E&E [...]million), but 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.

V. COMPETITIVE ASSESSMENT

Relevant Markets

Product Markets

8. The parties' activities overlap in the distribution of chemicals and polymers.
9. According to the parties, the distribution of chemicals and polymers is part of a broader chemical sales market, comprising three main distribution channels, namely direct sales by manufacturers, sales by traders, and sales by distributors.
10. Concerning the distinction between the distribution of polymers (plastic compounds) and other chemicals, the information provided to the Commission by the parties, competitors and customers indicates that these seem to be separate product markets. The market players are to a large extent different. The parties' competitors in chemical distribution in the UK that answered to the Commission's questionnaire supply polymers only to a marginal extent, if at all, and none of the competing polymer distributors in the Nordic countries that provided information said it would also supply other chemicals. The parties themselves operate their polymer business as distinct from their chemical distribution business (as far as E&E is concerned, also under a different brand name) and partly in different geographic areas (Vopak has no polymer activities

⁴ 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 € on a one-for-one basis.

in the UK, whereas in the Nordic countries, both parties only distribute polymers). Furthermore, the distribution of chemicals is subject to health, safety and environmental regulations that do not apply to polymers.

11. For chemical distribution, in a previous merger case the Commission has defined three separate product markets (excluding direct sales by manufacturers): chemical bulk business (“trading”), distribution of commodity chemicals (“chemical distribution”), and distribution of speciality chemicals (“specialities”)⁵. Whereas trading consists in delivering commodity chemicals to customers that demand large quantities of a single product, chemical distributors buy commodities in large quantities from producers or traders and distribute them to (mostly industrial) customers that require a large range (up to 300) of different chemicals in smaller quantities, thereby sometimes also providing additional services like filling, storing, blending and logistics. By contrast, specialities are high-priced, branded products distributed in small quantities to selected customers, and most distributors specialise in specific products for a range of user groups. In other subsequent cases dealing with the same sector⁶, the product market definition has been left open.
12. Also with regard to polymer distribution, the question arises whether distributors operate in the same product market as traders and/or manufacturers and whether a distinction has to be made between the distribution of commodities and specialities.
13. However, no decision on the issue of product market definition is needed, as even on the market definition by which the merger could be said to have the greatest potential implications for competition, the operation does not give rise to competition concerns.

Geographic Markets

14. The parties' business activities overlap in the UK and, to a lesser extent, in Ireland as far as chemical distribution is concerned, and in the Nordic countries for polymer distribution. The parties consider the market for chemical distribution to be at least EEA-wide. The Commission has held in previous cases that the relevant geographic markets in chemical distribution are national or larger.
15. In the present case, the information obtained from the parties, competitors and customers indicates that the relevant geographic market for chemical distribution comprises at least the UK and Ireland taken together, and the relevant geographic market for polymer distribution includes at least the whole of the Nordic countries (Denmark, Finland, Norway, and Sweden).
16. Chemical distributors operate warehouses from which they distribute their products to the customers (although they sell to a smaller extent also products directly delivered from the manufacturer to the customer, the distributor receiving a commission). A number of distributors, among them E&E, operate several warehouses in the UK, each distributing all or most products at the same time and serving an area over a radius of approximately 100-300 miles (160-480 km). However, in the process of restructuring

⁵ Case IV/M.1073 – Metallgesellschaft/Klöckner Chemiehandel.

⁶ Cases COMP/M.1682 – Ashland/Superfos, COMP/M.1748 – Industri Kapital Limited/Superfos and COMP/M.2202 – Stinnes/HCI.

of the industry, some distributors, including the parties, have increasingly concentrated their business on a smaller number of warehouses specialising in the storage and delivery of specific chemicals which are distributed from one warehouse to the whole of the UK and Ireland. Vopak, for example, serves 1500 out of the approximately 2000 different chemicals available to customers in the whole of the UK and Ireland from two depots in the UK, two other UK-based depots serving a limited number of more specific products. Vopak's Irish customers are served from all UK depots and a Dublin-based depot, the latter being a subcontracted arrangement through which only limited numbers of pre-drummed and pre-packed products are sold. Thus, there is no indication that the distance from which a distributor can operate out of a given warehouse might lead to define a geographic market narrower than the UK and Ireland taken together.

17. They same applies for polymer distribution in the Nordic countries. The parties' main competitors in this business operate at least in the whole of the Nordic countries, if not Europe-wide. Also, logistics are less important for polymer distribution than for chemical distribution, because polymers are easier to deal with and pose less environmental or health risks. Thus, although the competitors that have answered to the Commission's questionnaire operate more than one warehouse in the Nordic countries, they are able to distribute a single product to more than one Nordic country out of the same warehouse.

Assessment

Chemical Distribution in the UK and Ireland

18. After the operation, Vopak and E&E would become the leading chemical distributor in the UK/Ireland, with a share of the distribution market (excluding trading and direct sales by manufacturers) and each of its segments (commodities or specialities) ranging between [10-20%] (according to the parties) and 25-30 % (according to other estimates). Whereas [$\geq 50\%$] of E&E's sales is in commodities, most of Vopak's sales are in specialities ([$\geq 75\%$] of ex-warehouse sales and [$> 50\%$] of direct sales from producers), so that under a narrow market definition, the merger is largely complementary insofar as commodities are concerned. Under a broader market definition including both commodities and specialities, the overlap between the parties would be more significant (according to the parties, Vopak's existing share of the distribution market is [$< 10\%$], E&E's [5-15%]), though still below a critical level, given the presence of a significant number of competitors, both large and small. Although the parties' main competitors are national or regional distributors operating mainly within the UK and Ireland (like Hays, Tennant, Gower Chemicals e. a.), large internationally operating distributors (Brenntag/HCI, Internatio Müller, Caldic) are also active in the UK/Irish market. Furthermore, even though chemical and speciality distribution may have to be considered as separate product markets, some competitive pressure is also exercised on distributors by traders and direct sales by manufacturers. Most customers that answered to the Commission's questionnaire said that under the hypothesis of a significant price rise by distributors, they would consider purchasing chemicals directly from manufacturers or from traders.
19. It can therefore be excluded that the operation might create or strengthen a dominant position in either commodity or speciality distribution.

Polymer Distribution in the Nordic countries

20. In polymer distribution in the Nordic countries, the parties' estimates of their combined market share is [10-20%] ([5-10%] each). That market share may be larger according to other estimates, though still below a level that could give rise to competition concerns. There are no indications that the parties reach significantly higher market shares in the segments of commodity or speciality polymers. Competitors include multinationals like BASF and Bayer, but also local distributors. Polymer distribution is a more global business with fewer competitors than chemical distribution, operating in larger geographic areas (in the whole of the Nordic countries- or Europe-wide). Therefore, no competition problem can be identified.

Other Markets

21. E&E also has some polymer activities in Belgium and the Netherlands. By contrast, Vopak's distribution activities in those countries are only in chemicals, so the merger is complementary. Under a broader product market definition comprising both chemical and polymer distribution, the parties' combined market share would be considerably below 10 %, so that no competition concerns arise.
22. Vopak also has distribution activities in other European countries (France, Germany, Italy, Spain, Portugal, Switzerland), but E&E is not active in any of these countries.

VI. CONCLUSION

23. 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
(*signed*)

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