

***Case No COMP/M.5736 -
TPG/ IMS HEALTH***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 02/02/2010

***In electronic form on the EUR-Lex website under
document number 32010M5736***



EUROPEAN COMMISSION

Brussels, 02/02/2010

SG-Greffe(2010) D/1126/1127
C(2010) 798

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.5736 - TPG/ IMS HEALTH
Notification of 23 December 2009 pursuant to Article 4 of Council
Regulation No 139/2004¹**

1. On 23 December 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "Merger Regulation") by which the undertakings TPG V and TPG VI, both belonging to the TPG group of investment funds ("TPG", USA), acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking IMS Health Incorporated ("IMS", USA) by way of purchase of shares.

I. THE PARTIES

2. TPG V and TPG VI are both limited partnerships registered in Delaware belonging to the TPG group, which consists of a number of private equity funds. TPG has a number of investments in the healthcare sector, but it does not have controlling interests in any company active in the same markets as IMS. However, TPG has a controlling interest in Axcan Pharma ("Axcan"), a Canadian company active in the production and marketing of finished pharmaceuticals.

¹ OJ L 24, 29.1.2004 p. 1.

3. **IMS** is a corporation active worldwide in health information and consulting services, providing health-related market research services (MRS), notably data and consulting services relating to the pharmaceutical industry.

II. THE OPERATION AND THE CONCENTRATION

4. Following a Merger Agreement of 5 November 2009, TPG and Canada Pension Plan Investment Board Private Holdings Inc. ("CPPIB") will acquire IMS. [...] of the shareholdings will be held by TPG, [...] by CPPIB and the remaining [...] by the Green Equity Investors ("Green Equity").
5. According to the Equity Term Sheet attached to the Merger Agreement, IMS will be run by a Board of Directors composed of [...] members with [...] representation of the shareholdings: [...] for TPG, [...] for CPPIB and [...] for Green Equity. Decisions at the Board will be taken by [...] except for reserved matters, [...] [...] which should be decided upon jointly by TPG and CPPIB. Therefore, as CPPIB will not have the power to block actions which determine the strategic commercial behaviour of IMS, CPPIB will not have joint control over IMS.
6. Instead, the proposed transaction consists in the acquisition by TPG of sole control over IMS, therefore constituting a concentration in the sense of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² [...] for TPG and EUR 1,584 for IMS]. Each of them has a Community-wide turnover in excess of EUR 250 million [...] million for TPG and [...] for IMS], but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension pursuant to Article 1(2) of the Merger Regulation.

V. COMPETITIVE ASSESSMENT

8. IMS supplies health-related market research services (hereinafter "MRS"), through its "information and analytics" department, and consulting services, through its "consulting and services" department. The parties' activities do not overlap in the supply of MRS and consultancy. However, there is a vertical link between the provision of (health) MRS by IMS and the development and marketing by Axcan of three pharmaceuticals aimed at treating gastro-intestinal diseases.

1. Market definition

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation.

a) Market Research Services (MRS)

PRODUCT MARKET DEFINITION

9. The upstream market concerned is that for the provision of MRS, where IMS is active.
10. MRS encompass a wide category of products and services aimed at measuring and understanding consumer attitudes, sales and purchasing behaviour, market trends, and industry dynamics. In its previous practice, the Commission left open the question whether the MRS market could be sub-divided according to the specialised area to which the services are provided (e.g. automotive, internet services, healthcare/pharmaceuticals).³
11. The notifying party nevertheless submits that, in view of the high degree of supply-side substitutability, the relevant product market is that for the provision of MRS in general and that any further sub-division would not be appropriate.
12. The results of the Commission's investigation in this case showed that health MRS are largely considered to constitute a separate market to the provision of MRS in general. Furthermore, certain of the respondents to the market investigation suggested further sub-segmentations within health MRS depending on (i) the type of pharmaceutical product assessed, thus distinguishing between health MRS supplied for prescription drugs as opposed to MRS supplied for over-the-counter (OTC) drugs, the OTC health MRS sub-segment being characterised by strong competition; and (ii) the type of market research data provided (more competition and easier entry on the primary/raw market research data sub-segment compared to more concentration and higher barriers for secondary/processed market research data).
13. Respondents also pointed to the fact that the provision of cross-country health MRS (e.g. data recognising the same product despite different trade names) may be distinct from the provision of such services at the single country level, mainly due to the need for uniformity and quality consistency across countries for such data. As a result, a further subsegmentation between cross-country health MRS and national health MRS could be envisaged.
14. However, for the purpose of this case the precise product market definition can be left open as there are no competition concerns regardless of the market definition.

