

***Case No COMP/M.3049 -
ALCAN / FLEXPACK***

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/02/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.02.2003

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3049 – Alcan/FlexPac
Notification of 23/01/2003 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 23.01.2003, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking Alcan Inc. (Alcan) acquires sole control of the flexible packaging division (FlexPac) of Hydro Aluminium Deutschland GmbH, a wholly owned subsidiary of Norsk Hydro ASA.
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. Alcan is a multinational company active in various aluminium activities and packaging. With worldwide sales of EUR 3 billion, Alcan Packaging offers total packaging solutions, transforming aluminium, plastics, paper, cartonboard, glass and steel into industrial and consumer branded products. Alcan Packaging combines the former algroup wheaton and algroup lawson mardon,² as well as the former packaging and foil rolling operations of Alcan, and is both a material supplier and packaging converter.

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).

² See Case COMP/M.1663 - *Alcan/Alusuisse* of 14.03.2000.

4. FlexPac, the former flexible packaging division of VAW, is a business division of Hydro Aluminium Deutschland, which is a subsidiary of Norsk Hydro³ and consists of a number of companies producing a range of flexible packaging products manufactured from aluminium, paper, and plastic, that are used in a variety of end use industries.

II. THE OPERATION AND THE CONCENTRATION

5. The notified concentration is an acquisition by Alcan of Hydro Aluminium Deutschland's entire direct and/or indirect shareholding in each of the companies constituting FlexPac, the flexible division of Hydro Aluminium Deutschland. As a result, Alcan will acquire sole control of each of these companies and thus FlexPac. The notified transaction, therefore, constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation 4064/89.

III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁴ (Alcan: EUR 14.091 million; FlexPac: EUR [...] million). Each of them has a Community-wide turnover in excess of EUR 250 million (Alcan: EUR [...] million; FlexPac: EUR [...] 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. COMPETITIVE ASSESSMENT

Relevant product markets

7. Alcan submits that the transaction gives rise to horizontal overlaps with regard to flexible packaging.
8. In Case M.2441 - *Amcor/Danisco/Ahlstrom*⁵, 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.
9. 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

³ Case COMP/M.2702 – *Norsk Hydro/VAW*, of 4.3.2002

⁴ 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.

⁵ Case COMP/M.2441 - *Amcor/Danisco/Ahlstrom* of 11.06.2001.

industrial heavy duty sacks. The Commission also found that flexible packaging excludes PVC and other cling films and aluminium foils sold to consumers. The aforementioned 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 packing, 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.

10. According to Alcan, the relevant market comprises the manufacturing and supply of an overall market for all "flexible packaging." Alcan considers that it is highly artificial to segment the market by end-use products when customers can choose between various flexible packaging substitutes and suppliers have the machines and expertise to switch production between various types of packaging for various end-use applications. As a result, Alcan argues that similar end-use products can often be packaged in very different ways using different materials, whilst very different end-use products may be packaged in very similar ways using similar materials.
11. However, in two previous cases, Case M.2441 - *Ancor/Danisco/Ahlstrom*⁶ and Case M.2840 - *Danapak/Teich/JV*⁷, the Commission investigation suggested that a 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.
12. The Commission's market investigation in this case has broadly confirmed the earlier indications, in particular with respect to the first segmentation. 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.
13. Also supply-side substitution does not seem to be as readily possible as Alcan suggests. Several competitors submitted that, for instance, switching to the pharmaceutical and medical segments requires investments into machinery worth up to 10 million Euro and further costly precautionary measures need to be taken in the manufacturing environments in order to comply with the regulation in force.
14. 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.

⁶ Case COMP/M.2441 - *Ancor/Danisco/Ahlstrom* of 11.06.2001.

⁷ Case COMP/M.2840 - *Danapak/Teich/JV* of 30.08.2002

Relevant geographic markets

15. Alcan submits that the appropriate geographic market is EEA-wide, which is in line with the Commission's findings in *Ancor/Danisco/Ahlstrom* and *Danapak/Teich*. This has also been reconfirmed by the market investigation.

