

***Case No IV/M.1514 -  
VIVENDI / US  
FILTERS***

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: 29/04/1999

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## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29-04-1999

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

**Subject: Case No IV/M. 1514 – VIVENDI/US FILTER**

Notification of 23/03/1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 23/03/1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Vivendi acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of US Filter.
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**

3. Vivendi is mainly active in the building industry; real estate; telecommunications and media and environmental activities. Vivendi is particularly involved in the supply and distribution of network drinking water and in the operation of waste water management. Through its subsidiary OTV, Vivendi is also active in the upstream activity of providing engineered systems and services in water and waste water treatment.

4. US Filter is a public company incorporated in the State of Delaware. This company provides on a world-wide basis industrial, municipal and consumer water and waste water treatment systems and services. In addition, US Filter manufactures and supplies sophisticated process piping systems for the delivery of high purity fluids, chemicals, gases and water; equipment and services for a wide range of surface preparation to clean, strengthen, decontaminate and enhance the appearance of many types of product surfaces (such as cartridges, steel, aircraft and automobiles) and, finally, filtration and separation equipment.

## **II. THE OPERATION**

5. The transaction consists in the acquisition by Vivendi of sole control over US Filter. On 22/03/1999, Vivendi and its wholly-owned subsidiary, Eau Acquisition Corporation entered into a merger agreement with US Filter. The transaction will be accomplished in two steps: first, Eau Acquisition Corporation will acquire the majority of the shares of US Filters through a cash tender offer. Upon completion of the acquisition, Eau Acquisition Corporation will merge with US Filter, with the latter continuing as a surviving company.
6. This transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Regulation.

## **III. COMMUNITY DIMENSION**

7. Vivendi and US Filter have a combined aggregate world-wide turnover in excess of EUR 5,000 million (Vivendi, [...]; and US Filter, [ ]). Each of them has a Community-wide turnover in excess of EUR 250 million (Vivendi, [ ]; and US Filter, [ ]), 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. It does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

## **IV. COMPETITIVE ASSESSMENT**

### **A. Relevant product market(s)**

8. The parties' activities only overlap in Western Europe in the design, engineering and provision of water and waste-water treatment systems. These are installations capable of delivering the required quantity and quality of water in accordance with the customers specifications for the provision of process water, potable water or treatment of waste water. US filters, in addition to designing and providing such systems, manufactures components to be included in them, such as filtration or piping systems. Vivendi is not active in the manufacture of such components.

9. The parties suggest that the design and provision of water and waste water treatment systems could be divided in two main relevant product markets in which both Vivendi and US Filter are active in Europe: systems for industrial purposes and systems for municipalities. The industrial market comprises systems to treat and purify water before it can be used in the industry's processes, whether as part of the final product (e.g. pharmaceuticals, beverages, pulp and paper), or as a process fluid necessary for the process to function (e.g. rinse water, boiler-feed water for steam production, cooling water). The industrial sector also typically needs systems to treat the water before it can be discharged into the environment to comply with regulatory requirements or in order to recycle waste water to re-use it in the process. The industrial market requires varying purification quality rates and generally, a higher purity and more sophisticated processes than required for the municipal market. The municipal market comprises systems for municipalities and water utilities which treat "raw" water from natural sources (ground or surface waters) in order to make it suitable for human consumption (potable water) and treat sewage water to remove physical and organic contaminants before its discharge into the environment. Water utilities are forced by regulation to respect strict standards for potable water. The investigation has shown that a vast majority of the competitors and customers consider industrial and municipalities systems as the two relevant product markets.
10. Further distinctions could be made between, for example, water treatment systems and waste water treatment systems or between the various types of water and waste water treatment systems (e.g. biological treatment equipment, separation equipment, disinfecting equipment, or high purification equipment), in any event, the exact definition of the product market(s) for water and waste water treatment systems can be left open, because even on the basis of the narrower market definition(s), the operation does not raise competitive concerns.
11. In addition to these markets where the parties activities overlap, US Filters is present in the markets of manufacture of components for water and waste water treatment systems. Following concerns of a vertical nature expressed by third parties, two of these markets have been analysed in particular.
12. First, US Filters, through its subsidiary Memcor, manufactures micro filtration membranes for the treatment of water. Membranes are used in order to separate particles in suspension in the water in water treatment systems. There are several types of membranes, such as ultrafiltration, microfiltration, nano filtration and inverse osmosis ones. The parties claim that microfiltration and ultrafiltration are substitutable products for water treatment, which would be proved by the fact that providers of water systems of treatment use both of them. It is not necessary, however, to define the product market(s) precisely, because even on the basis of the narrower market definition(s), the operation does not raise competitive concerns.
13. Second, US Filters, through its subsidiary Wallace & Tiernan, provides equipment for chlorine disinfection and, in particular, gaseous chlorinators. These are used to introduce the right dose of chlorine into the water for disinfection purposes. The parties claim that chlorine disinfection can be replaced by other disinfection means, such as ultraviolet treatment and ozonation and that, therefore, all these systems should be considered as belonging to the same product market. It is not necessary, however, to define the product market(s) precisely, because even on the basis of the narrower market definition(s), the operation does not raise competitive concerns.

