

***Case No COMP/M.3344 -
BAIN CAPITAL /
INTERFER /
BRENNTAG***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/01/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21/01/2004

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

Dear Sir/Madam,

**Subject: Case No COMP/M.3344 – BAIN CAPITAL/ INTERFER/ BRENNTAG/
Notification of 10 December 2003 pursuant to Article 4 of Council
Regulation No 4064/89¹**

1. On 10 December 2003, the Commission received a notification of a proposed concentration by which Bain Capital Investors LLC, an US-based private investment firm (“Bain Capital Investors”), through its controlled funds Bain Capital Fund VII-E, LP, Bain Capital Fund VII, LP, Bain Capital VII Coinvestment Fund, LP, and four BCIP Funds (BCIP Associates III, BCIP Associates III-B, BCIP Trust Associates III and BCIP Trust Associates III-B (together “Bain Fund”), acquires sole control directly or indirectly of all undertakings belonging to the Brenntag Group (“Brenntag”) and the Interfer Group (“Interfer”) by way of purchase of shares or purchase of assets.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I. THE PARTIES

3. Bain Capital Investors is a world-wide fund management group that manages private equity, venture capital and hedge and high yield funds. The proposed acquisition will be carried out via Bain Fund, who is ultimately controlled

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).

through voting rights established in respective partnership agreements and/or through shareholdings by Bain Capital Investors.

4. Brenntag is an international full-line distributor of commodity and speciality chemicals.
5. Interfer is active in the processing, storage, transport, trade, distribution, import and export of steel, metal, plastic and ferrous products, non-ferrous metals and their alloys, tools, machines as well as the rendering of advisory services relating to the foregoing.
6. Both Brenntag and Interfer (together the “Target”) belong to the Stinnes group which is controlled by Deutsche Bahn AG.

II. THE OPERATION

7. Bain Capital Investors, through Bain Fund, and further through various acquisition vehicles specially created for the purposes of the transaction will acquire sole control over the companies Brenntag and Interfer.
8. The transaction leads to the acquisition of sole control by Bain Capital Investors of Brenntag and Interfer constituting a concentration in the sense of article 3(1)(b) of Council Regulation No. 4064/89 .

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Bain Capital Investors: EUR [...] million; Brenntag: EUR 4,341.1 million; Interfer: EUR [...] million)². Each of Bain Capital Investors, Brenntag and Interfer have a Community-wide turnover in excess of EUR 250 million (Bain Capital: EUR [...] million; Brenntag EUR [...] million and Interfer 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. THE RELEVANT MARKETS

A. Relevant Product Markets

Steel and commodity trade

10. Interfer is active in the steel and commodity trade sector supplying customers with different steel products and non-precious metals through its own distribution network and related logistic services. The products include surface refined strips and sheets, cold and hot rolled flat products, tools, rod wire, non ferrous products such as aluminum, magnesium, nickel, cobalt etc. For the purposes of this decision no differentiation of distinct product markets is necessary, as under any conceivable market definition there is no horizontal overlap or a vertical relationship between Interfer’s activities and the activities

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, p.25).

of the Bain Capital Investors' controlled companies, nor does Bain Capital Investors have an interest exceeding 10% of the shares (or capital) of a company active on any of these markets.

Distribution of commodity and speciality chemicals

11. In the Commission's decisional practice concerning the chemical distribution sector generally three different product markets were distinguished: the bulk chemical business ("trading"), the distribution of commodity chemicals, and the distribution of speciality chemicals³. Brenntag is active in all these three product markets of chemical distribution. The notifying party submits that no other company controlled by Bain Capital Investors is active in any of these markets, nor does Bain Capital Investors have an interest exceeding 10% of the shares (or capital) of a company active on any of these markets. Following from that the product market delimitations concerning the chemical distribution business can be left open.

B. Relevant Geographic Markets

Steel and commodity trade

12. With regard to the present transaction, the geographical scope of the steel and commodity markets in which Interfer is active could be left open, as no horizontal or vertical relationship with Bain Capital Investors or any other company controlled by Bain Capital Investors exists.

