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***Case No COMP/M.6044 -
ALLIANCE BOOTS/
ANDREAE-NORIS ZAHN***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 16/12/2010

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EUROPEAN COMMISSION

Markets and cases IV: Basic Industries, Manufacturing and Agriculture

Brussels, 16.12.2010

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.6044 - ALLIANCE BOOTS/ ANDREAE-NORIS ZAHN pursuant to Article 4 of Council Regulation No 139/2004¹

1. On 11 November 2010, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Alliance Boots GmbH ("Alliance Boots", Switzerland) acquires within the meaning of Article 3(1)(b) Merger Regulation sole control of the undertaking Andrae-Noris Zahn AG ("Anzag", Germany), by way of purchase of shares.

I. THE PARTIES

2. Alliance Boots is an international health and beauty group. Its two core businesses are: (i) pharmacy-led health and beauty retailing and (ii) pharmaceutical wholesaling. In Germany, Alliance Boots via Loxxess Pharma GmbH², ("Loxxess") has a limited presence in pre-wholesaling services provided to pharmaceutical manufacturers and in wholesaling of oncology products (short-line wholesaling) through its subsidiary

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 According to the parties Alliance Boots holds a controlling stake in Loxxess Pharma GmbH.

Megapharm. Alliance Boots is jointly controlled by Kohlberg Kravis Roberts & Co, L.P. ("KKR") and Mr Stefano Pessina.³

3. Anzag is a pharmaceutical wholesaler in Germany. Its main activity is full-line wholesaling, i.e. the distribution of the complete range of pharmaceutical products to pharmacies. Anzag's subsidiary CPL Pharma Lager und Vertrieb GmbH ("CPL") also carries out, inter alia, pre-wholesaling services in Germany. Anzag's logistics subsidiary AS Logistik GmbH ("AS Logistik") provides logistical services mainly to Anzag but also to other full-line pharmaceutical wholesalers in Germany. Alliance Boots already has a 29.99% shareholding in Anzag.

II. CONCENTRATION

4. The transaction concerns Alliance Boots' acquisition of a further 51.64% shareholding from the four other current shareholders in Anzag. This will result in Alliance Boots having sole control over Anzag. The proposed transaction therefore constitutes a concentration within the meaning of Article 3 (1)(b) of the Merger Regulation.

III. EU DIMENSION

5. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ KKR including Alliance Boots: (EUR [...] million, Anzag: EUR 4 156 million). Each of them has a EU-wide turnover in excess of EUR 250 million (Alliance Boots: EUR [...] million, Anzag: EUR [...] 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 an EU dimension.

IV. COMPETITIVE ASSESSMENT

1. *Relevant Markets*

A. Pharmaceuticals pre-wholesale services

(i) Relevant Product Markets

6. The parties' activities overlap in the area of pre-wholesale services of pharmaceuticals in Germany where Alliance Boots - through its stake in Loxxess - and Anzag's subsidiary CPL are active. Pre-wholesaling is the provision of logistical services to pharmaceutical manufacturers, mainly consisting in the warehousing and transportation of pharmaceutical products from the manufacturer to wholesalers, hospitals and, in some instances, to pharmacies. The suppliers of pre-wholesale services do not take title to the pharmaceutical products they are storing and ownership remains with the manufacturer until delivery. Pre-wholesalers do not have a customer relationship with the intended recipient of the products but with the manufacturers who pay a fee or commission for the service.

³ COMP/M.4674, *KKR/Stefano Pessina/Alliance Boots*.

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).

