

***Case No COMP/M.2432 -
ANGELINI / PHOENIX /
JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 06/07/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06.07.2001

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject: Case No COMP/M. 2432 Angelini /Phoenix / JV

Your notification of 01.06.2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 01.06.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ("the Merger Regulation") by which the pharmaceutical wholesaler ADIVAR SpA ("ADIVAR"), belonging to the Italian Angelini Group ("Angelini"), and the pharmaceutical wholesaler Comifar Distribuzione SpA ("COMIFAR"), belonging to the German Phoenix Group ("Phoenix") form a full-function joint venture ("the JV") in the distribution of pharmaceuticals and parapharmaceuticals in Italy.
2. The Commission has concluded that the notified operation falls within the scope of the Merger Regulation as amended and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I THE PARTIES

3. Angelini is a diversified group active in the production and wholesale distribution of pharmaceuticals and parapharmaceuticals, in the manufacturing of industrial equipment, and in the agricultural and food sector. Phoenix is a wholesaler of pharmaceuticals and parapharmaceuticals and provide connected services throughout Europe.

II THE OPERATION

4. The parents will contribute to the JV the following activities:
 - Angelini (ADIVAR)'s branch of businesses operating in the pharmaceutical and parapharmaceutical wholesale distribution activities in the Centre-South and South of Italy (Latium, Abruzzi, Molise, Marche, Campania, Basilicata, Apulia, Calabria and Sicily, indicated hereinafter as "the Territory");
 - Phoenix (COMIFAR)'s branch of businesses operating in the pharmaceuticals wholesale distribution activities in the Territory.
5. In a separate transaction, which is not subject to this assessment, Angelini (ADIVAR) will in turn transfer its distribution activities in the Centre-North and North of Italy to Phoenix (COMIFAR). As a result, Angelini will withdraw from pharmaceutical and parapharmaceutical wholesale distribution in Italy on a stand-alone basis. Phoenix will remain active as a distributor in the North and Centre-North of Italy, where it, will incorporate Angelini's activities.

III CONCENTRATION

6. The concentration consists in the creation of a 50/50 joint venture by Angelini (ADIVAR) and Phoenix (COMIFAR) into which each party will contribute its activities for the wholesale distribution of pharmaceuticals and parapharmaceuticals in Central and Southern Italy. The voting rights between the parents in the JV reflect their parity in the shareholding structure.
7. Following the incorporation of the JV, there will be an increase of the JV's share capital which will be subscribed to by both Angelini (ADIVAR) and Phoenix (COMIFAR). The operation in question gives birth to a full-function joint venture which will perform on a lasting basis all the functions of an autonomous economic entity. In fact, the JV is intended to exist for a long lasting period [...], it will receive all the necessary tangible and intangible assets (warehouses, stockholdings, business contracts etc.) and sufficient resources and personnel [...]. Furthermore, the JV will have its own dedicated day-to-day management, distinguished from the parent companies' one, it will determine its commercial policy and assume the related commercial risk.

IV COMMUNITY DIMENSION

8. The parties to the agreement have a combined aggregate world-wide turnover of more than EUR 5 billion and have a Community-wide turnover in excess of EUR 250 million¹. Angelini achieves more than-two thirds of its aggregate Community-wide turnover in Italy, but that is not the case for Phoenix. The notified operation therefore has a Community dimension.

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.

