

***Case No COMP/M.1755 -  
CVC / ACORDIS***

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: 20/12/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20. 12. 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 COMP/M.1755 - CVC / ACORDIS**

Notification of 18.11.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 18.11.1999, the Commission received the notification of a proposed operation by which the UK based CVC Group will acquire sole control over the Acordis division of the Dutch group Akzo Nobel N.V.
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 AND THE OPERATION**

3. CVC Group is a group of companies and partnerships, controlled ultimately by U.K. company CVC Capital Partners Group Ltd. ("CVC Capital Partners"). This group provides management advice and consultancy services to investment funds. CVC Capital Partners controls the investment funds CVC European Equity Partners II LP, a limited partnership under the laws of Delaware and CVC European Equity Partners II (Jersey) LP, a limited partnership under the laws of Jersey, as the general partner in those partnerships.

4. Acordis is a division of the Dutch company Akzo Nobel N.V., grouping Akzo's fibres activities after the acquisition by Akzo of Courtaulds plc in 1998<sup>1</sup>, which acquisition was the subject matter of Case IV/M.1182. The Acordis business is the production and sale of industrial fibres, textile viscose, filament yarn, non-wovens, membranes, acrylic and viscose staple. It also has a 50% interest in Novaceta, which is active in textile acetate filament yarn.
5. Akzo Nobel N.V. is a multinational company based in the Netherlands which produces and markets healthcare products, coatings, chemicals and, up to the present operation, fibres. It is the seller of the controlling and majority shareholding in the Acordis business in the present operation, retaining a [...] % shareholding.
6. CVC Group has set up an acquisition vehicle called Acordis B.V. or "Topco", a 100 % owned subsidiary. Topco will, through a series of purchase agreements with Akzo Nobel subsidiaries concerning shares and assets, acquire sole control over the whole of the Acordis business. The majority of shares and voting rights in Topco will be acquired by CVC European Equity Partners II LP and CVC European Equity Partners II (Jersey) LP. The proposed concentration is an operation under which CVC Capital Partners, will through the managing partner in the aforementioned investment funds, CVC European Equity II, acquire sole control over Topco, which will by then own the Acordis business. In addition to Akzo Nobel N.V. a number of other investors, among whom the Acordis management, will acquire a minority shareholding in Topco.

## **II. CONCENTRATION**

7. In accordance with the Articles of Association of Topco, all shareholders resolutions will be taken by simple or absolute majority. Therefore, in absence of other shareholders' veto rights on actions which determine Topco's (and therefore Acordis') strategic commercial behaviour, the proposed acquisition of the majority of shares and voting rights ([...]%) results in CVC Capital Partners indirectly acquiring sole control over the Acordis business and the operation thus constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation (EEC) No. 4064/89.

## **III. CONCENTRATION OF A COMMUNITY DIMENSION**

8. The combined aggregate world-wide turnover of the undertakings concerned is more than EUR<sup>2</sup> 5,000 million [CVC Group €[...] million and Acordis €2,510 million]. The aggregate Community-wide turnover of at least two of the undertakings is more than EUR 250 million [CVC Group €[...] million and Acordis €[...] million] and the undertakings do not attain more than two- thirds of their aggregate Community-wide

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<sup>1</sup> Akzo/Courtaulds, Case M. 1182, decision of 30.06.98; OJ C no. 265 of 22.08.98, p. 28.

<sup>2</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.

turnover in one and the same Member State. Hence the concentration has a Community-wide dimension.

#### **IV. ASSESSMENT**

9. CVC Group have informed the Commission that, based on their extensive research on the activities of the CVC Group-controlled investments and of Acordis, CVC Group has reached the conclusion that no company directly or indirectly controlled by it is active on a market on which Acordis is active nor on any market which is upstream or downstream to any market on which Acordis is active, and that hence there are no affected markets.
10. Under these circumstances, where there are no overlaps between the parties on any product market (and therefore no affected markets), for the purpose of this Decision the definition of the relevant product market can be left open. For the same reason, the geographic market need not be defined. Hence it is considered that the proposed operation does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or the EEA or any substantial part of those.

#### **V. ANCILLARY RESTRICTIONS**

11. The parties request an assessment under the Regulation by the Commission of a non-competition (not limited to a certain geographic area) and a non-solicitation clause contained in the Master Purchase Agreement. The non-competition clause seeks to prevent that the Seller engages in any business, either directly or indirectly, competing with the acquired business, for a period of three years after completion of the operation. The non-solicitation clause seeks to prevent Seller from soliciting the employment of employees of Acordis earning a salary in excess of a specified amount (mostly of management level), for a period of three years from completion of the operation.
12. Insofar as these covenants are necessary to grant the acquiring party the full value of the Acordis business, these can be considered to be directly related to and necessary to the implementation of the concentration. In view of the transfer of intellectual property rights and know how involved in the operation and in view of the fact that the acquisition is a "management buy-out", i.e. that the Buyer does not have specific knowledge of the day-to-day running of the acquired business, the duration of three years of the above non-competition and non-solicitation covenants appears justified in this specific case. However, the non-competition clause can be considered ancillary to the concentration and thus covered by the present decision only in so far as it is limited to the geographic area where the Seller has established the products or services before the transfer of the business.

## **VI. CONCLUSION**

13. 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 and of Article 57 of the EEA Agreement.

For the Commission,