COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.01.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

Registered with advice of delivery

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1075 - Nordic Capital / Mölnlycke Clinical / Kolmi
Notification of 05.12.1997 pursuant to Article 4 of Council Regulation N/ 4064/89

1. On 5 December 1997, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings Atle AB (Atle), Investment AB Bure (Bure), AllmännaPensionfonden 4:e fondstyrelsen (AP4), AllmännaPensionfonden 6:e fondstyrelsen (AP6), Handelsbanken Livförsäkringsaktiebolag (controlled by Svenska Handelsbanken - SHB) and Livförsäkrings-aktiebolaget Skandia (Skandia) - hereinafter referred to as "the Investors" - acquire 70% of and therefore joint control of a newly created joint venture company, "NewCo". The remaining 30% of NewCo will be owned by Tamro Corporation ("Tamro") NewCo, will be managed by Nordic Capital on behalf of the Investors, and will take over the existing surgical products divisions of the Swedish company SCA Mölnlycke (Clinical Division) and the Finnish company Tamro (Kolmi Division). The products concerned by this operation are surgical single-use gowns, drapes and swabs. These products are mainly consumed by hospitals.

I. THE PARTIES

2. The business activities of the undertakings concerned are as follows. Atle and Bure are Swedish investment holdings and asset management companies, AP4 and AP6 are Swedish state-owned pension funds, SHB is a major Swedish bank offering all kinds of financial services and Skandia is a major Swedish insurance company. Tamro is specialised in logistics concerning health care products and OTC products.

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3. SCA Mölnlycke is a wholly owned subsidiary of Svenska Cellulosa Aktiebolaget (SCA), an integrated paper and packaging company. SCA is mainly involved in hygiene products, packaging, graphic paper and forest and timber.

4. The Investors have authorised Nordic Capital Svenska AB (Nordic Capital) to act on their behalf and to take all legal actions in respect of the agreement without any restrictions.[1] The investment made within the framework of Nordic Capital is jointly owned by the Investors whose reciprocal relationship is regulated through consortium agreements that provide that decisions by Nordic Capital require unanimous approval of all Investors. Consequently, Nordic Capital is jointly controlled by the Investors.

5. The transaction involves a number of interdependent agreements and transfers of assets. The end-result is that the surgical textiles divisions of Kolmi and SCA Mölnlycke are transferred to NewCo. NewCo itself will be jointly controlled by Atle, Bure, AP4, AP6, SHB and Skandia. Tamro will hold a 30%, non-controlling stake in NewCo.

II. CONCENTRATION

6. The transaction is a concentration within the meaning of article 3(1)(b) of the Merger Regulation. It will involve a change of control over the SCA Mölnlycke surgical division and Kolmi from sole control by SCA and Tamro respectively to joint control by the Investors (to be exercised by Nordic Capital). NewCo will constitute a concentrative joint-venture in the meaning of article 3(2) of the Merger Regulation. Following the transfer of assets of the SCA Mölnlycke surgical division and Kolmi, NewCo will perform all the functions of an autonomous economic entity. Some administrative services will be provided for a transitional period of two years to NewCo by SCA Mölnlycke. There will be no risk of co-ordination of competitive behaviour among the parent companies as none of them are involved in the market for surgical textiles.

III. COMMUNITY DIMENSION

7. The combined aggregate worldwide turnover of the undertakings concerned exceeds ECU 5 000 million, and the aggregate Community wide turnover of more than two of them exceed ECU 250 million. The undertakings concerned do not achieve more than two-thirds of their turnover in one and the same Member State. The operation has therefore a Community dimension.

IV. THE RELEVANT MARKETS

8. Surgical drapes, swabs and gowns are mainly used in operation theatres. Their function is primarily to protect the person undergoing a surgical procedure. Drapes are put on the body of the patient and swabs are used to absorb liquids, primarily blood. Gowns are worn by the hospital staff, surgeons and their assistants at the operation table. Their function is to protect both the patient and

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[1] For other decisions involving Nordic Capital, see case No IV/M.522, *Scandinavian Project*; of 28 November 1994; case No IVM.625, *Nordic Capital/Transpool,* of 23 August 1995; case No IV/M.732, *Nordic Capital/Euroc,* of 18 April 1996, and case IV/M.1026, *Nordic Capital / Apax Industri* of 6 November 1997.

staff from infections during surgery. It is of paramount importance that these equipments are clean and sterile.

