

***Case No COMP/M.3142 -
CVC / DANKE
TRAE LAST***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 12/05/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12/05/2003

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3142 – CVC / DANSKE TRÆLAST
Notification of 03.04.2003 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 03.04.2003, the CVC Group (“CVC”), UK, notified a proposed concentration by which they acquire sole control of Danske Trælast A/S (“DT”), Denmark, by way of public bid announced on the same date. The investment is made on behalf of CVC Fund III through the CVC company DT Group A/S.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. CVC is the CVC Capital Partners group of companies, which provides investment and management advice to investment funds and management of investments on their behalf. Through its portfolio companies CVC is active in manufacture, wholesale and retail of building materials through its portfolio companies, for instance Wavin N.V. (“Wavin”) and Hozelock (“Hozelock”).

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).

4. DT Group A/S is a holding company set up for the purpose of the transaction and owned by the CVC Group through DT Holding 1 A/S and DT Holding 2 A/S.
5. DT is the parent company of the Danske Trælast Group, which is a wholesaler and retailer of building materials in the Nordic countries. DT's activities can be divided into three divisions: Wholesale; Builders' merchants (professional as well as non-professional customers) and Do-It-Yourself stores (or DIY, which are directed only to non-professional customers), of which the Builders' merchants division accounts for approximately 81% of the Group's turnover. DT has no manufacturing activities.

II. THE OPERATION

6. On 03.04.2003, CVC made a public tender offer to acquire DT from its present shareholders. The bid is conditional *inter alia* on receiving more than 90 per cent acceptance of shares and the voting rights. Following the completion of the concentration DT will become a wholly owned subsidiary of DT Group A/S, which ultimately is wholly owned by the CVC Fund III and its management.

III. CONCENTRATION

7. In the light of the above, it can be concluded that the operation constitutes a concentration within the meaning of Article 3 (1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (CVC €[...] million and DT €2,002 million). Each of the companies have a Community-wide turnover in excess of EUR 250 million (CVC €[...] million and DT €1,875 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

Product markets

9. The relevant economic sector is the building materials sector, which comprises everything from cement products, timber, insulation, watering equipment, pipes and fittings, plumbing products etc. The materials are sold via wholesalers or retailers to the customers (professionals, non-professionals or industry) and the distribution channels are builders' merchants, DIY stores and specialised stores.
10. DT is active in the markets for distribution (wholesale and retail) of building materials. The CVC portfolio companies are active in manufacture, wholesale and retail of building materials and various related products. The concentration has to be assessed to the extent that it creates a few overlaps, namely where the CVC portfolio companies

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.

are active in the same product markets as DT, and to the extent that the CVC companies are active in markets upstream from DT.

11. The parties submit that the relevant downstream product markets are (1) Wholesale of building materials, (2) The retail sale of building materials to professional customers (through Builders' merchants), and (3) The retail sale of building materials to non-professional customers (primarily through DIY stores but also through Builders' merchants). The retail sale is assessed as a whole, whereas the wholesale is further sub-segmented by product. The upstream product markets are the manufacture and sale by manufacturers of respectively cement products, plastic pipes and fittings, insulation products, lighting products and gardening enhancement products as a whole.
12. The Commission's market investigation shows that the various market players broadly support these product market definitions, and they will be applied in the following.
13. The precise product market definitions can be left open given that, on basis of all alternative product market definitions considered, the concentration does not give rise to competition concerns.

Geographic markets

14. The parties submit that the geographic markets are the following:
 - (i) manufacture and sale by manufacturers of cement products: national;
 - (ii) manufacture and sale by manufacturers of insulation products: wider than national, possibly European-wide;
 - (iii) manufacture and sale by manufacturers of plastic pipes: national or wider comprising neighbouring countries;
 - (iv) manufacture and sale by manufacturers of lighting products: at least European-wide;
 - (v) manufacture and sale by manufacturers of gardening enhancement products³: wider than national, comprising at least the Nordic regions and possibly the EU;
 - (vi) wholesale of building materials (for all products): at least national but possibly wider, including certain neighbouring countries (from that perspective Nordic countries may constitute one single market for some of the products concerned);
 - (vii) retail level (both to professional and non-professional customers): national.
15. Third parties have broadly confirmed these market definitions.

³ The parties submit that the relevant market is "garden enhancement equipment" (comprising watering equipment and garden tools etc.) and that it is wider than national and comprises at least the Nordic countries. This is confirmed in the Commission's market investigation. They base this on the fact that the same competitors are present across Europe, product specifications do not vary significantly and the products are easily transported. A narrower market for watering equipment alone comprises hoses, sprinklers, water feature products, sprayers and accessories.

16. However, the precise geographic market definition can be left open given that the concentration does not give rise to competition concerns under any of the possible definitions.

