

***Case No IV/M.565 -
SOLVAY /
WIENERBERGER***

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/04/1995

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EUROPEAN COMMISSION

Brussels, 24.04.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sirs,

Subject : Case No IV/M.565 - SOLVAY/WIENERBERGER

Notification of 17.03.1995 pursuant to Article 4 of Council Regulation No 4064/89

1. On 17 March 1995, Solvay S.A. and Wienerberger Baustoffindustrie AG notified jointly a concentration by which Wienerberger acquires 50% of the shares in four wholly-owned subsidiaries of Solvay S.A.. Simultaneously with this acquisition, the notifying parties agree to transfer these companies to the control of a Joint Venture Agreement (JVA) into which they entered in 1989.
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of application of Council Regulation (EEC) No. 4064/89 and does not raise serious doubts as to its compatibility with the common market or the functioning of the EEA Agreement .

I. THE PARTIES

3. Solvay S.A. is a Belgian company which through its international group is present, primarily in Western Europe and the Americas, in five sectors of activities : chemicals, plastics processing and health.
4. Wienerberger Baustoffindustrie AG is an Austrian company which is mainly active in Europe in the following sectors : wall, ceiling and roofing systems, pipe systems and sewage technology and real estate/property.

II. THE OPERATION

5. The proposed operation consists in the acquisition by Wienerberger of 50% of the shares in four wholly-owned subsidiaries of Solvay. These companies constitute all the interests which Solvay still owns in the field of plastic pipes and fittings for building and agriculture in Europe. They are the following :

- Draka Polva & Co SNC in Belgium,
- Polva Pipelife BV in The Netherlands,
- Tubos Y Repuestos De Plasticos SA in Spain,
- Maiaplas SA. in Portugal.

6. The share purchase agreement by which Solvay sells and Wienerberger purchases 50% of the shares in the companies mentioned above, includes the parties' commitment to subject them to the provisions of a Joint Venture Agreement (JVA), which was signed by the parties in 1989.

7. The JVA relates to the parties' activities in the field of plastic pipes and fittings for building and agriculture. The companies originally subject to the to the JVA are the following :

- Pipelife Rohrsysteme GmbH, Bad Zwischenahm;
- Pipelife France S.A., France
- Pipelife Rohrsysteme Ges.m.b.H., Austria;
- Pipelife Rohrsysteme Golzau, Germany;
- Société Méditerranéenne de Plastiques Agricoles (MPA), France;
- France Tube, France;
- Petzetakis-Pipelife Polyethylene Pipe Systems, Greece.

8. Other joint venture agreement with local third parties were concluded by Solvay and Wienerberger in Turkey, Hungary and the Czech Republic.

III. CONCENTRATION

Joint Control

9. On 22 December 1994, Solvay and Wienerberger entered into a Share Purchase Agreement (the Notified Agreement) which provides for the transfer by Solvay of 49.5% of the shares in the four companies, mentioned at point 5 above, to Wienerberger. Moreover, the Notified Agreement provides that 1% of the shares in each of these companies is to be held by Pipelife International Holding Company ("PIH"). This holding company is a 50/50 joint venture established by the parties under the JVA (under the name Management Services Ges.m.b.H ("MSG")) in order to facilitate communications between the shareholders and to give general advice as to investment, marketing, supply, purchasing and technology projects of the joint venture companies. Basically, the purpose of the JVA (article 2) is to "provide for the establishment , ownership and operation by the parties (Solvay and Wienerberger) of Joint Venture Companies having their main activity in Austria, the Federal Republic of Germany, and France" in the field of manufacture and distribution of plastic pipes and fittings and to provide for further developments of joint activities in this field". MSG has a Managing Board and an Advisory Board. The Advisory Board consists of four persons; two are executive and two non-executive, each party designating one of each kind. One of the members of MSG's Advisory Board is

appointed as its president for a two year-period. Designation is made alternately by Solvay and by Wienerberger. The president does not have a casting vote. The Managing Board consists of two managing directors, one to be designated by Wienerberger and Solvay. The directors of the Joint Venture Companies have to inform the MSG about any decision requiring the shareholders' approval. The shareholders use the MSG to inform the directors about their discussions.

10. It follows from the above that the created joint venture companies owned by the Notified Agreement and also the existing joint venture companies are jointly controlled by their parents Solvay and Wienerberger through the JVA into which they entered in 1989.

