

*Case No IV/M.1349 -  
CVC CAPITAL  
PARTNERS /  
DYNOPLAST*

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 08/03/1999

*Also available in the CELEX database  
Document No 399M1349*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.03.1999

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

Dear Sirs,

**Subject: Case No IV/M.1349 – CVC Capital Partners / Dynoplast**

Notification of 5 February 1999 pursuant to Article 4 of Council Regulation  
No 4064/89

1. On 5 February 1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which CVC European Equity II Limited acquires within the meaning of Article 3(1)(b) of the Council Regulation joint control of the Dynoplast group of companies (“Dynoplast”), which until completion of the operation will be under the sole control of Dyno Industrier ASA (“Dyno”).

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 with the EEA Agreement.

## **I. THE PARTIES' ACTIVITIES AND THE OPERATION**

3. CVC European Equity II Limited provides management and consultancy services to investment funds. It is a subsidiary company of CVC Capital Partners Europe Limited and a member of the CVC Capital Partners group of companies. The CVC Capital Partners group recently acquired joint control over Drum Holdings, S.A. which has packaging activities through its subsidiary, Blagden Packaging, a manufacturer of steel drums.
4. Dyno is a producer of explosives, chemicals and microparticles. Through the companies which constitute the target of the operation, Dyno is engaged in the business of developing, manufacturing and distributing plastic products within the following areas: automotive and electrical components, packaging of industrial and consumer products, industrial and food packaging, storage and fuel tanks, and marine products.
5. The notified transaction can be described as follows: Dyno and CVC first create a vehicle joint venture, Oxenclose Limited, which will then acquire Dynoplast. The ordinary voting shares in Oxenclose Limited will be held as to 59.4% by CVC European Equity Partners II L.P. and CVC European Equity Partners II (Jersey) L.P., 9% by other investors, 26.3% by Dyno and 5.3% by Dynoplast's management.
6. CVC European Equity Partners II L.P. and CVC European Equity Partners II (Jersey) L.P. are investment funds organised as limited partnerships. CVC European Equity II Limited has been appointed general partner to these partnerships on a permanent basis. In this capacity, CVC European Equity II Limited has full control of the affairs of the partnerships as well as sole and discretionary authority to take investment decisions on their behalf. In particular, CVC European Equity II Limited will exercise the partnerships' majority voting rights in Oxenclose Limited.
7. Under the terms of the Shareholders Agreement of Oxenclose Limited, CVC European Equity II Limited will only give its approval of [...] with the consent of Dyno. Thus, Dyno will have the ability to exercise decisive influence over the strategic business behaviour of Dynoplast, because it holds a veto right over [...]
8. Given that due to their respective rights, CVC European Equity II Limited and Dyno acquire joint control over the vehicle company Oxenclose Limited, and given that Oxenclose then acquires Dynoplast, the result of the operation is the acquisition of joint control by CVC over Dynoplast and the exercise of joint control by CVC European Equity II and Dyno over it. Dyno, as the parent company of the joint venture, Oxenclose Limited, will no longer be present on the same market.

## **II. COMMUNITY DIMENSION**

9. The undertakings concerned and have a combined aggregate world-wide turnover in excess of EUR 5,000 million<sup>1</sup>. (CVC European Equity II Limited, as member of the CVC Capital Partners group – EUR [...] million; Dyno - EUR [...] million). Each of them has a Community-wide turnover in excess of EUR 250 million (CVC Capital Partners group – EUR [...] million; Dyno – EUR [...] million), but 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.

## **III. RELEVANT MARKETS**

### **A. Relevant Product Market**

10. The only sector in which the operation leads to a certain overlap is that of industrial containers, given that Dynoplast is a producer of plastic drums and Blagden Packaging, belonging to the CVC Capital Partners group, produces steel drums. The overlap in their respective activities exists most particularly in 210 litre and 220 litre capacity drums. The Commission has considered whether these types of plastic and steel containers belong to the same product market or constitute separate product markets.

#### Plastic Drums

11. Dynoplast's UN-certified 210/220 litre "L ring" plastic drums are blow-moulded from high molecular weight high density polyethylene and range in weight from 8 to 10 kilograms. They are subject to vigorous quality testing in line with their UN certification. Such plastic drums are used for the transportation and storage of mainly hazardous industrial liquids, for use primarily in the chemical and food industries.

