

***Case No COMP/M.4579 -
INVESTOR / MORGAN
STANLEY /
MÖLNLYCKE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 27/03/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.03.2007

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4579 - INVESTOR/MORGAN STANLEY/MÖLNLYCKE
Notification of 20/02/2007 pursuant to Article 4 of Council Regulation
No 139/2004¹**

I. INTRODUCTION

1. On 20 February 2007, 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 undertakings Investor AB ("Investor", Sweden) and Morgan Stanley Principal Investments Inc. ("MSPI", USA), belonging to the Morgan Stanley group, acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking Mölnlycke Health Care UK Limited, the holding company of Mölnlycke Health Care Group AB ("Mölnlycke", Sweden) by way of purchase of shares.

II. THE PARTIES AND THE OPERATION

2. Mölnlycke is a provider of surgical, wound care and bandages products to the professional healthcare sector, and currently under control of Apax Fund Europe V belonging to the Apax group².

¹ OJ L 24, 29.1.2004 p. 1.

² Case M. 1075 Nordic Capital/Mölnlycke; Case M. 3816 Apax/Mölnlycke.

3. Investor is the largest listed industrial holding company in the Nordic region and is listed on the Stockholm Stock Exchange. The largest shareholder in Investor is the Knut and Alice Wallenberg Foundation with a share of votes corresponding to 40.0 % and a share of capital of 18.6 %.³ Through private equity firm EQT which is controlled by Investor, Investor has indirect control of Aleris AB, a customer of limited amounts of surgical products and of wound care products for its senior care and its health care services in Sweden and Norway.
4. MSPI belongs to the Morgan Stanley group of companies which is a global financial services firm active in investment banking, sales, trading, financing and private equity.
5. The operation consists of the acquisition of the entire share capital of Mölnlycke by Investor, MSPI and Mölnlycke's management, via the investment vehicle Cator Sweden. Investor and MSPI will each hold [...] % of the votes in Mölnlycke, whereas the management will hold the remaining [...] %. According to the term sheet agreement and the shareholders agreement between the parties, both Investor and MSPI will obtain specific veto rights concerning matters of strategic importance to the company (e.g. approval of the budget and business plan and the appointment of the principal managers). The notified operation therefore leads to the acquisition of joint control by Investor and MSPI within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The transaction has a Community dimension pursuant to Article 1(2) of the Merger Regulation: The parties have a combined aggregate worldwide turnover in excess of EUR 5 billion (Investor: EUR [...] billion, Morgan Stanley: EUR 21.5 billion, Mölnlycke: EUR [...] million), and each has a Community-wide turnover in excess of EUR 250 million (Investor: EUR [...] billion, Morgan Stanley: EUR [...] billion, Mölnlycke: EUR [...] million). The parties did not achieve more than two thirds of their Community-wide turnover in one and the same Member State.

IV. RELEVANT MARKETS

7. The notified concentration does not give rise to any horizontal overlaps as neither Investor nor MSPI is engaged in business activities in the same (or neighbouring) markets as Mölnlycke. The concentration only gives rise to a limited number of vertical relationships through Investor's controlling interest in Aleris AB which purchases surgical products and wound care products from Mölnlycke for its senior care and its health care services in Sweden and Norway.

³ See http://www.investorab.com/en/Investors_media/Share+Information/Ownership/default.htm, as updated 2006-10-19.

1. Upstream markets

a. Surgical products

8. In previous decisions⁴ the Commission has split the market for surgical products into a number of sub-markets. The parties support these previous findings of the Commission. In the present case, this split results in vertically affected markets for i) surgical textiles (with the sub-markets: drapes, gowns, caps, scrub suits, most of which exist as single use products and multiple use products) and ii) surgical gloves (with the sub-segments unpowdered and synthetic gloves, all single use products).
9. The parties also agree with the Commission's conclusion in previous cases⁵ that the geographic market for surgical products is EEA-wide. Surgical products are regulated by European standards and price levels are similar across the EEA. There are no significant barriers to trade in surgical products within the EEA (except transportation costs in some occasions) whereas the main suppliers are active throughout the area.⁶

b. Wound care products

10. Mölnlycke is also a large supplier of wound care products. In previous Commission decisions⁷ on which the parties base themselves, separate product markets were defined for i) traditional wound care products (in the present case swabs constitute the only vertically affected market for traditional wound care products) and ii) advanced wound care products (which are designed to create a special healing environment). Advanced wound care products were split up in further sub-markets, one of which was the market for moist wound care products. This vertically affected market could be split up in further sub-markets⁸, which in the present case would result in vertically affected markets for foam dressings, contact layers and scar dressings.
11. The Commission has defined the market for traditional wound care products as national due to large discrepancies in the market shares of leading players between individual Member States, large price variations and customers' national sourcing and specifications⁹. This also applies to the vertically affected sub-markets¹⁰ in the present case.

⁴ Case COMP/M.3816 Apax/Mölnlycke; Case M. 4229 APHL/L&R/Netcare/GHG; Case COMP/M. 4367 APW/Nordic Capital/APSA/Capio.

⁵ Case M. 1075 Nordic Capital/Mölnlycke; Case M. 3816 Apax/Mölnlycke; Case M. 4229 APHL/L&R/Netcare/GHG; Case COMP/M. 4367 APW/Nordic Capital/APSA/Capio.

⁶ Only with respect to one category of surgical products, i.e. antiseptics, which is not affected in the present case, the Commission has defined the geographic market as national in scope, see Case M. 4007 Reckitt Benckiser/Boots Healthcare International.

