

EN

***Case No COMP/M.5949 -
DEUTSCHE BANK /
ACTAVIS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 22/09/2010

***In electronic form on the EUR-Lex website under document
number 32010M5949***



EUROPEAN COMMISSION

Brussels, 22.09.2010

SG-Greffe(2010) D/14332
C(2010) 6688 CORR

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5949 - Deutsche Bank / Actavis
Notification of 18 August 2010 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 18 August 2010, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² by which the undertaking Deutsche Bank AG ("Deutsche Bank", Germany) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Actavis Group hF ("Actavis", Iceland) by way of contract of management or any other means.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation")

I. THE PARTIES

2. Deutsche Bank is active in three key businesses, namely retail banking and financial services, global investment management and services, and corporate and investment banking. Deutsche Bank AG is acting in this operation through its London branch.
3. Actavis is a global player in the development, manufacture and sale of generic pharmaceuticals and has headquarters in Iceland. Björgólfur Thor Björgólfsson ("BTB"), a natural person, currently indirectly holds legal control in Actavis[...].

II. THE OPERATION

4. BTB acquired a majority ownership of Actavis in 2007 with Deutsche Bank providing most of the debt financing required for the acquisition [...]
5. [...] Deutsche Bank has opted to pursue a consensual restructuring of Actavis [...].
6. [...] negotiations resulted in the parties entering into a number of agreements to restructure the debt, [...]. These agreements envisage the amendment, restating and refinancing of existing loan facilities, together with the restructuring of the existing holding structure of Actavis (the "Proposed Transaction"), that whilst not conferring upon Deutsche Bank any equity³, confer upon it a number of rights.
7. Indeed, a number of commercially strategic matters [...] will be decided by the board of the new holding entity of Actavis (the "Board") by simple majority. The Board is composed of 7 members, [...] being appointed by DB, [...] by BTB and [...] by the [...] Icelandic banks. The chairman (the 7th member of the Board) is proposed by simple majority, but Deutsche Bank will hold a veto right over his/her appointment and removal. [...]
8. [Furthermore, DB will hold a number of rights in relation to Actavis.]
9. [...] whilst Deutsche Bank does not have the power to on its own to impose decisions regarding the commercial strategy of Actavis, it has the power to appoint three out of seven members of the Board and to block the appointment of the chairman, a power that is not enjoyed by any other shareholder. DB may thus be considered to hold negative sole control over Actavis under the terms and conditions set out under paragraph 54 of the Jurisdictional Notice.
10. The transaction therefore constitutes a concentration in the sense of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁴ (Deutsche Bank: EUR 45 233 million; Actavis: EUR 1 506 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Deutsche Bank: EUR 29

³ BTB will remain the ultimate majority equity holder of Actavis.

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

963 million; Actavis: EUR 692 million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has a EU dimension.

IV. COMPETITIVE ASSESSMENT

12. As mentioned above, Actavis' business is in the development, production and sale of finished pharmaceuticals as well as the development and manufacture of active pharmaceutical ingredients. According to the notification, Deutsche Bank does not control any company that is active on such markets or in any markets that may be vertically connected to such markets.
13. During the procedure, it was nonetheless brought to the Commission's attention by an interested third party that the relationship between the Parties should be considered in terms of its possible effect on the Icelandic pharmaceutical market in view of the financial strength of Deutsche Bank and the existing strong position of Actavis in generic pharmaceuticals in Iceland, coupled with the current difficulties in obtaining commercial credit in Iceland in view of the financial crisis. It was pointed out that the Icelandic Competition Authority (ICA) had already examined a number of cases involving the takeover of industrial companies in Iceland by banks and subjected its clearance to commitments by the parties' involved in some of these cases.
14. There are three large banks in Iceland, formerly known as Glitnir bank, Kaupthing bank and Landsbanki Islands and now renamed, respectively, to Islandsbanki, Arion banki and NBI. The cases in which the ICA has intervened have all involved one of these three banks.
15. The ICA noted in these decisions that even in instances where the same bank did not control (by means of equity) another company active in the same sector, it was frequently a creditor or provider of banking services to such companies. In the Commission's understanding, it was therefore concerned that the company in which the bank has a controlling equity stake might derive some advantages over competitors to which the same bank only has a credit exposure, and that commercially sensitive information of such companies might, by virtue of the banking relationship, leak to the company controlled, resulting in a facilitation of collusion. In many cases, the company acquired was also capital-intensive and therefore outside capital constituted a vital input.
16. In the present case, the Parties have indicated that Deutsche Bank has no permanent establishment in Iceland, that it has no equity stake in Actavis and is not a lender to any Icelandic entity active in the pharmaceutical sector in that country. Moreover, whilst Actavis is a significant provider of generic pharmaceuticals in Iceland⁵, most of its competitors, both generics and innovators, are international companies which can therefore be taken not to be dependent on the Icelandic national commercial credit market for funding. There is no indication that any of these competitors have difficulties to obtain outside funding if they require it.

⁵ Generic pharmaceuticals represent about 15% of all pharmaceutical expenditure in Iceland and, of this, Actavis accounts on the Parties' figures for about two-thirds; they therefore represent around 10% of the overall pharmaceutical market. Actavis also acts as an agent for a number of foreign generic companies which have sales in Iceland, such as Merck NM AB, Merck KGaA and Mylan. The most important generic competitor is another Icelandic company, Portfarma, with 12% generic market share overall.

17. It follows that the steps taken by Deutsche Bank through the notified transaction [...] are not such as to unduly strengthen Actavis' position on the Icelandic market and consequently do not lead to serious doubts as to the compatibility of the notified operation with the Merger Regulation and the EEA agreement.

V. CONCLUSION

18. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission,

(signed)
Joaquín ALMUNIA
Vice-President of the Commission



EUROPEAN COMMISSION

Brussels, 28.10.2010

SG-Greffe(2010) D/17144
C(2010) 7586

MERGER PROCEDURE
Corrigendum Decision

Dear Sir/Madam,

**Subject: Case No COMP/M.5949 - DEUTSCHE BANK / ACTAVIS
Corrigendum of the Decision C(2010) 6688 concerning M.5949 - DEUTSCHE
BANK / ACTAVIS**

The European Commission adopted on [...] * a decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ registered under the number C(2010) 6688, whereby it did not oppose and declared compatible with the internal market and with the EEA Agreement a concentration notified pursuant to Article 4 of the Merger Regulation by which the undertaking Deutsche Bank acquired negative sole control of the undertaking Actavis Group hF. The decision C(2010) 6688 includes certain errors which are corrected as follows:

1. In Recital 7 of Commission Decision C(2010) 6688 of 22 September 2010, the words "of the new holding entity of Actavis (the "Board"))" are added between the words "decided

* should read: '22.09.2010'

¹ OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

by the board" and "by simple majority". In the following sentence, the words "of Actavis" are deleted.

2. In Recital 9 of Commission Decision C(2010) 6688 of 22 September 2010, the word "board" is capitalised to "Board".

The above correction does not modify the operative part of the decision and therefore does not modify its conclusion.

Enclosed you will also find, for information purposes, the corrected version of the Commission decision.

For the European Commission

(signed)
Joaquín ALMUNIA
Vice-President of the European
Commission