

***Case No COMP/M.2840 -
DANAPAK / TEICH / JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 30/08/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30/8/2002

SG (2002) D/231431

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No COMP/M.2840 - Danapak/Teich/JV
Notification of 01/08/2002 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 01.08.2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings Danapak A/S (“Danapak”) belonging to the Arla Foods Amba group, and Teich AG (“Teich”) controlled by Turnauer Industriestiftung acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking Danapak Flexibel A/S (“Danapak Flexibel”) by way of purchase of shares.
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation 4064/89 and that it does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. Danapak is founded and wholly-owned by the Danish dairy industry through the Danish co-operative Danapak Amba. Danapak Amba is controlled by Arla Foods Amba (hereinafter ‘Arla’) which is a global supplier of dairy products and which holds 93,1% of the voting rights in Danapak Amba. Danapak’s core business is the production and supply of folding carton packaging and flexible packaging.
4. Danapak Flexibel is currently a wholly owned subsidiary of Danapak. It is specialised in the production and supply of flexible packaging.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

5. Teich is controlled by Constantia Verpackungen AG, which is one of the two branches of the Constantia Industrial Group comprising three company groups active in various business areas. These are the Teich Group, the Haendler & Naterman Group and the Duropak Group ('Duropak'). The ultimate parent company of Constantia Verpackungen AG is Turnhauer Industriestiftung, which is an independent foundation (i.e., it has no controlling shareholders).

II. THE OPERATION

6. Upon completion of the notified transaction, 60% of the shares of Danapak Flexibel will be owned by Teich and 40% will be held by Danapak. As part of the transaction, Teich will transfer all the shares in six wholly-owned subsidiaries to Danapak Flexibel: Constantia (UK) Ltd., Teich Flexible (UK) Ltd., Teich Aluminium (UK) Ltd., Teich Flexible Packaging (UK) Ltd. and Teich Packaging Films (UK) Ltd., and Newco, (described in more detail below). Constantia (UK) is a holding company which owns the shares in Teich Flexibles (UK) which in turn owns Teich Aluminium (a dormant company). The other subsidiaries with the exception of Newco are active in flexible packaging and located in the UK. The sixth subsidiary, Corona Packaging A/S ("Corona Packaging") which is a wholly-owned subsidiary of Teich, is to be de-merged and its flexible packaging business will be transferred to a new company ("Newco") which will be owned by Danapak Flexible. No packaging activities will remain in the legal entity Corona Packaging after the de-merger.
7. Through Duropak, Teich will continue to be active in the manufacture and supply of corrugated cases and corrugated board. Danapak will also retain some independent activities in the manufacture and supply of thin corrugated cases.

III. CONCENTRATION

8. The proposed operation will bring about a shift from sole control by Danapak over Danapak Flexibel to joint control by Danapak and Teich. Although Danapak will hold only 2 out of 6 seats on the board of Directors, it will have joint control because of the veto rights conferred by the joint venture agreement, (inter alia, adoption of business plan and budgetary approval). Prior to the transaction Danapak Flexibel was already a full function company and this will not change after the notified transaction. The notified transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation 4064/89.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than € 5 billion² (Arla: € 5.116 million; Turnhauer Industriestiftung: € 1.459 million). Each of them have a Community-wide turnover in excess of € 250 million (Arla: € 4.253 million; Turnhauer Industriestiftung: € 967 million), but 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 dimension.

² 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.