Assessment

A. Horizontal overlaps

Flexible packaging products

16. 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 merged entity would be [10-20]% for 2001 (Alcan [5-15]%, FlexPac [0-10]%), closely behind the market leader Amcor ([10-20]%). 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 (Teich [0-10]%, Sealed Air Cryovac [0-10]% and Pechiney [0-10]%).
17. In terms of the narrower, individual end use segments considered above, overlaps would occur in each segment save for household products. According to Alcan, these overlaps would lead to the following shares for the merged entity:
- Food: [10-20]% (Alcan [0-10]%, FlexPac [0-10]%). Main competitors are Amcor ([10-20]%), Sealed Air Cryovac ([0-10]%), Teich ([0-10]%), Pechiney Sopliril ([0-10]%).
 - Medical supplies: [20-30]% (Alcan [0-10]%, FlexPac [15-25]%). Competitors are Rexam ([35-45]%), Wipak ([20-30]%).
 - Pharmaceuticals: [20-30]% (Alcan [15-25]%, FlexPac [0-10]%). Competitors are Teich ([10-20]%), Amcor ([10-20]%), Pechiney and Hueck ([5-15]% each).
 - Other non-food-products: [20-30]% (Alcan [10-20]%, FlexPac [0-10]%). Main competitors are Amcor ([10-20]%), Clondalkin ([0-10]%), Pechiney ([0-10]%).
18. Within food packaging, overlaps leading to a share of more than 15% would, according to Alcan, occur in the following segments: dairy product packaging [15-25]% (Alcan [0-10]%, FlexPac [10-20]%) - main competitors are Teich ([15-25]%) and Amcor ([10-20]%); packaging for confectionery [15-25]% (Alcan [10-20]%, FlexPac [0-10]%) - main competitors are Amcor ([15-25]%) and Teich ([0-10]%); packaging for pet food [20-30]% (Alcan [15-25]%, FlexPac [0-10]%) –competitors are Huhtamaki ([15-25]%), Amcor and Teich ([5-15]%).
19. These figures as submitted by Alcan were broadly confirmed by the market investigation with two exceptions: medical supplies and pharmaceuticals. Alcan used independent experts' data (PCI Film Consulting Ltd) as the basis for its estimations. PCI estimated the combined market of medical supplies and pharmaceuticals to be EUR 500 million in 2001 for the EEA plus Switzerland. Alcan estimated that sales of flexible packaging products for medical supplies would be around EUR [50-100] million, and sales for pharmaceuticals then EUR [400-500] million. However, PCI does not include blister base or bottom web, but only the blister lidding or top web in its estimation for the pharma segment. Since blister packaging for drugs accounts for the majority of sales in

this segment, Alcan added EUR [150-250] million for the supply of blister base and arrived, after deducting sales in Switzerland, at EUR [600-700] million for the pharma segment.

20. However, the market investigation suggested the medical supplies segment to be rather around EUR [100-150] million. Consequently, the market shares of the merged entity in this segment would be only [10-20]% (Alcan [0-10]%, FlexPac [5-15]%). Moreover, the total market volume of the pharma segment would be only around EUR [500-600] million. The market investigation showed that the leading producers of blister base themselves estimate the total volume of this product in the region of EUR [100-200] million. Consequently, the market volume for the flexible packaging of pharmaceutical products would be between EUR [450 and 600] million. The market share of the merged entity would then be between [25 and 35]% (Alcan [15-25]%, FlexPac [5-15]%), followed by Klöckner and Teich (around [5-15]%), Hueck and Amcor ([5-15]%).
21. The majority of sales in the pharma segment is made with blister packagings. Blister packagings consist of two parts, the blister base or base web, and the lidding or top web, which is sealed to the base after the drugs have been filled in. The Commission also investigated whether in the pharmaceutical segment suppliers for blister base and those for blister lidding are in competition, or whether there are in fact two different sub-segments. The lidding material contains in most cases a layer of aluminium. Therefore, the suppliers of blister lidding foil are predominantly firms with a strong presence in aluminium based packaging. Blister base, however, is predominantly made from plastic, and the leading firms such as Klöckner Pentaplast are specialised in this product and do not normally produce lids. Therefore, an argument could be made that the proposed merger creates a dominant firm for lidding material. The share of the merged entity in such a sub-segment would be around [35-45]%. However, there are other strong competitors such as Teich, which remains number two in this segment also after the proposed transaction, Hueck and Pechiney.
22. A similar argument could be made with regard to high barrier blister base, in which both Alcan and FlexPac are active. Alcan is the market leader for blister base made with an aluminium layer, the so-called coldform technique, which also FlexPac masters. Blister base with an aluminium layer has excellent barrier properties, in particular against water vapour transmission. On the other hand, firms such as Klöckner Pentaplast produce blister base material made of plastic such as COC and the Aclar® line, which has equally good barrier properties. Therefore, after the acquisition of FlexPac, there will not only be a number of suppliers of aluminium-based high barrier blister base, such as Teich, which has its own patents and has grown considerably over the past years, but also competition from plastic based suppliers such as Klöckner Pentaplast, Tekni-Plex and EVC. Consequently, even within the pharma segment the merged entity will face strong competition for both blister lidding and high barrier base material.
23. Therefore, even in these narrow product market definitions, the creation of a dominant position of the merged entity can be ruled out, since in each of the above market segments, there will be no scope for the merged entity 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. After the concentration there will remain effective competition in each segment of the market for overall flexible packaging.

24. On the demand-side, Alcan submitted that a large portion of the customers are well known brand-owner food and petfood producers as well as large pharmaceutical companies which exercise considerable buyer power. Indeed, as confirmed by the market investigation, some high-profile companies such as Unilever, Mars, Nestle, Kraft, Astra Zeneca, Bayer and Pfizer carry out centralised purchasing operations of the relevant products at European and in some instances global level.
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.

B. Vertical relationships

26. As regards the upstream market for the supply of aluminium foil, Alcan is a leading supplier of this base material and estimates to have a EEA market share of [15-25]%. However a risk of upstream foreclosure effects is very unlikely for the following reasons. First, only 25% of all flexible packaging products incorporate an aluminium foil substrate. Second, a large number of aluminium foil suppliers would remain available, including Pechiney, Alcoa and others. Moreover, the target, FlexPac, was already prior to the proposed concentration part of a vertically integrated group, Hydro Aluminium. FlexPac has a supply agreement with Hydro Aluminium for aluminium foil until [...]. After this date, however, the operation will sever the vertical links existing between the target FlexPac and its controlling company, as a result of which an additional non-integrated supplier of aluminium foil will be operating on the market.

VI. CONCLUSION

27. 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
(signed)