

***Case No COMP/M.2951 -
A.S. WATSON /
KRUIDVAT***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 27/09/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.09.2002

SG (2002) D/231850

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2951 - A.S. Watson/Kruidvat**
Notification of 29.08.2002 pursuant to Article 4 of Council Regulation
No 4064/89¹

1. On 29 August 2002, the Commission received a notification of a proposed concentration whereby A.S. Watson & Co., Limited ("A.S. Watson"), which belongs to the Hong Kong based group Hutchison Whampoa Limited ("Hutchison"), intends to acquire within the meaning of Article 3(1)(b) of the Council Regulation (EEC) No 4064/89 ("the Merger Regulation") control over Dutch companies Kruidvat Holding B.V., and Kruidvat Superdrug B.V. (hereinafter "Kruidvat"). The companies are presently controlled by Kruidvat Beheer B.V. ("Kruidvat Beheer").
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 the functioning of the EEA Agreement.

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).

I. THE PARTIES

3. A.S. Watson's activities in the EEA include procurement and retail sale of health and beauty products in the United Kingdom and the supply of spring water to corporate customers. A.S. Watson operates approximately 270 health and beauty stores under the trade name "Savers" in the United Kingdom. Hutchison is active in retail and manufacturing, the operation of ports, provision of telecom and internet infrastructure, real estate, hotels and supply of energy and infrastructure projects in Asia, Australia and Canada.
4. Kruidvat Holding B.V. and Kruidvat Superdrug B.V. represent Kruidvat Beheer's activities in the retail sale of health and beauty products. Kruidvat operates retail chains in the Netherlands, Belgium, the United Kingdom and Eastern Europe (Poland, Hungary and the Czech Republic). Kruidvat operates a total of approximately 1,900 stores, of which about 700 are located in the United Kingdom. These chains operate under various tradenames: 'Kruidvat' (the Netherlands and Belgium), 'Trekpleister' (the Netherlands), 'Ici Paris XL' (the Netherlands and Belgium), 'Superdrug' (the United Kingdom) and 'Rossman' (Poland, Hungary and the Czech Republic).

II. THE OPERATION

5. The notified concentration consists of the acquisition by A.S. Watson through group companies Watson's Personal Care Stores (Luxembourg) S.a.r.l. and Watson's Personal Care Stores (UK) Holdings Limited of sole control over Kruidvat. Pursuant to the International Share Sale Agreement signed on 22 August 2002, Kruidvat Beheer will sell 100% of the shares in Kruidvat to A.S. Watson.

III. CONCENTRATION

6. The acquisition by A.S. Watson of control of Kruidvat Holding B.V. and Kruidvat Superdrug B.V. constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Hutchison EUR 12,746 million and Kruidvat EUR [...] million in 2001)². Each of Hutchison and Kruidvat have a Community-wide turnover in excess of EUR 250 million (Hutchison EUR [...] million and Kruidvat EUR [...] million in 2001), 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. RELEVANT MARKETS

A. The relevant product market

8. The parties to the proposed concentration have overlapping activities only in the United Kingdom, where A.S. Watson operates stores under the trade name “Savers” and Kruidvat operates stores under the trade name “Superdrug”. Therefore, the focus of the Commission’s investigation has been on the impact of the proposed operation on the United Kingdom.
9. The notifying party considers the scope of the relevant market comprises the retail sale of the whole range of health and beauty products. The Commission has not assessed the markets for the procurement of health and beauty products since the share of the notifying parties considered either on a national basis or wider would be less than 10%. In the view of the notifying party, the retail market in health and beauty products consists of offering consumers a diversified range of such health and beauty products in a given sales area.
10. In previous cases involving daily consumer goods (e.g., Case IV/M784 *Kesko/Tuko*³) the Commission has determined that the participants in the market compete by offering a basket of goods. The notifying party submits that retailers in this market compete by offering a basket of goods, rather than individual products. According to the notifying party, the basket of goods includes a range of cosmetics, toiletries, health products (such as vitamins, minerals, OTC pharmaceuticals and dietary supplements), as well as baby and child products (such as diapers, care-products and foods). In the view of the notifying party, ancillary products and services such as lunch food (sandwiches, etc.), film, beauty treatments, photo development and dry cleaning should also be included.
11. As regards the type of retail outlet, the notifying party considers that the products and services concerned are offered to consumers in a vast range of outlets, including, but not limited to, speciality stores, supermarkets, pharmacies, department stores and duty-free shops, as well as by way of home-shopping (offline and online). In particular, the notifying party considers that speciality stores (e.g., “Boots”, “The Bodyshop”) are subject to competition from sales of health and beauty products in supermarkets. In this regard, the notifying party considers a distinction should be drawn between the competition experienced by supermarkets from speciality stores and that experienced by speciality stores in relation to supermarkets. In the view of the notifying party, a one-sided competition/substitutability in favour of supermarkets exists: whilst speciality stores may not always be substitutable for supermarkets, supermarkets are substitutable for speciality stores. The notifying party also suggests that pharmacies, department stores, duty-free stores and home-shopping should be included in the same relevant product market.
12. The Commission’s market investigation provided some support for the views of the notifying party, however, some respondents took a different view. As regards type of products, it was pointed out that in the United Kingdom, OTC healthcare products are available only under the supervision of a pharmacist, which generally means that the same location also sells prescription only medicines. As Savers does not appear to have any pharmacies the product market definition might be limited to general sales list

