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Case No IV/M.500 - American Home Products / American Cyanamid

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REGULATION (EEC)No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 19/09/1994

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.09.1994

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

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To the notifying party

Dear Sirs,

Subject: Case N° IV/M.500 - AMERICAN HOME PRODUCTS (AHP)/AMERICAN CYANAMID
Notification of 16.08.1994 pursuant to Council Regulation (EC) No. 4064/89

1. On 16 August 1994 American Home Products Corporation notified an agreed public bid for the acquisition of American Cyanamid Corporation.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation N° 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

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I. THE PARTIES

3. American Home Products Corporation, together with its subsidiaries and divisions (collectively, "AHP"), is a U.S. international pharmaceutical and health care company involved in the development, production and sale of human pharmaceutical products, medical supplies, diagnostic products, animal pharmaceutical and biological products and food products.

4. American Cyanamid Corporation ("Cyanamid") is a U.S. international biotechnology and chemicals company, whose principal activities include the development, production and sale of human pharmaceutical products, medical supplies, agro-chemical products, agricultural products and animal pharmaceutical products.

II. THE OPERATION

5. The notified operation consists of the takeover (by way of an agreed public bid) of Cyanamid by AHP.

III. CONCENTRATION

6. The takeover of Cyanamid by AHP by way of agreed public bid is a concentration within the meaning of article 3(1) (b) of the merger regulation.

IV. COMMUNITY DIMENSION

7. The combined aggregate worldwide turnover of the parties exceeds 5.000 million ECU. The aggregate Community wide turnover of each party exceeds 250 million ECU. They do not achieve more than two-thirds of their turnover in one and the same Member State. The operation has therefore a Community dimension.

V. COMPATIBILITY WITH THE COMMON MARKET

8. Of the businesses to be acquired by AHP, the principal horizontal product overlaps occur in the manufacture and sale of human pharmaceuticals.

In the sectors of medical supplies, diagnostic products, and animal health products, AHPs' and Cyanamid's businesses are complementary.

In addition, AHP is not present in Cyanamid's substantial business of agrochemicals, and in its turn Cyanamid is not present on AHP's field of food products.

A. Relevant Product Market

9. Council Directive (65/65 EEC) considers a medicine to be : "any substance or combination of substances presented for treating or preventing disease in human beings or animals; any substance or combination of substances which may be administered to human beings or animals with a view to making a medical diagnosis or to restoring, correcting or modifying physiological functions in human beings or in animals".[1]

10. Medicines can be broken down into therapeutic classes according to the Anatomical Therapeutic Classification ("ATC") which is recognized and used by the World Health Organization. This classification, previously used by the Commission,[2] enables medicines to be grouped according to their composition and therapeutic properties.

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 analyses 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.

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1 Council Directive of 26.1.1965 (65/65 EEC) on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products.

2 Decision IV/M.072 - Sanofi/Sterling Drug (10.06.91)
Decision IV/M.323 - Procordia/Herbamont (29.04.93)
Decision IV/M.426 - Rhône Poulenc/Cooper (18.04.94)

Even though in some cases it is necessary to descend to the 4th level of ATC classification, this is not the case here where there are no overlaps at the 4th level. The areas of overlaps between AHC and Cyanamid will be on the following 3rd level categories:

* A9A Digestives Incl. Enzymes
* D4A Topical Antipruritics
* D7A Top. Corticosteroid Plain
* G1B Gynaecolog. Antifungals
* J1C Broad Spectr. Penicillins
* M2A Antirheumatics Topical
* N2B Non-Narcotic Analgesics
* N5C Tranquillisers
* R5D Antitussives

11. Furthermore, medicines may be subdivided into different segments on the basis of different criteria which may lead to distinctions, essentially from a demand-side point of view. A distinction may be made between medicines which are subject to medical prescription ("prescription-only" medicines) and medicines which are not subject to medical prescription ("sold freely" medicines).[3] A distinction may also be made between medicines which are wholly or partially reimbursed under the health insurance system and medicines which are not reimbursed. These segments overlap to a certain extent. Most of "prescription only" medicines are reimbursed and most of "sold freely" medicines are not reimbursed. Moreover, the presence of one medicine in one segment is not permanent to the extent it is linked to decisions of national authorities which can lead to switches between these segments.

However, it is not necessary to decide whether these segments constitute or not separate product markets because the assessment of the current operation would not be modified.

[3] Council Directive of 31.03.1992 (92/26/EEC) concerning the classification for the supply of medicinal products for human use.

B. Geographical Reference Market

12. The harmonisation of technical legislation within the Community and the entry into force on 1.1.1995 of the new marketing authorisation procedures for medecines will represent the completion of the Single Market Programme from the point of view of scientific and technical requirements for medecines. These measures will lead pharmaceutical companies to operate more than ever at research and development and production stages, on a Community-wide basis.

However, the geographic reference markets for the sales of medicines remain for the purposes of a competition assessment essentially national.

The conditions of prescription and reimbursement of medicines depend on various legislative and regulatory measures and vary from one Member State to another.

The prices of most medicines are directly or indirectly regulated by national laws. The differences in the pricing and reimbursement mechanisms result in wide disparities in medicine price levels among different Member States.
The systems for distribution of medicines vary from one Member State to another, notably with regard to the final distribution of these products.

Within the framework of the proposed acquisition, the geographical markets affected by the operation are Germany, the United Kingdom, France and Portugal.

13. The markets affected by the operation are reported in the following table :

Affected country and product	AHC	CYANAMID	TOTAL
United Kingdom M2A	0.78%	18.54%	19.32%
Germany D4A	0.50%	23.47%	23.97%
Germany D7A	18.17%	0.03%	18.20%
Germany G1B	16.10%	1.78%	17.88%
Germany N2B	11.33%	0.02%	11.35%
Germany N5C	13.16%	2.81%	15.97%
Portugal J1C	13.20%	0.42%	13.62%
France A9A	6.38%	5.15%	11.53%
France RD5	0.11%	10.54%	10.65%

The classes D7A, G1B, J1C, N5C include prescription-only medicines, most of which are reimbursed.

The classes A9A, D4A, N2B, R5D include medicines sold freely, most of which are not reimbursed.

C. Competitive Assessment

14. The highest combined market share of the parties to the operation on the affected markets is represented by a 23.97 % share of the sales in Germany of D4A Topical Antipruritics. On this last market there remains a significant competitor, Ciba-Geigy, with a 12.68% market share. All other competitors have market shares inferior to 10% and their number is quite high. Among them there are companies like BASF, Merck AG, Asta Medica and Boehringer Ingelheim.

For the other markets, the combined market share of the two companies varies from a minimum of 10.65% in France for R5D Antitussives, to a maximum of 19.32% in the United Kingdom for M2A Antirheumatics Topical. For each product there is at least one significant competitor with similar sales figures to the aggregate of the parties in some cases and more important figures in other cases. These competitors include companies such as Roche, Ciba-Geigy, Pfizer, Hoechst and BMSC/UPSA. In addition there is a high number of smaller competitors with market shares of less than 10%.

15. Because of the relatively low combined market shares and because of the competitive presence of major pharmaceuticals companies, the addition of the market shares of AHP and Cyanamid in the affected markets does not lead to the creation or strengthening of a dominant position.

VI. CONCLUSION

16. On the basis of these findings, the Commission has decided 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