EN

Case No COMP/M.3670 - EQT GROUP / CARL ZEISS / SOLA

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 03/03/2005

In electronic form on the EUR-Lex website under document number 32005M3670

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03-III-2005

SG-Greffe(2005)D/200933

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3670 - Zeiss / EQT / Sola JV**
Notification of 27/01/2005 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 27/01/2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004, by which the undertakings Carl Zeiss AG, ("Carl Zeiss", Germany) and EQT III Fund, ("EQT III", Guernsey, Channel Islands), being part of the EQT Group, which is ultimately controlled by Investor AB, acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking SOLA International Inc., ("SOLA", U.S.A.) 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 Council Regulation No 139/2004 and does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. **Carl Zeiss** is active in the optical and opto-electronic industry, producing and distributing optical consumer goods such as eye glass lenses. Its affiliate, **SCHOTT AG**, produces optical materials and components. **EQT III** is a private equity portfolio

1 OJ L 24, 29.1.2004 p. 1.

company. **Leybold Optics GmbH**, an EQT III portfolio company, is active in the development and production of coating equipment for optical and optoelectronic applications. **SOLA** manufactures and distributes eyeglass lenses for sale to ophthalmic laboratories and operates ophthalmic laboratories which supply lenses to opticians and other retailers.

4. Carl Zeiss and EQT III entered into a Merger Agreement on 05.12.2005, pursuant to which they will establish a joint venture ("TopCo") which will act as the acquisition vehicle for Sola. Carl Zeiss will contribute its Optical Lenses and System Technology Business Divisions to TopCo in return for 50% of the equity and voting shares in the JV, whilst EQT III will contribute cash in consideration for 50% of the shares in the JV. Both parties will have equal representation on the Board of TopCo. The Merger Agreement provides that both shareholders' consent will be required on key strategic decisions concerning the business and commercial policy of the company. It may be concluded that TopCo, and therefore Sola, will be jointly controlled by Carl Zeiss and EQT Group. Whilst TopCo itself will function as a mere holding company, its subsidiaries will operate a stand-alone-business and act as an independent market participant vis-à-vis third parties. TopCo will have sufficient funds, personnel and assets at its disposal to operate permanently and independently of Carl Zeiss and EQT III. TopCo can thus be considered as a full-function joint venture within the meaning of Art. 3(4) of the ECMR.

II. COMMUNITY DIMENSION

5. The combined aggregate world wide turnover of the undertakings concerned exceeds € 5000 million (Carl Zeiss Stiftung: € 4,005 million, EQT € 6,537million, Sola: € 553 million in 2003). The aggregate Community wide turnover of the parties exceeds € 250 million (Carl Zeiss Stiftung: € 2,153 million, EQT € 4,121 million in 2003, Sola: € 216 million in 2003). The parties do not achieve more than two-thirds of their aggregate Community wide turnover in one and the same Member State. The notified operation, therefore, has a Community dimension according to Article 1(2) of the Merger Regulation.

III. RELEVANT MARKETS

The relevant product market

(a) Ophthalmic lenses

6. This case concerns ophthalmic lenses, which are eye glass lenses as used in spectacles. The parties submit that the ophthalmic lenses markets can be segmented along lines defined by the Bundeskartellamt[2]. According to this decision, ophthalmic lenses are either plastic (organic) or glass (mineral) and can be categorized into three types of corrective design: Single Vision, Bi-Multifocal, or Progressive.

7. Identifying separate markets for respectively glass and plastic lenses may be justified by the differences in price (lower for glass lenses) and customer preferences (plastic has superior weight and breakage resistance characteristics). The use of glass for ophthalmic lens production is declining throughout the EEA on an ongoing basis. Each of the three corrective designs may also form a distinct market, based on the vision correction needed by the consumer. It needs however to be taken into account that there is a high degree of supply-side substitutability, as most producers make all corrective lens designs in both glass and plastic.

