

***Case No COMP/M.2573 -
A&C / GROSSFARMA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 30/08/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, **30/08/2001**
SG(2001)D/291144

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2573 A&C / Grossfarma

Your notification of 31.07.2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 31.07.2001, 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 Italian Angelini group ("Angelini") and the German Phoenix group ("Phoenix") acquire, through the intermediate undertaking A&C Adivar e Comifar S.p.A. ("A&C"), joint control of the Italian undertaking Grossfarma Distribuzione Spa ("Grossfarma Distribuzione") by way of purchase of shares.
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. A&C is a recently established joint venture between Angelini and Phoenix, which will perform the wholesale of pharmaceuticals and parapharmaceuticals in the Centre and Centre-South of Italy.

4. Grossfarma Distribuzione is a wholesaler of pharmaceutical and parapharmaceutical products active in Sicily.

II THE OPERATION

5. A&C is the result of a merger of the pharmaceutical and parapharmaceutical wholesale distribution activities of Angelini and Phoenix in the Centre-South and South of Italy. The creation of A&C was cleared by the Commission on 6 July 2001 (case M.2432/Angelini/Phoenix/JV).
6. The present transaction, that constitutes a further step of the overall reorganisation of the pharmaceutical and parapharmaceutical wholesale distribution activities of Angelini and Phoenix in Italy, consists in the acquisition by Angelini and Phoenix, through their joint venture A&C, of the joint control of Grossfarma Distribuzione, whose scope of activity is limited to Sicily. This latter company will be created on purpose by the seller Grossfarma Spa, which will transfer to it its branch of business in the field of pharmaceutical wholesale distribution. Angelini and Phoenix will acquire, through A&C, 60% of the share capital of Grossfarma Distribuzione, while the latter will also have a put option for the remaining 40% capital, exercisable between 1-31 December 2002. During the same period, A&C will have the right to exercise a call option for the 40% capital of Grossfarma Distribuzione in case the shareholders of Grossfarma Spa should change.
7. Since, at the present stage, A&C is not yet active on the market and its acquisition of Grossfarma Distribuzione (together with the organisation and financing of the operation) was decided in the same framework agreement in which the creation of the joint venture was agreed, the Commission takes the view that the real players and therefore the undertaking concerned in this transaction are, besides the target, the parent companies Angelini and Phoenix. A&C is therefore to be regarded as a vehicle for the acquisition.
8. In a separate transaction, which had no community dimension and was therefore cleared by the Italian Competition Authority,¹ Angelini will transfer all its wholesale distribution activities in the Centre-North and North of Italy to Phoenix. As a result, Angelini will completely withdraw from pharmaceutical and parapharmaceutical wholesale distribution in Italy on a stand-alone basis. Phoenix will remain active as a distributor in the North of Italy, where it will incorporate Angelini's activities. The joint venture A&C will be active in the Centre-South and South of Italy.

III COMMUNITY DIMENSION

9. 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 million². Angelini achieves more than-two thirds of its aggregate Community-wide

¹ Decision of the Italian Competition Authority of 26/07/2001, N° 9812, Cases No C4724 – Comifar Distribuzione/A.Di.Var. and C4725 – Comifar Distribuzione/Difarma.

² 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

turnover in Italy, but that is not the case for Phoenix. Therefore, the notified operation has a Community dimension.

IV THE RELEVANT MARKET

Relevant product market

10. The sector concerned by the notified transaction is that of the wholesale distribution of pharmaceutical and parapharmaceutical products in Italy.
11. 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 Legislative 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 order³.
12. 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 distributors⁴.
13. 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-

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.

³ 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.

⁴ Commission Decision case COMP/M.2432 Angelini/Phoenix/JV, case 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.

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 Commission has confirmed in its recent decision in the case M.2432 (Angelini/Phoenix/JV) that 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, it appeared that, due to the limited scope of this substitution, a distinction between the two could still be appropriate for the purpose of determining the relevant product market⁵. In any event, for the purpose of this decision, the question need not to be resolved, since, irrespective of whether the above distinction were to be maintained, the assessment of the competitive impact of this transaction would not be affected.

Relevant geographic market

14. 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 decisions⁶, 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.
15. In the recent case M.2432/Angelini/Phoenix/JV mentioned above, 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.
16. Nevertheless, as in the case M.2432/Angelini/Phoenix/JV, 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.

V COMPETITIVE ASSESSMENT

HORIZONTAL EFFECTS

⁵ See COMP/M.2432 Angelini/Phoenix/JV, and also case COMP/M.1058 – Unichem/Alliance Santé, case COMP/M.2193 Alliance UniChem/Interpharm.

⁶ COMP/ M.1243 Alliance Unichem PLC/Safa Galenica SA

17. In Sicily, which is the only market concerned by the present transaction, the concentration does result in an overlap. A&C will inherit the market share that one of the parents (Phoenix) previously had in that region, due to its acquisition in the course of the current year of sole control of a company called Aditalia⁷ (with a market share of [less than 5%] in the past three years), whilst Grossfarma had during the past three years [15-25%] market share. Therefore, there is an affected market since the transaction will give A&C an overall market share of [15-25%]. Nevertheless, A&C will face strong competition stemming from other players (namely Alleanza Spa with [30-40%] market share, Riccobono Spa with [5-15%] market share), one of which has *inter alia*, higher market shares than A&C itself.
18. In any event, 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), and to potential competition from wholesalers active in nearby regions.
19. The above picture should prevent the JV from exercising any form of market power vis-à-vis customers or competitors.

VERTICAL EFFECTS

20. As it has been observed for the purpose of case M.2432/Angelini/Phoenix/JV, 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 Centre-South and South of Italy.
21. Angelini produces pharmaceuticals and parapharmaceutical products. Angelini has a significant share in Italy in the market for Vitamin B12 [80-90%], Topical sexual hormones [45-55%], other gynaecological products [30-40%], neurotonics [30-40%] and decongestants/anti-infectives for pharynx [25-35%]. However, this does not give rise to any competitive concern for the following reasons. First, it is very unlikely that Angelini would have an incentive to deliver in Sicily exclusively to Grossfarma Distribuzione, because in so doing it would lose the business made by the other wholesalers accounting for [75-85%] of Sicilian distribution. Second, no foreclosing effect at the distribution level should be expected because other important wholesalers are active in Sicily and because, since pharmacists and wholesalers have no possibility to change the brand prescribed by doctors, Grossfarma Distribuzione would have no incentive to exclusively distribute Angelini branded products⁸.
22. Therefore, the concentration 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.

⁷ Transaction cleared by the Italian competition authority the 18 January 2001, case n°4397 Comifar Distribuzione/Aditalia, published in *Boll.* 3/2001.

⁸ For instance, Vitamine B12 is sold by Angelini through a product called “Dobetin”, 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.

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

For the Commission,
(Signed)
Viviane REDING
Member of the Commission