Distribution of chemicals

13. The parties submit that with respect to the commodities and specialities markets the relevant geographic market should be considered to be at least national, since transportation costs are usually lower than the ones to run additional warehouses and therefore nearly all large chemical distributors try to limit the number of warehouses and thus they sell and deliver their products on a national or EU-wide basis.
14. The parties consider that at least for the bulk chemical business it can be assumed that the relevant market is world-wide since the main providers in the bulk chemical business are active at such a level. Furthermore, they submit that the purchasing of chemicals from one country and their sale in another country is a typical activity in the bulk chemical business.
15. Some of the previous Commissions decisions in the chemical distribution sector are consistent with the party's view. In other Commissions decisions the geographic market definition could be left open⁴.

³ Case IV/M. 1073 - Metallgesellschaft/Klöckner Chemiehandel; COMP/M. 2202 - Stinnes/HCI; COMP/M. 2244 - Royal Vopak/Ellis & Everard; COMP/M.2992 - Brenntag/Biesterfeld/JV

⁴ COMP/M.2992 - Brenntag/Biesterfeld/JV

16. Under none of the possible geographic market delimitations presently competition problems are likely to arise, so it is not necessary to examine the exact geographic scope of Brenntag's activities.

V. COMPETITIVE ASSESSMENT

Horizontal relations

17. Bain Capital Investors does not have any presence, either directly or indirectly through a controlled portfolio company, nor does it have an interest exceeding 10% of the shares of a company active on any of the product markets where Interfer and Brenntag are active, therefore the transaction does not bring about any horizontally affected markets. A competitive restraint resulting from the proposed transaction can be excluded.

Vertical relationship

18. None of Bain Capital Investor's controlled investee companies has a vertical relationship with Interfer.
19. There are some limited vertical relationships between Brenntag and three of Bain Capital Investor's controlled companies: Novacap (a chemical producer), SigmaKalon (involved in the manufacture and supply of decorative and industrial coatings) and Walco (involved in the manufacture and supply of animal health products).

Novacap

20. According to the notifying party, Novacap has on the following product markets market shares of more than 25% concerning individual chemical commodity products: Soda Ash in Luxembourg ([55-65]%), Acetone in France ([45-55]%), Phenol in France ([55-65]%) and Hydrochloric acid in France ([25-35]%).
21. Brenntag is active on the commodity distribution market in Belgium/Luxembourg and in France but has market shares of less than 20% (Belgium and Luxembourg) and less than 30% (France).
22. It follows from the limited presence of Brenntag in France and the Benelux that even if Novacap was to supply all its said chemicals through Brenntag as a chemical distributor, foreclosure effects can be excluded on both, the upstream and downstream level. Moreover, an important part of Novacaps chemical products are supplied directly to their customers. It does not appear to be profitable for Novacap to change the direct distribution into an indirect distribution via a distributor such as Brenntag. Distributors are, particularly for the huger quantities of chemicals, always competing with the parallel direct distribution from suppliers to purchasers of chemicals.
23. Furthermore, Novacap's products are basic chemicals which are produced and supplied by important competitors such as Polimeri, Eritisa, Ineos, Phenol, Shell and BP. For this reason there will be sufficient choice for the customers to source these products elsewhere.

24. It can be concluded that even if Novacap would distribute all of its chemical products through Brenntag the impact of this vertical relationship is not susceptible of causing any competitive restrains.

SigmaKalon

25. The notifying party submits that SigmaKalon purchases chemicals primarily directly from the producers (approx. [80-90]% of its requirements) and purchases less than 25% via distributors in any EEA country. Its total purchases of chemicals in any EEA country of either specialities or commodities does not represent more than [0-10]%. Presently SigmaKalon purchases chemicals from Brenntag in [...]. These purchases via Brenntag represent less than [0-10]% of SigmaKalons total purchases in each of these countries. From Brenntag's perspective the sales to SigmaKalon do not exceed [<1]% of its total sales in commodity or speciality chemicals in any country.
26. Due to this minor possible vertical relationship it can be excluded that the transaction may lead to any foreclosure effects and thereby to any competitive harm on the markets.

Walco

27. Walco is a provider of animal health products and services to customers in the animal and companion-animal market. Walco purchases some chemicals, mainly chlorine, propylene glycol and mineral oils from Brenntag in the US for disinfecting dairies. Walco makes no sales in the EEA. The vast majority of Walco's sales are made in the US and it has some sales in Canada. The company has no trading relationships with any chemical distributor or producer in the EEA.
28. It follows from the above that the limited existing vertical relationships outside the EU will not cause any competitive harm as a result from the notified transaction.

VI. CONCLUSION

29. 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