

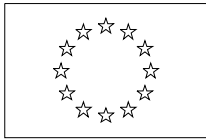
***Case No COMP/M.2192 -
3* SMITHKLINE
BEECHAM / BLOCK
DRUG***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 11/01/2001

*Also available in the CELEX database
Document No 301M2192*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.01.2001
SG(2000)D/285020

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

Subject: Case No COMP/M.2192 – SmithKline Beecham/Block Drug

Notification of 17.11.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 17 November, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (“the Merger Regulation”), by which the UK company, SmithKline Beecham plc (“SB”) notified its intention to acquire sole control over the US company, Block Drug Company Inc. (“Block Drug”), through purchase of shares.
2. Following examination of the notification, the Commission has concluded that the notified operation falls within the scope of the said Council Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I. THE PARTIES AND THE OPERATION

3. SB is a multinational company involved in the research, development, manufacture and marketing of pharmaceuticals, vaccines, over-the-counter medicines and health-related

consumer products. The merger of SB with Glaxo Wellcome merger was approved by the Commission on 8 May 2000¹.

4. Block Drug is mainly active in oral healthcare, and health and beauty care. It generates some 40% of its sales in the US and another 40% in Europe. Block Drug is present under the name of Stafford-Miller in several EEA countries.
5. The operation will be carried out through the acquisition by SB of all the outstanding stock, and thus sole control, of Block Drug.

II. CONCENTRATION OF A COMMUNITY DIMENSION

6. The proposed operation constitutes a concentration within the meaning of Article 3.1.b. of the Merger Regulation.
7. The undertakings concerned have a combined aggregate world-wide turnover of more than €5 billion (SB, [...] million; Block Drug, [...] million). Each of them has a Community-wide turnover in excess of €250 million (SB [...] million; Block Drug, [...] million), and 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-wide dimension.

III. RELEVANT MARKETS

A. Relevant Product Markets

i) Toothpaste

8. Both SB and Block Drug are active in toothpaste across the EEA, SB mainly with its Macleans, Aquafresh, Odol, Iodosan, and Binaca brands, and Block Drug mainly with its Sensodyne brand. Toothpaste is manufactured and sold in a number of product variants, ranging from the basic traditional regular/family toothpaste at one extreme of the spectrum, to the most recent innovative “whitening” and “sensitive” variants at the other extreme. Within the spectrum, and as a result of a history of continuous innovation in the sector, there are several other toothpaste variants which, like “whitening” and “sensitive”, have particular attributes intended to provide specific benefits (e.g. “tartar control”, “bicarbonate of soda”, “smokers”) to individual consumers. One of the more popular innovative products is the “total care” variant, which incorporates in one toothpaste several attributes, so as to produce a combination of the benefits that are most relevant to the consumer. Similarly, the “sensitive” variant, which originally had as its primary attribute its therapeutic benefits for consumers who suffer from sensitivity to hot, cold, and sweet, food and drink, now, in its most innovative form, includes “whitening” among its attributes, thus broadening the set of benefits it offers to users, whose demands have grown alongside product innovation.
9. From the demand side, the Commission investigation in this case has shown that consumers’ choice of toothpaste is influenced not only by their individual needs, but can also be influenced by overall family needs, which may lead to the choice of a “total

¹ COMP/M.1846 – Glaxo Wellcome/SmithKline Beecham

care” product. In any case, consumers adapt over time to changes both in their own needs and in the range of products on offer. While prices vary across the spectrum, with the regular/family paste at the lower end of the range, and “whitening” and “sensitivity” products tending to occupy the upper end, and “total care” the in-between, the market investigation has confirmed a low price sensitivity among toothpaste consumers in general, as these base their choice primarily on the benefits attributed to the particular variants, in relation to their specific or overall needs.

10. From the supply side, the Commission’s investigation broadly confirmed SB’s contention that manufacturers can change production between the different variants with relative industrial and financial ease: production facilities are essentially the same, and almost all variants have a certain number of active ingredients in common; the time needed for production changes is not significant, nor are there significant additional financial costs. Indeed, the main toothpaste producers, including some retailer brands (e.g. in the UK), have gradually added the different innovative variants under their particular umbrella brand names, and some (e.g. SB, Colgate, Unilever, Gaba, Sara Lee, to varying degrees) have extended their product range to include the “sensitive” variant, which originally enjoyed a somewhat special status, due to its therapeutic attributes and image, and its historic distribution through pharmacies. However, with time this “sensitive” variant has been innovated to include more “mainstream” attributes (e.g. Block Drug’s “Sensodyne” whitening product), and its distribution has been extended to include grocery retailers, with this type of outlet being significantly more important than pharmacies as a point of sale in several EEA countries.
11. Given all the above demand-side and supply-side factors, the Commission has retained an overall toothpaste market for the purposes of its competitive assessment in this case.