7. According to the parties pre-wholesaling constitutes a relevant product market on its own. This market has emerged due to the outsourcing of these specific activities by manufacturers of pharmaceuticals over the last years. Pre-wholesaling services differ from wholesaling in that they are services provided to the manufacturers and do not concern the purchase and sale of pharmaceuticals. Pre-wholesaling also differs from wider logistics and transportation services because pre-wholesaling requires sector-specific knowledge, and the providers need a wholesale license as well as a license for the premises where the pharmaceuticals are stored (warehousing). The services are specific to the products concerned, e.g. the services comprise temperature-controlled and humidity-regulated storage, refrigerated transit, high-security and legislation-compliant storage, recall management and labelling as well as secondary and tertiary packaging specific to pharmaceuticals.
8. The Commission has not yet dealt with pre-wholesale services of pharmaceuticals. However, in a number of previous decisions concerning other logistics services, it has defined a broad market for contract logistics services covering logistics services for all kinds of goods.⁵ Regarding a further sub-segmentation of contract logistics services according to sectors and goods, the Commission noted that while providers may be active in several different sectors, sector-specific knowledge was relevant, and that knowledge of a given sector and its product specific requirements constitutes a valuable asset for a logistics service provider in winning contracts⁶. Nevertheless, the Commission did not examine any further the possibility to define narrower markets for the provision of services to clients in a specific sector⁷.
9. The Commission considers the parties' arguments for a separate market for pre-wholesaling services to be plausible. However, it is not necessary to conclude on the product market definition since even on the basis of a narrow delimitation – pre-wholesale services for pharmaceutical manufacturers - the operation does not result in competition concerns.

(ii) Relevant Geographic Markets

10. The parties consider the geographic scope of the pre-wholesale services market to be national as competition between pre-wholesalers takes place at the national level. Pre-wholesale contracts are typically awarded and the fees for pre-wholesale services typically determined on a national basis. Moreover, a significant number of pre-wholesalers provide this service only nationally and the stage of development of the pre-wholesale market is different in different EEA Member States.
11. On the other hand, pre-wholesaling competition does not take place at a narrower level, for instance, the regional level. Pre-wholesale services are not restricted by the same frequent and timely transportation requirements such as, for instance, full-line wholesaling provided to pharmacies. Pharmaceutical manufacturers require their products to be distributed nationally and contracts between pre-wholesalers and manufacturers

⁵ OMP/M.3492, *Exel/Tibbet & Britten*; COMP/M.1895, *Ocean Group/Exel*; IV/M.1500, *TPG/TechnoLogistica*.

⁶ IV/M.1500, *TPG/TechnoLogistica*, at paragraph 12.

⁷ COMP/M.3492, *Exel/Tibbet & Britten*, at paragraph 7.

specify national delivery. All pre-wholesalers can and do offer national coverage, since their deliveries are not time-critical. Should the product market be considered to be wider and comprise, for instance, healthcare logistics or contract logistics in general, the parties argue that the same reasons would apply and a national market should also be defined for healthcare logistics or the even broader contract logistics services.

12. The Commission in previous decisions indeed found that the (wide) contract logistics market is national in scope⁸. As to a potential pre-wholesaling market, there are indications for an even wider than national scope since some of the larger competitors of the parties provide these services on European-wide basis. The precise geographic market definition, however, can be left open in the present case as even on the basis of the narrowest possible delimitation – national markets - the operation does not lead to competition concerns.

B. Wholesale of pharmaceutical products

13. There is no vertical link between the pre-wholesale activities of Loxxess and CPL in either full-line or short-line wholesaling. However, if the product markets are defined wider as healthcare logistics or contract logistics and Anzag's transportation subsidiary AS Logistics as a supplier to full-line wholesalers is included, the transaction results in hypothetical vertical links, since the wider healthcare logistics or contract logistics market include activities – for instance, transport services for wholesalers - that are upstream to the market of wholesaling of pharmaceutical products although neither Loxxess nor CPL have wholesalers among their customers.

(i) Relevant Product Market

14. In previous decisions, the Commission has considered that full-line wholesaling of pharmaceutical products constitutes a relevant product market that is separate from short-line wholesaling.⁹ In view of the narrowly defined legal framework in which full-line wholesalers operate in certain countries, their activities are to be distinguished from the direct distribution of products by manufacturers to pharmacists (direct-line) or the activities of short-line distributors, who generally focus on a limited range of products.¹⁰ This market definition is also followed in the present case.

⁸ COMP/M.3492 - *Exel/Tibbet & Britten*, paragraph 16.

⁹ IV/M.1243 - *Alliance Unichem plc/Safa Galencia SA* paragraph 7; COMP/M.2432 – *Angelini/Phoenix/JV*, paragraph 11; COMP/M.2573 – *A&C/Grossfarma*, paragraphs 11; COMP/M.5433 - *Sanacorp/V.D. Linde*, paragraph 6 .

