

***Case No COMP/M.2441 -  
AMCOR / DANISCO /  
AHLSTROM***

Only the English text is available and authentic.

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

---

Article 6(1)(b) NON-OPPOSITION  
Date: 11/06/2001

*Also available in the CELEX database  
Document No 301M2441*



## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11/06/2001

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject : Case No COMP/M.2441 – AMCOR/DANISCO/AHLSTROM**

**Notification of 04.05.2001 pursuant to Article 4 of Council Regulation N°4064/89**

1. On May 4, 2001 the Commission received a notification of a proposed concentration by which Amcor Limited (an Australian company, “AMCOR”) and Danisco A/S (a Danish company, “DANISCO”) merge their European flexible packaging businesses into a new company called AMCOR FLEXIBLES EUROPE A/S (the “JV Company”).
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 OPERATION**

3. The operation consists in the formation of a full function joint venture. The operating assets of the JV Company will be transferred both by the notifying parties referred to above and by Ahlstrom Corporation (“AHLSTROM”, a Finnish company) which, in return, will hold a minority stake. The exact shareholding structure will be as follows: AMCOR (67%), DANISCO (25%), and AHLSTROM (8%). Although AMCOR will hold the majority shareholding, in view of some veto rights vested upon DANISCO over strategic commercial decisions of the JV Company, the overall operation results in the acquisition, within the meaning of Article 3(1)(b) of the Merger Regulation, of joint control by AMCOR and DANISCO over the JV Company.

## **II THE PARTIES**

4. AMCOR is a global focussed packaging publicly listed company with around 140 plants in 24 countries. Its range of products include corrugated boxes, flexible packaging, closures, aluminium cans, PET containers and folding cartons.
5. DANISCO is a major international producer of food ingredients, sugars and flexible packaging. It has also activities in selected parts of the European food markets and corrugated board packing, although DANISCO intends to divest these businesses.
6. AHLSTROM is an international corporation based in Finland, whose main business is speciality paper and advanced fibre web materials. It owns a company active in the flexible packaging business (Akerlund and Rausing, A&R). Most of the asset of this undertaking will be transferred to the JV Company.

## **III COMMUNITY DIMENSION**

7. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion<sup>1</sup>. AMCOR has world-wide turnover of [€ 3600 million in 2000] and DANISCO has world-wide turnover of [€ 3740 million in 2000]. AMCOR and DANISCO have a Community-wide turnover in excess of EUR 250 million (AMCOR: [€ 408,7 million], DANISCO: [€ 2151 million] in 2000) and 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.

## **IV THE RELEVANT MARKET**

### *PRODUCT MARKET*

8. The parties have proposed to define the relevant market as comprising the overall business of “flexible packaging”. Flexible packaging involves the manufacture, supply and conversion of plastic and cellulose films, aluminium foils and papers into reels of packaging to be used for primary retail food packaging and labelling and certain other non-food sectors. There are thousands of different flexible packaging products, based on a variety of films, papers and foils. These materials can be used independently (as monoweb) or in combinations (laminates) for a very wide range of different end uses. The majority of flexible packaging consists of laminates.
9. Flexible packaging excludes shrink and stretch films used for secondary packaging, pallet wrap, carrier bags, supermarket self-service and counter bags, silage bags, refuse sacks, and industrial heavy duty sacks. It also excludes PVC, and other cling films and aluminium foil sold to consumers. These items (“excluded items”) are not being contributed to JV Company. In fact, the excluded items are sold to customers in a wide variety of retailing, consumer and industrial markets as packaging for the customer to use as he/she wishes (e.g. as a carrier to take shopping, pallet wrap for supermarkets to

---

<sup>1</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.

use for storing goods etc.), whereas flexible packaging is sold to customers such as brand owners and manufacturers who use the material to package products which are ultimately sold to consumers. Accordingly, from a customer's perspective, flexible packaging would not be regarded as a ready and economic alternative to the excluded items (or vice versa) as these products serve essentially different purposes. Moreover, from a supply-side perspective, the equipment used in order to produce flexible packaging is quite different from that used to produce the excluded items.