ii) Toothbrushes

12. Both SB and Block Drug also market various brands of toothbrushes, of which the most important are: for SB, Aquafresh, Binaca, Dr Best, Iodosan, Macleans; and for Block Drug, Sensodyne and Parodontax, apart from character children’s brushes.
13. SB considers the relevant product market for manual toothbrushes as separate to powered toothbrushes (i.e. electric and battery-driven toothbrushes). It is to be noted that there would be no overlap, in any case, in powered toothbrushes, as Block Drug does not have this type of activity.
14. The Commission’s investigation has shown that third parties agree with the above distinction between manual and powered toothbrushes, as these products satisfy different customer needs and are different in their use. The exact market definition can, however, be left open, as the operation would not lead to the creation or strengthening of a dominant position on any of the alternative market definitions.

iii) Mouthwash and Mouth Infection Treatments

15. Mouthwashes are liquids designed to be rinsed or gargled around the mouth, usually after brushing. SB submits that there are two distinct types which are not interchangeable:

a) Cosmetic mouthwashes

16. Cosmetic mouthwashes are mainly used to freshen the breath and mouth and can be used on a daily basis. The majority are sold in grocery outlets and the marketing is aimed at consumers. The parties' brands of cosmetic mouthwash are: SB, Odol, Iodosan, Synthol, Mouthguard, and Macleans; and Block Drug, Corega and Sensodyne.

b) Mouth infection treatments

17. Mouth infection treatment products are used for the treatment of specific medical problems such as mouth ulcers, gingivitis and throat infections. They should be used only for a short period and are invariably licensed OTC medicines. Marketing is directed towards the dental profession. The parties market the following brands: SB, Corsodyl, and Block Drug, Chlorhexamed.

18. The Commission's investigation has shown that third parties also consider cosmetic mouthwashes and mouth infection treatments as two distinct markets, due to their differences, mainly in terms of ingredients, use, period of use and marketing.

iv) Acid Control / Heartburn Treatment Products

19. Heartburn is a burning feeling caused by stomach acid regurgitating into the oesophagus. A muscular valve, called the lower oesophageal sphincter, keeps stomach acid in the stomach. But if the lower oesophageal sphincter opens too often, or does not close tightly enough, stomach acid can seep into the oesophagus and cause a burning sensation.

20. Both parties manufacture and market products to remedy acid control and heartburn: SB's products are Tums, Philips Milk of Magnesia, Andrews Antacid, Tagamet and Zantac; and Block Drug's, Setlers and Setlers Heartburn.

21. SB considers the relevant product market to be for products for the treatment of acid control and heartburn, which fall within the "over-the-counter" ("OTC") category O3A1, which forms part of the digestive remedies sector.

22. In its previous decisions², the Commission noted that pharmaceutical products are used for the treatment of human illnesses and diseases. Prescription/ethical medicines are pharmaceutical products which are exclusively accessible by way of medicinal

² Case IV/M.072 – Sanofi/Sterling Drug; IV/M.323 – Procordia/Herbamond; IV/M.426 – Rhône-Poulenc/Cooper; IV/M.457 – la Roche/Syntex; IV/M.500 – AHP/Cynamid; IV/M.555 – Glaxo/Wellcome; IV/M.495 – Behringwerke AG/Armour Pharmaceutical Co.; IV/M.587 – Hoechst/Marion Merell Dow; IV/M.631 – Upjohn/Pharmacia; IV/M.737 – Ciba-Geigy/Sandoz; IV/M.950 – Hoffman La Roche/Boehringer Mannheim; IV/M.1229 – American Home Products/Monsanto; IV/M. 1403 – Astra/Zeneca; IV/M.1397 – Sanofi / Synthélabo; IV/M.1378 – Hoechst/Rhône-Poulenc – COMP/M.1846 Glaxo-Wellcome/Smithline Beecham

prescription and subject, for the main part, to reimbursement through social security schemes. OTC drugs are pharmaceutical products, certain of which are prescribed by a doctor and may be reimbursable through a social security scheme. The Commission noted that OTC, as well as prescription medicines, may be sub-divided into therapeutic classes by reference to the “Anatomical Therapeutic Chemical” classification (“ATC”), devised by the European Pharmaceutical Marketing Research Association (EphMRA) and maintained by EphMRA and Intercontinental Medical Statistics (“IMS”).

