

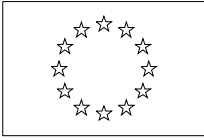
***Case No COMP/M.3025 -
BAIN CAPITAL / DOR
CHEMICAL /
TRESPAPHAN***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 17/12/2002

*Also available in the CELEX database
Document No 302M3025*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17/12/2002

SG (2002) D/233251

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3025 - Bain Capital/Dor Chemicals/Trespaphan
Notification of 18.11.02 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 18.11.2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings Bain Capital Fund VII-E (UK) LP ("Bain"- UK), belonging to the USA-based Bain Capital Investors group, and Dor Chemicals Ltd ("Dor" – Israel) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the Trespaphan group ("Trespaphan" – Germany), belonging to the German Celanese AG group, and the undertakings Moplefan S.p.A ("Moplefan") and Dor Film Australia Pty ("Dor Film"), both wholly owned by Dor, by way of purchase of shares.
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 PARTIES

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).

3. Bain is a limited partnership investment fund whose ultimate general partner is Bain Capital Investors, as mentioned above. The Bain Capital Investors group is a world-wide fund management group that manages private equity, venture capital, hedge and high yield funds.
4. Dor is a family-controlled company which produces a range of intermediate petrochemical products used in the chemical, plastics, pharmaceuticals and wood industries, as well as in agriculture and in motor fuels.
5. Moplefan, Dor Film and Trespaphan are all active in the manufacture and supply of standard flexible packaging material for consumer goods, namely in the production and supply of a plastic application obtained from polypropylene: the so-called "BOPP" (bi-axially-oriented polypropylene) film, which is mainly used for food and non-food packaging. As already indicated, Trespaphan is a business unit of the Celanese AG group, a global chemical supplier which was founded in 1999 as a result of the de-merger of the main industrial activities of Hoechst AG.

II. THE OPERATION

6. The envisaged concentration consists of the acquisition by Bain and Dor of joint control over Trespaphan, Moplefan and Dor Film, which will constitute a full-function joint venture. The notified operation will comprise a series of transactions that must be seen as one concentration, since they are conditional upon each other, will take place simultaneously and will be financed together.
7. According to the principal transaction agreements, entered into on 30.10.2002 :
 - a) Bain Fund will acquire, through wholly-owned vehicle companies, 49% of the shares in an intermediate company which belongs to Dor and holds 100% of Moplefan and Dor Film;
 - b) The intermediate company will acquire Trespaphan from Celanese, to which it will contribute its shares in Moplefan and Dor Film;
 - c) As a result, Bain and Dor will respectively hold 49% and 51% of the intermediate company, which will itself own 100% of the targets (Trespaphan, Moplefan and Dor Film).

III. THE CONCENTRATION

Joint control and full functionality

8. Joint control between Bain and Dor will be based on the ability of any of these parties to exercise strategic commercial veto rights with regard to the actions of the intermediate company holding 100% of the share capital of the targets. According to the terms of the Securityholders Agreement, a 75% majority of the shareholders general meeting will be required in order for the annual budget of the intermediate company to be approved. The budget will incorporate the business plan of the target companies and therefore approval of the budget implies approval of the latter.

9. The targets will be run autonomously of the parents, in line with the background of the three merged businesses, each of which were operating on an independent commercial basis prior to the transaction.

IV. COMMUNITY DIMENSION

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (Bain [] million, Dor [] million and the targets [] million). Two of them have a Community-wide turnover in excess of EUR 250 million (Bain [] million and the targets [] 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.

V. RELEVANT MARKETS

11. The parties are both producers and suppliers of a plastic application obtained from the raw material polypropylene, BOPP film. BOPP film is one of the materials used for flexible packaging and labelling in food and non-food sectors. Flexible packaging is also produced from aluminium foil and paper. Upstream of BOPP film manufacturers are polypropylene manufacturers, and downstream BOPP film is principally supplied to “converters” and large multi-national consumer product manufacturers. BOPP film can be subdivided into transparent, white/opaque and metallised plastic material.

Relevant product market

12. The notifying parties consider that the relevant product market is the market for standard flexible packaging material for consumer goods³. This market comprises mainly paper, aluminium foil and different plastic films (among others BOPP film, produced from the raw material polypropylene, as mentioned above).
13. Furthermore, standard flexible packaging materials using polypropylene can be subdivided into three categories, with BOPP plastic film being one of them. In turn, within the BOPP applications, three subcategories of plastic films can be distinguished, depending on the different appearances and treatment of the film, i.e. transparent BOPP, white/opaque BOPP and metallised BOPP.
14. In order to support this product segmentation, Bain and Dor argue that customers (consumer goods companies and converters) have the choice between the three different packaging materials, depending on the final product in question. Converters

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.

³ When stating so the parties refer to Commission’s previous decision in case COMP/M. 2441 – Amcor/Danisco/Ahlstrom, where the Commission did not reject that flexible packaging materials can be seen as one product market.

have generally the means to treat any of the three materials, which are significantly interchangeable. Thus while not every packaging material is suitable for any product, for most products there is a choice of at least two or three packaging materials.

