

***Case No COMP/M.2505 -
TYCO / CR BARD***

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

Article 6(1)(b) NON-OPPOSITION
Date: 04/10/2001

*Also available in the CELEX database
Document No 301M2505*



COMMISSION OF THE EUROPEAN COMMUNITIES

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 04.10.2001

SG (2001) D/291678

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.2505 – TYCO/CR BARD
Notification of 3 September 2001 pursuant to Article 4 of Council Regulation No 4064/89¹

1. On 03.09.2001, the Commission received a notification of a proposed concentration by which the Bermuda-based company, Tyco International Ltd. (“Tyco”) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the US undertaking, C.R. Bard Inc. (“Bard”) by way of purchase of shares.
2. 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.

I. THE PARTIES AND THE OPERATION

3. Tyco is a diversified company with world-wide activities, mainly in disposable medical supplies, fire detection and suppression systems, electronic security devices, undersea cable systems and flow control products. It is present throughout the EEA.
4. The target company, Bard, also a multi-national company, is specialized in diagnostic and interventional medical devices. It has a presence in practically all countries of the EEA.
5. The operation consists of the acquisition by Tyco of full ownership and sole control over the whole of Bard, through its acquisition of all the outstanding common stock and 100% of the voting rights in Bard.

II. COMMUNITY DIMENSION

6. The aggregate world-wide turnover of Tyco and Bard is in excess of €2,500 million. In each of Austria, Belgium, France, Germany, Ireland, Italy, the Netherlands, Portugal, Spain, Sweden and the UK, the combined aggregate turnover of the parties is more than €100 million, and the aggregate turnover of each of Tyco and Bard is also in

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).

excess of €25 million in France, Germany and the UK. Finally, the aggregate Community-wide turnover of each of Tyco and Bard is more than €100 million, and the undertakings concerned 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.

III. RELEVANT MARKETS

Relevant product markets

7. The only product overlaps in the activities of Tyco and Bard are in the medical devices sector, where both are active throughout the EEA. Within this sector Tyco has identified seven categories of devices, constituting separate product markets, in which the operation would lead to the creation of affected markets, and the Commission's market investigation has not indicated any inaccuracy in Tyco's product market definition. The seven product markets concerned are:
 - a) in urology, Foley urethral catheters/kits, urinary drainage bags and urine meters;
 - b) in oncology, implantable ports and chronic catheters;
 - c) in dialysis, haemodialysis catheters/kits;
 - d) for hernias, hernia repair mesh.
8. The operation will not give rise to the creation of any vertically affected product markets.

Relevant geographic market

9. Tyco submits that the EEA is the relevant geographic market for all the products concerned, mainly for reasons of: i) the lack of any national regulatory barriers (due to the Medical Devices Directive of 1993, which enforces EEA level approval, instead of approval in individual countries); ii) the presence of most major players across the EEA, where they own centralised warehousing facilities; iii) the widespread use of tendering procedures in procurement, with the participation of leading competitors; iv) the relatively high degree of importation (typically 50-60% for medical devices), and v) relatively low transport costs (5%).
10. At the same time, Tyco recognizes that in certain products the different players (including Tyco and Bard) have significant pockets of strength in particular countries, which Tyco lays down to the historic development of their presence in the countries concerned. Likewise, Tyco recognizes that there are some instances of significant price differences between countries, which it attributes largely to differences in the particular specifications of the products as used in particular countries, and the differences in the scope of national reimbursement schemes.
11. The Commission's market investigation has to a large extent confirmed Tyco's view on the EEA geographic scope of the markets, and has also broadly confirmed Tyco's submission with regard to the competitive conditions which are present. In this context, both competitors and customers (mainly hospitals) have most particularly confirmed the widespread use of tendering procedures across the EEA. Nonetheless, the respondents also recognize that the market shares of the different companies vary significantly from one country to another, with some instances of players holding particularly important positions in certain countries and being less strong in others. However, the explanation given by these respondents has also coincided with that of

Tyco, i.e. the historic reason of a stronger presence by companies in those particular countries where they have been active for a longer period of time.

12. With regard to the price differences between EEA countries for some products recognized by Tyco, the market investigation has also confirmed this lack of price homogeneity. According to the replies received, this situation basically seems to be, as submitted by Tyco, the result of the differences between national reimbursement schemes within the EEA, as well as the impact that the specific features of the products used in the different countries have on prices.
13. Given the weight of all the above factors which point to an EEA scope for the markets concerned, the Commission has retained this geographic level for the purposes of its analysis of the competitive impact of the operation in this case.

IV. COMPETITIVE ASSESSMENT

Market position

14. Of the seven affected markets mentioned above, Tyco would achieve its strongest market position through the proposed operation in the area of urology, namely in Foley urethral catheters/kits, with [35-45%] (Bard [25-35%] + Tyco [5-15%]), while two pan-European competitors, Rüsç and Porges, enjoy some [20-30%] and [5-15%] respectively. In the other two urology products Tyco's share would be, in urinary drainage bags, [25-35%] (Tyco [10-20%] + Bard [10-20%]), followed again by two pan-European players, Braun, with some [15-25%] and Maersk, some [5-15%], and in urine meters, [25-35%] (Tyco [25-35%] + Bard [0-10%]), while Braun and Maersk have some [25-35%] and [5-15%] respectively.
15. In the oncology products, in implantable ports, Tyco would have a market share of [30-40%] (Bard [25-35%] + Tyco [0-10%]), followed by Braun, [25-35%] and Simms Deltec, some [5-15%]; in oncology chronic catheters, Tyco would have some [30-40%] (Bard [30-40%] + Tyco [0-10%]), while two other pan-European players, Vygon and Arrow enjoy [20-30%] and some [10-20%] respectively.
16. In dialysis, Tyco would have [20-30%] (Tyco [20-30%] + Bard [0-10%]) in haemodialysis long term catheters/kits, while the market leader would be Gambro, with [25-35%], and yet another competitor, Medcomp, would have a similar market share to Tyco, at [20-30%].
17. Finally, in hernia repair mesh, Tyco's market share would be some [30-40%] (Bard [15-25%] + Tyco [5-15%]), but the market leader would be Ethicon (Prolene) with [35-45%] and Braun has some [5-15%].

Compatibility with the common market

18. As can be seen from the above market share figures, through the proposed operation Tyco will strengthen significantly its position in the EEA on several of the affected markets, and most particularly on those markets where the target, Bard, has a more substantial share than Tyco.
19. However, the Commission has considered that the market position of Tyco resulting from the operation, while not negligible, does not raise serious competition concerns, given the important degree of competition with which Tyco will be confronted from significant players on all the markets concerned: at least two pan-European players are

present on each of the markets, of which at least one has a significant share, and even a leading share in two of the markets. Moreover, the Commission's investigation has confirmed the participation, even though smaller, of several other pan-European players across the different affected markets.

20. Furthermore, the results of the market investigation have confirmed the presence of additional factors which, as already alleged by Tyco, characterize the affected markets and point towards the existence of competitive conditions overall in the markets concerned: i) the extensive use of pan-European tendering procedures by customers (mainly hospitals, both public and private) with the participation of the main players; ii) the limited duration of supply contracts (1 to 2 years); iii) the absence of technical, regulatory or intellectual property barriers to entry to the affected markets; iv) the lack of important difficulties to change suppliers; v) the existence of hospital purchasing groups with the resulting buying power.

V. CONCLUSION

21. 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
Romano Prodi
President