

*Case No IV/M.883 -
PRUDENTIAL / HSBC
/
FINNISH
CHEMICALS*

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 13/02/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13/02/1997

PUBLIC VERSION

MERGER PROCEDURE

ARTICLE 6(1)(b) DECISION

Registered with advice of delivery

To the notifying parties:

Dear Sirs,

Case No IV/M.883 - PRUDENTIAL NOMINEES LTD/HSBC EQUITY LTD/FINNISH
CHEMICALS OY

Notification of 10 January 1996 pursuant to Council Regulation (EC) No.
4064/89

- 1 On 10 January 1996 Prudential Nominees Ltd (United Kingdom) (Prudential Nominees) and HSBC Equity Ltd (United Kingdom) (HSBC Equity) notified to the Commission an intended operation whereby they acquire within the meaning of article 3(1)(b) of Council Regulation 4064/89 joint control of Finnish Chemicals Oy (Finland).
- 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 and with the functioning of the EEA Agreement.

I THE PARTIES

- 3 Prudential Nominees is ultimately controlled by the Prudential Corporation (United Kingdom). The principal activity of the Prudential corporate group is the supply of life insurance. Prudential Venture Managers Ltd, another subsidiary of the Prudential Corporation, holds a discretionary investment management authority on behalf of various entities both inside and outside the Prudential corporate group. The shares in which it invests are subscribed in the name of Prudential Nominees

in designated accounts attributed to the entities on whose behalf the investment is made.

- 4 HSBC Equity is ultimately controlled by HSBC Holdings plc (United Kingdom). The HSBC corporate group supplies general banking and financial services. HSBC Private Equity Europe Ltd, the immediate parent of HSBC Equity, holds a discretionary investment management authority on behalf of various entities both inside and outside the HSBC corporate group.
- 5 Finnish Chemicals, founded in 1937, is at present jointly controlled by UPM-Kymmene Corporation (Finland) and Nokia Corporation (Finland). Its primary activity is the manufacture and import of pulping and bleaching chemicals for supply mainly to the pulp and paper industries. It also produces water treatment and wood treatment chemicals.

II THE OPERATION

Introduction

- 6 The operation is a management buy-in whereby UPM-Kymmene and Nokia dispose of their shares in Finnish Chemicals to Erikem Oy (Finland), a subsidiary of Erikem Luxembourg SA (Luxembourg). The shareholders in Erikem Luxembourg will be the funds managed by Prudential Nominees (45.6 per cent), the funds managed by HSBC Equity (36.49 per cent), MB Corporate Finance Ltd (Finland) and MB Equity Fund Ky (Finland) (10.32 per cent), Gungho Ltd (Turks and Caicos Islands) (2.21 per cent), Longstanton Ltd (Turks and Caicos Islands) (4 per cent) and the company management (1.38 per cent). MB Corporate Finance, MB Equity Fund, Gungho and Longstanton are each investment companies.
- 7 UPM-Kymmene and Nokia Corporation will purchase from Finnish Chemicals its 50 per cent shareholding in Oy Finnish Peroxides Ab (Finland), a manufacturer of hydrogen peroxide.

Joint control

- 8 Decisions relating to the acquisition or disposal of corporate group assets representing more than 15 per cent of the total net consolidated assets require a qualified majority of the shareholders of Erikem Luxembourg. Until 20 February 1997 or until Prudential Nominees notifies Erikem Luxembourg otherwise (whichever event is earlier) the majority required for these decisions is 60 per cent. Thereafter the majority required is 75 per cent.
- 9 The management board of Erikem Oy will consist of seven members including a director nominated by Prudential Nominees and a director nominated by HSBC Equity. Certain decisions relating to Erikem Oy and Finnish Chemicals require the approval of the management board of Erikem Oy. These include decisions relating to a material change in the nature of their business, the appointment and removal of their directors and senior employees, additional borrowings outside the normal course of business, the disposal of assets valued above ECU 1.75 million, capital expenditure above ECU 175 thousand and leases above ECU 17.5 thousand. Until 20 February 1997 or until Prudential Nominees notifies Erikem

Luxembourg otherwise (whichever event is earlier) the affirmative vote of the Prudential Nominees director is required for these decisions. Thereafter the affirmative vote of both the Prudential Nominees director and the HSBC Equity director is required.