23. According to SB, the fourth level of the ATC classification, namely category O3A1, would be appropriate to define the relevant product market for the treatment of acid control and heartburn. A broader definition, proposed by a special Euromonitor Report into the Digestive Remedies sector, identifies indigestion and heartburn remedies as a segment of the digestive remedies market. In this Report, the indigestion and heartburn segment is subdivided into further categories, reflecting the products’ different modes of action: products which block acid production are distinguished from those which solely neutralise.
24. The exact market definition can, however, be left open, as the operation would not lead to the creation or strengthening of a dominant position irrespective of the market definition retained.

v) Anti-Allergy Products

25. An allergy may occur when the body’s immune system over-reacts to normally harmless substances. Symptoms include a runny nose, itchy eyes and skin rash.
26. Both parties manufacture and markets anti-allergy products: SB, Beconase/Beconase Allergy, Flixonase, and Block Drug, Piriton.
27. Piriton, Beconase and Flixonase have different therapeutic indications and fall within different prescription ATC categories. Both Beconase and Piriton are prescribable and also available over the counter in the UK and in Ireland, whereas Flixonase is prescription only. Piriton is for the treatment of allergies in general and is an antihistamine falling within R6A (Systemic Antihistamines). Beconase and Flixonase treat hayfever and nose- related symptoms, and are corticosteroids which relieve nasal congestion falling within R1A (Topical Nasal Preparations). Therefore, while both they and Piriton may be used to treat allergies, including hayfever, they are very different products to Piriton, which is an antihistamine, has a different mechanism of action to both Beconase and Flixonase, which are anti-inflammatories. The mode of administration differs too: tablets and syrup for Piriton, nasal spray or nasal drops for Beconase and Flixonase. These medicines also have different side effects (drowsiness for Piriton but not for the other two products).
28. The question whether the relevant market is for anti-allergy as a whole, or whether there may be a narrower market for hayfever remedies, can be left open, as there is no material overlap outside the hayfever segment.

vi) Inflammatory Bowel Disease Treatments

29. Inflammatory Bowel Disease (“IBD”) is a chronic inflammatory condition of the digestive tract (e.g. ulcerative colitis and Crohn’s disease). IBD treatments are specific anti-inflammatories falling within ATC third level category A7E. The market test has confirmed that there is a separate product market for anti-inflammatories designed to treat IBD. Therefore, the Commission has considered that there is a separate market for Inflammatory Bowel Disease Treatments. Both parties manufacture and market IBD treatments: SB, Asacol, and Block Drug, Colifoam.

B. Relevant Geographic Markets

i) Toothpaste

30. SB submitted a national scope for the geographic market for toothpaste, based on a number of factors: i) the large number of mainly local players, ii) the variation in the market shares of the main players across the different member states, iii) the presence of different brand names (even of the same manufacturer) in the different countries, and iv) traditional national differences in oral care habits. The Commission’s investigation has confirmed the presence of these factors, as well as instances of significant price differences across the EEA. Thus a national geographic market has been retained for the purposes of the competitive assessment of the impact of the operation on the toothpaste market in this case.

ii) Other Relevant Product Markets

31. SB also submitted a national level as the scope for all the other relevant product markets, described further above, mainly for the same reasons as those given for toothpaste, as well as for reasons of the pricing and marketing strategy of manufacturers (for toothbrushes, cosmetic mouthwashes and mouth infection treatments), and national regulatory controls (for acid control/heartburn, anti-allergy, and anti-inflammatories). The Commission’s investigation has broadly validated this geographic market definition for these products also.