V THE RELEVANT MARKET

Relevant product market

9. The sector concerned by the notified transaction is that of the wholesale distribution of pharmaceutical and parapharmaceutical products in Italy.
10. The distribution of pharmaceuticals covers the entire range of products, including doctor prescription only products, over the counter medicines (OTC), and products which require special storage and handling such as analgesics and inflammables. Parapharmaceuticals include toiletries, health care, baby and beauty products. The wholesale distribution of pharmaceutical products in Italy is strictly regulated by Italian Decree 538 of 30 December 1992. This Decree defines wholesale distribution as any activity consisting of the procurement, storage, supply or export of pharmaceutical products, with the exception of the supply of pharmaceutical products to the public, which is reserved to the pharmacies. The wholesaler must carry in stock of: a) all products indicated in Table 2 of the Official Italian Pharmacopoeia; b) at least 90% of the pharmaceutical products on sale; c) at least one pharmaceutical packaged product obtained through an industrial process for each of the formulations contained in the National Form of the Italian Pharmacopoeia and which are on sale. The supply of pharmaceutical products in the reference territory must be secured at short notice, i.e; within twelve working hours of any order².
11. Due to the narrowly defined legal framework in which full-line wholesalers operate, their activities can be distinguished from the direct distribution of products by manufacturers to pharmacists (direct-line), or the activities of short-line distributors (short-line wholesalers), including parallel importers, who generally focus on a limited range of products. In the light of the foregoing, both the Commission and the Italian Competition Authority have taken the view in the past that the relevant product market to be taken into account in Italy must be limited to pharmaceutical “full-line wholesale” excluding direct sales by manufacturers and specialised short-line distributors³.
12. The structure of the Italian market for the wholesale distribution of pharmaceuticals and parapharmaceuticals is quite fragmented with the possibility to identify on the supply-side national players (multi-deposit companies with multi-regional operations) and local players (mono-deposit companies normally with a more limited area of activities). The market investigation carried out for the purpose of the present case has confirmed that especially pharmacies may also use the “short-line” channels and/or source a limited part of their requirements directly from the manufacturers or from smaller operators (non-full line), when economic conditions of purchase would be more favourable. Therefore, there exists some degree of substitution between short- and full-line wholesaling services. Nevertheless, due to the limited scope of this substitution a

² Furthermore, the wholesale distributor must be licensed by the Region or the Province in which he carries on his activity. The issue of this authorisation is subject to the existence of premises and equipment required for the storage and the distribution of pharmaceutical products and to the presence of a person who is a graduate in pharmacy or in a similar subject.

³ Commission Decision Case No IV/M.1243 - Alliance Unichem PLC/Safa Galenica SA, para. 7. Decision of the Italian Competition Authority of 4/04/2000, N° 8186, Case No C-3919 - Alleanza Salute Italia / La Farmaceutica, para. 4; decision N° 9120 of 18/01/2001, Case C-4397, Comifar Distribuzione/Aditalia par. 4.

distinction between the two remain appropriate for the purpose of determining the relevant product market⁴.

Relevant geographic market

13. The parties take the view that, because of the specific regulatory framework in each Member State, the relevant geographic market for wholesale distribution of pharmaceuticals does not extend beyond the border of Italy. In previous decisions⁵, the Commission considered that the geographic market might be sub-national due to the emphasis placed by customers on the frequency and speed of delivery and the resulting need for wholesalers to compete on a sub-national basis and to have warehouses at regional level. In Italy, the geographic extent of the market is limited mainly to a regional or macro-regional level also in view of the need for wholesalers to provide products within the twelve-hours from the request of the customers.
14. In the present case, the market investigation carried out by the Commission has confirmed that full-line and short-line wholesalers compete in a market that is mainly regional (or macro-regional for the smaller Italian regions). Wholesalers normally have warehouses or depots in the areas where they are most active in order to achieve better cost-effective conditions for the delivery of the services to their customers, closer to their wholesale depots. In Italy, on the supply-side, some wholesalers operate mainly on a regional or macro-regional basis while, even for the national players, the market shares may diverge considerably between individual regions. On the demand-side, customers (essentially pharmacies) are mainly supplied by one or more wholesalers within their own region, but they may also purchase from wholesalers situated in contiguous regions and from the short- or direct-lines referred to above.
15. In the present, it is not necessary to define the geographic markets any further, since the operation will not create or strengthen a dominant position under any of the possible geographic market definitions.

VI COMPETITIVE ASSESSMENT

HORIZONTAL EFFECTS

16. At the national level, in 2000, the combined market share of the parties was [between 10-20% (Angelini between 1-10% and Phoenix 5-15%)]. The parties's stronger competitors were Alleanza ([between 20-30%]) and Farmintesa ([between 25-35%]). Upon a request of the Commission, the parties have provided market share figures also for each region of the Territory.
17. The regions where the JV would achieve the highest market shares are: [Latium (20-30%, of which 15-25% Phoenix and 5-15% Angelini), Abruzzi (25-35% of which 15-25% Phoenix and 5-15% Angelini), Molise (40-50% of which 30-40% Phoenix and 5-15% Angelini) and Marche (25-35% of which 5-15% Phoenix and 15-25% Angelini)].