8. Ophthalmic lenses are produced by laboratories that grind, coat, tint and cut finished Single Vision lenses ("ophthalmic substrate") procured from lens manufacturers. The parties submit that a further distinction must be made according to where the lens manufacturer is situated in the supply chain, and this has been confirmed by the market investigation. Therefore, for each of the product markets identified above, a distinction must be made between (a) sales of finished lenses to opticians/retailers for resale to the end consumer, and –further upstream- (b) sales of ophthalmic substrate to prescription laboratories, which will process the substrate into lenses before supplying them to opticians. Prescription laboratories can be independent, or operated by retail chains or lens manufacturers.

9. The market investigation has broadly confirmed this market definition approach. In any case, this narrow segmentation provides for a worst-case scenario assessment. Therefore, for the purpose of this decision, the precise definition of the product market can be left open, since in no alternative product market will the proposed operation significantly impede effective competition in the common market or a substantial part of it, in particular, as a result of the creation or strengthening of a dominant position.

10. Neither of the parties is active in the retail of lenses or the production of spectacle frames. Both parties are active upstream of ophthalmic lenses. Carl Zeiss' affiliate, SCHOTT AG, produces silicate lens blanks (the raw material for mineral lenses), whilst Leybold Optics GmbH, an EQT III portfolio company, produces optical coating equipment.

---

2 Gesch.-Z.: B 4 – 33401 - Fa –62/03 : Essilor / Rupp + Hubrach

(b) Silicate lens blanks

11. According to the market investigation, silicate lens blanks may be further sub-divided on the basis of their performance and technical requirements into standard index, high index, photochromic, and fixed tints. However, as the high index and photochromic properties have now also become available for organic lenses, the importance of identifying distinct silicate lens blanks markets decreases. In any case, for the purpose of this decision, the precise definition of the product market can be left open, since in no alternative product market will the proposed operation significantly impede effective competition in the common market or a substantial part of it in particular as a result of the creation or strengthening of a dominant position.

(c) Optical coating equipment

12. Optical coating equipment improves light transmission by reducing reflections on the material being coated. Coating performance variation and/or enhancement is mainly dependent upon the ingredients employed and/or the material being coated by the end-user rather than the equipment. On the basis of this degree of supply-side substitutability it is therefore not necessary to further sub-divide optical coating equipment.

The relevant geographic market

13. The parties submit that sales of finished lenses to opticians/retailers are national in scope because opticians' demand behaviour is focussed on domestic sources of supply (local distribution offices). The market investigation has confirmed this, showing that opticians value local sales and services.

14. On the basis of the low level of transport costs, the multinational presence of all major competitors and the absence of local presence as a prerequisite to compete in this market, the parties consider the upstream market for the sale of ophthalmic substrate to prescription laboratories to be at least EEA-wide if not world-wide in scope. The market investigation confirmed this and has pointed to the significant increase in importance of Asian, Israeli and US suppliers. In any case, for the purpose of this decision, the precise geographic scope of the market can be left open, since on neither an EEA nor a world-wide basis will the proposed operation significantly impede effective competition in the common market or a substantial part of it, in particular, as a result of the creation or strengthening of a dominant position.

15. The markets for Silicate lens blanks and Optical coating equipment are world-wide in scope as the manufacturers of these products serve their customers on a world-wide basis from a single plant.

IV. COMPETITIVE ASSESSMENT

Horizontal relationships

(a) sales of finished lenses to opticians and retailers

16. Overall, the parties have different market orientations. Carl Zeiss sells ophthalmic lenses to opticians on the basis of a strong brand name and perceived quality. Sola is primarily focussed on the sale of substrate to prescription laboratories, using its worldwide distribution network. In the sales to opticians and retailers markets, Sola

targets the budget and private label segments. Overall, Essilor/BBGR is the European market leader (around 30%), but Hoya (12%) and Rodenstock (10%) also have a European-wide presence. A combined Carl Zeiss – Sola would have around 20% of the overall finished lenses market. Other European actors, such as Signet Armorlite, Pentax, Nikon, Indo, and Tokai have around 2–5% each, whilst a number of Chinese, Indian, US firms/ undertakings account for the remaining 5–10%.

17. Taking into account the national scope of the finished lenses markets, the new entity would only hold overall market shares in excess of 15% in Italy (28%) and Portugal (28%). Only in Italy would the new entity become the market leader.