VI. COMPETITIVE ASSESSMENT

Horizontally affected markets

17. The only possible overlap between CVC's and DT's activities would be at the retail level, assuming the geographic scope of this market would be larger than national. CVC operates building material retail business in the Netherlands only, in competition with several other operators. On the other hand, DT is active in this product market, along with other players, only in several Nordic countries. The overlap between CVC and DT at any more than national level would therefore be minimal.
18. As far as the wholesale markets are concerned, DT operates in the Nordic countries (with a minimal activity in Germany and the UK); CVC is not present in the Nordic countries with the exception of a wholesale business in barite, cement and bentonite, through its subsidiary Cementbouw.
19. Thus, the concentration does not amount to appreciable horizontal effect on competition whatever the geographical scope of the market.

Vertically affected markets

Wholesale of building materials

20. DT's wholesale (sale to retailers) covers a broad range of building materials focused on 1) handles and fittings, 2) Hardwood, 3) Boards and veneer, 4) Roofing tiles and 5) Parquet floors and Laminated floors (wooden flooring). DT's wholesale division acts as a purchasing department to supply the Group's own retail activities, but some of the purchases are also sourced for external customers.
21. The CVC portfolio companies do not produce these products nor sell them in Denmark, Sweden, Finland or Norway; hence there exist no vertically affected markets in this respect.

Retail to professional customers as well as retail to non-professional customers (DIY)

22. DT's market shares in the retail business to professional customers and non-professional customers are listed by the sales channel in the table below.

Table 1 - DT's retail market shares

	DENMARK	SWEDEN	FINLAND	NORWAY	NORDIC
(1) Builders' merchants / sale to professionals	[20-30]%	[10-20]%	[10-20]%	[0-10]%	[10-20]%
(2) Builders' merchants / sale to non-professionals	[5-15]%	[0-10]%	[5-15]%	[0-10]%	[0-10]%
(3) DIY	[5-15]%	[0-10]%	[0-10]%	[0-10]%	[0-10]%
(2+3) Total sales to non-professionals	[10-20]%	[5-15]%	[5-15]%	[0-10]%	[5-15]%

Source: the parties.

23. The CVC portfolio companies Wavin (manufacture and sale of plastic pipe systems), Massive (manufacture and sale of lighting products) and Armacell (manufacture of insulation products) are suppliers of DT. Other CVC companies are potential suppliers to DT, e.g. Hozelock.
24. Wavin manufactures and sells plastic pipe systems for gas, water, sewage, drainage, cable ducting and construction purposes, as well as plastic fittings for such systems. In Denmark Wavin primarily sells the products to specialist wholesalers (e.g. the Danish plumbing company "VVS grossister") but also to builders' merchants and to a very limited extent to DIY.
25. Wavin is a supplier to DT which in 2002 purchased approximately [...]% of its total requirement from Wavin.⁴ Currently Wavin supplies DT only in Denmark. Wavin's sales to retail (through builders' merchants) accounts for [...]% of its total sales in Denmark. Of these retail sales in Denmark DT accounts for approximately [...]%. DT only accounts for approximately [...]% of Wavin's total sale (i.e. to builders' merchants, industry and public undertakings) in Denmark. The majority of Wavin's sales go through "VVS grossister", and in the retail segment through DT's competitor Ditas who accounts for [...]% of Wavin's sale to retail and [...]% of Wavin's total sale in Denmark and [...]% in the Nordic countries.

⁴ The other supplier to DT is [...].

Table 2 – Wavin’s market shares in the Nordic countries in 2002

	DENMARK	SWEDEN	NORWAY
Underground drains and sewer pipes	[...]%	[...]%	[...]%
Underground drains and sewer fittings	NA ⁵ /EEA [...]%	NA/EEA [...]%	NA/EEA [...]%
Drainage for land and roads (pipes)	[...]%	[...]%	[...]%

Source: the parties’ estimates.

26. Because of Wavin’s markets shares there are vertically affected markets in Denmark, Sweden and Norway. Wavin does not sell underground drainage and sewer pipes etc. in Finland.
27. Should Wavin refuse to sell its products to DT’s competitors, these would still have access to supplies from Wavin’s competitors, e.g. Uponor who has an overall market share of [...]%⁶, Pipelife International who has a market share of [...]%⁷ and ViaCon who has a [...] % market share⁸ in the Nordic countries.
28. In combination with this, it would not be economically viable for Wavin to restrict its supplies to DT only, since this would deprive Wavin of more than [...]% of its current sales in Denmark to retailers.
29. On the other hand, were DT to purchase 100% of its requirement from Wavin, Wavin’s competitors would still have access to alternative sales outlets, e.g. the purchasing group Ditas⁹ who has a market share of [...]%¹⁰ of the market for sale of building materials to professional customers in Denmark.
30. Considering markets wider than national, the mere fact that Wavin and DT will be part of the same group does not significantly change Wavin’s upstream position on a European-wide level because DT is only active in the above-mentioned countries with downstream market shares of respectively [20-30]% in Denmark, [10-20]% in Sweden and [0-10]% in Norway which does not lead to an appreciable effect on competition on a European-wide level.
31. Hence, the concentration will not lead to any appreciable restriction of competition with regard to Wavin’s products.

⁵ National shares are not available. It is reasonable to assume that the market shares for underground drains and sewer fittings are comparable to the market shares for pipes.

