



EUROPEAN COMMISSION

DG Competition

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***Case M.8363- FARMINVESTE / ALLIANCE BOOTS /
ALLIANCE HEALTHCARE***

Only the English text is available and authentic.

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

Article 4(4)

Date: 6/3/2017



EUROPEAN COMMISSION

Brussels, 6.3.2017
C(2017) 1647

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties:

To Autoridade da Concorrência

Subject: Case M.8363 – FARMINVESTE / ALLIANCE BOOTS / ALLIANCE HEALTHCARE
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004¹ for referral of the case to Portugal and Article 57 of the Agreement on the European Economic Area².

Date of filing: 31.01.2017

Legal deadline for response of Member States: 21.02.2017

Legal deadline for the Commission decision under Article 4(4): 07.03.2017

Dear Sir or Madam,

1. INTRODUCTION

- (1) On 31 January 2017, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to

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 1, 3.1.1994, p. 3 (the 'EEA Agreement').

the transaction cited above. The Parties request the operation to be examined in its entirety by the competent authorities of Portugal.

- (2) According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the Parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State(s) where the concentration may significantly affect competition in a market within a Member State and which present(s) all the characteristics of a distinct market.
- (3) A copy of this Reasoned Submission was transmitted to all Member States on 3 February 2017. In the case at hand, Portugal is the only Member State to which the case could be referred to.
- (4) By letter of 10 February 2017 the Portuguese Competition Authority ("PCA") informed the Commission that Portugal agrees with the proposed referral.

2. THE PARTIES AND THE TRANSACTION

- (5) Alliance Boots Holdings Limited ("Alliance Boots") is a member of the Alliance Boots Group whose corporate object is the management of holdings in other undertakings in the same group related to the wholesale distribution of pharmaceutical, hygiene and perfumery products.
- (6) Farminveste – Investimentos, Participações e Gestão, S.A. ("Farminveste") is an investment company whose corporate object is to invest in companies in the areas of pharmaceutical distribution, information technology and systems, pharmaceutical market intelligence, provision of healthcare services and real estate. It is owned by the Portuguese National Pharmacies Association whose membership comprises almost all pharmacies in Portugal.
- (7) Alliance Healthcare, S.A. ("Alliance Healthcare") distributes and trades medicinal products, perfumes, chemical and pharmaceutical products in Portugal.
- (8) The transaction in question involves the acquisition of joint control over Alliance Healthcare by Farminveste and Alliance Boots by way of purchase of shares. This acquisition has an EU dimension within the meaning of Article 1 of the Merger Regulation. The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million.³ Each of them has an EU-wide turnover in excess of EUR 250 million, but each does not achieve more than two-thirds of its aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

4. ASSESSMENT

- (10) On the basis of a preliminary assessment of the information provided by the Parties in the Reasoned Submission, the proposed transaction could be an appropriate candidate for pre-filing referral from the Commission to the PCA in accordance with Article 4(4) of the Merger Regulation.

Product markets

- (11) The product markets mainly affected by the transaction are in the health care area, more specifically, (i) wholesale distribution of medicinal products, (ii) provision of logistics services for pharmaceutical products, (iii) supply of raw data and market intelligence for pharmaceutical products and services and (iv) marketing and sale of generic medicines.

Geographic scope

- (12) The European Commission and the PCA have in the past consistently considered that the geographic scope of all of these markets is to be considered as national, or narrower.
- (13) Following a preliminary assessment, the transaction appears to meet the legal requirements set out in Article 4(4) of the Merger Regulation. The transaction is a concentration within the meaning of Article 3 of the Merger Regulation, it has an EU dimension and it may significantly affect competition in Portugal, since the geographic scope of all of the product markets under consideration is national, or narrower.
- (14) According to the Notifying Parties, there is one affected market, the supply of raw data and market intelligence for pharmaceutical products and services, where the combined market share post-transaction could be as high as 80%.
- (15) On the basis of the information submitted in the Reasoned Submission, the affected markets in the present concentration are all national in scope.
- (16) In view of the foregoing, the preliminary assessment suggests that the principal effects of the proposed operation would be restricted to Portugal. Further, the markets in question present all the characteristics of a distinct market.

Additional factors

- (17) Alliance Boots and Farminveste participations in Alliance Healthcare have been examined several times in the recent past, typically by the PCA.
- (18) **The 2005 transaction:** On 23 December 2005, Farmindústria – Investimentos, Participações e Gestão, S.A. (current shareholder at Farminveste) (“Farmindústria”, Portugal), José de Mello Participações II, SGPS, S.A. (“José de Mello”, Portugal) and Alliance Santé Europe, S.A. (now succeeded by the current shareholder Alliance Boots) (“Alliance Santé”, UK) notified the acquisition of joint control Alliance Healthcare⁴ to the PCA. The shareholdings of the Parties in the target were as follows: Farmindústria 49%; José de Mello 2%; and Alliance Santé 49%.

⁴ At the time Alliance Healthcare was called Alliance Unichem Farmacêutica, S.A.

- (19) Due to a complaint filed by a third party, contesting the PCA's competence, the transaction was notified to the European Commission. The case was subsequently referred to the PCA under Article 4(4) of the Merger Regulation, which finally approved the concentration.
- (20) In the transaction that led to the 2005 filing, the three Parties had executed a Shareholders' Agreement which, in the PCA's view, conferred to Farminústria and José de Mello (acting together as a block) on the one hand and Alliance Santé on the other, joint control over Alliance Healthcare. The Shareholders' Agreement was executed for a 10-year period and came to an end on 28 June 2015.
- (21) **The 2015 transaction:** On 25 June 2015, Farminveste filed a precautionary notification to the PCA on the basis that the latter might consider that the mere lapse of the Shareholders' Agreement could entail a change in the structure of control in Alliance Healthcare. The PCA considered that the lapse of the Shareholders' Agreement was a reportable event due to the fact that Farminveste and José de Mello acquired joint control over Alliance Healthcare (by virtue of them acting previously as a block and controlling 51% of the shares). Finally the PCA did not find any competition concerns and approved the transaction.
- (22) **The proposed (2016) transaction:** On 21 November 2016, the three shareholders of Alliance Healthcare entered into an agreement, whereby José de Mello agreed to sell its 2% share of Alliance Healthcare to Farminveste. Therefore, after the transaction, Farminveste will hold 51% of the share capital of Alliance Healthcare and Alliance Boots 49%.
- (23) Furthermore, Farminveste and Alliance Healthcare entered into a new shareholders' agreement, reiterating their joint control over Alliance Healthcare.
- (24) The proposed transaction constitutes a change of control over Alliance Healthcare, since the new (2016) Shareholders' Agreement was signed after the lapse of the 2005 one.
- (25) By letter of 10 February 2017 the PCA informed the Commission that Portugal agrees with the proposed referral.

5. REFERRAL

- (26) On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission notice on case referral in respect of concentrations⁵ (point 17) indicates that, in seeking a referral under Article 4(4), “the requesting parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny”, and that “such indications may be no more than preliminary in nature...”. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the concentration is liable to take place on distinct markets in Portugal, and that the requested referral would be consistent with point 20 of the notice.

⁵ OJ C 56, 5.3.2005, p. 2.

6. CONCLUSION

- (27) For the above reasons, and given that Portugal has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the Portuguese Competent Authority. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)

*Johannes LAITENBERGER
Director-General*