



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.1997

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1058 - UniChem/Alliance Santé

Notification of 20.11.1997 pursuant to Article 4 of Council Regulation N/ 4064/89

1. On 20.11.1997 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No. 4064/89 by which UniChem PLC of the UK ("UniChem") and Alliance Santé SA of Luxembourg ("Alliance Santé") will merge.

I THE PARTIES

2. UniChem is active in pharmaceutical wholesaling and retailing in the UK. It is active in pharmaceutical wholesaling in Portugal through a joint venture with Alliance Santé.
3. Alliance Santé is active in pharmaceutical wholesaling in France and Italy. It is active in pharmaceutical wholesaling in Portugal through a joint venture with UniChem. Furthermore, Alliance Santé has a number of ancillary businesses such as a business supplying laboratory equipment, a business supplying information technology ("IT") services to pharmacies, a veterinary products business, an orthopaedic and paediatric footwear business and a home care services business.
4. Alliance Santé Participation SA ("Alliance Santé Participation") is a holding company wholly owned by Mr. Stefano Pessina. It currently holds shares in Alliance Santé. As a result of the operation Alliance Santé Participation will acquire UniChem shares in exchange for the shareholding in Alliance Santé (see below).

II THE OPERATION

5. The operation is a de facto merger of UniChem and Alliance Santé. It is to be affected by transferring the entire issued share capital of Alliance Santé in consideration for the issue by UniChem of new shares to Alliance Santé Participation. As a result Mr. Stefano Pessina will hold 36% of the share capital of UniChem.
6. Only about 40% of the shares have been represented at the general meetings of UniChem over the past three years. Furthermore, the three next largest shareholders in UniChem have 10%, 5% and 3% of the shares respectively. The rest of UniChem is widely held. Therefore, Mr. Stefano Pessina will be able to cast a majority of the votes at the general meetings of UniChem. Consequently, the operation gives Mr. Stefano Pessina de facto control over the enlarged group.
7. The Merger Agreement provides that Alliance Santé Participation, Mr. Stefano Pessina, persons acting in concert with Alliance Santé Participation or Mr. Stefano Pessina, their associates or persons or entities under their control are subject to a non-compete clause in the territory of the merged company, a restriction on the disclosure of information, and a restriction on the use of trademarks, logos, business names etc. They are bound by these clauses until either Mr. Stefano Pessina is wrongfully removed from the Board of UniChem, the share holding of Alliance Santé Participation and any of its associates falls below [...] ¹ of UniChem, or until one year after Mr. Stefano Pessina ceases to be a director of UniChem.
8. In the view of the Commission, as far as these clauses can be considered restrictions on competition, they are intra group arrangements. Therefore, they are not subject to an assessment under the Merger Regulation.

IV COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate worldwide turnover of more than 5000 million ECU. Each of the undertakings have a Community-wide turnover in excess of 250 million ECU and 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 according to Article 1 (2) of the Merger Regulation, but does not constitute a cooperation case under the EEA Agreement.

¹ Business Secrets - deleted for publication

V COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product markets

10. The only market in which UniChem and Alliance Santé are both present is pharmaceutical wholesaling. Whether there only exist one single market for pharmaceutical wholesaling or whether a distinction has to be made between full-line wholesaling and short-line wholesaling or whether other distinctions could be made need not be decided for the purpose of the present case, since UniChem and Alliance Santé are not active on same geographical markets. The operation, therefore, does not give rise to market share additions in any relevant product market, and it will 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.

B. Relevant geographic markets

11. According to the parties, full-line wholesalers compete in a market that is sub-national in nature. In addition, continuing divergences in the legal framework applicable to full-line wholesalers in different EU Member States ensure that full-line wholesaling services are not provided across EU-borders. This view is consistent with previous decisions under the Merger Regulation, where it has been found that the market for pharmaceutical wholesaling is at most national in nature (see case IV/M.572 - Gehe/AAH and IV/M.718 - Phoenix/Comifar). The Commission is of the view that this is also the situation in the present case despite various steps to reduce barriers to trade between Member States. Furthermore, it cannot be excluded that it would be possible to distinguish geographic markets, which are smaller than national. However, it is not necessary to define the geographic markets in this case any further, since the operation will 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 under any of the possible geographic market definitions.

C. Competitive assessment

12. The operation does not give rise to any horizontal or vertical issues, since UniChem and Alliance Santé are in different geographic markets. The operation will lead to a financially stronger group. However, the main effect of this will be the creation of a company, which will have the financial resources necessary to challenge the market leader Gehe AG.

VI CONCLUSION

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

For the Commission