V. COMPETITIVE ASSESSMENT

Relevant product markets

10. The Parties submit that the transaction gives rise to horizontal overlaps with regard to flexible packaging.
11. In Case M.2441 - *Amtcor/Danisco/Ahlstrom*³, the Commission considered the product markets in the flexible packaging business. The production of 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 monowraps) or in combinations (laminates) for a very wide range of different end uses. The majority of flexible packaging consists of laminates.
12. In the above-mentioned case, the Commission found that flexible packaging excludes the following items: 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. The Commission also found that flexible packaging excludes PVC and other cling films and aluminium foils sold to consumers. The afore-mentioned excluded items were generally found to be sold directly to customers in a wide variety of retailing, consumer and industrial markets as packaging for the customers' individual use. Flexible packaging on the other hand, is sold to customers such as brand owners and manufacturers who use the material to package products which are ultimately sold to end consumers.
13. The investigation suggested that a possible demand segmentation is possible, by distinguishing the customers and sales of flexible packaging according to some end-use industries as follows: (i) food; (ii) medical supplies; (iii) pharmaceuticals; (iv) household products; and (v) other non-food. Furthermore, within food packaging sales a further segmentation was also considered, by distinguishing flexible packaging in respect of various categories of food: (a) dairy; (b) beverages; (c) confectionery; (d) fresh; (e) dried; (f) frozen; and (g) pet food. However, the product market definition was ultimately left open.
14. In the present case, the Parties submit that the relevant market comprises the manufacturing and supply of an overall market for all "flexible packaging." The Parties consider that demand for flexible packaging is customised in the sense that each customer has very specific requirements for each product it is packaging, and will select a product based on considerations such as cost, functionality, shelf-life, machineability and "look and feel." The customers are normally brand owners and food manufacturers. The Parties suggest that 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, the Parties argue that the similar products may often be packaged very differently, whilst different products may be packaged with similar packaging.
15. On this basis, the Parties argue that the sub-division into narrower sub-segments discussed in *Amtcor/Danisco/Ahlstrom* is not meaningful. On the supply-side, the Parties argue that there is 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.

³ Case COMP/M.2441 - *Amtcor/Danisco/Ahlstrom* of 11.06.2001.

16. The Commission's market investigation has however largely provided confirmation to the earlier indications. Furthermore, there are indications that, within the class of all flexible packaging for food products, it may be appropriate to adopt a deeper segmentation into the following categories; (a) dairy; (b) beverages; (c) confectionery; (d) fresh; (e) dried; (f) frozen; and (g) pet food.
17. The results of the Commission's market investigation suggests that these types of packaging meet different customers requirements in terms of particular characteristics, for example, barrier properties, seal strength, print quality, design, and to some extent, to different production technologies. In particular, it appears that flexible packaging for medical products and pharmaceuticals for example, requires a specific testing phase and validation time, which is normally longer and stricter than the one required by food packaging customers.
18. In any event, for the purposes of this decision the precise relevant product market definition can be left open since, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or in a substantial part of it.

Relevant geographic markets

19. The Parties submit that the appropriate geographic market in this case is EEA-wide, which is in line with the Commission's findings in *Amcor/Danisco/Ahlstrom*. This has also been reconfirmed by the market investigation.

Assessment

A. Horizontal overlaps

Flexible packaging products

20. The Parties are not active in the manufacture or supply of flexible packaging for [...]. The market investigation carried out by the Commission has indicated that the above-mentioned 'excluded items' should not belong to the same product market as flexible packaging.. On the basis of the broader relevant market definition comprising all "flexible packaging" products with an EEA-wide geographic scope, the combined value share of the Parties of manufacture and supply of flexible packaging would be [0-10]% for 2001. The operation would therefore lead to the creation of the number three player on the market for overall flexible packaging, behind Amcor/Danisco/Ahlstrom ([10-20]%) and Alcan ([5-15]%). The concentration would thus not create or strengthen a dominant position since there appears to be fragmentation on the supply-side with a number of competitors able to offer alternative sources of supply (Sealed Air Cryovac with [0-10]%, VAW Europack with [0-10]%, and HVL with [0-10]%).
21. On the demand-side, the Parties submitted that a large portion of the customers are well known brand-owner food producers. Some high-profile food companies such as [...] carry out centralised purchasing operations of the relevant products at European level via international tenders and e-auctions.
22. In terms of the narrower, individual end use segments considered above, as regards non-food packaging, overlaps would occur in each segment save for medical supplies, leading to the following shares for the Danapak Flexibel: [5-15]% (pharmaceuticals) and [0-10]% (other non-food). Except for beverages, overlaps between the Parties would occur in respect of the overall segment for food packaging ([0-10]% total market share for the Danapak Flexibel). Within food packaging, overlaps would occur in the following segments: dairy product packaging ([15-25]% total market share for the Danapak Flexibel); packaging for

