

***Case No COMP/M.3783 -
TPG / BRITISH VITA***

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

Article 6(1)(b) NON-OPPOSITION
Date: 06/06/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06/06/2005
SG-Greffe(2005) D/202520

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

Subject: Case No. COMP/M.3783 – TPG / BRITISH VITA

**Notification of 02/05/2005 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 02/05/2005, 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 the undertaking TPG Advisors IV, Inc. (“TPG IV”, USA) belonging to the TPG group (“TPG”, USA) acquires control of the whole of the undertaking British Vita PLC (“British Vita”, United Kingdom).
2. After examination of the notification, the Commission has concluded that the notified operation constitute a concentration that 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 AND THE OPERATION

3. TPG IV is a private equity fund that invests in a variety of companies through acquisitions and corporate restructuring. TPG IV is active in the manufacture and supply of synthetic elastomers through Kraton Polymers LLC (“Kraton”, USA).
4. British Vita is a manufacturer and supplier of polymer-based foams, non wovens, and industrial and commercial polymer-based compounds.

¹ OJ L 24, 29.1.2004 p. 1.

5. TPG IV will acquire control of British Vita via a Scheme of Arrangement pursuant to which TPG UK and TPG France, two special purpose entities wholly owned by TPG IV, will acquire the whole of the issued and to be issued share capital of British Vita. The transaction was announced on 22/03/05 and has been recommended by British Vita's Board of Directors. As the result of the proposed operation, TPG IV will acquire sole control of British Vita and as such the transaction would constitute a concentration within the meaning of the Merger Regulation.

II. COMMUNITY DIMENSION

6. The combined aggregate worldwide turnover of the undertakings concerned exceeds EUR 5 billion (TPG IV: EUR [...] million, British Vita: EUR 1,412 million). The aggregate Community-wide turnover of the undertakings concerned exceeds EUR 250 million (TPG IV: EUR [...] million, British Vita: EUR [...] million). None of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover in one and the same Member State. The concentration therefore has a Community dimension according to Article 1(2) of the Merger Regulation.

III. RELEVANT MARKETS

Relevant product markets

7. Kraton and British Vita are active in the synthetic elastomer and polymer-based compounds industry.
8. Polymer based foams and non wovens markets will not be further discussed for the purpose of the present decision as none of the companies controlled by TPG IV, including Kraton, is active on those markets or on vertically related or neighbouring markets.

Synthetic elastomers

9. Kraton manufactures and supplies a specific type of synthetic elastomer known as SBCs (styrenic block copolymers).
10. Elastomers are materials with elastic properties obtained by reacting monomers to form polymers. Fillers, pigments and other additives are also used in the production process. Depending on the base materials, various types of synthetic elastomers can be obtained.
11. SBCs are a family of thermoplastics synthetic elastomers produced by an anionic polymerization using three feedstocks: styrene, butadiene and isoprene. They are used in consumer and industrial applications such as compounding and polymer systems, adhesives and sealants, asphalt modification and footwear.
12. The parties submit that all synthetic elastomers could be considered as a single relevant product market in view of the number of permutations of their chemistry and physical properties that would imply a high degree of demand-side substitutability. They indicate that SBCs are substitutable with a wide range of other polymers and synthetic elastomers for all categories of SBC applications. The parties

also underline that large chemical groups produce several families of synthetic elastomers.

13. In a previous decision², the Commission however concluded that the relevant product markets were the markets for individual synthetic elastomers in view of the limited demand-side substitutability between different elastomer families. The market investigation also showed that SBCs had specific physical properties that could prevent their substitution by other families of synthetic elastomer for a number of end applications.
14. For the purpose of the present case, the question whether each family of synthetic elastomer constitute a relevant product market can be left open as under any alternative the proposed operation is not likely to give rise to competition concerns.