18. When market shares for every correction design –split between organic and mineral- are compared, the new entity would have significant market shares (above 40%) in Denmark (Mineral bi-multifocal), Italy (Mineral single vision), Portugal (organic single vision) and UK (Mineral single vision). Of these market positions of above 40%, the increments in market share are very small in the UK (aggregate market share of 44% with Sola adding 1%) and relatively modest in Denmark (aggregate market share of 40% with Sola adding 7%) and Portugal (aggregate market share of 44% with Carl Zeiss adding 7%). In Italy, the transaction will lead to a 42% market share for Mineral single vision lenses (Carl Zeiss 16% and Sola 26%). Whilst this constitutes a significant market position, it does not equate to a position of single dominance as all the above mentioned European players are active in this market and none of the Italian opticians have indicated that they would encounter difficulties in switching suppliers if the new entity were to raise prices.

(b) sales of ophthalmic substrate to prescription laboratories

19. Most lens manufacturers, including Essilor, Rodenstock, Hoya, Seiko/Pentax, Carl Zeiss and SOLA, are also active, to varying degrees, in the market for the supply of ophthalmic substrate consumed in Europe. Increasingly, demand for ophthalmic substrate is met by new manufacturers that have emerged in China, Korea, Taiwan, Indonesia, Singapore, Thailand, USA, Mexico and Israel. These manufacturers, which do not supply directly to opticians and retailers, ship products globally to prescription laboratories. Carl Zeiss has limited sales on this market whilst Sola is one of the most important players. Combined, the new entity's market share on both the European and world-wide market would remain below 15%. Sola makes the bulk of its sales in this market to the prescription laboratories of the major retail chains in the UK (Specsavers), Germany (Fielmann) and France (Grand Vision), which have, as confirmed by the market investigation, a certain degree of buying power.

20. Apart from the complementarity of Carl Zeiss and SOLA, both in terms of product offering and geographic focus (in those national markets where Zeiss has a strong position, Sola generally has a relatively weak position and vice-versa) the merger could create a stronger competitor to Essilor and Hoya, a prospect explicitly mentioned by a number of respondents to the Commision's questionnaires. Considering the position of the parties in these markets and the strength and number of competitors present therein, it can be concluded that the notified operation will not significantly impede competition, in particular by the creation or strengthening of a dominant position.

Vertical relationships

21. Whilst the merger does not lead to a horizontally affected market for the supply of ophthalmic substrate, it will strengthen the new entity's ability to vertically integrate ophthalmic substrate and its sales of ophthalmic lenses. The market investigation has however confirmed that the new entity will not be in a position to foreclose its downstream ophthalmic lenses competitors from access to ophthalmic substrate. With a combined market share of below 15%, and the availability of a multitude of alternative ophthalmic substrate suppliers, the new entity would not be in a position to foreclose in this manner. Even if the new entity were to exclusively source its ophthalmic substrate needs internally, this would not affect the position of its competitors on the ophthalmic lenses markets.

22. Leybold Optics GmbH, an EQT III portfolio company, produces optical coating equipment that is procured by prescription laboratories. As Leybold's market share (world-wide) is limited to around 10% and stronger Asian competitors exist, vertical foreclosure issues can be excluded.

23. A third possible vertical relation occurs on the market for the supply of silicate lens blanks (the raw material for mineral lenses), where Carl Zeiss affiliate, SCHOTT AG, is a leading player (38% of the world-wide market). The market investigation has concluded that the new entity would neither have the ability nor the incentive to foreclose its customers from lens blanks supply. Firstly, alternatives exist in the market (such as Corning with 45% and China Glass with 10%). Secondly, there is already an existing relationship between Carl Zeiss and SCHOTT, and the market share increment that results from the concentration is not sufficiently large to give rise to new foreclosure issues. Thirdly, as EQT III is not a shareholder in SCHOTT, it is not likely to agree to the JV having exclusive supply arrangements with SCHOTT if this would be to the detriment of the JV.

V. CONCLUSION

24. It can therefore be concluded that the concentration will not significantly impede effective competition in the common market or in a significant part of it, in particular as a result of the creation or strengthening of a dominant position.

25. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and 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