IV. ASSESSMENT

i) Toothpaste

32. In the overall toothpaste market, the operation will lead to affected markets, with shares of over 15% for SB, in all the EEA countries, with the exception of Finland, France, Greece and Spain, where SB shares will be in the [5-20]% range. The highest market shares will be achieved in the Netherlands, with [35-45]%, followed by the UK, [35-45]%, Ireland, [25-35]%, Belgium and Luxembourg, some [20-30]% each, Portugal, [20-30]%, Germany, [20-30]%, Austria, [15-25]%, Denmark, [15-25]%, Sweden [10-20]%, Norway, [10-20]%, and Italy, [10-20]%. The operation will have led to an addition to SB’s market shares of [15-25% in the Netherlands, [5-15]% in the UK, [1-5]% in Ireland, [5-15]% in Belgium and Luxembourg, [5-15]% in Portugal, [5-10]% in Germany, [5-15]% in Austria, [1-5]% in Denmark, [5-10]% in Sweden, [5-10]% in Norway, and [1-10]% in Italy.
33. Competitors to SB will vary across the different affected markets, both in terms of presence and importance of market share. In the Netherlands, where SB will achieve its

highest market share, it will be confronted with competition from two more local/regional type players, Sara Lee and Gaba with [25-35]% and [5-15]% respectively, apart from Colgate with some [5-15]%. In the UK, apart from the market leadership of Colgate with [35-45]%, Unilever and Procter & Gamble have a presence of some [1-5]% and [1-5]% respectively, while private label brands enjoy some [5-15]% of the market. In Ireland, outside of Colgate's very significant [40-50]% share, a more local player, Richard Brierly & Co has [1-10]%, with Unilever and Procter & Gamble having in the region of [1-10]% each. In Belgium and Luxembourg, apart from the market leader, Colgate with [20-30]%, Unilever and Henkel & Schwarzkopf have substantial shares with some [15-25]% and [10-20]% respectively. Both these players have a sizeable presence, in the [5-10]% range, in Portugal, apart from the very substantial leading share of Colgate with [40-50]%.

34. In Germany, SB will be followed closely by Gaba with [15-25]%, while Colgate and Procter & Gamble have a substantial presence with [10-20]% and [10-20]% respectively, apart from Unilever and Henkel & Schwarzkopf with [1-10]% and [1-10]% respectively. In Austria, the main competition will be provided by the significant presence of Unilever and Procter & Gamble, both with some [10-20]%, followed by Gaba, Henkel & Schwarzkopf, and Colgate with some [5-15]%, [1-10]% and [1-10]% respectively. In Denmark, Colgate's share of [45-55]% will more than double that of SB, while Sara Lee's presence with some [20-30]% will be more important than that of SB. In Sweden and Norway, Colgate's shares [30-40]% and [35-45]% respectively, will again be more than twice those of SB, and Unilever's share of some [15-25]% in Sweden and some [25-35]% in Norway will also be significantly more important than SB's share, while Henkel & Schwarzkopf enjoys some [5-15]% of the market in Sweden. In Italy, SB will be confronted with Unilever as market leader, with some [20-30]%, followed by the substantial shares of some [10-20]% and [10-20]% of Colgate and Procter & Gamble respectively, apart from several other players in the [1-10]% range.
35. Thus, after the operation, SB, will be confronted with significant competition from several players in the different affected markets, ranging from large pan-European players to more regional or local players, which will enjoy either more important shares than SB or, in any case, substantial market shares. In the circumstances, the Commission considers that the operation will not lead to the creation or strengthening of a dominant position on any of the affected markets for toothpaste.

ii) Toothbrushes

36. With regards to a market for manual toothbrushes, the operation does not create an overlap in Belgium, Denmark, Finland, Greece or Norway. In France, Ireland, Italy, Spain and Sweden the combined market shares will not exceed 15%. Competition concerns are, therefore, not likely to arise in these member states.
37. SB will attain higher post-merger market shares in Austria, with [35-45]%, Germany, [40-50]%, the Netherlands, [25-35]%, Portugal, [15-25]%, and the UK [15-25]%. The increment resulting from the concentration is small in most countries (between [1-5]%, except for the Netherlands, where the increment is [5-10]%).
38. SB will have to face strong competition from the other main players: Gillette, Unilever, P&G, Johnson & Johnson, Jordan, and Colgate, particularly in the Netherlands, where the increment resulting from the operation is the highest with [1-10]%, and where

Gillette holds a market share of [25-35]%, and the second largest player, Jordan, accounts for [15-25]% of the market.