³ Commission decision of 26.07.1996.

medicines which do not require the presence of a pharmacist. Other responses suggested that duty-free and online sales should not be included within the relevant product market on the basis that they are not available to mass market. Another disagreed with the inclusion in the relevant product market of ancillary products such as lunch food (sandwiches etc.) films, photo processing and dry cleaning. The Commission's market investigation generally confirmed the view that supermarkets exercise competitive constraint on speciality stores.

13. However, for the purposes of this decision the issues whether there is a separate market for health and beauty products or the market includes speciality stores and other outlets including supermarkets may be left open since in all alternative markets considered, the notified operation does not lead to the creation or strengthening of a dominant position.

B. The relevant geographic market

14. The notifying party is of the view that the geographic scope of the retail market should include the whole of the UK. The notifying party submits that for the individual consumer, the market is local or, at most, regional. The notifying party suggests that since there will inevitably be geographic overlaps, a chain of substitution between geographically proximate retail outlet is created.
15. The notifying party states that most commercial policies such as product ranges, quality, service level, advertising, promotions and prices are to a large extent, decided by the market players at a national level rather than regional level. In addition, according to the notifying party, Savers, Superdrug and some of the main competitors set different price bands according to geographic region within the United Kingdom. Superdrug sets [...]. Savers applies [...]. However, the notifying party contends that even if the market is geographically limited to an area of 10-30 minutes by car for the individual customer, the competition between the market players of some size take place on a much wider geographic level.
16. In previous retail cases (e.g., Case IV/M.1612 *Wal-Mart/ASDA*⁴) the Commission has pointed out that although the catchment area of a retail outlet, which can be based on the distance a consumer is willing to travel to reach it, is of local or regional scale, the catchment area does not necessarily determine the geographic market. If several retail chains operate networks of stores on a national scale it has to be examined whether important parameters of competition are determined on a national scale.
17. The existence of different price-bands for Scotland and Northern England applied by Savers and Superdrug should not necessarily alter the geographic market definition. The notifying party argues that the rationale for different price bands follows from different cost bases. Whilst these price bands are applied on a regional level to reflect different costs, they are also set centrally and cannot be deviated from at local level. The Commission's market investigation indicated that retailers of health and beauty products tend to determine their commercial policies, including pricing policy, generally on a national scale, although there is some evidence that marketing and advertising policies are determined at a more local level. The market investigation did not confirm conclusively the existence of different price bands for different type of

⁴ Commission decision of 23.07.1999.

stores or locations. Therefore, there are some indications to conclude that the relevant geographic market is national in scope.

18. For the purposes of this case, the exact definition of the relevant market can be left open, however, since on the basis of all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or in a substantial part of it.

VI. COMPETITIVE ASSESSMENT

19. As noted above, the parties to the proposed concentration have overlapping activities in the United Kingdom, where A.S. Watson operates 270 health and beauty stores under the trade name “Savers”. Kruidvat operates approximately 700 stores in the United Kingdom under the trade name “Superdrug”. A sample evaluation of the dispersion of Savers and Superdrug outlets by postal code showed that there are many locations where, following the proposed operation, the notifying party will own two stores in close proximity to each other. However, further analysis of the location of outlets belonging to the notifying party’s main competitor, confirmed that in every overlap postal code area in the sample there exists at least one competitor.
20. On a narrow market for speciality stores only, following the transaction, the notifying party would have a market share of [20-25]% (A.S. Watson (Savers) [0-5]%; Kruidvat (Superdrug) [15-20]%) in the United Kingdom. The notifying party would be the second largest player in the United Kingdom after the market leader Boots, which has a market share of [45-50]%. Other speciality stores providing competition would include Wilkinsons with [5-10]%, The Body Shop with [0-5]% and Lloyds Pharmacy with [0-5]% of the market.
21. On a wider market including supermarkets, the notifying party would be the fourth largest competitor with a market share of [5-10]%. Boots would still be the market leader with a market share of [20-25]%, followed by Tesco with a [10-15]% and Sainsbury with a [5-10]% market share respectively. Other competitors include Asda/Wal-Mart with [5-10]% and Safeway [5-10]% market share.

VII. CONCLUSION

22. 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

Mario MONTI
Member of the Commission