#### Steel Drums

12. The steel drums produced by Blagden Packaging are manufactured from cold rolled steel sheets. They have a standard capacity of 210 litres but are also produced in a range up to 250 litres. Like the plastic drums, these steel drums are also UN-certified. They are used for the transport and storage of non-bulk products, mainly for chemicals and mineral oils, but also for food. Whenever possible, steel drums are reconditioned (i.e. reshaped and repainted) for reuse.

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<sup>1</sup> 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 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.

### Substitution between Plastic and Steel Drums

13. On the demand-side, the parties contend that there is only a limited degree of substitutability between plastic and steel drums. They base their contention on: i) limited switching, due to possible practical difficulties for customers in terms of using their particular installed filling line, in so far as this is established for a particular type of drum (e.g. plastic or steel), and the inherent costs in changing the type of filling installation, ii) product suitability and customer preference, which are often determined by the specific product being packaged (e.g. unsuitability of plastic drums for oil or certain hazardous chemical products and of unlacquer-lined steel drums for certain acidic products), iii) reuse and recycling issues (e.g. longer life span of plastic drums due to lack of denting and corrosion; disposal and reprocessing problems related to plastic drums), and iv) (occasional) price differences, due to fluctuations of raw plastic materials prices.
14. With regard to the supply-side, the parties indicate that substitution is rendered impossible by the difference in the raw materials used in the production of plastic and steel drums and by the significant cost differences between both types of production.

### Substitution by Intermediate Bulk Containers (“IBC’s”)

15. IBC’s are larger than typical plastic and steel drums. The parties describe the typical IBC as having a capacity of around 800 to 1,200 litres, being cube-shaped and incorporating a steel cage sitting on a reinforced base, rendering it easy to transport and store. When loaded, an IBC is heavy, and so is designed to be handled mechanically by fork-lifts and gantries.
16. The parties submit that, while most of the points made by them with regard to the substitutability limitations between plastic and steel drums are equally valid for substitution by IBC’s, nonetheless, IBC’s are more likely to be considered by customers as a substitute for steel drums than the 210/220 litre L-ring plastic drums manufactured by Dynoplast. The parties contend this on the grounds that the superior capacity of IBC’s offers environmental advantages in terms of reduction in the number of packages used.

### Market Enquiry

17. The Commission carried out a market enquiry among users of plastic drums and users of steel drums with regard to the degree of real or possible substitution between plastic and steel drums in the 210/220 capacity range, and the potential for substitution by IBC’s. The replies showed that the choice of drums is largely determined by the type of product for which the drum is going to be used, and that, while for some products both plastic and steel drums would be suitable, for some products one type would be preferable, and in the case of still others, the choice would not exist, as only either plastic drums or steel drums would be suitable for reasons of chemical compatibility.
18. With regard to possible practical difficulties arising from the installed filling line of the customer, as put forward by the parties, for most customers such difficulties either did not exist or were not considered a significant obstacle to switching between plastic and steel drums. Similarly, reuse and recycling factors were not considered of great

relevance by customers in the context of their choice. In so far as price considerations were concerned, the enquiry revealed that price was not a determining factor in choice, mainly due to the comparable price level between plastic and steel drums (with the exception of the higher priced new lacquer-lined steel drums).

19. On the possibility of using the larger capacity IBC's as a substitute, the enquiry showed that for the customer this is greatly influenced by consumption volume/stockholding considerations and by factors such as storage and handling capacity.

#### Conclusion on Relevant Product Market

20. In the light of the above findings, the Commission considers that a certain degree of substitution exists between the plastic and steel drum products concerned by the present operation and that, likewise, there appears to be some degree of substitution for these drums by IBC's. A more exact evaluation of whether these different types of containers form part of the same product market is not necessary in the present case given that, as can be seen in the competitive assessment present further below, the operation would not result in any competition concerns on any of the possible alternative markets.