39. In view of the foregoing, the Commission considers that the operation will not lead to the creation or strengthening of a dominant position in a market for manual toothbrushes.

iii) Mouthwash and Mouth Infection Treatments

a) Cosmetic mouthwash

40. In a market for cosmetic mouthwash, the concentration will lead to affected markets in Austria, with [85-95]%, Germany, [50-60]%, and Norway, [10-20]%. As the presence of Block Drug in this product market is limited, i.e. Austria [<1]%, Germany [<1]% and Norway [1-5]%, the increments resulting from the operation are small.
41. Furthermore, important competitors are present in the different countries. In Germany, Gaba has a [15-25]% share, and Colgate and Warner Lambert are also present with [1-10]% and [1-10]% respectively. In Norway, Colgate is the market leader with [20-30]%, and Jordan and Lilleborg have [20-30]% and [15-25]% respectively. In Austria, both Gillette and Henkel & Schwarzkopf are present with [1-5]% and [1-10]% respectively.
42. In view of the strong competition, mainly in Norway and Germany, and the limited increments in these countries, the concentration will not strengthen significantly the position of SB in the market for cosmetic mouthwash and thus does not give rise to any competition concerns.

b) Infection treatments

43. The only affected market for infection treatments would be in Germany. Post-merger SB would hold a market share of [15-25] % (SB [1-5]%, Block Drug [15-25] %). Following the operation, SB will still be confronted with competition from other important players such as Warner Lamber, with [5-15]%, Stada, [5-15]%, Kreussler, [1-10]% and Norgine, [1-10]%, and will also face competition from a wide range of smaller companies.
44. Given the limited size of SB's market share after the operation, and the degree of competition it will face, the operation does not give rise to any competition concerns.

iv) Acid Control / Heartburn Treatment Products

45. The only overlap between the parties' sales in 03A1 is in the UK, where SB will hold a market share of [15-25]% (SB [15-25]%, Block Drug [1-5]%).
46. SB will face a number of strong competitors: Reckitt Benckiser holds a market share of [25-35]% with the number one brand, Gaviscon, and Roche holds a market share of [20-30]% with the number two brand, Rennie. Other important pharmaceutical companies are also active on this market: Seton Scholl, with [1-10]%, Whitehall/AHP, [1-10]%, Pfizer, [1-5]%, and Aventis, [1-5]%.
47. Apart from all SB's own digestive remedy products, Block Drug also has another product, Setlers Wind-Eze, which acts on a separate indication, namely the anti-

flatulence market. Since SB has no anti-flatulence products, the competitive assessment would not be modified by a different market definition for digestive remedies.

48. Given the limited size of SB's market share after the operation, and the small overlap concerned, as well as the degree of competition SB will face, the concentration does not give rise to any competition concerns in these products.

v) Anti-Allergy Products

49. The only countries where both parties market anti-allergy products are the UK and Ireland. In an overall market for anti-allergy products in the UK, SB's market share after the operation would be [25-35]% (SB [15-25]%, Block Drug [5-15]%). It will face competition notably from Schering-Plough, [20-30]% with "Clarityn", and UCB-Pharma, [15-25]% with "Zirtek".
50. In a possible separate market for hayfever remedies, in the UK after the operation SB's market share would be [25-35]% (Block Drug [10-20]%, SB [10-20]%). There are at least three significant competitors present: Schering-Plough, [10-20]% with "Clarityn", Pfizer, [10-20]% and UCB-Pharma, [5-15]% with "Zirtek". The sales data for 1999 also show a growth of [1-10]% and [0.5-3]% respectively for Piriton and Beconase, and of [10-20]% and [20-30]% respectively for Clarityn and Zirtek.
51. In an overall market for anti-allergy products, in Ireland after the operation SB's share would be [35-45]% (Block Drug [1-10]%, SB [25-35]%). It would face competition notably from Schering-Plough with "Clarityn", [20-30]%, and from UCB-Pharma with "Zirtek", [20-30]%. In a possible separate market for hayfever remedies, in Ireland SB's share would be [15-25]% (Block Drug [5-15]%, SB [5-15]%). It would face competition notably from Schering-Plough with "Clarityn", [25-35]%, and from UCB-Pharma with "Zirtek", [20-30]%.
52. In view of the foregoing, and notably the degree of competition SB will face, the Commission considers that serious doubts as to the compatibility of the notified operation do not arise in a market for anti-allergy products.

vi) Inflammatory Bowel Disease Treatments

53. The only member state in which the parties' sales in inflammatory bowel disease treatments overlap is the UK, where SB has a [50-60]% market share and Block Drug a [1-5]% market share. The main competitor is Pharmacia Upjohn with [10-20]% and other competitors like Ferring, with [5-10]% and Astra Zeneca, [1-5]% are also active on the market.
54. Given the small size of the increment brought to SB's share by the acquisition of Block Drug, the operation will not lead to the creation or strengthening of a dominant position.

V. CONCLUSION

55. 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,
*M. Monti, (Member of the
Commission)*