9. Whereas all swabs are intended for single-use, due to hygienic reasons, surgical gowns and drapes are provided on the market either as multiple use textiles or as single use products. According to the notification, in 1996, the total EEA consumption of these products amounted to 379 MEcu for surgical gowns, of which [[2]] MEcu ([[3]]%) were single-use products. For surgical drapes the corresponding figures were 505 MEcu and [[4]] ([[5]]%), respectively. Finally, for swabs the total consumption was 346 MEcu.

10. In their notification the parties have stated that single-use and multiple-use products are interchangeable and that the relevant geographic market is EEA-wide. Based on this assumption the parties are of the opinion that their combined market shares following the concentration would be around [[6]] for gowns and swabs and [[7]] for drapes.

(a) Relevant product market

11. As has been stated above, the parties are only active in the field of single use products. However, in their notification, they submitted that single use and multiple use products are fully substitutable and therefore belong to the same relevant product market. The following points were indicated to substantiate this allegation. Customers may choose between single use products and multiple use products, since both types are intended for the same purpose. Multiple use products can be divided in two categories: traditional textiles and new hi-tech synthetic materials. All three categories of products present similar characteristics and customers order a mix of them. In addition to functional substitution, the parties allege that there are no switching costs from multiple use products to single use products or vice versa. Nevertheless, single use and multiple use products present differing cost structures. Single use products raise the costs of processing clinical wastes. On the other hand, multiple use products must obviously be laundered and sterilised. In the parties view, the choice to use single use products does not create a lock-in effect because, whatever their consumption of surgical gowns and drapes, hospitals always need laundry and sterilisation facilities. Moreover, the laundering and sterilising activities are often outsourced. The parties have provided evidence that some of their former customers have recently switched from single use to multiple use products.

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2 Business secret, exact figure deleted from the public version, less than 50 MEcu.

3 Business secret, exact figure deleted from the public version, less than 20%.

4 Business secret, exact figure deleted from the public version, less than 200 MEcu.

5 Business secret, exact figure deleted from the public version, less than 40%.

6 Business secret, exact figure deleted from the public version, less than 10%.

7 Business secret, exact figure deleted from the public version, less than 20%.

12. It, however, appears from the Commission's investigation that most customers consider that a switch to multiple use products would take at least one year and would lead to increased costs in terms of laundry and sterilisation facilities. It also appears that such a switch would require additional training of the personnel as well as a review of the procedures employed. It cannot therefore be excluded that the relevant product market may be more narrow than proposed by the notifying parties.

13. However, since the operation would not lead to competitive concerns, even if the assessment were to be restricted to single use products only, it is not necessary for the purpose of this case to conclude finally on the definition of the relevant product market.

(b) Relevant geographic market

14. As far as prices are concerned, there are no reliable statistics available for the actual price levels in the EEA countries, which is partly explained by the fact that the prices that result from public tenders are not revealed by the purchasers. The parties have submitted price data, relating to their own average sales prices in the EEA countries. This data, however, is inconclusive for the purposes of definition of the relevant geographic market. In the submitted data existing price differences between individual EEA countries is matched by similar variations in prices even within a single country.

15. The parties have submitted that the relevant geographic market is EEA wide. This submission is based on the following considerations. Firstly, the products concerned are marketed under the same brand name in multi-lingual packaging throughout the EEA. Secondly, the parties, as well as their main competitors have organised their distribution from two to four central warehouses in Europe. This is indicative of the fact that transport costs for these relatively high-valued products are low (in the region of 2% of the total price). The low transport costs are further evidenced by the fact that a large proportion of these products are manufactured in Asia and Central America. Thirdly, purchases made by hospitals are usually made through public tenders announced in the Official Journal and available to any competitor within the EEA. Finally, there are no barriers to entry in the form of national regulatory legislation. Moreover, as the surgical gowns, drapes and swabs, produced by the parties and their main competitors, are consumables, the suppliers do not need to make large investments in maintaining local sales and service networks.