GEOGRAPHIC MARKET DEFINITION

15. In previous decisions the Commission left open the question of whether the geographic market for the provision of MRS is national or EEA-wide.⁴
16. The notifying party submits that due to the high supply-side substitutability, and to the international profile of clients such as multinational companies who are usually operating on a global scale, the market is most likely at least EEA-wide.
17. The market investigation in this case confirmed that the market for MRS is at least national. However the geographic market definition can be left open in this case as it does not change the competitive assessment.

³ Case No COMP/M.5232, WPP/TNS, Commission decision of September 23, 2008.

⁴ Case No COMP/M.5232, WPP/TNS and Case No COMP/M.2291, VNU/AC Nielsen .

b) Development and marketing of pharmaceutical products

PRODUCT MARKET DEFINITION

18. The relevant affected market downstream identified by the parties in this case is the market for the development and marketing of finished pharmaceutical products.
19. In previous decisions⁵, the Commission defined the relevant markets for pharmaceutical products based on the ATC classification⁶. Consequently, on the basis of the third level of the ATC classification ("ATC3"), the notifying party identifies three pharmaceutical products where Axcan has a market share of more than 25%: A5A (bile therapy), A7F (anti-diarrheal microorganisms) and A9A (enzymes, including digestive enzymes). The market investigation confirmed the appropriateness of this distinction for the purpose of this case.
20. However the precise product market definition of pharmaceutical products concerned in this case can be left open, as there are no competition concerns regardless of the market definition.

GEOGRAPHIC MARKET DEFINITION

21. Regarding the relevant geographic market for finished pharmaceutical products, the parties submit, also referring to the Commission's past practice, that the market is national in scope⁷, which was broadly confirmed by the market investigation. However the geographic market definition can be left open in this case as there are no competition concerns regardless of the market definition.

2. Competitive assessment

A. HORIZONTAL EFFECTS

22. The parties' activities do not overlap on any potential market. Therefore, there are no horizontally affected markets.

B. VERTICAL EFFECTS

23. Axcan is a customer of IMS for health MRS and consulting services. The notifying party submits that the transaction could potentially result in the identification of a number of vertically affected markets. These vertically affected markets arise:

5 Case No COMP/M.3544 – Bayer Healthcare/Roche, COMP/M.3354-Sanofi-Synthelabo/Aventis, Case No COMP/M.3751 Novartis/Hexal and Case No COMP/M.4007 Reckitt Benckiser/Boots Healthcare International

6 ATC stands for the Anatomical Therapeutic Chemical Classification System, the standard classification of drugs used by the European Pharmaceutical Marketing Research Association (EphMRA).