confectionery ([5-15]% total market share for the Danapak Flexibel); packaging for dried food ([5-15]% total market share for the Danapak Flexibel); and packaging for pet food ([10-20]% total market share for the Danapak Flexibel).

23. However, even in these narrow product market definitions, the creation of a dominant position of the Danapak Flexibel can be ruled out, since in each of the above market segments, there will be no scope for the Danapak Flexibel to exercise market power by raising prices above the competitive level, or reducing product quality. Following the proposed operation, the combined entity will face strong competition from a number of suppliers.
24. In particular, according to the value estimates of the Parties for 2001, some of the main manufacturers for each of the affected segments envisaged above are the following companies: 1) *flexible packaging for pharmaceuticals*: Alcan ([15-25]%), VAW Europack [5-15]%, Amcor ([0-10]%), 2) *other non-food*: Amcor ([10-20]%), (Alcan ([5-15]%), VAW Europack ([0-10]%), 3) *food*: Amcor ([10-20]%), Alcan ([10-20]%) VAW Europack ([0-10]%), 4) *dairy*: Alcan ([10-20]%), VAW Europack ([10-20]%), Amcor ([5-15]%), 5) *confectionery*: Amcor ([20-30]%), Alcan ([15-25]%), VAW Europack ([5-15]%), 6) *dried food*: HVL ([25-35]%), Amcor ([15-25]%), Alcan ([0-10]%), 7) *pet food*: Alcan ([35-45]%), Amcor ([5-15]%), VAW Europack ([5-15]%). These figures were broadly confirmed by the market investigation and by the structure of competition considered by the Commission in the M.2441 - *Amcor/Danisco/Ahlstrom* decision in 2001. Based on the above-mentioned shares it is clear that after the concentration there will remain effective competition in each segment of the market for overall flexible packaging.
25. In view of the foregoing, and regardless of the precise relevant product market definition, the notified concentration will not significantly impede effective competition in the EEA or in a substantial part of it.

Co-ordination Article 2(4)

26. As noted above, the Parties shall retain activities outside of the Danapak Flexibel for the manufacture and supply of corrugated cases and corrugated board: Danapak produces very thin “micro-flute” corrugated paper used for the manufacture of thin paper cases; Duropak is active as a supplier of corrugated board and corrugated cases. However, the focus of the Parties’ activities are in different geographic areas and give rise to only a de minimis overlap. The majority of Danapak’s activities are in Denmark, whereas Duropak’s focus of activity is in Austria. The only country in which the activities of the Parties overlap to a very limited extent is Germany. Therefore, the Commission has no reason to expect that the concentration will lead to co-ordination of behaviour between the Parties as regards their retained activities.

B. Vertical relationships

27. As regards the upstream market for the supply of aluminium foil, the Turnauer Industriestiftung owns 40% of Austria Metall AG (‘AMAG’). There is thus, a vertical relationship between the Danapak Flexibel and the AMAG. However, this vertical link does not give rise to concerns since neither the above mentioned Corona Packaging, Danapak Flexibel or NOR Constantia (UK) Ltd. (the businesses contributed to the joint venture) have in the past bought aluminium foil from AMAG, but from independent third parties. Second, the thickness of aluminium foil sold by AMAG is [...] microns and the aluminium foil required by the joint venture in terms of thickness must be no bigger than [...] microns.

VI. CONCLUSION

28. 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

Signed,
Mario MONTI
Member of the Commission