16. The Commission's investigation has largely confirmed the parties views on the relevant geographic market. In particular, most competitors have indicated that they regard the EEA as one single market. Responses from customers also confirm the international character of the market and that most purchases of these products are done following public tender procedures, to which a number of EEA and US companies (see below) regularly submit offers.

17. For the above reasons the Commission has concluded that the relevant geographic market for surgical gowns, drapes and swabs is the EEA.

V. ASSESSMENT

18. As indicated above, the parties are of the view that the definition of the relevant market includes both single-use and reusable products and that the relevant

geographic market is EEA wide. On that basis, NewCo's market shares would not in any case exceed 15%. More specifically, the parties would obtain combined market shares of [[8]] for surgical gowns, drapes and swabs, respectively.

19. However, as there are indications from the demand side that single-use products may not be fully substitutable with multiple use products, the below assessment will focus on the effects of the proposed operation if a narrower product market definition, excluding multiple use products, were to be adopted. Whereas this would not affect the structure of the market for surgical swabs, the parties would obtain market shares in the EEA of [[9]] for single-use surgical gowns (Mölnlycke [[10]] and Kolmi [[11]]) and for single-use surgical drapes [[12]] (Mölnlycke [[13]] and Kolmi [[14]]).

20. As can be seen from the above indicated figures the activities of Kolmi are significantly smaller than those of Mölnlycke. It also appears that Kolmi so far has only been active in the Nordic countries, France and Italy. In comparison, Mölnlycke and the other main suppliers, Baxter/Allegience and Johnson & Johnson, are active throughout the EEA.

21. The merged entity will face competition from a number of significant suppliers who all offer a broad range of surgical gowns and drapes. The largest competitors are two multinational US companies, Baxter/Allegiance and Johnson & Johnson, both of which have market shares of approximately 15-20%. In addition there has been a number of new entries on the market in the last five years (Kimberly Clark, 3M and Maxxim Medical). Although these new entrants still have relatively low market shares, all of them have experienced significant increases in their sales over that period.

22. Furthermore, the Commission's investigation has indicated that most customers follow a policy of dual or triple sourcing for surgical gowns and drapes, and that there are no appreciable barriers to switching between different suppliers of single-use gowns and drapes. Furthermore, the supply contracts in this industry seem to run for relatively short periods (normally 1-2 years), after which they will normally be subject to renewed public tender procedure.

23. In view of the above it must be concluded that the relatively strong position that the merged entity will attain in the field of single use surgical gowns and drapes will be balanced by the existence of a number of strong, internationally active,

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8 Business secret, exact figure deleted from the public version, less than 10%, 20% and 10%.

9 Business secret, exact figure deleted from the public version, 50%.

10 Business secret, exact figure deleted from the public version, less than 40%.

11 Business secret, exact figure deleted from the public version, less than 10%.

12 Business secret, exact figure deleted from the public version, less than 40%.

13 Business secret, exact figure deleted from the public version, less than 40%.

14 Business secret, exact figure deleted from the public version, less than 10%.

competitors, who, in view of the relatively short duration of supply contracts in this industry would be in a position to counteract any attempt by the merged entity to raise prices above the competitive level.

VI. ANCILLARY RESTRICTIONS

24. The parties have presented a number of contractual provisions which they consider ancillary to the operation. Mölnlycke and Tamro have undertaken not to compete for a period of [[15]] years with NewCo. Similarly, they (together with NewCo) have agreed to keep confidential information related to the surgical businesses. Finally, the investors have undertaken not to compete with NewCo for a period of [[15]] years after withdrawing from its capital. All of these clauses are standard clauses for such transactions and therefore should be deemed to be ancillary.

25. SCA Mölnlycke group will also grant to NewCo a number of licences relating to the manufacturing, packaging, distribution, promotion and sale of the products concerned. The purpose of the licences is to provide NewCo with certain intellectual property rights in the form of trade markets and trade names which are perceived as necessary for NewCo to maintain continuity of its activities. Consequently, these licences are necessary and directly related to the operation.

26. Lastly, NewCo and Tamro shall negotiate an exclusive distribution agreement in some geographical areas. Given that the agreement has not yet been concluded it cannot be considered ancillary to the transaction.

VII. CONCLUSION

27. 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,

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[15] Business secret, exact figure deleted from the public version.