⁷ Case M. 3816 Apax/Mölnlycke, Case JV 54 Smith& Nephew/Beiersdorf.

⁸ See also Case M. 4229 APHL/L&R/Netcare/GHG; Case COMP/M. 4367 APW/Nordic Capital/APSA/Capio.

⁹ Case JV 54 Smith&Nephew / Beiersdorf.

¹⁰ See Case M. 4229 APHL/L&R/Netcare/GHG; Case COMP/M. 4367 APW/Nordic Capital/APSA/Capio.

12. With respect to advanced wound care products the Commission has left open so far whether this market, including possible sub-segments thereof are national or EEA-wide¹¹. On the one hand, the regulatory framework for advanced wound care products is similar across the EEA and leading suppliers market the same products all over the EEA. On the other hand, sales patterns vary between countries depending on awareness and penetration of advanced wound care techniques and reimbursement schemes.¹²

2. Downstream markets

13. Aleris is active on vertically affected downstream markets concerning the provision of specialist health care and senior care in Sweden and Norway and in this context is a customer for surgical products and wound care products. The parties submit that a market for specialist health care services can be identified for Norway and Sweden. Specialist health care services¹³ are provided following a referral from primary care providers and under public/private healthcare outsourcing contracts (PPHO) with the relevant Public authorities. The parties further submit that a market for senior care can be identified which may be subdivided into different segments of day-care, home help and special housing services for elderly people¹⁴. The market investigation was not conclusive on this matter.

14. The parties submit that both markets, specialist health care and senior care, can be considered as national at most. This was confirmed by the market investigation which suggested that some or most of the possible sub-segments may even be regional or local.

3. Conclusion on relevant markets

15. For the purposes of this case, the exact product and geographical market definitions can be left open since under all alternative definitions considered, effective competition is not significantly impeded in the EEA or any substantial part thereof.

V. ASSESSMENT

16. According to the parties' estimates Mölnlycke has on the vertically affected markets and/or sub segments thereof in Sweden and Norway and the EEA market shares of 30% and more; The market shares concern sales to hospitals in 2005 (see table below):

¹¹ Case M. 3816 Apax/Mölnlycke; Case M. 4229 APHL/L&R/Netcare/GHG; Case COMP/M. 4367 APW/Nordic Capital/APSA/Capio.

¹² Case COMP/M. 4367 APW/Nordic Capital/APSA/Capio.

¹³ Aleris' specialist care in Sweden and Norway includes general surgery, eye surgery, orthopaedic surgery, hand and foot surgery, cardiology, gynaecology, urology, paediatrics, geriatric care and audiology.

¹⁴ No relevant Commission precedents exist concerning the senior care market. The Swedish competition authorities however confirmed the split of this market as suggested by the parties.

Product segment	Market share EEA	Market share Sweden	Market share Norway
Surgical products			
drapes single use	[40-50]%		
gowns single use	[40-50]%		
caps	[40-50]%		
scrub suits single use	[30-40]%		
surgical gloves unpowdered	[50-60]%		
surgical gloves synthetic	[40-50]%		
Traditional wound care			
Swabs		[40-50]%	[60-70]%
Advanced wound care			
moist wound care – all		[40-50]%	[50-60]%
moist – foam		[70-80]%	[70-80]%
moist - contact layers		[70-80]%	[50-60]%
moist - scar care		[90-100]%	[50-60]%

17. For Aleris the parties estimate their market shares in the segment of PPHO specialist care at [0-10]% in Sweden and [30-40] % at most in Norway. Aleris's market shares for senior care in Sweden and in Norway remains [<10] % under all possible market definitions.
18. Although Mölnlycke has substantial market shares in some of the segments mentioned above, it is unlikely that any substantive competition concerns could arise from the vertical relationship between Mölnlycke (upstream) and Aleris (downstream) due to the following reasons: i) Aleris' demand of surgical and wound care products represents no more than [<5]% of Mölnlycke's sales in Norway and in Sweden; ii) surgical and wound care products account for an insignificant part of Aleris' costs ([<5] % of equipment and expendables in both Sweden and Norway, [<5] % of total costs in Sweden and Norway). Sales of Mölnlycke to Aleris represent in absolute terms exceptionally small amounts, in particular where it concerns wound care products. Therefore neither party would have the ability nor incentive to foreclose third parties as regards input or customers and even if such a possibility existed the likely impact on effective competition would be very limited.
19. Even if Mölnlycke provided Aleris with more favourable conditions than its competitors, this would not lead to concerns of input foreclosure as these supplies would represent only a very small part of Aleris' total expenditures and total cost. As a consequence, Aleris would achieve only a very limited cost advantage over its competitors which would not materially affect its ability to compete on the market. This is confirmed by the market investigation as competitors of Aleris did not indicate any foreclosure concerns.
20. Similarly, although one of Mölnlycke's competitors expressed concerns that Mölnlycke would have preferential access to Aleris as a customer it is unlikely that the present transaction would lead to concerns of customer foreclosure. Even if Aleris decided to cover all its requirements for surgical and wound care products with supplies from Mölnlycke, this would not significantly reduce the potential customer base for competing suppliers of medical products considering that Aleris' demand for these products on the respective national or EEA market (depending on the product concerned) only represents a tiny part of the overall demand for these products. This has been confirmed by the market investigation.

Even those competitors of Mölnlycke who expect Mölnlycke to become a preferred supplier of Aleris do not expect a significant impact on their business or on the market.

21. It follows from the above that under the circumstances it is unlikely that the transaction will significantly impede effective competition on the identified vertically affected upstream and/or downstream markets.

V. CONCLUSION

22. 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