

***Case No COMP/M.1736 -
UIAG / CARLYLE /
ANDRITZ***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 17/11/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.11.1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M. 1736-UIAG/CARLYLE/ANDRITZ

Notification of 14.10.1999 pursuant to Article 4 of Council Regulation (EEC) No 4064/89

1. On 14 October 1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ("Merger Regulation") by which Carlyle Europe Partners LP ("Carlyle"), controlled by the Carlyle Group L.L.C., and Unternehmens Invest AG ("UIAG") acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of Andritz AG ("Andritz") by way of purchase of equities in a newly created company constituting a joint venture.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. Andritz is active world wide in the production and distribution of machines, plants and systems for the pulp, paper, board, steel, electricity and feed industries.
4. Carlyle, based in the Guernsey Islands, is an investment fund that controls a portfolio of companies in Europe. Carlyle forms part of the Carlyle Group L.L.C. in the U.S., a Washington based investment fund. The business activities of the fund include the production and distribution of fluid piping equipment, parts for the automotive and aircraft industries, newspapers, air cargo deliveries, medical devices and products, clinical research and airport maintenance among other activities.

5. UIAG is an Austrian investment fund that is specialised in acquiring minority stakes in Austrian companies and preparing them for going public. It controls companies active in retailing of furniture, books and compact disks.

II. CONCENTRATION

6. Carlyle Europe and UIAG agreed on 28 September 1999 to acquire 99,99% of the shares of Andritz AG through the newly created company Implementa GmbH from AGIV AG. Implementa itself will be held by Andritz Holding GmbH. Andritz Holding GmbH will be solely controlled by ProjektFinanz which holds 74,99% of its equity. A minority share without particular veto rights will be held by MFA, consortia led by a managing director of Andritz, Dr. Wolfgang Leitner. ProjektFinanz will be controlled by Carlyle (63,33% of its shares) and UIAG (33,34%). Under the shareholders agreement, each party may veto major strategic decisions like budget, business plan and major investments.
7. Andritz will continue to perform, on a lasting basis, all the functions of an autonomous economic entity and is therefore a full function joint venture within the meaning of the Merger Regulation. The operation is therefore a concentration within the meaning of article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

8. Carlyle, UIAG and Andritz have a combined aggregate world wide turnover in excess of EUR 5,000 million¹. (Carlyle EUR [...] million; Andritz EUR [...] million and UIAG EUR [...] million). Each of them has a Community-wide turnover in excess of EUR 250 million (Carlyle EUR [...] million, and Andritz EUR [...] million, UIAG EUR [...] million). Only UIAG achieves more than two-thirds of its aggregate Community wide turnover within one Member State, Austria. The notified operation therefore has a Community dimension.

IV. COMPATIBILITY WITH THE COMMON MARKET

Relevant markets

9. There are no overlaps between the product ranges of the parties. The markets concerned by the notified operation are the business activities of Andritz: Andritz is active in the markets for machines for wood processing, machines for the pulp and paper industry as well as hydraulic machines like water turbines, environment process technologies and feed technology.
10. The Carlyle Group controls several companies in different sectors, mainly in the US markets. Among them are the Groupe Genoyer, which is active in the production of pipes and valves mainly for the oil and gas production; the Honsel Group, which is

¹ 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.

active in the production of rivets for car manufacturers and aircraft construction²; as well as companies active in airport maintenance and biotechnology.

11. The parties' view, supported by competitors and clients, is that there is no product overlap. The notified operation would thus not lead to the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it. For this reasons it is not necessary to define the relevant markets further.

V. ASSESSMENT

12. As there are no horizontal overlaps in the product range of the notifying parties, the operation will not create any adverse horizontal effects on competition.
13. The only effect following the operation that has to be considered is that the Groupe Genoyer produces pipes and valves mainly for use in the oil and gas industry, which might be also used in wood processing plants designed by Andritz. This could lead to a range effect, as Andritz's product portfolio would be more complete. However, the adaptation of the Groupe Genoyer's production process to produce pipes and valves compatible with the machines sold by Andritz would involve considerable shifting costs. Moreover, the Groupe Genoyer faces strong competition from competitors like Emerson, Dresser, Tyco International, Flowserve and Rauma. Andritz also faces competition from Sunds/Valmet, BMH, Beloit and J&L. Therefore, the Commission does not consider that the proposed operation would lead to foreclosure effects being created. Competitors and clients also supported this view.
14. Based on the foregoing and in view of the different markets concerned, the Commission considers that the notified operation will have no impact on competition in the EEA. Consequently, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part thereof.

VI. CONCLUSION

15. 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 Case No. IV M.1485 Carlyle/Honsel