7 Case COMP/M.4418Nycomed Group/Altana Pharma and Case COMP/M.4314 Johnson & Johnson/Pfizer Consumer Healthcare

- based on Axcan's shares of sales, which account for over 25% of the overall sales in certain ATC3 classes in 3 Member States⁸ where IMS provides (health) MRS,
 - based on IMS' market share of more than 25% in the provision of health MRS in certain EEA countries⁹ where Axcan currently develops and markets its pharmaceuticals,
 - or based on IMS' health MRS market share of [40-50]% at the EEA-wide level where Axcan is also present.
24. On the one hand, IMS has an extensive and strong presence in the provision of health MRS across most of the EEA, and could in theory have the ability to engage in input foreclosure of Axcan competitors. Indeed, IMS has a market share of above 70% in Portugal, the Czech Republic and Austria, and a market share of above 50% in Belgium, Poland and Germany, and could therefore potentially try to foreclose Axcan's competitors. The market investigation confirmed the strong presence of IMS in the provision of health MRS across the EEA vis-à-vis its competitors such as Cegedim, GERS, IRI, Kantar Group and Nielsen. Moreover, some of the respondents pointed out that the competitive advantage of IMS is also due to its unique capacity of collecting cross-country health MRS data as well as possessing the necessary tracking systems for measuring prescription behaviour (contacts with doctors and dispensing pharmacists, ability to analyse the impact of parallel trade).
25. According to the notifying party, health MRS do not constitute an essential input to the production of pharmaceutical companies, but rather represent a marketing and sales tool which has a relatively limited value to their R&D programmes/processes, including early research and new compound discovery. The market investigation produced strong indications that, although health MRS are not an essential input to the actual production of pharmaceutical products, they could constitute a seminal factor in shaping and evaluating the marketing strategies of pharmaceutical companies as well as their understanding of customer and stakeholder needs.
26. On the other hand, even if IMS has a high market share in the market for health MRS in several countries in the EEA as well as at EEA-wide level, it is highly unlikely that the transaction would lead to input foreclosure of Axcan's competitors in these countries, due to the lack of a sufficient economic incentive. Indeed, IMS and Axcan both hold more than 25% of the relevant upstream and downstream markets in only one geographic market, namely France. More specifically, Axcan's purchases from IMS only represent less than [0-5] % of IMS's total MRS revenue in the EEA. Indeed, in the EEA, Axcan is a small player specialised in the provision of treatments for use in the field of gastroenterology. Given that the vast proportion of its MRS turnover is achieved with other pharmaceutical companies, including direct competitors of Axcan and other

8 A5A in France ([40-50]%), A7F in France ([20-30]%), A7F in Luxembourg ([40-50]%), A9A in Luxembourg ([30-40]%) and A9A in the Netherlands ([40-50]%).

9 Austria ([80-90]%), Belgium ([50-60]%), Bulgaria ([40-50]%), Czech Republic ([70-80]%), Finland ([40-50]%), France ([30-40]%), Germany ([60-70]%), Greece ([30-40]%), Hungary ([40-50]%), Italy ([40-50]%), Poland ([50-60]%), Portugal ([70-80]%), Slovakia ([50-60]%) and the UK ([30-40]%); in Norway: ([30-40]%). IMS also provides consulting services in those countries. However, in none of them does its market share exceed 25%, in either the provision of consulting services in general or pharma consulting services in particular, with the exception of pharma consulting services in Poland, where it holds ([30-40]%).

pharmaceutical producers, there would be no economic incentives for IMS to focus exclusively on, or to prioritise supplies to Axcan. Therefore, any risk of input foreclosure of Axcan's competitors can be excluded.

27. Furthermore, the prospect of customer foreclosure of IMS' competitors by Axcan is equally unlikely. Indeed, as already explained, Axcan represents only a minimal proportion of IMS' MRS turnover. Even if Axcan were to stop purchasing health MRS from its other suppliers and focus exclusively on IMS, there are many other credible alternative customers in the market for pharmaceuticals production and marketing (Sanofi-Aventis, Solvay, Biocodex, Johnson & Johnson, directly competing with Axcan, as well as other big pharmaceutical producers such as Pfizer, Bayer Schering, Novartis etc, which already purchase MRS from other suppliers as well) to whom IMS's competitors can sell their services.
28. Similarly, any foreclosure risk of IMS' competitors by Axcan regarding access to its tracking equipment or data necessary for market measuring can be excluded, given that, as the market investigation confirmed, MRS providers source such data from a variety of sources that are not exclusively limited to pharmaceutical producers (such as wholesalers, hospitals, pharmacies and other consumer health product retailers).
29. Therefore, while IMS leads the health MRS market at national and EEA level, the integration of IMS in the group to which Axcan belongs will not affect the upstream and downstream market situation. As confirmed by the market investigation, even under the narrowest possible subsegmentation of the health MRS market, the transaction would not lead to any competition concerns.
30. In conclusion, in the light of the above, the transaction will not give rise to competition concerns in the markets for the provision of MRS or the development and marketing of the A5A, A7F and A9A ATC3 finished pharmaceuticals.
31. On the basis of this information, the Commission finds that the notified concentration does not raise serious doubts as to its compatibility with the common market.

VI. CONCLUSION

32. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission

(Signed)

Neelie KROES
Member of the Commission