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LEHRBUCH

39 **The Acquisition of Aventis by Sanofi: Attack as Defence - Play 1: Sanofi's Hostile Attack and the Fierce Battle for Aventis**

*Günter Müller-Stewens and Alexander Alscher**

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39.1 Setting the Stage: The Players

Sanofi-Synthélabo

Jean-Francois Dehecq	Chairman and CEO (Président Directeur Général)
Hanspeter Spek	Chief Operating Officer
Gérard Le Fur	Research Director

- 1973 The oil group Elf Aquitaine takes over the French pharmaceuticals group Labaz and founds the subsidiary company Sanofi. Jean-François Dehecq heads the operational business and during the following decades buys up hundreds of small firms.
- 1988 Dehecq becomes CEO of Sanofi and founds the cosmetics division.
- 1993 Sanofi buys the luxury goods producer Yves Saint-Laurent.
- 1994 Sanofi enters the US market and buys US pharmaceuticals firms.
- 1999 Sanofi merges with the French competitor Synthélabo. Concentration on the pharmaceuticals business; sale of the cosmetics, diagnostics and animal feeds divisions.
- 2003 EUR 8.1 billion sales, EUR 2.1 billion profits, 33,000 staff

Aventis

Jürgen Dormann	Chairman of the Supervisory Board
Jean-René Fourtou	Deputy Chairman of the Supervisory Board
Igor Landau	Chairman of the Management Board
Heinz-Werner Meier	Personnel Director, Aventis Germany

- 1974 Hoechst acquires the majority in its French shareholding Roussel-Uclaf, becoming the world's largest pharmaceuticals manufacturer.
- 1987 Takeover of the US chemicals group Celanese.
- 1994 Jürgen Dormann becomes Chairman of the Board. He concentrates the business on the pharmaceuticals, agriculture and biotechnology sectors.
- 1999 Hoechst merges with the French chemicals and pharmaceuticals group Rhône-Poulenc to form Aventis and drops chemicals divisions.
- 2002 Sale of the agrochemicals business to Bayer. Dormann takes over the role of Chairman, and Igor Landau becomes CEO.
- 2003 EUR 16.8 billion sales, EUR 2.4 billion profit, 75,000 staff.

39.2 Introduction: The Global Pharmaceuticals Sector

Over the last 20 years, the pharmaceuticals industry has been displaying increasing consolidation, driven by enormous competitive pressure and an increasing competitive dynamic. Whilst in 1985 the ten largest companies were responsible for around 20 % sales worldwide, by 2002 their share has increased to 48 % (Danzon/Epstein/Nicholson 2004, p. 2). In the year 2004, sales of pharmaceutical products worldwide came to 550 billion USD (+7 % compared with the previous year); North America represented by far the most important market with a share of 45 %, whilst Europe and Japan followed in second and third place with around 40 % between them. In general, the consolidation process in the pharmaceutical sector is driven by three challenges: growth, innovation, and a complex sales structure.

First, companies have to grow, simply to be able to finance the ever-higher levels of investment needed for a new drug. Yet in recent years, the rationale of **economies of scale** has lost a great deal of its attractiveness in the eyes of shareholders, as the majority of acquisitions over recent years led to larger companies but not necessarily more profitable companies (e.g., merger of Glaxo Wellcome and SmithKlineBeecham). Jürgen Dormann, Chairman of the Supervisory Board at Aventis, once said on this subject: "A merger whose goal is merely size or synergy is difficult to arrange and implement in its integration."

Second, the pharmaceutical companies in the sector are significantly dependent on the successful development and introduction of new active agents and drugs. The enormously high risk in the area of Research and Development (R&D) – particularly through the high costs and uncertainties entailed in the approval of the respective products – is one of the distinctive characteristics of the sector. The average R&D costs for a single product come to around 802 million USD (DiMasi/Hansen/Grabowski 2003, p. 180), whereby success is extremely uncertain and hard to calculate. These enormously high costs can essentially be ascribed to (1) the high costs of discovering and developing drugs (including testing processes), (2) the high loss due to the time value of the money invested (long development phase of usually more than 10 years) and (3) the high error and elimination rate (Danzon, Nicholson/Pereira 2003, p. 2). Therefore companies frequently aim to develop blockbuster drugs (drugs with an annual turnover of more than 1 billion USD). But blockbusters of this type are interesting not only for their high sales, but also because developing and marketing them presents fewer risks in relative terms, in other words they save costs and time. In 2004, there were 82 of these blockbuster drugs in existence worldwide, representing an increase of more than 25 % compared with 2003 (IMS Health Report 2004). On average, pharmaceuticals companies invested 15.9 % of their turnover in R&D (Pharmaceutical Research and Manufacturers of America 2005, p. 35). This percentage rate increased substantially from around 9.2 % in 1972 and around 10.9 % in 1982 and has been relatively constant since 1992 at around 16 %. The risk is usually much higher for smaller companies in comparison to these large companies. A further particular feature of the pharmaceuticals sector is to be seen in the **patent protection** of drugs, which as a rule lasts for 20 years. Patents are

