

***Case No COMP/M.3642 -
CARLYLE / ADVENT /
HT TROPLAST JV***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 22/12/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.2004

SG-Greffe(2004) D/206324/25

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3642-CARLYLE/ADVENT/HT TROPLAST
Notification of 22. 11.2004 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 22.11.2004, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (“the Merger Regulation”) by which several funds managed by Advent International Corporation (“Advent”, USA) and Carlyle Europe Partners II, L.P. (CEP II, Cayman Islands), which belongs to The Carlyle Group (“Carlyle”, USA), acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of HT Troplast AG (“HT Troplast”, Germany), which is a subsidiary of Rütgers AG controlled by German company RAG Aktiengesellschaft, 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 the EEA Agreement.

I. THE PARTIES

3. Advent is a globally active private equity investor, which focuses on the acquisition of equity and on the management of investment funds. The company holds several participations in various industry sectors including construction, energy, media, communications, information technology, internet and pharmaceuticals. Advent

¹ OJ L 24, 29.1.2004 p. 1.

controls the German company Vinnolit GmbH & Co.KG (“Vinnolit”), which is a producer of standard and speciality polyvinylchloride (later “PVC”). Standard PVC is used in the production of vinyl profiles, vinyl sheets and vinyl shutters.

4. Carlyle is a private equity investment group which makes private equity investments through various funds in selected industries, including telecommunications and media, automotive and transport, aerospace, energy and healthcare. None of the companies controlled by Carlyle is active in the same product markets than HT Troplast or in any upstream or downstream market.
5. HT Troplast is active in developing, manufacture and selling of vinyl profiles for windows and doors, vinyl sheets and vinyl shutters, cross-linked polyolefin foam products and vulcanised fibre for abrasive discs and other applications.

II. THE CONCENTRATION

6. The proposed concentration consists in the joint acquisition of HT Troplast by Advent and Carlyle, by way of purchase of shares. Pursuant to the proposed transaction several funds managed by Advent and Carlyle intend to acquire through a joint acquisition company (“Newco”) 100% of the shares in HT Troplast.

Joint control

7. Carlyle will hold [...] and Advent [...] of the shares in Newco. In addition, the management of HT Troplast will have the right to acquire at a later stage up to [...] of the equity capital in Newco.
8. Advent and Carlyle will have equal voting rights as shareholders of the joint venture. Decisions in the shareholder meeting require at least 75% of the votes, so both Advent and Carlyle will be able to veto actions which determine the company’s strategic behaviour. Therefore, Carlyle and Advent will be able to exercise decisive influence over the joint venture’s strategic behaviour, and hence jointly control HT Troplast.

Full-functionality of the joint venture

9. HT Troplast will continue to operate on the markets for profiles for windows and doors, sheets, shutters, cross-linked polyolefin foam products and vulcanised fibre. It will continue to perform on a lasting basis all the functions of an autonomous economic and has the necessary resources and personnel to operate the business
10. The transaction therefore constitutes a concentration within the meaning of Art. 3(4) of the Merger Regulation.

III. COMMUNITY DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (EUR [...] for Carlyle in 2003, EUR [...] for Advent in 2003 and EUR [...] for HT Troplast in year 2003)². Each of Carlyle, Advent and HT Troplast

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.

have a Community-wide turnover in excess of EUR 250 million (EUR [...] for Carlyle in 2003, EUR [...] for Advent in 2003 and EUR [...] for HT Troplast), 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.

IV. COMPATIBILITY WITH THE COMMON MARKET

Relevant product market and geographic market

12. The transaction concerns the manufacture and sale of vinyl profiles for windows and doors, vinyl sheets and vinyl shutters, cross-linked polyolefin foam products and vulcanised fibre for abrasive discs and other applications used in building and construction industry.
13. The notifying parties take the view that the market for profiles (windows and doors) comprises profiles made of all materials, including PVC, aluminum, timber and, increasingly, of a combination of aluminum and timber and aluminum and PVC. The parties also hold that the market for profiles is at least European wide.
14. The Commission has previously examined³ the market for profiles and took note of certain elements of demand side substitution (differences in price and product characteristics) and supply substitution, which pointed towards a narrower market definition by material as well as aspects of differences in demand in different Member States. However, the Commission did not finally conclude on the definition of the relevant product and geographic markets.
15. In the present case, there is no need to conclude on the precise definition of the relevant product or geographic markets for the products concerned since the transaction does not lead to any horizontal overlap and addition of market shares. Neither Advent, nor Carlyle has controlling holdings in companies that produce, distribute or market any of the products produced by HT Troplast.