10. According to the parties, most demand for flexible packaging is bespoke in the sense that each customer (normally brand owners and food manufacturers) has very specific requirements for each product it is packaging. The customer selects a bespoke product based on a number of considerations: cost, functionality, shelf life, machinability and "look and feel". A combination of these factors determined by the customer will set the parameters within which the raw materials and conversion processes used for the specific product supplied will be chosen. As a result, similar products may often be packaged very differently, whilst different products may be packaged with similar packaging. They have concluded that, on the demand-side, it is not meaningful to sub-divide the flexible packaging market into narrower sub-markets.
11. On the supply-side, the parties have argued that there's a high degree of substitutability in the sense that manufacturers of flexible packaging displaying one set of characteristics can readily produce flexible packaging displaying a different set of characteristics. All that is generally required is standard lamination, printing and slitting equipment. If additional processes are required, further equipment can be acquired at low cost or the process can be sub-contracted out or semi-finished materials can be bought in. In conclusion, the parties have suggested that flexible packaging should be regarded as a single product market.
12. Nevertheless, from the market investigation carried out by the Commission, it has also appeared that a possible demand segmentation is envisageable, by distinguishing the customers and sales of flexible packaging according to some end-use industries: (i) food, ii) medical supplies, iii) pharmaceuticals, iv) household products, v) other non-food). Furthermore, within food packaging sales, a deeper segmentation would also be possible, by distinguishing flexible packaging in respect of various categorisation of food: a) Dairy, b) Beverages, c) Confectionery d) Fresh e) Dried f) Frozen g) Pet food. These distinctions might well reflect significant categorisations for the purpose of statistical industry surveys, but might also indicate the existence of separate products markets, because these forms of packaging respond to different customers needs, with special requirements in terms of barrier properties, seal strength, printing quality, design etc. and also, to some extent, to different production technologies. Moreover flexible packaging for medical products, for instance, would also require specific testing phase and validation time, which is normally longer and stricter than the one required by food packaging customers. The parties themselves have confirmed that one important distinguishing characteristic of medical packaging is the additional requirement of sterilisation, even if they have stated that this is not part of the conversion process, as the customer would sterilise its own products in the package post-packing.
13. In any event, for the purposes of this case the precise relevant product market definition can be left open since, in all alternative market definition considered, effective competition would not be significantly impeded in the EEA or in a substantial part of it.

14. The parties believe that the market for flexible packaging would be at least EEA-wide, since there is a substantial degree of import/export movement between different European countries and customers are increasingly purchasing on an international basis, while transport costs relative to the value of the product are very low, since shipping of products normally takes place on reels.
15. In particular, further justification for the high level of import/export within European countries is in that no local presence is required by converters either in terms of after-sales service or a distribution network (except access to warehousing space), and there are no regulatory or technical barriers within the EU with regard to flexible packaging. According to the parties, which quote independent experts data (PCI Film Consulting Ltd), in 2000 imports constitute on average around [15%-25%] of domestic consumption within the EEA, and exports from the EEA (towards European and non European countries) constitute on average [25%-35%] of EEA domestic production. This level of cross-border trade, together with the above referred elements, indicates the existence of a market which is at least EEA-wide. Furthermore some European companies are also increasingly setting up converting facilities in Central and Eastern European countries such as Poland and Hungary.
16. The market investigation has broadly confirmed that customers actually source or may easily source flexible packaging products from outside their own country, and mainly on a EEA basis. Price levels for flexible packaging materials seem to be similar between EEA member countries, while some differentials (in terms of price, quality and standards required) would emerge between the EEA as opposed to the Central and Eastern Europe, to the Asian and to the US markets. Furthermore, the most important converters are global or pan-European players, while replies received to the market investigation by both converters and the by the majority of customers indicated that the clients' most likely reaction to an hypothetical price rise of 5 to 10% magnitude for the relevant products would be to switch their orders to suppliers located in a different geographical area outside their own country, rather than switching to a different range of products.
17. For the purposes of this case, the relevant scope of the geographic market is assumed to be EEA-wide.

## **V COMPETITIVE ASSESSMENT**

18. The market investigation carried out by the Commission has first confirmed that the aforementioned "excluded items" should not belong to the same product market as flexible packaging, and has broadly indicated that the relevant product market might be one overall market comprising all "flexible packaging" products with a EEA-wide scope. Within this market delineation, the operation would lead to the creation of the market leader with [10%-15%] market share (year 2000), in light of the horizontal overlap between the single parties' market shares (respectively [below 5%] for AMCOR, [5%-10%] for DANISCO and [below 5%] for AHLSTROM). However, the concentration would not create or strengthen any dominant position upon the JV company, since the market appears to be highly fragmented on the supply-side, with numerous competitors able to offer valid alternatives to the JV company (the second ALCAN Packaging having [5%-15%] market share, followed by Sealed Air Cryovac

with [below 10%], VAW Europack with [below 10%], Constantia Teich with [below 10%], etc.)<sup>2</sup>.