⁴ See case COMP/M.1058 – Unichem/Alliance Santé, case COMP/M.2193 Alliance UniChem/Interpharm.

⁵ COMP/ M.1243 Alliance Unichem PLC/Safa Galenica SA

18. In each of these regions the JV would face competition from significant players with important market shares. In Latium the JV would face strong competition from *inter alia* Alleanza ([10-20%]); in Abruzzi, Safar would have higher market shares ([between 30-40%]) than the JV and Alleanza would be third player ([between 20-30%]); in Marche, Saf ([15-25%]) and Sofarmamorra ([10-20%]) would be strongly active. In Molise, the only region where a the JV would achieve more than 45% market share, there would be a very strong close competitor, Alleanza ([40-50%]).
19. Furthermore, the market for wholesale distribution is subject to competitive constraints stemming from the short-line channel (direct supplies from manufacturers to pharmacies) and from non full-line wholesalers (which may also be local mono-deposit distributors). Moreover, the regional markets may be considered contestable and subject to strong potential competition, since: a) entry barriers are low in term of cost of investments, technology required, administrative burden⁶; b) the other big players already operating in other regions may easily switch their supply towards the regions in question without major difficulties or hurdles, also exploiting the reputation and goodwill acquired in other territorial areas⁷; c) the demand of the customers is to some extent flexible and mobile, being possible for pharmacies to switch orders towards wholesalers which are not in the same region of the customer, in the light of the homogeneous character of the relevant products.
20. Moreover, it must be borne in mind that the pricing of pharmaceuticals in Italy is regulated by law: Law number 662 of 1996 defines the margins to be granted to wholesalers and pharmacists for pharmaceuticals subject to medical prescription, which are 6,65% and 26,7% respectively of the price applied to the sale to the public net of VAT. For such products the price is fixed by the “Commissione Unica del Farmaco”. The margins for wholesalers and pharmacists are not fixed for non prescription pharmaceutical products, but for these products the law provides that the price must be the same in the entire national territory. The end-price is indicated by the pharmaceutical companies, but prices and discounts applied to the sale to the public can be freely determined.
21. The above legal framework should prevent the JV from exercising any form of market power vis-à-vis customers or competitors.

VERTICAL EFFECTS

22. Before the transaction Phoenix has never been vertically integrated, as it acts as a distributor only and has no production activities. Following the concentration, Angelini will still be vertically integrated, but will no longer have sole control over its wholesale distribution activities, which, instead, will be carried out by the JV in the Territory.

⁶ The initial cost for a deposit capable of an appreciable turnover (between ITL 50-60 billion) is around 2 billion Liras. The only legal requirement to operate on the market is a license by the Province which can be obtained at relatively short notice.

⁷ It would be sufficient for the big wholesalers to set up a new depot in that region, or just to supply it with their actual commercial structures.

23. Angelini produces pharmaceuticals and parapharmaceutical products. Angelini has a significant market share in the market for Vitamin B12 ([80-90%]), Topical sexual hormones ([45-55%]), other gynaecological products ([30-40%]), neurotonics ([30-40%]) and decongestant/anti-infective for pharynx ([25-35%]). Therefore, there is a vertical issue. According to the parties, this does not give rise to any competition concerns⁸, since the products concerned face competition from neighbouring markets and because the wholesaler's duty -under Italian law- to carry at least 90% of the pharmaceuticals on the market rules out any risk of foreclosure. The market investigation carried out by the Commission has confirmed that. If anything, in view of paragraph 22 above, post-transaction, Angelini will have a diminished incentive to favour its integrated partner with regard to competing suppliers than it had before the formation of the JV.
24. Therefore, the transaction will not give rise to the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part thereof.

VII CONCLUSION

25. 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 pursuant to Article 6(1)(b) of Council Regulation (EEC) No. 4064/89 and Article 57 of the EEA Agreement.

For the Commission,

Mario MONTI
Member of the Commission

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Commission of the European Communities
Competition DG
Directorate B - Merger Task Force
Rue Joseph II / Jozef II-straat 70
B-1000 Brussels
Fax No 32 2 296.43.01

⁸ For instance, Vitamine B12 is sold by Angelini through a product called "Dolbetin", used for the medical care of adynamia, anorexia, secondary anemia, convalescence from infective disease. This product is subject to medical prescription. Vitamine B12 is normally used in association with other vitamins and similar substances.