Industrial and commercial polymer-based compounds

15. British Vita produces industrial, liquid and sheet polymer based compounds, including SBC-based compounds. Kraton also manufactures certain compounds using SBCs.
16. Polymer compounds are based on a variety of polymers and are used in broad range of end applications: packaging, grips for sport equipment, pipelines, textile coating, carpet backing, transportation, etc. The parties submit that the relevant product market is all industrial and commercial polymer-based compounds.
17. In a previous case dealing with polymer compounds³, the Commission defined quite narrow product markets, by reference either to the chemistry of a particular compound or end-use applications. Therefore, in the present case, the relevant product markets could be defined as SBC-based compounds or SBC-based compounds based on end applications.
18. For the purpose of the present case, the question whether all industrial and commercial polymer-based compounds constitute a single relevant product market can be left open as under any alternative the proposed operation is not likely to give rise to competition concerns.

Relevant geographic markets

Synthetic elastomers

19. The parties submit that the synthetic elastomers' or SBCs' market is worldwide in scope and a previous decision from the Commission⁴ defined the relevant geographic markets as at least European in scope.
20. For the purposes of the present case, the question of whether the geographic scope of synthetic elastomers product markets are European or larger in scope can be left

² Case COMP/M.663 Dow / Dupont.

³ Case COMP/M.2187 CVC / Lenzing.

⁴ Case COMP/M.663 Dow / Dupont.

open as under any alternative the proposed operation is not likely to give rise to competition concerns.

Industrial and commercial polymer-based compounds

21. The parties submit the industrial and commercial polymer-based compounds markets are European in scope and a previous decision from the Commission cited in paragraph 17 above defined the relevant geographic markets as European or worldwide in scope depending on the specific compounds in question.
22. For the purposes of the present case, the question of whether the geographic scope of industrial and commercial polymer-based compounds product markets are European or larger in scope can be left open as under any alternative the proposed operation is not likely to give rise to competition concerns.

IV. COMPETITIVE ASSESSMENT

Horizontal relationships

23. The transaction does not give rise to horizontal overlaps except for SBC-based compounds.
24. The transaction gives rise to a limited overlap in the field of SBC-based compounds. The parties' combined EEA market share for SBC-based compounds is well below 15% (Kraton [0-5%] and British Vita [5-10%]) and the parties manufacture and market SBC-based compounds used in different end applications (sanitary/personal hygiene for Kraton and industrial applications, sport grips and medical component for British Vita).
25. The proposed transaction is therefore not likely to significantly impede effective competition, in particular through the creation or strengthening of a dominant position on the potential SBC-based compounds market as a result of this horizontal overlap.

Vertical relationships

26. As mentioned above, Kraton is a global supplier of SBCs and British Vita is active in SBC-based compounds, which gives rise to a vertical relationship.
27. Kraton is the leading supplier of SBCs both globally ([30-40%] market share in 2004) and in the EEA ([35-45%] market share in 2004). Kraton's main competitors in the EEA are Total, Polimeri Europa (Enichem), Dynasol (Repsol / DESC), Dexco (Dow / Exxon Mobil) and suppliers based outside the EEA (such as Kuraray (Japan)). The market investigation confirmed that Kraton's SBCs customers could switch to these alternative suppliers and that they had sufficient spare capacity. Although Kraton's expertise and know how in developing complex SBCs is recognized, the market investigation also revealed that some competitors had similar capabilities.
28. British Vita purchases of SBCs are very limited as they represent less than [0-5%] of British Vita raw materials purchases. British Vita's raw SBC purchases account for approximately [0-5%] of SBCs global sales and less than [0-5%] of SBCs EEA

sales. In addition, British Vita's SBCs purchases represent less than [0-5%] of Kraton's global sales and approximately [0-5%] of Kraton's SBC sales in the EEA.

29. In view of these figures, it is clear that Kraton will not have any incentive to stop supplying British Vita's competitors or to increase price and thus, there is no risk of foreclosure. The proposed transaction is therefore not likely to significantly impede effective competition on the potential SBC-based compounds market as a result of this vertical relationship.

V. CONCLUSION

30. In light of the above, it can 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.
31. For the above reasons, the Commission has decided not to oppose the notified operations and to declare the concentration compatible with the common market and the EEA Agreement. This decision is adopted in application of Article 6(1)b of the Merger Regulation.

For the Commission
signed
Louis Michel
Member of the Commission