Autonomous full function joint venture

11. Like the existing joint venture, each of the newly created joint venture companies will have all the resources and assets necessary to enable it to perform on a lasting basis all the functions of an autonomous economic entity, including production facilities, marketing resources, personnel and the appropriate know-how and technology. All the joint venture companies will be free to obtain raw materials from whatever source they choose. The Share Purchase Agreement provides for the transfer by Solvay to each of them of all the assets and industrial and intellectual rights required for the operation.

Absence of risk of coordination

12. The Joint Venture Agreement and the Share Purchase Agreement provide that Solvay will withdraw entirely from the territory in which the existing joint ventures and the newly created joint venture companies are or will be active (as regard Wienerberger, it is not active in the markets of the new joint venture companies). Furthermore, in the agreements mentioned above the parents undertake not to compete with any of their joint venture companies.
13. The Notified Agreement provides that Solvay shall grant to Wienerberger a non-exclusive licence in the sector of plastic pipes and fittings for the world excluding the territory of the joint venture companies. And finally Solvay and Wienerberger has concluded other joint venture agreements with local third parties in Turkey , Hungary and the Czech Republic. Because, the relevant geographic market for pipes is mainly regional and that for fittings European, this non-exclusive licence and the existing Joint Venture outside the territory of the notified Joint Venture do not raise concerns about the risk of coordination of competitive behaviour.
14. In conclusion there is no risk of coordination of the competitive behaviour of the parents.

Conclusion

15. It follows from the above that the four newly created joint venture companies which are transferred to the existing JVA and the seven existing joint venture companies acquired since 1989 under the JVA constitute together a single economic entity, with a common structure and acting as a single operator in the markets of plastic pipes and fittings.

III. COMMUNITY DIMENSION

16. The combined aggregate turnover of the undertakings concerned is more than ECU 5,000 million (in 1993, Solvay had a total worldwide turnover of ECU 6,045 million; for Wienerberger it was ECU 716.5 million). The aggregate Community-wide turnover of each is more than ECU 250 million (in 1993, for Solvay it was ECU 4,004 million, for Wienerberger ECU 578 million). The parties did not achieve more than two thirds of their Community-wide turnover in one and the same Member State. Consequently the concentration has a Community dimension. The operation is not an EEA "cooperation" case.

IV. COMPATIBILITY WITH THE COMMON MARKET

(a) Relevant product markets

17. The existing joint venture companies and those which are created under the notified Share Purchase Agreement operate in the sectors of the plastic pipes and fittings. These products are mainly used for transport and distribution of water and gas, sewage, drainage, electroprotection and irrigation.
18. As regard plastic pipes, it is generally recognised that the relevant product markets are constituted on the basis of each specific application (i.e. water pressure, gas pressure, sewage, drainage, electroprotection and irrigation).
Plastic pipes consist mainly of LLDPE/MDPE/HDPE, PVC and PP. Most actors on the market are present in both PVC and PE pipes, while concentrating on one or other of them. Whereas the production of PE is determined (compliance with technical specifications and norms) by the relevant authorities both at the level of resin and at the finished product level, PVC resin is freely available. Therefore new applications are expected to be mainly developed for PE.
19. The notifying parties argue that plastic pipes are substitutable between themselves and for the main applications (i.e. water pressure, gas pressure, sewage) to a large extent substitutable with pipes made of other materials.
As regards sewage, it appears that for approximately 10 years, due to the development of structured walled pipes, plastic pipes have become more competitive vis-à-vis concrete, asbestos cement and clay pipes of larger diameter. As far as soil is concerned, although most of the plastic pipes used are presently made of PVC, this may be replaced by PP because of the latter's higher resistance to temperature. In high buildings, it may be replaced by HDPE because of its better sound insulation properties and resistance to temperature.
For gas pressure, the parties argue that HDPE and MDPE compete with ductile iron and PVC almost everywhere in low pressure distribution networks in cities. For high and medium pressure steel and ductile iron are still predominant. For approximately 5 years, high-resistance PE resins have replaced progressively ductile iron for medium pressure range (up to 8 bars). The next generation of PE pipes will extend to pipes of 20 bars or more.
For water pressure, the parties point out that PVC is replacing asbestos and cement large diameter pipes which have to be withdrawn for health reasons. Moreover, as users have gained more experience with PVC pipes, they have become more confident with the product. This has allowed an improvement in the competitiveness of PVC in larger-diameter pipes against Glass Fibre Reinforced Polyester (GRP), fibro cement and ductile iron pipes up to pressures of 10 bars. Due to the development of new resins, HDPE has

improved its competitiveness vis-à-vis GRP, fibro cement and ductile iron in very large diameter pipes (up to 6000 mm).

