

***Case No COMP/M.2465 -
CVC / AMSTELLAND***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 16/07/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.07.2001

SG (2001) D/289782

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2465 – CVC / Amstelland
Notification of 02/05/2001 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 14.06.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89² by which, via a holding company, the undertaking CVC Capital Partners BV (NL), belonging to the CVC Group of Companies (“CVC”) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the division Cementbouw Handel & Industrie BV (“CHI Group”, NL) from Amstelland NV (NL) by way of purchase of shares.
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.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

² OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

I. THE PARTIES

3. CVC is an investment company and provides investment management and related services. As such, CVC manages a large number of portfolio companies which are active among others in sealant guns (PC Cox) and additives for concrete and cement (Lafarge Materis).
4. CHI Group is active in the production, wholesale and retail trading of building products.

II. THE OPERATION

5. The notified transaction consists of the acquisition by the CVC group of companies of CHI Group, a division of Amstelland NV. Exclusively to this end one of the companies within the CVC Group, CVC Capital Partners has acquired a shelf company whose name will be changed into Cementbouw Handel & Industrie Holdings BV (“CHI Holdings”). CHI Holdings will acquire all of the issued and outstanding shares in the capital of CHI Group. The Sale and Purchase Agreement was signed on 11 June 2001.

III. CONCENTRATION

6. CVC Capital Partners BV currently holds all the shares in CHI Holdings. As CHI Holdings will acquire all of the shares in CHI Group, it follows that the notified transaction is a concentration pursuant to Article 3 (2) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ [...] Each of the CVC Group and CHI Group have a Community-wide turnover in excess of EUR 250 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

1. Relevant Product and Geographic Markets

8. The concentration relates to the building materials sector in the Netherlands, in Belgium and marginally in Germany, in which area CHI is active in the following activities: aggregates, ready-mix concrete, asphalt granules and rubble granules, pre-cast concrete products, the wholesale of building materials, retail sale of Do It Yourself (“DIY”) products, the sale and transportation of cement, cement products (dry mortar), plaster, calcium silicate ‘glues’, quicklime, mineral residues/fly ash, insulation products, fillers for road construction, synthetic fibres for the concrete industry, bentonite, barite, drilling cement and drilling chemicals, logistics, paving products, specialised stone production, constructive and non-constructive walls, facing walls, foundations, construction floors and shell buildings. In previous Commission decisions the geographic markets for most

³ 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.

of these products and services have been defined as either local, national or regional in scope.

No horizontally affected markets

9. There are no horizontally affected markets. For most products there is no overlap under any conceivable product or geographical segmentation of the markets. On a number of products, such as paints and decorative materials for the building sector and plasters and other mortars, there are minor horizontal overlaps of CHI Group's activities with the activities of CVC's portfolio companies which, however, do not result in affected markets under any conceivable product or geographical segmentation of the markets.

Vertically affected markets

10. There are a number of vertical relationships not resulting in vertically affected markets (additives/plaster; garden watering/DIY retail, plastic pipes/ DIY retail, plastic pipes/building materials wholesale) and two vertical relationships which potentially result in vertically affected markets: (1) fly ash / mortar and (2) sealant guns / retailing and wholesaling to professional users (through DIY retail or building materials wholesale).

Fly ash

11. The parties do not consider that fly ash, traded by CHI Group, constitutes a separate product market because fly ash, a by-product from coal fired electricity plants, is only used as a substitute for various other materials (for cement to produce concrete, for clinker to produce cement, for calcium silicate to produce clinker and for sand to be used for landfills). Fly ash should therefore be considered, in the parties' view, part of the market for aggregates and substitutes for cement, clinker, calcium silicate or sand.
12. CVC's portfolio company Materis (Lafarge) is active in the downstream market for the production of mortars. If fly ash were considered a separate market it would constitute a vertically affected market as CHI's market share in Belgium and Netherlands is above 25 per cent.
13. In previous decisions aggregates were usually considered a single product market.⁴ However the list of product segments subsumed, gravel, crushed rock and sand, did not contain any reference to fly ash. Fly ash may be distinct from these other aggregates as it can be used also at previous stages of the concrete production chain, i.e. clinker and cement production. In one decision, moreover, one aggregate, crushed rock aggregate was considered a separate market.⁵
14. In geographic terms previous Commission decisions assessed the aggregates market either on the basis of the parties' strengths at national level, supported by evidence concerning the markets for aggregates on a regional and local level⁶ or as, alternatively, national or local with a radius of between 55 and 100 kms around the production site.

