

***Case No IV/M.1139 - **
DLJ / FM HOLDINGS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/04/1998

*Also available in the CELEX database
Document No 398M1139*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.04.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1139 - DLJ/FM Holdings

Notification of 23.03.98 pursuant to Article 4 of Council Regulation N/ 4064/89

1. On 23 March 1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Donaldson, Lufkin & Jenrette, Inc. ("DLJ") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of FM Holdings, Inc., Formica Nederland BV, Formica Italia Srl and Formica (Schweiz) AG (all of which are referred to as "the Formica group"), which are part of the business of BTR plc. ("BTR").
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

The parties

3. DLJ is a US broker/dealer and investment adviser engaged in investment banking, institutional trading and research, investment management and financial services. DLJ is owned as to 76% by the US insurance group The Equitable Companies Inc. which is owned as to 59% by AXA-UAP, a major French insurance group with a world-wide presence.

4. Laminates is a newly established Delaware holding company which is owned to approximately 50% by DLJ and to 25% by CVC and Citicorp respectively.
5. CVC European Equity Ltd. ("CVC") is a member of the CVC Capital Partners group of companies which provide management advice and consultancy services to investment funds.
6. Citicorp Venture Capital, Ltd. ("Citicorp") is a banking institution involved in both consumer and corporate banking world-wide.
7. The Formica Group designs, manufactures and distributes high pressure laminates which are used in a wide range of commercial and residential surfacing application. It has major operating groups in North America, Europe and Asia. The Formica Group is currently owned by a subsidiary of BTR plc, the UK engineering conglomerate.

Concentration

8. BTR will sell all its shares in the Formica Group to Laminates. Although Laminates is the direct and immediate participant in the acquisition of the Formica Group, DLJ is the economic operator acquiring control over the Formica Group and therefore the undertaking concerned.
9. Of the three parent companies of Laminates, only DLJ will have the possibility of exercising decisive influence on it -and, therefore, on the Formica Group- within the meaning of the Merger Regulation.
10. The shareholders' agreement provides that certain strategic business decisions, e.g. [...]¹ must be approved by the Directors appointed by DLJ and one Director appointed by CVC or Citicorp.
11. The shareholders' agreement therefore gives DLJ the possibility to block the adoption of certain strategic business decisions by exercising its veto rights. CVC and Citicorp do not have the same possibility to block such decisions as the approval of one of them is sufficient. However, DLJ can not impose such decisions on its own. This kind of control by a single shareholder on the basis of veto rights is similar to that exercised in normal cases of joint control. Therefore, DLJ acquires control within the meaning of the Merger Regulation and the acquisition is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

Community dimension

12. The combined aggregate world-wide turnover of the undertakings concerned exceeded 2,500 million ECU in 1997 (DLJ: [...]¹ ECU; Formica Group: [...]¹). The combined aggregate turnover of the undertakings was more than 100 million ECU in each of at least three Member States. The aggregate turnover of each of the undertakings concerned was more than 25 million ECU in at least three Member States (in France DLJ's turnover was [...]¹ and the Formica Group's was [...]¹; in Spain DLJ's turnover was [...]¹ and the Formica Group's was [...]¹; in the United

¹ Deleted for publication

Kingdom DLJ's turnover was [...]¹ and the Formica Group's was [...]¹). The aggregate Community-wide turnover of each of the two undertakings was more than 100 million ECU (DLJ: [...]¹; the Formica Group: [...]¹). The turnover figures for DLJ include the turnover of undertakings belonging to the AXA-UAP Group.

13. The Formica Group does not generate more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. Hence, the concentration has Community dimension.

Compatibility with the common market

14. The Formica group is involved in high pressure laminates and other surfacing products. The principal activity of DLJ is investment banking services. None of the companies in the DLJ group or the parent companies is active in any market in which the Formica Group is active or in any market upstream, downstream or neighbouring such markets.
15. Consequently, the concentration will not give rise to any competitive concerns.

Ancillary Restraints

16. The following provision was submitted by DLJ as an ancillary restriction directly related to and necessary for the implementation of the concentration.
17. Pursuant to section 20 of the Share Sale and Purchase Agreement BTR is prohibited to carry on business in the same field as that of the Formica Group for a period of [...]² years. Furthermore, BTR shall refrain from approaching the customers of the Formica Group for a period of [...]² years. Finally, section 20 establishes that BTR shall not solicit or entice away from the employment senior employees employed by the acquiring parties or the Formica Group for a period of [...]² years with the exception of senior employees responding to public recruitment advertisement placed by BTR.
18. These obligations serve to guarantee the transfer of the full value of the assets transferred and are therefore directly related and necessary to the implementation of the concentration. Their duration is reasonable and therefore these restrictions may be considered ancillary to the concentration.

Conclusion

19. 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,

² deleted for publication