⁶ Uponor’s market share estimation. Not submitted country-by-country.

⁷ Pipelife’s market share estimation. Not submitted country-by-country.

⁸ The parties’ market share estimate. ViaCon is only active in the segment “drainage for land and roads”.

⁹ Ditas is a purchasing group owned by 105 members who own and operate approximately 250 outlets in Denmark. Ditas also operates two building material chains: “Råd&Dåd Byggecenter” and “Byggegram”.

¹⁰ Ditas’ market share estimation.

32. Massive manufactures and sells lighting products. Massive’s customers are both wholesalers and retailers. Massive is a supplier to DT’s retail DIY chain (Silvan in Denmark and Sweden) and is as such active on the upstream market from DT.
33. Massive estimates its market shares to be [...] % in Denmark, [...] % in Sweden, [...] % in Finland and [...] % in Norway. As listed in table 1, DT’s market shares on the building materials retail market to non-professional customers through its DIY stores is [5-15] % in Denmark and [0-10] % in Sweden.¹¹ Since the parties’ market shares on the national markets do not exceed 25%, there are no vertically affected national markets and the transaction does not raise any competition concerns.
34. On markets wider than national, competition concerns would not arise either, because Massive will not be strengthened significantly upstream as a result of the concentration. Even though Massive and DT will be part of the same group, the addition of DT’s downstream market shares of only [5-15] % in Denmark and [0-10] % in Sweden does not lead to an appreciable effect on a European-wide level.
35. Armacell manufactures and sells insulation products and is a supplier to DT. As such, Armacell is active on the market upstream from DT. Armacell’s products are supplied to industry, wholesale and retail, in particular to builders’ merchants.

Table 3 – Armacell’s market shares in the Nordic countries

	DK	SWE	FIN	NOR	NORDIC
Technical insulation	[...] %	[...] %	[...] %	[...] %	[...] %

Source: Armacell’s estimation.

36. The parties have submitted that the relevant geographic market is the Nordic countries where Armacell’s market share is [...] % and where DT’s market share is [10-20] %. If this geographic market definition is applied, then there exists no vertically affected market. Applying the more narrow national market definition, there is no vertically affected market either, because the parties’ market shares are below 25%. On a European-wide upstream market, Armacell will not be significantly strengthened as a result of the concentration. The mere fact that Armacell and DT will be part of the same group does not substantially change Armacell’s position on the upstream European-wide market because DT’s activities are limited to the Nordic countries where it has downstream market shares of respectively [20-30] % in Denmark, [10-20] % in Finland, [10-20] % in Sweden and [0-10] % in Norway.
37. Hozelock manufactures and sells hoses, sprinklers, watering systems, water feature products and sprayers to wholesalers and retailers and as such, Hozelock is active on the market upstream from DT. Until [...], Hozelock was a supplier to DT, now Gardena is DT’s supplier. Hozelock’s sales in Finland and Norway are to local distributors. Sales in Denmark and Sweden are organised through local sales offices to retailers who primarily sell to non-professionals.

¹¹ DT is not active in sales to non-professional customers through DIY stores in Finland and Norway.

Table 4 – Hozelock’s market shares in 2002

	DENMARK	SWEDEN	NORDIC	EU
Garden enhancement equipment	-	-	[...]%	[...]%
Watering equipment	[...]%	[...]%	[...]%	[...]%

Source: the parties. Note: Market shares on the Danish and Swedish market for enhancement equipment are not available. Market shares for Finland and Norway are not available.

38. As mentioned in table 1, DT’s market shares for sale to non-professional customers is [10-20]% in Denmark, [5-15]% in Sweden, [5-15]% in Finland and [0-10]% in Norway.
39. On the “Garden enhancement equipment market” the concentration does not give rise to any vertically affected markets on a Nordic basis.
40. On the “market for watering equipment” the concentrations gives rise to vertically affected markets in Denmark and in Sweden, as well as in the Nordic countries as a whole (and possibly also in Norway and Finland), because Hozelock’s market shares exceed the 25% threshold for vertically affected markets.
41. Should Hozelock refuse to sell its products to DT’s competitors, these would still have access to supplies from e.g. Gardena, who has a market share of [...] %¹² in the Nordic countries and Claber, Elgo and Ubbink.
42. Even if Hozelock were to become DT’s (sole) supplier, there would still be several other distribution channels left to Hozelock’s competitors, e.g. other DIY outlets, garden centres and supermarkets. Hozelock estimates that DIY retail accounts for approximately 50% of the sales of the products concerned and even if the DIY retail outlets accounted for more than 50% of the sales, competitors to Hozelock would still have access to more than [80]% of such sale channels.
43. On a European-wide market for either garden enhancement equipment or watering equipment, the concentration does not give rise to a vertically affected market because DT is not active on other markets than the above-mentioned and Hozelock’s markets share is below the 25% threshold for vertically affected markets.
44. In the light of the above, it can be concluded that the operation does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part thereof.

¹² Gardena’s estimate.

VII. CONCLUSION

45. 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 by Mario MONTI
Member of the Commission