19. Moreover, on the demand-side, the parties pointed out that a big portion of the customers are well known brand-owner food companies. Some noticeable food companies, such as Unilever, Mars, Sara Lee, Nestlé, Frito-Lay, United Biscuits, begin to carry out centralised purchasing operations of the relevant products at European level via international tenders.
20. With reference to the narrower product market configurations considered above, overlaps between the parties would occur<sup>3</sup> in respect of the overall Food packaging ([...] % market share for the JV Company), Medical packaging ([...] % total market share for the JV company), Pharmaceutical packaging ([...] % market share for the JV Company) and Other non-food packaging ([...] % market share for the JV Company). Within the Food packaging, overlaps would occur in each segment, save flexible packaging for Pet food, leading to the following attribution of total market shares to the JV Company: [...] % (Dairy), [...] % (Beverages), [...] % (Confectionery), [...] % (Fresh food), [...] % (Dried food), [...] % (Frozen food).
21. However, even in these narrowest product market definitions, the creation of any dominant position of the JV Company can be ruled out, since in each of the above market segments, there will be no scope for the merged business to exercise any form of market power, by raising prices above the competitive level, or reducing product quality. After the merger, the combined group will face strong competition from a significant number of suppliers in a market that will remain fragmented.
22. In particular, some of the main players for each of the affected segments envisaged above are the following companies (non-exhaustive list): 1) flexible packaging for Pharmaceuticals: Alcan ([...] %), VAW Europack ([...] %); 2) flexible packaging for Dairy food: WAV Europack ([...] %), Alcan ([...] %), Constantia Teich ([...] %); 3) flexible packaging for Beverages: Huhtamaki ([...] %), Goglio Luigi ([...] %), Soplamil ([...] %); 4) flexible packaging for Confectionery: Alcan ([...] %), Constantia Teich ([...] %); 5) flexible packaging for Fresh food: Sealed Air Cryovac ([...] %).
23. In view of the foregoing, for the purposes of this case the precise relevant product market definition can be left open since, in all alternative product market definition considered, effective competition would not be significantly impeded in the EEA or in a substantial part of it.

## **VI ANCILLARY RESTRAINTS**

24. The parties have agreed a number of arrangements which they claim are restrictions directly related and necessary to the concentration in order to protect the full value of the assets being transferred to JV Company.

---

<sup>2</sup> The source of these figures are PCI Films Consulting Ltd and the parties' best estimates for year 2000.

<sup>3</sup> All figures provided hereinafter are 2000 converted flexible packaging consumption/sales by end-use. The source of these figures are PCI Films Consulting Ltd and the parties' best estimates.

25. These restrictions concern *inter alia* a non-compete clause, and a “non-solicitation of customers” clause contained in the Shareholders’ Agreement. Moreover, each of the parties undertake vis-à-vis the JV Company, *inter alia*, not to acquire any interests above a [...] % stake in competing companies listed in a stock-market (minority-shareholding acquisition clause). According to the parties, all these restrictions are designed to provide protection for the investments, the goodwill and the confidential know-how, which each party is transferring to the JV Company. In this respect, the parties argue that, due to confidential commercially sensitive information concerning the JV Company’s business activities, any shareholding above [...] % held by the parties in a listed competitor would lead to a conflict of interest that could seriously prejudice the business of the JV Company.
26. In respect of each party, the non compete clause and the minority-shareholding acquisition clause cover [...] and run from [...] up to the date [...]. These provisions would cover [...]. In this latter case, the provisions could be potentially of unlimited duration.
27. *Mutatis mutandis*, similar provisions concern also “non-solicitation of customers” clauses put upon each of the parties to the operation for a period running from [...].
28. In accordance with the practice of the Commission regarding restrictions ancillary to concentrations, a non-compete obligation prohibiting the parent undertakings from competing with the business of the joint venture is considered as directly related and necessary to the implementation of the concentration as far as it reflects the need to enable the joint venture to assimilate know-how and goodwill provided by the parents. Therefore, the Commission takes the view that the above clauses (non-compete, non-acquisition of minority shareholding stakes in so far as it confers the possibility to exercise material influence in an undertaking and, *mutatis mutandis*, non solicitation clauses) are to be considered ancillary to the operation for a period of three years from completion of the transaction.
29. As far as AHLSTROM (minority shareholder in the JV Company) is concerned, the present decision covers the aforementioned non-compete, non-acquisition of minority-shareholding (conferring the possibility to exercise material influence in an undertaking) clause and, *mutatis mutandis*, non-solicitation provisions for a period of up to three years from completion of the transaction. In fact, AHLSTROM has contributed the entire business of flexible packaging to the JV Company and, according to the practice of the Commission, a period of up to three years for a non-compete clause can be considered reasonably necessary and directly related to the implementation of a concentration, when transfer of assets, goodwill and know-how is involved.

## VII CONCLUSION

30. In view of the foregoing, it can be concluded that the proposed operation would not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or in any substantial part of that area.

31. For the reasons above, the Commission decides not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) N°4064/89.

For the Commission

Mario MONTI  
Member of the Commission  
*(signed)*