15. The parties also indicate that there is a high degree of supply-side substitutability as concerns flexible packaging manufacture: producers of materials displaying a concrete set of characteristics can readily produce flexible packaging displaying a different set of characteristics at low cost.
16. Furthermore, the parties claim, although the cost for packaging materials vary and price is an element taken into account by customers, on many occasions they will base their choice on factors such as functionality, machinability and the “look and feel” consideration.
17. In respect of the above-mentioned subdivisions, the parties refer to previous decisions⁴ dealing with products having similar characteristics to BOPP film, where the Commission has indicated that a further product segmentation could be made within the market for standard flexible packaging materials on an end-use industries basis (particularly food and non-food industries), identifying different categories of plastic film applications and suggesting that they could be seen as separate markets.
18. Concerning the BOPP market, the parties argue that there is a significant degree of supply-side substitutability as to the three categories of BOPP films (transparent BOPP, white/opaque BOPP and metallised BOPP): it is argued that BOPP film for standard flexible packaging is manufactured in production lines which are capable, on short notice, to switch between the various modalities without technical difficulties, significant investments or credibility problems vis-à-vis the customers. Moreover, the parties claim that although the three materials have considerable differences concerning their appearance (which make them interchangeable only to a certain extent), they are often used for the same products, since all have functional similarities.
19. The market investigation has not shown a clear view on whether the standard flexible packaging material for consumer goods or the market for BOPP film for standard flexible packaging material for consumer goods (or a subdivision of it) should be defined as relevant market.
20. However, for the purpose of this operation, it is not necessary to decide on the exact product market definition since even on the narrowest definition, the transaction does not give rise to any significant competition concerns (see below).

Relevant geographic market

21. On the basis of previous decisions dealing with products having similar characteristics to BOPP film⁵ (aluminium foil, polyethylene film), the parties consider the relevant

⁴ Cases Amcor/Danisco/Ahlstrom (already quoted); IV/M. 984 – Amcor/Danisco/Ahlstrom; COMP/M. 2840 – Danapak/Teich/JV.

⁵ Cases Danapak/Teich/JV, Amcor/Danisco/Ahlstrom, Amcor/Danisco/Ahlstrom, (already quoted). See also cases No. IV/M. 984 – DuPont/ICI; No. COMP/M. 2843 – Amcor/Schmalbach/Lubeca; COMP/M.1599 Dupont/Teijin; COMP/M.2702 Norsk Hydro/VAW;

geographic market to be at least EEA-wide in relation to all the product segmentations that may be eventually considered by the Commission: standard flexible packaging materials for consumer goods, BOPP film for flexible standard packaging and each of the segments for transparent, white/opaque and metallised BOPP.

22. Bain and Dor argue that: the materials are sold in identical form throughout the EEA and technical and qualitative requirements are common; they are easily transported and may be shipped economically over long distances, with transport costs being relatively insignificant as a proportion of average sales value (5% of final product); manufacturers tend to supply customers from a limited number of plant sites within Western-Europe; materials of a similar type and thickness are sold at similar prices across the EEA; no significant local presence in the EEA is required in terms of after-sales service or distribution network and customers source on a centralised EEA-wide basis.
23. On the basis of the market investigation, the views of the parties can be confirmed. It can be concluded that the relevant geographic market, in relation to all the possible product market segmentations that can be considered, is at least EEA-wide.

VI. COMPETITIVE ASSESSMENT

24. BOPP film is the only product with regard to which the parties' (Moplefan and Tresaphan) activities overlap and no vertical issues have been identified on the basis of the information provided by the parties.
25. According to the figures submitted by Bain and Dor, if the relevant product market is defined as standard flexible packaging material for consumer good in the EEA, the combined market share of the parties is [0-10]%.
26. Should the narrower market of BOPP film for flexible standard packaging be defined, the combined market share of the parties by volume and value in 2001, on an EEA basis, is around [15-25] % . The parties have a number of competitors with the following market shares (by volume, 2001): Exxon/Mobile ([10-20]%), Vibac ([10-20]%), UCB ([5-15]%), Manuli ([0-10]%), Radici ([0-10]%), Bimo ([0-10]%), Condepals ([0-10]%), Walothen ([0-10]%), others ([10-20]%).
27. If the market for BOPP film for flexible standard packaging is further subdivided, the market shares of the parties by volume in 2001 are: transparent BOPP film ([20-30]%), white/opaque BOPP film ([15-25]%) and metallised BOPP film ([5-15]%). All of the above mentioned competitors are also present in these markets and have even stronger positions than the parties (i.e. Exxon/Mobil).
28. In the light of the figures above, Bain and Dor claim that the environment in any eventual affected market is competitive enough in order to discard serious competition concerns.
29. Moreover, the parties argue that customers of BOPP film, which are large and sophisticated purchasers, have considerable buyer power because they can simply switch their demand to another supplier in response to a threatened price rise. Furthermore they claim that the barriers to entry concerning this market are low.

30. The market investigation has provided information which confirms in general, with some variations, the market shares estimates given above, as well as the presence of a number of solid players competing with the new entity and ensuring enough customer choice. In addition, the market investigation has shown that the negotiating power of customers of BOPP film (among them pan-European converters and international consumer goods companies) appears to be well balanced between them and the suppliers.
31. Furthermore, it can also be concluded from the market investigation that for the customers there are no significant barriers to switch to other suppliers (many of them have switched suppliers in the past), with brand loyalty not playing a relevant role and contracts, if existing, having a limited duration. Moreover, most customers do not source from only one supplier but purchase from different sources of supply, and use centralised purchasing strategies.
32. Customers are of the opinion that the impact of the transaction on prices, their own businesses and the competitive structure of the market/s will be limited. In conclusion, the Commission's enquiry has confirmed the parties' assertions as to the absence of serious competition concerns.

VII. CONCLUSION

33. In light of the above, the Commission has concluded that the proposed transaction is not likely to create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.
34. 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