#### **B. Relevant Geographic Market**

21. With regard to the determination of the relevant geographic market, the parties emphasise the importance of transport costs as a factor. They point out that empty large industrial containers (i.e. steel and plastic drums and IBC's) are expensive to transport (typically by road), and estimate the transport costs at approximately 5 to 6% of the cost of such containers, for distances of 200 to 300 kilometres. Furthermore, it seems that large container producers tend to have production facilities in a number of countries in order to compete on the market there, as the need for a local presence is a feature of the market. With regard to price levels, in the case of steel drums comparative prices for different member states show significant differences in some cases.
22. The above factors point towards considering the relevant geographic market for these products to be primarily of a national scope, without discarding the possibility of some cross-border/regional markets. However, further precision is not necessary in the present case, given that the relevant overlap in activities is restricted to the UK, and that, even at that level, the operation does not raise any competition concerns, as can be seen in the assessment further below.

#### **IV. COMPETITIVE ASSESSMENT**

23. If Dynoplast and Blagden Packaging are considered to operate in the same market, i.e. a UK market for industrial containers including plastic and steel drums and IBC's, or, alternatively, a UK market comprising plastic and steel drums, it is unlikely that the concentration will create or strengthen a dominant position as a result of which effective competition would be impeded, for the following reasons :
24. The combined 1998 market share of Dynoplast and Blagden Packaging, based on unit sales, will amount to approximately [ 25-35% ] if plastic and steel drums and IBC's are considered to form part of the same relevant market<sup>2</sup>, and approximately

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<sup>2</sup> Figures based on estimates provided by the parties.

[25-35%] if a market for steel and plastic drums alone is considered. However, the increase in market shares is of a limited size as, in both alternative markets considered, Dynoplast achieved a market share under [1-10%]. Therefore, the present concentration does not significantly increase the degree of concentration in the market.

25. A number of sufficiently strong competitors remain active, in particular Van Leer UK Ltd (active in all segments, i.e. steel drums, plastic drums and IBCs) with a market share of approximately [20-30%], Rexam Harcostar Ltd (a manufacturer of plastic containers) with [5-15%], Tanks & Drums plc with 7-8% and Metal Drum Co Ltd with [1-10%] (both manufacturers of steel drums).<sup>3</sup>
26. Moreover, it can be assumed that smaller manufacturers also represent effective competition. Due to the differences in customer preferences determined by the type of product to be filled into the container (cf. paragraph 17), it is not essential for competitors to be able to supply a complete range of containers which includes both steel and plastic containers. Container manufacturers who supply only one of these products can compete in the market. For instance, the leading supplier of plastic drums in the UK, Rexam Harcostar Ltd, accounts for over half of the plastic drum production but has no significant presence in the steel drum sector. Furthermore, smaller, locally operating manufacturers are favoured by the fact that manufacturers located close to their major customers are in a good competitive position, because the transport costs of industrial containers account for a significant proportion of the overall product cost (cf. paragraph 21).
27. Potential competition by new entrants remains possible, as evidenced by the fact that a number of companies have entered the market over the last few years, particularly in steel drums. Furthermore, it is to be noted that the larger producers have production facilities in a number of countries (cf. paragraph 21).
28. On the demand side, the customers for industrial containers include a number of large multi-national companies who exercise significant market power. Many customers source from more than one supplier and do not commit themselves to purchase particular volumes, which allows them to switch to alternative suppliers. Moreover, the customers contacted by the Commission have not raised any special concerns about the effect of the notified operation on competition.

## **V. ANCILLARY RESTRAINTS**

29. Under clause 12.1 of the Share Sale and Purchase Agreement between Dyno and the vehicle company, Oxenclose Limited, Dyno undertakes, for a period of [...] years after the Closing Date (i.e the date of completion of the operation), not to carry on or be engaged, concerned or interested in any business which is in competition with Dynoplast. Dyno also agrees not to solicit any employee of Dynoplast during the [...] year period following the completion of the operation. The Commission considers such non-competition clauses necessary for the implementation of the concentration, to the extent that a prohibition on Dyno to compete with Dynoplast aims at expressing the reality of the lasting withdrawal of Dyno from the market assigned to Dynoplast.

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<sup>3</sup> The figures vary depending on whether IBC's are considered to form part of the relevant market or not.

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

For the Commission,