¹⁰ COMP/M.2432 – *Angelini/Phoenix/JV*, paragraph 11; COMP/M.2573 – *A&C/Grossfarma*, paragraph 12; COMP/M.5433 – *Sanacorp/Linde*, paragraph. 6-9.

(ii) Relevant Geographic Market

15. Regarding the geographic scope of full-line as well as of short-line wholesaling of pharmaceutical products, the Commission has previously left open whether the market is national or regional in scope.¹¹
16. Also in the present case, the exact geographic market definition in the wholesale of pharmaceutical products can be left open, since the proposed transaction will not lead to competition concerns under any alternative market definition.

2. *Competitive Assessment*

A. Horizontal overlaps

17. The concentration results in very modest overlaps in the market for pharmaceutical pre-wholesale services in Germany where the parties estimate their respective shares of pre-wholesale services in 2009 at [5-10]% (for Alliance Boots via Loxxess) and [0-5]% (Anzag via its subsidiary CPL) respectively, resulting in a combined market share of about [5-10]%. Movianto and Pharmlog are larger competitors that according to the parties achieve a market share of about 10-15% each. Other competitors include Next Pharma with a market share of about 5-10% according to the parties and Logosys and Arvato that achieve [0-5]% each according to the parties.
18. On the basis of the broader alternative market definitions of healthcare logistics or – even wider - contract logistics, the combined market share of Loxxess, CPL and the Anzag transportation subsidiary AS Logistik is estimated at [0-5]% (healthcare logistics) or [0-5]% (contract logistics).

2. Vertical relationships

19. There is no vertical link between the pre-wholesale activities of Loxxess and CPL and the full-line wholesaling activity of Anzag or the short-line wholesaling of oncology products of the Boots Alliance' subsidiary Megapharm, since the pre-wholesale services of Loxxess and CPL are not provided to wholesalers but to the manufacturers of pharmaceutical products.
20. If the markets were, however, to be defined wider, i.e. as healthcare logistics or general contract logistics, a vertical link could be identified between the activities of Loxxess, CPL and AS Logistik as part of a wider healthcare or even general contract logistics market on the one hand, and Anzag's activities as a full-line wholesaler and/or Megapharm's activities as a short-line wholesaler for oncology products on the other hand.
21. Regarding the potential vertical relation between a wider logistics market and the full-line wholesaling activities of Anzag, Loxxess accounts for a negligible market share on either the healthcare or the contract logistics market. Thus, even if it were to provide services to the full-line wholesaler Anzag - which has a market share of [10-20]% in

¹¹ COMP/M.2432 – Angelini/Phoenix/JV, paragraphs 13-15; COMP/M.2573 – A&C/Grossfarma, paragraphs 14-16; COMP/M.2432 – Angelini/Phoenix/JV; COMP/M. 5433 – Sanacorp/Linde, paragraphs 9-10.

Germany and over 25% in some German regions – the parties would neither have the ability nor the incentive to foreclose non-integrated wholesalers from access to logistics services or non-integrated logistics providers from access to full-line wholesaling markets. Accordingly, this vertical link is of a hypothetical nature since a) Loxxess does not provide and is not able to provide logistics services to full-line wholesalers such as Anzag, since it is not equipped to meet the rapid response delivery requirements of full-line wholesalers and b) neither CPL nor AS Logistik provide services to (short-line) wholesalers such as Megapharm. Against this background, any considerations of potential input or customer foreclosures are of a theoretical nature because there is no input or customer relationship between the activities of the parties.

22. Regarding the potential vertical relation between a wider logistics market and the short-line wholesaling activities of Alliance Boots/Megapharm: Megapharm does not achieve market shares of over 25 % on short-line wholesaling markets in Germany or German regions and CPL and AS Logistik account for a negligible combined market share on either the healthcare or the wider contract logistics market (see paragraph 18). Thus, even on the basis of a theoretical vertical link between the subsidiaries providing logistics services and the short-line wholesaling of Megapharm, there are no affected markets and any input or customer foreclosure can be excluded.
23. In light of the foregoing, the concentration does not give rise to competition concerns, either as a result of the horizontal overlap or as a result of a (potential) vertical relationship.

V. CONCLUSION

24. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the functioning of 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)
Joaquín ALMUNIA
Vice-President of the Commission