Concerning the other applications where the parties are active (i.e. drain, electroprotection, cable protection, and irrigation), the parties stress that substitutability between plastic and other materials is limited.

20. As regard fittings, these constitute a separate market as their characteristics are very different : they are less voluminous, have a higher added value and are intended to be adapted to various types of pipes.
21. However, the precise market definition can be left open, as even on a narrow market definition the proposed operation will not lead to the creation or strengthening of a dominant position.

(b) Relevant geographic markets

22. Concerning fittings, because they are not voluminous and their transport cost is relatively low in comparison with their high added value, they therefore travel over the distances as long as 1.000 km. Thus the relevant geographic market for these products has a EEA dimension.
23. Pipes are voluminous and low value-added products of which transport is costly (transport for distances exceeding 300-400 km is not economic). Moreover, they are made to satisfy local requirements and standards.
There is no European product standard in the field of pipes (but rather a voluntary standardisation plan at CEN level with a target date of the year 2000 promoted by TEPPFA). Every country has its own specifications as well as its own technical approval procedure and type of pipe. As regards specifications, the EU can be roughly divided into 4 blocks : the DIN specifications influenced zone (Germany, Austria); French specifications influenced zone (France, Italy, Spain and Portugal); UK specifications; and Dutch specifications. On top of these technical specifications, pipe producers also have to deal with national preferences such as colour and way of laying. Moreover, in some countries technical approval of the relevant authorities must be obtained not only of the raw materials but of the pipes including approval for each diameter and for each production line as well.
24. Therefore the market for pipes is probably still mainly regional and characterised by a national approach.
25. However, in this case it is not necessary to decide whether the geographic market for plastic pipes is local, national or EEA-wide. Even on the basis of local or national markets, the proposed operation will not lead to the creation or strengthening of a dominant position.

(c) Competitive assessment

A. EEA Level

26. If the market for plastic pipes is considered as Community- wide, the notified operation does not create or strengthen a dominant position since the market is not an affected market. Even if the narrowest product markets (i.e. segmentation of the market by applications point 20 above) are taken into account, the new entity after the completion of the notified operation will not hold more than 15% of any of these narrowest markets..

27. As regard fittings, the combined market shares of the new entity are far below 15% (estimate for 1994 [...]¹ of the EEA market.

B. Member State level or local level

28. At Member State or local level, the notified operation does not create or strengthen a dominant position since there is no overlap between the newly created joint venture companies and the existing joint venture companies. They operate in different local and national markets. Indeed the existing joint venture companies have not developed any activity in the countries where Solvay maintained an independent activity and Solvay was prevented by JVA Agreement from distributing its products in the European countries where the existing joint venture companies were active. Moreover, Wienerberger is not active in the markets of the Solvay subsidiaries in which it acquires shares under the present operation.
29. Although the existing joint venture companies hold relatively significant market shares in certain countries for some specific pipes (in 1994, in Austria [...]² for gas pressure pipes and [...]³ for sewage pipes, in France [...]⁴ for gas pressure pipes, in Greece [...]⁵ for gas pressure pipes) and the new joint ventures companies will have a relative high market share in The Netherlands (in 1993, [...]⁶ for gas pressure pipes and [...]⁷ for water pressure pipes), the notified operation results only in the transfer of the subsidiaries' shares, in distinct geographical markets, to the newly created joint venture companies.

IV. CONCLUSION

30. 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 functioning EEA Agreement. This decision is adopted in application of Article 6(1)b of Council Regulation No. 4064/89.

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For the Commission,

⁽¹⁾ Deleted business secret - Below 10%.
⁽²⁾ Deleted business secret - Between 30% and 40%.
⁽³⁾ Deleted business secret - Between 20% and 30%.
⁽⁴⁾ Deleted business secret - Between 20% and 30%.
⁽⁵⁾ Deleted business secret - Between 30% and 40%.
⁽⁶⁾ Deleted business secret - Between 30% and 40%.
⁽⁷⁾ Deleted business secret - Between 30% and 40%.