## **B. Relevant geographic market(s)**

14. The parties suggest that the relevant geographic market for both water and waste water treatment systems should be considered at least as Western Europe. In this connection, they cite the existence of substantial cross-border sales between EU Member States and suggest that suppliers established in Western Europe have the possibility to supply customers throughout that area from one plant. The parties also argued that there are no major geographic differences in specifications of water and waste water treatment systems between Member States and that in countries where particular standards are required it is easy for providers of treatment systems to acquaint themselves with these situations. Furthermore, the process of competitive tendering for municipalities and large industrial contracts is well-established and contractors from throughout the European market make offers in all Member States. Finally, transport costs of main relevant components appear to be relatively low (around 5%).
15. The relevant geographic market could thus be considered as at least EEA wide. The competitors and the customers consulted during the Commission's investigation largely confirmed this conclusion. However, it is not necessary to decide upon the exact geographical dimension of the markets, as in any case the concentration will not give rise to serious concerns for competition.
16. As far as the markets for the manufacture of components of water and waste-water treatment systems the market appears to cover, at least, the whole EEA. Indeed, for most of these components, customers seek offers from manufacturers established in different European countries.

## **C. Assessment**

17. In value terms, the combined market shares of the parties amounted in 1998 to [5-15%] for the total market for water and waste water treatment systems (Vivendi [<10%] and US Filter [<10%]). On all the range of water and waste water treatment products, the parties will face competition in the EEA from strong international-scale competitors such as Degrémont ([5-15%] of total water and waste water treatment systems), Passavant Impianti ([<10%]) and others such as Anglian Water, Wabag, Lurgi Bamag and Stereau.
18. On the narrower product market for water and waste water treatment systems for industrial customers, the new entity would have a combined market share of around [5-15%] (Vivendi [<5%] and US Filter [5-15%]) in value terms in the EU. Major competitors include Degrémont or Passavant Impianti. On the market for water and waste water treatment systems for municipalities, Vivendi and US Filter will have a combined market share of [5-15%] (Vivendi [<10%] and US Filter [<5%]) and the new entity will have to face competition from other strong actors.
19. On a national basis, the parties had in 1998 combined market shares for all water and waste water treatment systems together varying from around [<5%] in Portugal up to [30-40%] in Denmark, in value terms. The combined market shares of the new entity exceed 15% in The Netherlands ([10-20%]), France ([25-35%]) and Denmark. On all these markets, the parties will face strong competition from other actors (Degrémont, Passavant, Lurgi Bamag or Wabag) that can supply all the range of the water and waste water treatment products.

20. Also on a national basis, on the narrower market for water and waste water treatment systems for industrial customers, the parties' combined market shares would reach [15-25%] in France (Vivendi [5-15%] and US Filter [<10%]). Although US Filter holds market shares above 15% in Finland, Ireland, Italy and The Netherlands, Vivendi has no activities outside France. On the market for water and waste water treatment systems for municipalities, the parties' combined market shares would only be higher than 15 % in France and Denmark. In France their market shares would amount to [30-40%] (Vivendi [25-35%], US Filter [<5%]). That would place them as leaders but facing strong competition from Degrémont, with a market share of around [25-35%], and other companies such as Wabag, Passavant-Impianti or Biobalance, recently attracted by that the high growth potential of the French market. In Denmark, Vivendi, through its subsidiary Krüger, held in 1998 market shares above [45-55%]. US Filter, however, is not active in this country and, therefore, the operation would not lead to any increase of Vivendi's present position there. Even if it could be considered that the operation eliminates US Filter as a potential competitor in this market, it would not lead to the creation or strengthening of a dominant position because other strong actual and potential competitors remain in the market, such as Puritek (owned by Degrémont), Purac (owned by Anglian water), Scandinavian water products and other local companies.
21. Furthermore, it has to be noted that on none of the narrowest possible product market definitions i.e. if distinctions are made between the various types of water and waste water treatment systems (for example biological treatment equipment, chemical treatment, high purification), the combined market shares of the parties will exceed 10%.
22. Finally, the vertical aspects of the concentration will not raise competitive concerns. US Filters, as explained, is active in the manufacturing of components for water and waste water treatment systems and supplies to main Vivendi competitors. However, no component market has been identified where US Filter would hold a substantial market share. Therefore, even if US Filters would, as a result of the operation, cease to supply to Vivendi's competitors, these could, in any event, switch to another supplier.
23. In particular, concerns were raised by competitors in relation to the markets for microfiltration membranes and gaseous chlorinators. As to the first one, the Commission's investigation confirmed that several competitors, such as Pall, Akzo-Stork, Norrit or Koch, are present in this market and are able to provide products of similar quality and reliability to those produced by Memcor, a subsidiary of US Filters. With regard to gaseous chlorinators, the investigation revealed that several competitors are able to provide products substitutable to those manufactured by Wallace & Tiernan (subsidiary of US Filters), which holds a EU market share of around [15-25%]. In particular the following competitors were identified: Alldos ([10-20%]), Jesco ([5-15%]), Capitol Controls, Portacel and Dinotec. If the market were restricted to gaseous chlorinators used in municipal and industrial water treatment systems only, the position of Wallace & Tiernan would not change substantially. Finally, even if Vivendi would only acquire in the future gaseous chlorinators from Wallace & Tiernan, the new entity will not have a dominant position as the potential addition of market shares would be around [5-15%].

#### **IV. CONCLUSION**

24. For the above detailed 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,