generally viewed as the drivers behind the innovation efforts. In the industry, it is not unusual to compensate for a lack of innovative strength by a patent protection strategy, at least in the short and medium term. In this context, increasing significance becomes attached to the **generics** market which was around 27 billion USD in 2001 increasing by around 13.3 % p.a. (Reuters, Patent Protection Strategies: Maximizing market exclusivity. Reuters Business Inside – Healthcare 2003, p. 8).

A third challenge for pharmaceuticals companies lies in their sales forces. Their clout and scope have to be improved so as to earn the revenues needed to cover the high upfront investments. The pharmaceuticals industry is characterised by a complex sales and customer structure specific to the sector. This sector-specificity can be illustrated using the example of prescription-only drugs in Germany. This means that the person who is responsible for the choice of drug (usually the doctor) and the consumer (the patient) are not the same. Moreover, the payment mostly comes not directly from the customer, but paid out by the health insurers. Therefore the familiar mechanisms of supply and demand partially cease to operate. Furthermore the sector is marked by international differences in legislation, in sales guidelines (in Germany by pharmacies or in the USA by chains of drugstores) or in who bears the costs (the health insurers or the consumer directly). In this field of tension of economic, social and political aspects, pharmaceuticals companies have to act extremely dynamically. Apart from an increasing fragmentation of the value chain, a more pronounced amalgamation is observed between pharmaceuticals companies (concentrating on product marketing) and biotechnology companies (focussing on research and development). Twelve of the leading 25 drugs were originally developed by a different company to the one marketing them today (Mallik/Zbar/Zemmel 2004, p. 16). This dynamic increases the pressure of cross-industry transactions, especially M&A activities between biotechnology and pharmaceuticals companies. But the suppliers of generics are also increasingly coming under the spotlight as takeover candidates. This is not at all surprising, as it is generally assumed that increasing cost pressure in the health system will lead to generic drugs gaining in significance and market share.

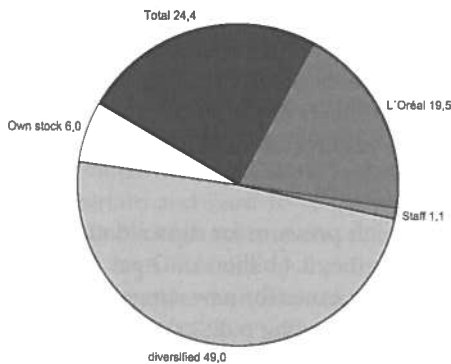
In conclusion, the pharmaceutical sector showed high pressure for consolidation and M&A deals due to the following factors: rising R&D costs (i.e., 1.4 billion USD per drug), increasing pressure for innovation, ever longer development times for new drugs, rise of generics products, pending legal actions on patent protection, growing political pressure in many of the large consumer markets, and declining sales efficiency because of overcapacities. The given case study about the merger of Sanofi-Synthelabo and Aventis provides an example illustrating the strategic interactions of two companies in the pharmaceuticals sector, which have to survive in the increasing competitive pressure.

39.3 Act One: Sanofi Submits a Hostile Takeover Bid for Aventis

The year 2004 appears to start with a bombshell for the M&A sector: On Sunday January 25, rumours emerge of an imminent takeover bid from Sanofi-Synthelabo to the shareholders in Aventis. One part of the rumours also has it that – if it should come to an offer – then “white knights” would emerge from the sector, which could lead to a contest between bidders. One day later, rumours are affirmed as the Chairman and CEO of Sanofi-Synthelabo, Jean-Francois Dehecq, submits a share exchange offer (81 %) and a cash offer (19 %) worth 60.43 Euro per share to the Aventis shareholders. This offer values the company at 47.8 billion EUR in total. The envisioned hostile takeover resembles a David-against-Goliath attack, as Sanofi-Synthelabo is quite smaller than Aventis with half of its sales size and half of its employee number. The combined company would come in at 3th place on the international ranking list with a relatively small market share of 5 % in contrast to Pfizer’s 10.9 % share.