Competitive assessment

16. The notifying parties submit that the market share of HT Troplast in 2003 on the market for all profiles (windows and doors) including vinyl, aluminum and timber products, was [0-10]% in terms of value and [0-10]% in terms of volume in the EU. On a Member States basis, the market share was not higher than [0-10]% in any Member State in terms of value and [20-30]% in terms of volume. For PVC profiles (doors and windows) in the EU in 2003, HT Troplast reached a market share of [20-30]% in terms of value and [20-30]% in terms of volume. On the narrowest possible market, national market for PVC profiles, the company's market shares would be higher and exceed 25% in some Member States (Germany: [40-50]%, Greece [50-60]%, Slovenia [40-50]%).
17. As regards vinyl sheets and shutters, the notifying parties point out that their economic significance is negligible and, in terms of value, sheets represent approximately [0-10]% and shutters for less than [0-10]% of overall sales of vinyl profiles, sheets and shutters the EU. In 2003, HT Troplast's market share on the market for vinyl sheets

³ Commission decision in case COMP/M.2094 – HT Troplast/Kömmerling of 28.9.2000.

was [10-20]% in the EU and somewhat higher in some Member States ([40-50]% in Slovenia, [30-40]% in Malta, [30-40]% in France, and [30-40]% Germany). For vinyl shutters, according to the notifying parties, the company achieves a market share of less than 10% in the EU with no national market reaching a market share of 25% or above.

18. HT Troplast also manufactures cross-linked polyolefin (“XLPO”) foam (rolls and blocks) and converted XLPO foam products with combined sales of EUR [...] in the EU in 2003 with a market share of [20-30]% in terms of volume (rolls and blocks) and for polyolefin foamed rolls [30-40]% in terms of volume. Finally, the company produces vulcanised fibre used by the abrasive industry in the manufacture of flexible abrasive discs with sales of EUR [...] in the EU in 2003. Only in the very narrow segment of technical fibre does it achieve a market share of [10-20]% at the EU level.
19. In view of the foregoing, and given that the proposed transaction does not lead to any horizontal overlap and addition of market shares, it can be concluded that the proposed operation would not, in any of the markets considered, significantly impede effective competition, in particular as a result of creating or strengthening a dominant position in the EEA or any substantial part of it.

Vertical issues

20. Vinnolit, controlled⁴ by Advent, is a producer of standard and specialty PVC on an upstream market to that of HT Troplast. According to the notifying parties, standard PVC, comprised of suspension homopolymers and mass copolymers, is used in the production of vinyl profiles, vinyl sheets and vinyl shutters and for general applications such as construction, packaging, pipes and fitting industries. It is submitted that the main applications of speciality PVC, comprised of paste, emulsion polymers and suspension polymers, is technically a more complex product and up to 50% more expensive than standard PVC, are found in the automotive and flooring industries. According to notifying parties, standard PVC usually has the same properties and there are only minor differences in product specification whereas speciality PVC has more unique properties often having an impact on the end product.
21. The Commission has examined PVC in a number of decisions⁵ but has not concluded on the exact scope of the relevant product market. In its decision in case *IV/M.284–Hoechst/Wacker* the Commission defined the geographic market as Western European in scope but has subsequently taken note of elements indicating a EEA-wide market but without concluding on the exact definition of the relevant geographic market.
22. The notifying parties submit that HT Troplast uses only standard PVC in the manufacture of its vinyl window and door profiles, sheets and shutters. Vinnolit specializes in specialty PVC and only has a small market share for standard PVC and currently supplies small amounts of standard PVC to HT Troplast.

⁴ The notifying parties submit that Advent also holds a [...] % non-controlling share in Vestolit GmbH & Co. KG (“Vestolit”, Germany), another producer of PVC but does not have a right to appoint a Director to the Board of the company or influence strategic decisions and thus does not have control over the company.

⁵ Commission decision in Case No. IV/M.284– Hoechst/Wacker of 10 May 1993, in Case No IV/M.475–Shell Chimie/Elf Atochem of 22 December 1994, in Case No IV/M.1469–Solvay/BASF.

23. The parties submit that Vinnolit is the fifth largest supplier of PVC (standard and specialty PVC) in the EEA (total PVC market: 5,900 kt) with a market share of [0-10]% ([...] kt) after Atofina ([10-20]%), EVC ([10-20]%), Solvin ([10-20]%) and Vestolit ([10-20]%). On the basis of a narrower market definition, it would have a market share of [0-10]% ([...] kt) in standard PVC (total market: approximately 5,000 kt) and [20-30]% ([...] kt) in specialty PVC (total market: approximately 900 kt) in the EEA.
24. In 2003, HT Troplast sourced approximately [0-10]% of all PVC ([...] tons) and [0-10]% of the standard PVC consumed in the EEA. Consequently, even if HT Troplast were to source its entire requirement of standard PVC from Vinnolit, this would amount to approximately [0-10]% of the supply of standard PVC in the EEA, which would not affect the ability of Vinnolit's competitors to compete effectively on this market at the EEA level. This has been largely confirmed by the results of the Commission's market investigation.
25. In view of the foregoing, it can be concluded that the proposed operation would not, in any of the markets considered, significantly impede effective competition, in particular as a result of creating or strengthening a dominant position in the EEA or any substantial part of it.

V. CONCLUSION

26. 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 (EC) No 139/2004.

For the Commission
(signed)
Neelie KROES
Member of the Commission