- 10 The effect of these provisions is that after 20 February 1997 at the latest Prudential Nominees, which controls 45.6 per cent of the shares in Erikem Luxembourg, and HSBC Equity, which controls 36.49 per cent of the shares, will exercise joint control over Erikem Luxembourg. Until 20 February 1997 at the latest Prudential Nominees will exercise sole control over Erikem Oy; thereafter Prudential Nominees and HSBC Equity will exercise joint control over Erikem Oy
- 11 In its decision IV/M.425 - British Telecom/Banco Santander (28 March 1994) the Commission considered that, where an operation leads to joint control for a starting-up period (not exceeding three years) but according to legally binding agreements joint control will be converted to sole control by one shareholder, the whole operation will normally be considered as an acquisition of sole control. The application of the converse principle in the present case leads to the conclusion that, despite the temporary sole control of Erikem Luxembourg and Erikem Oy exercised by Prudential Nominees, the operation should be considered as an acquisition of joint control.
- 12 Luxembourg and Erikem Oy, and thus Finnish Chemicals, will therefore be subject to joint control by Prudential Nominees and HSBC Equity.

Autonomous economic entity

- 13 Finnish Chemicals will be sold as a going concern. It will continue to perform on a lasting basis all the functions of an autonomous economic entity.

Absence of coordination

- 14 No member of either the Prudential or the HSBC corporate groups is active in or controls any company active in any market in which Finnish Chemicals or any company in its corporate group is active or in any market upstream of, downstream of or neighbouring any market in which Finnish Chemicals or any company in its corporate group is active. There is thus no possibility of the coordination of the competitive behaviour of any member of the Prudential corporate group and the HSBC corporate group as a result of the operation.

Conclusion

- 15 The operation accordingly constitutes a concentration within the meaning of article 3(1)(b) of the Regulation.

III CONCENTRATION OF COMMUNITY DIMENSION

- 16 Prudential Nominees, HSBC Equity and Finnish Chemicals have a combined aggregate worldwide turnover in excess of 5000 million ECU (Prudential Nominees - 8,728 million ECU, - HSBC Equity 27,368 million ECU, Finnish Chemicals - 145 million ECU). Prudential Nominees and HSBC Equity each has a

Community-wide turnover in excess of 250 million ECU (Prudential Nominees - 5,393 million ECU, HSBC Equity 10,120 million ECU). Each of the parties achieves more than two-thirds of its aggregate Community-wide turnover within the country of its incorporation.

- 17 The operation therefore has a Community dimension within the meaning of article 1(1) of the Regulation.

IV COMPATIBILITY WITH THE COMMON MARKET

- 18 Finnish Chemicals will continue to manufacture and import pulping and bleaching chemicals for supply mainly to the pulp and paper industries and water treatment and also wood treatment chemicals; but it will no longer supply hydrogen peroxide. As stated at point 14 above, no member of either the Prudential or the HSBC corporate groups is active in or controls any company active in any market in which Finnish Chemicals or any company in its corporate group will remain active or in any market upstream or downstream of any market in which Finnish Chemicals or any company in its corporate group is active. Accordingly there is no affected market and no overlap between Prudential Nominees and HSBC Equity on the one hand and Finnish Chemicals on the other hand and the operation raises no competition concerns.

V ANCILLARY RESTRAINTS

- 19 The notifying parties have requested that certain provisions of the agreements constituting the operation, if they amount to restrictions, be considered as ancillary to the concentration:
- UPM-Kymmene and Nokia Corporation will not establish their own factory or facility to supply any chemicals manufactured by Finnish Chemicals and will refrain from manufacturing or supplying any chemicals (except hydrogen peroxide) supplied by Finnish Chemicals in Europe, Japan, South Africa, Chile, Indonesia and Taiwan (the area in which Finnish Chemicals has established business in the supply of pulping and bleaching chemicals for the pulp and paper industries).
 - UPM-Kymmene and Nokia Corporation will not solicit key employees of Finnish Chemicals for three years.
- 20 These provisions contain restrictions which are necessary to guarantee the transfer to the purchasers of Finnish Chemicals of the full value of the assets purchased or are otherwise directly related to and necessary for the successful implementation of the concentration. They can therefore be treated as ancillary to the concentration.
- 21 UPM-Kymmene and [...] ¹ will enter into agreements for the supply of chlorine dioxide and other products. These agreements will be notified to the Commission under Regulation 17/62.

¹ [...] Read Erikem Oy.

VI CONCLUSION

- 22 For the above reasons the proposed concentration does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

For the above reasons, 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.

For the Commission