



DETERMINATION OF MERGER NOTIFICATION M/08/004 – 3i/ALPHARMA

Section 21 of the Competition Act 2002

Proposed acquisition by 3i Group plc. of the active pharmaceutical ingredients business of Alpharma Inc.

Dated 13/03/2008

Introduction

1. On 22 February 2008, the Competition Authority (the “Authority”), in accordance with Section 18(1)(a) of the Competition Act, 2002 (“the Act”) was notified, on a mandatory basis, of a proposed acquisition by Alfanor 7152 AS and Otdelholdco Inc. of: (i) certain assets primarily related to Alpharma Active Pharmaceutical Ingredients (“API”), the active pharmaceutical ingredients business of Alpharma Inc. (“Alpharma”) and its wholly owned subsidiaries Alpharma (Luxembourg) S.à.r.l., Alpharma Bermuda G.P. and Alpharma International (Luxembourg) S.à.r.l.; and, (ii) 100% of the issued and outstanding shares in Alpharma AS and certain other subsidiaries.
2. Alfanor 7152 AS and Otdelholdco Inc. are ultimately controlled by 3i Group plc (“3i”). As a result of the proposed acquisition, 3i will acquire indirect sole control of API. The remainder of Alpharma will be unaffected by the proposed acquisition.

The Undertakings Involved

The Acquirer

3. 3i is an international venture capital company that provides management advice to and manages investments on behalf of investment funds. 3i holds investments in various sectors of industry and services (for example media, retail, food and drink, healthcare, IT services, leisure, oil, gas and power, software, Internet and telecoms).
4. None of the portfolio companies held by 3i or any fund managed or controlled by 3i holds any interest in any company active in the development, manufacture or supply of active pharmaceutical ingredients either worldwide or in the island of Ireland. In addition, none of 3i’s portfolio companies within the healthcare sector are customers of API.
5. For the year ended 31 March 2007, 3i and its affiliated companies achieved a worldwide turnover of approximately €[...], a turnover in the EU of approximately €[...] and in Ireland of approximately €[...].

The Target

6. Alpharma is a global specialty pharmaceutical company active in more than 60 countries around the world. Alpharma's core business segments include API, a growing branded pharmaceutical products business, and an animal health business focused on pharmaceutical products for poultry and livestock that enhance food quality and safety for humans.
7. API operates as a separate business unit of Alpharma and is headquartered in Oslo and Copenhagen. API develops, manufactures and supplies fermentation-based active pharmaceutical ingredients and one chemical synthesis based active pharmaceutical ingredient. API's active pharmaceutical ingredients are used in the production of finished dose pharmaceutical products and its customers are leading global generic and branded pharmaceutical companies which procure active pharmaceutical products on a global basis.
8. API's accounts are consolidated with those of the other companies within Alpharma. In 2006, Alpharma generated worldwide turnover of €654 million. In 2006, API generated worldwide turnover of approximately US\$168.7 million (approximately €134.3 million¹), a turnover in the EU of approximately €[...] and in Ireland of approximately €[...].

Analysis

9. There is no horizontal or vertical overlap between the activities of 3i and Alpharma, since none of the portfolio companies held by 3i or any fund managed or controlled by 3i holds any interest in any company active in the development, manufacture or supply of active pharmaceutical ingredients either worldwide or in the island of Ireland.
10. In addition, none of 3i's portfolio companies within the healthcare sector are customers of API. Only one 3i portfolio company could potentially be a buyer of active pharmaceutical ingredients (however not in the segment where API is active). In addition, the company in question is focused on research and development and has extremely limited sales and does not have any sales in the island of Ireland.
11. The Authority considers that given the absence of any overlap between the activities of parties in the State, the proposed acquisition does not raise competition concerns in the State.

Ancillary Restraints

12. The Authority also reviewed the restrictive arrangements agreed by the parties in their Stock and Asset Purchase Agreement and referred to in the notification of the merger. The Stock and Asset Purchase Agreement contains covenants in relation to the solicitation of employees, non-compete and confidentiality which the parties consider to be directly related and necessary to the implementation of the proposed acquisition.
13. The duration of the non-compete covenants is three years. The parties submit that a non-compete clause with a duration of three years is

¹ Based on ECB average exchange rate for 2006 €1 = US\$1.2556

directly related and necessary to the implementation of the proposed acquisition, given the highly technical nature of the pharmaceutical sector in which API is active. Accordingly, the parties submit that a non-compete clause of three years will be necessary in order to guarantee the transfer to 3i of the very significant and valuable know-how developed by API. The parties submit that this is in accordance with the European Commission's *Notice on restrictions directly related and necessary to concentrations*², which provides that non-competition clauses are justified for periods of up to three years when the transfer of the undertaking includes the transfer of know-how.

14. The Stock and Asset Purchase Agreement also provides that the duration of the non-compete obligation shall be extended to five years in the case of two specific active pharmaceutical ingredients produced by API which can be used in the manufacture of both human health products and animal health products. Alpharma's core business segments include an animal health business focused on pharmaceutical products for poultry and livestock which is not being acquired by 3i. Alpharma will continue to use these two pharmaceutical ingredients and the related know-how and technology in its animal health business to produce finished dose non-human pharmaceutical products.
15. The Stock and Asset Purchase Agreement prohibits, for a period of five years, the manufacture or sale by Alpharma of these two pharmaceutical ingredients for incorporation into finished dose human pharmaceutical products. The agreement also prohibits, for a period of five years, the manufacture or sale by 3i of the ingredients for incorporation into finished dose non-human pharmaceutical products. The parties submit that the duration of the reciprocal non-compete clauses is warranted in these exceptional circumstances as the ingredients and related know-how can be used in either human or non-human pharmaceutical products, which post-transaction will be separate businesses belonging to 3i and Alpharma, respectively.
16. The parties submit that paragraph 5 of the Commission's *Ancillary Restraints Notice* provides that cases involving exceptional circumstances may justify departing from the principles laid down in the *Ancillary Restraints Notice*. The parties cite the example of *Solvay-Laporte/Interox*³ where the Commission accepted that a longer non-compete period was justified. In this case, the vendor agreed to an indefinite restriction on the use (to the detriment of the purchaser) of certain technical know-how which was transferred to the purchaser as part of the transaction. The parties also submit that more recently, the Commission has accepted a five year non-compete provision in *Volvo/Renault*⁴ and in *Kodak/Imation*⁵.
17. The Authority considers that the non-compete restrictions are directly related and necessary to the implementation of the proposed acquisition.

² *Commission Notice on restrictions directly related and necessary to concentrations* (2005/C 56/03), paragraph 20. Hereinafter referred to as the *Ancillary Restraints Notice*.

³ Commission Decision of 30 April 1992 – IV/M.197- Paragraph 50.

⁴ Commission Decision of 1 September 2000 - COMP/M.1980, paragraph 56.

⁵ Commission Decision of 23 October 1998 - IV/M.1298, paragraph 73.

Determination

The Competition Authority, in accordance with Section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by 3i Group plc of the active pharmaceutical ingredients business of Alharma Inc. will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect.

For the Competition Authority

Dr. Paul K. Gorecki
Member of the Competition Authority