EN

Case No IV/M.480 - Sanofi / Kodak

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REGULATION (EEC) No 4064/89 MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.08.1994

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

PUBLIC VERSION

To the notifying party

Dear Sirs,

Subject: Case no. IV/M.480 - SANOFI/KODAK
Notification of 12.7.1994 pursuant to Article 4 of Council Regulation No 4064/89

1. The above mentioned notification concerns an agreement between Sanofi, Sterling Winthrop and Eastman Kodak Company (Kodak), by which Sterling Winthrop agrees to transfer its ethical pharmaceutical activities to Sanofi.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. Sanofi is a French company, controlled by Elf Aquitaine, active in three key sectors: human health, agro and food business and perfumes and cosmetics.

4. Sterling Winthrop is a wholly-owned subsidiary of Kodak. It is active in the pharmaceutical industry, household cleaning, and other products.

5. In 1991, Sanofi and Sterling Winthrop entered into a number of agreements by which they combined their ethical prescription activities worldwide (excluding

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Japan) and their European over-the-counter (OTC) human pharmaceutical activities. Since then, the ethical business has been carried out as a joint venture under the name Sanofi Winthrop. This operation was approved by the Commission under Article 6(1)(b) of the Merger Regulation[1].

II. THE OPERATION

6. Sterling Winthrop is transferring its ethical pharmaceutical activities, which had been merged into the joint venture Sanofi Winthrop, to Sanofi.

III. CONCENTRATION

7. The operation can be characterized as the acquisition by Sanofi of full control over Sanofi Winthrop. The acquisition by one of the parents of sole control over a concentrative joint venture is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation[2].

IV. COMMUNITY DIMENSION

8. The aggregate worldwide turnover of the undertakings concerned exceeds 5,000 million ECU {...}[3]. With regard to aggregate Community-wide turnover each of the two undertakings concerned exceeds the 250 million ECU threshold laid down in the Regulation. Finally, none of the undertakings achieves two-thirds of its turnover within one and the same Member State.

9. Therefore, the concentration has a Community dimension.

V. COMPATIBILITY WITH THE COMMON MARKET

10. Relevant product market

In its decision of 10.6.1991, the Commission stated (paragraph 14) : "the third level classes of the ATC classification provide a grouping of medicines according to their therapeutic properties, that is, their intended use, and therefore may be accepted as an operational market definition. It may be necessary, however, to carry out analysis at other levels of ATC classification where it is appropriate to group particular 3rd level categories together or to descend to narrower classes at the 4th level". In accordance with this statement, which is still valid, the concentration affects a number of separate product markets. It is not necessary, however, to define precisely these product markets since, with two exceptions, discussed below, the operation does not give rise to serious doubts, even on a narrow market definition.

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1 Commission Decision of 10.6.1991 in case IV/M.72 - Sanofi/Sterling Drug.

2 See Commission Decision of 28.11.1990 in case IV/M.23, ICI/Tioxide.

3 Deleted business secret.

11. Geographical reference market

In its decision of 10.6.1991, the Commission had considered that ethical pharmaceutical markets remain essentially national because the industry operates in a very tight legal framework and prices of ethical drugs are directly or indirectly regulated by national laws. Even if there is a trend towards harmonization within the EU (Centralized Market Authorization Procedure to be entered into force in 1995, setting up of a European Medicines Evaluation Agency), the grant of a product license will still remain a national decision except for biotech/high level medicines. Therefore, the Commission is of the opinion that the geographic market for ethical pharmaceutical products remains essentially national.

12. Assessment

The move from joint control in a concentrative joint undertaking to sole control does not lead to any material change in market structure in the present case. There is no horizontal overlap between Sanofi and Sanofi Winthrop since Sanofi's ethical pharmaceutical activities were transferred to Sanofi Winthrop in 1991. The competitive position of Sanofi Winthrop's ethical pharmaceutical activities is not strengthened by the fact that Sanofi will no longer share control with Kodak. Moreover, Sanofi Winthrop's market position has not been strengthened to any appreciable extent since the joint venture was established, with two exceptions in which the joint venture has achieved high market shares. In the case of platelet aggregation inhibitors in Greece, the market segment concerned is extremely small but is fast-growing and, furthermore, there are many generic products in the same market. With respect to injectable anticoagulants in Portugal, the market segment is even smaller but easily contestable by a powerful competitor, Rhône Poulenc, which has entered the market. For the above reasons the Commission considers that there is no strengthening of a dominant position on these market segments. Likewise the structure of the market has not been significantly modified. Finally, there is no significant conglomerate effect between Elf Aquitaine and Sanofi Winthrop.

VI. CONCLUSION

The Commission has decided for the above reasons not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA agreement. This decision is adopted in application of Article 6(1)b of Council Regulation No 4064/89 and article 57 of the EEA agreement.

For the Commission,