

***Case No COMP/M.2193 -
ALLIANCE UNICHEM /
INTERPHARM***

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

Article 6(1)(b) NON-OPPOSITION

Date: 07/12/2000

*Also available in the CELEX database
Document No 300M2193*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07/12/2000
SG(2000)D/

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir, Madam,

Subject: Case No COMP/M. 2193 Alliance UniChem / Interpharm

Your notification of 06.11.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 06.11.2000, 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 Alliance UniChem PLC ("Alliance UniChem") will acquire control within the meaning of Article 3(1)(b) of the Council Regulation of the seven subsidiary companies which comprise the Interpharm Group ("Interpharm") from Internatio-Müller NV ("Internatio-Müller").
2. The Commission has concluded that the notified operation falls within the scope of the Merger Regulation as amended and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES AND THEIR ACTIVITIES

3. Alliance UniChem is a pharmaceutical wholesaler in a number of European countries, but not (as yet) the Netherlands. In the Netherlands, it owns 70% of a company that operates 14 retail pharmacies, mostly under the brand name "The Vier Vijzels". Interpharm is a pharmaceutical wholesaler in the Netherlands and is a franchisor to about 200 pharmacies under the "Kring"-formula. Interpharm is further active in the distribution to drugstores via a joint venture with DA, a co-operative association of private business owners in the Netherlands. Internatio-Müller currently owns Interpharm and is also active in the distribution of specialty chemicals, various

automation and IT-related operations in the Netherlands, heating and ventilation systems in Germany, ship-building in Europe and engineering operations in Belgium.

II. THE OPERATION

4. Alliance UniChem will acquire all of Internatio-Müller's shareholdings in Interpharm, with the exception of one subsidiary, Pharmapartners BV, in which Internatio-Müller will continue to hold 50%.

III. CONCENTRATION

5. Alliance UniChem will acquire sole control over Interpharm with the exception of one subsidiary, Pharmapartners BV, over which Alliance UniChem will acquire joint control together with Internatio-Müller. This operation gives rise to two concentrations, given the fact that the "quality of control" (joint/sole) differs between the respective parts of the business. In any event, both concentrations fall under the jurisdictional criteria in Article 3(1)(b) of the Merger Regulation. Since the competitive assessment is not affected the present decision deals with both concentrations together.

IV. COMMUNITY DIMENSION

6. The parties to the agreement have a combined aggregate world-wide turnover of more than EUR 5 billion and have a Community-wide turnover in excess of EUR 250 million¹. The parties do not all achieve more than two-thirds of their aggregate Community-wide turnover in one and the same Member State. The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

A. Relevant product markets

7. In terms of the product market, in the Netherlands there are several routes for pharmaceutical products to reach their point of consumption: (i) manufacturers supply direct; (ii) via full-line wholesalers such as Interpharm (full-line wholesalers are those that offer the whole range of pharmaceuticals); (iii) short-line wholesalers (offering a restricted range of fast-moving pharmaceutical products; and (iv) parallel imports (which can be viewed as a form of short-line wholesaling).
8. The Commission has previously recognised that there may be some degree of substitution between short- and full-line wholesaling services, but that a distinction between the two may be appropriate for the purpose of determining relevant product markets (see case IV/M.1058 – Unichem/Alliance Santé). The parties argue that this distinction is not very relevant to the Netherlands as the short-line wholesalers offer almost as wide a range of products as the recognised full-line wholesalers in that country. A distinction between parallel importing and short-line wholesaling is conceivable, but it appears that the former can be seen as a particular form of the latter.

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.

Another possible distinction is that between wholesaling to hospitals and other care institutions ("intramural") and wholesaling to retail outlets ("extramural"), in view of the differing customer groups and applicable regulations. In the context of the present case, however, it is not necessary to decide upon the above distinctions, since whatever the precise market definition chosen, the concentration does not lead to the creation or strengthening of a dominant position.

9. At the retail level, it is likely that retailing through pharmacies can be considered as a separate relevant market as a result of the licensing requirements to which pharmacists are subject. Drugstores or other outlets cannot be considered to provide sufficient competitive pressure on pharmacies for them to be considered in the same market.

B. Relevant geographic markets

10. According to the parties, full-line and short-line wholesalers compete in a market that is national or sub-national in nature. This view is consistent with previous decisions under the Merger Regulation, where it has been found that the market for pharmaceutical wholesaling is, at most, national in nature (see case IV/M.1058 – Unichem/Alliance Santé). Wholesalers cannot economically provide their delivery services at more than a certain distance from their wholesale depots. The regional nature of the market is reflected by the fact that many wholesalers operate purely on a regional basis and that, even for national players, in some states, market shares may diverge considerably between individual regions. With its relatively small geographic area, such regional divisions are not readily apparent in the Netherlands, but they cannot be excluded. However, it is not necessary to define the geographic markets in this case any further, since the operation will not create or strengthen a dominant position under any of the possible geographic market definitions.

C. Assessment

11. The only affected markets relate to the Netherlands. Alliance UniChem's only presence on the wholesaling markets in the Netherlands is via its parallel imports into the country. Interpharm is active as a full-line wholesaler and as parallel importer. Internatio-Müller has no pharmaceuticals wholesaling activities other than through Interpharm. DA is not active in wholesaling. If we were to consider that parallel imports represented a separate relevant market from short-line wholesaling, then the parties combined market share in 1999 would have been 20% (Interpharm 16%, Alliance UniChem 4%) on a market total of Euro 328 million. Five other competitors would still exist with market shares of 10% or more. This concentration would therefore not create or strengthen any dominant position, even on this narrowest possible market. The parties' parallel imports activities amount to a combined market share of 12% (Interpharm 10%, Alliance UniChem 2%) in the short-line wholesaling market as a whole, valued at Euro 534 million, without significant differences between the intramural segment and the extramural segment. Neither are there significant regional differences.
12. On the full-line wholesaling market, there is no competitive overlap since only Interpharm is active as such (with a market share of 23% on a total of Euro 1.8 billion). On the overall wholesaling market worth Euro 2.5 billion, Alliance UniChem's parallel imports represented only 0.6% in 1999. As a result the competitive overlap is very small. The parties would hold a combined market share of 24% on this market. There are no significant differences between the intra or extra-mural segments or between regions in this respect.

13. There are only very limited horizontal and vertical relationships in relation to retailing. Alliance UniChem owns only 14 pharmaceutical retail outlets (about 1% of the total). Interpharm does not itself operate retail pharmacies but it does provide a franchise formula to around 15% of pharmacies (200 outlets) in the Netherlands. These franchisees have no exclusive arrangements with Interpharm. In view of the low market shares across the Netherlands, the operation as such raises no risks of any adverse effects as a result of foreclosure.
14. In the light of above elements, the operation will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in any market for the distribution of pharmaceutical products in the Netherlands.

VII. 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 pursuant to Article 6(1)(b) of Council Regulation (EEC) No. 4064/89 and Article 57 of the EEA Agreement.

For the Commission,
(signed)
Mario MONTI
Member of the Commission