⁴ Decisions IV/M.1157 – Skanska/Scancem and COMP/M. 1874 – Lafarge / Blue Circle

⁵ Decision IV/M.678 – Minorco / Tilcon

⁶ Decision IV/M.1157 – Skanska/Scancem

15. Both the precise delimitation of the product and geographic market where fly ash could be included can be left open for the assessment of this case as under any alternative market definition the concentration would not lead to the creation or strengthening of a dominant position.

Sealant guns for professional users

16. CVC's portfolio company PC Cox produces and sells sealant guns whereas CHI is active in two downstream activities, namely DIY retail in the Netherlands and wholesale of building materials in the Netherlands. PC Cox considers that for reasons of differences in quality requirements and in price sealant guns for professional users constitute a market distinct from sealant guns for non-professional users. PC Cox's market share for sealant guns sold to professional users in the Netherlands is above 25 per cent. The market share for sealant guns for non-professional users, on the other hand, is [between 1 and 10] per cent. Sealant guns for non-professional users therefore do not have to be considered any further.
17. The market for the sale of sealant guns for professional users appears to be wider than national. PC Cox's largest customer in the Netherlands estimates that about 50% of the sealant guns they purchase are reexported to buyers outside the Netherlands. Whether the geographic scope for this market of sealant guns for professional users is national or wider than national can, however, be left open. This is due to the fact that even under the narrowest geographic market definition, confined to the territory of the Netherlands (CHI Group is only active in building materials wholesaling and DIY retailing in the Netherlands), the operation would not lead to the creation or strengthening of a dominant position. For the purposes of this decision, the Commission's assessment is made on the basis of a working hypothesis of a separate Dutch market for sealant guns for professional users. On the basis of this hypothesis the Dutch market for sealant guns for professional users constitutes a vertically affected market.

2. Assessment

18. While on any other than the two (potentially) vertically affected markets the concentration cannot lead to the creation or reinforcement of dominant positions its effect on these two vertically affected markets needs to be assessed.

Fly ash

19. Even under the assumption of a separate market for fly ash, under which CHI Group's market share would be [between 60 and 80] percent in the Netherlands and [between 20 and 40] per cent in Belgium, the operation cannot lead to the creation or strengthening of a dominant position as the link between CHI's fly ash activities and CVC's mortar activities is only hypothetical. In the area where CHI's market share exceeds 25 per cent, the CVC-controlled company Materis does not produce mortar and nor does Materis even use fly ash for the production of its mortars.

Sealant guns for professional users

20. The notifying party's best estimate of their market share in the Netherlands on the market of sealant guns for professional users is [between 30 and 50]% which is the same as their European-wide market share.

21. CHI Group's shares on the Dutch markets for DIY retailing and for the wholesale of building materials (both are possible outlets for sealant guns for professional users) are no more than [between 5 and 10] per cent and [below 5] per cent, respectively. Sales in Germany and Belgium are incidental and any definition of the market larger than a national one would lead to lower market shares. It can therefore be excluded that this position in retailing and wholesaling will lead to any appreciable strengthening of PC Cox's position in the sales of sealant guns for professional users in the Netherlands, irrespective of PC Cox's exact market share. It can also be excluded that any foreclosure of competitors in DIY retailing and buildings materials wholesaling will result from the proposed transaction.

Conclusion

22. In the light of the above, it can be concluded that the 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 in a substantial part of it.

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

(Signed)

Mario MONTI
Member of the Commission