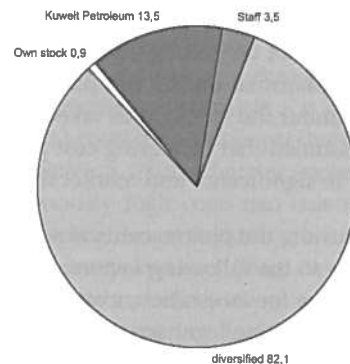
Figure 39.1 Shareholder Structure at Sanofi and Aventis

Sanofi-Synthelabo
Shareholdings in % (31/12/2003)



Stock market value 42,9 bn Euro
P/E (12/2004) 18
High/Low (52 weeks, Euro) 63,25 / 41,50

Aventis
Shareholdings in % (31/12/2002)



Stock market value 46,2 bn Euro
P/E (12/2004) 17
High/Low (52 weeks, Euro) 59,15 / 37,50

Source: faz.net.

The Aventis shareholding is widely distributed. No one has a blocking minority. The largest proportion of the Aventis shares are held in France (21.5 %) and in the USA (21.5 %), followed by Great Britain and Ireland (13.5 %) and Germany (8.9 %). 61.2 % of the shares were owned by institutional investors, and the remainder were held by small or private shareholders, staff and others. The largest single shareholder is the Kuwait Petroleum Group with a 13.5 % shareholding.

With his offer, Dehecq is making use of the favourable position of Sanofi in comparison to Aventis due to its relatively higher profitability and more profitable blockbusters (Sanofi-Synthélabo's Plavix [annual sales of 1.33 billion EUR] and Ambien/Myslee vs. Aventis' Lantus, Lovenox, Clexane). This gives Sanofi the market capitalisation to be able to submit such a bid at all. Dehecq emphasises the strategic logic of the merger by pointing out the synergies from combined marketing and sales. Costs savings are said to be 1.6 billion EUR (before tax) a year from 2006. Moreover, Dehecq is supported by Sanofi-Synthélabo's main shareholders, Total (24.4 %) and L'Oréal (19.5 %) (of which in fact Nestlé held 26.3 %).

The reaction from the Aventis Chairman Igor Landau comes promptly. With the following words he turns the offer down on behalf of the Management Board:

"On January 26, 2004, Sanofi has submitted an unsolicited offer to the Paris Bourse authority to take control of Aventis without any consultation between the two companies. We firmly believe that this offer is not in the best interests of Aventis shareholders or employees. It undervalues the company, it carries significant risk, and it will cause job losses for limited strategic benefit... The reasons for the rejection were stated as follows: "(1) The offer clearly undervalues Aventis; (2) The offer is mainly in Sanofi shares, which carry major downside risks; (3) The proposed combination presents limited strategic benefits for Aventis; (4) The risks of major job cuts for employees, particularly in France and Germany"

Thus, the management considers the takeover to be hostile. The management is backed up by both the Supervisory Board, with its Chairmen Jürgen Dormann and Jean-René Fourtou, and also the main shareholder, KPC Kuwait Petroleum Corporation. The bid is considered to be inappropriately low (3.6 % premium on the latest closing rate; 15.2 % above the average rate over the last month), as Aventis itself believes that the shares are undervalued by 30 % (as the share price already takes account of the threat to some patents

39.4 As always in such situations, both sides mandate anybody in the champions league of M&A consultancy

to help them fight the takeover battle and to prevent certain experts from advising the opposition. Sanofi works together with Merrill Lynch and BNP Paribas, while the main shareholders Total and L'Oréal cultivate relations with J.P. Morgan, CSFB and CCF-HSBC.

Aventis on the other hand seeks the counsel of Goldman Sachs, Rothschild and Morgan Stanley. It will be their job to work out reaction options. One option is to bring a "white knight" into the game. Therefore, Novartis, Roche, GlaxoSmithKline and Pfizer are suggested either to acquire the company in a "friendly" takeover or, at least, to drive up the price of Aventis in a bidding contest.

The other equally important task for the Aventis advisers will be primarily to come up with arguments to convince the shareholders not to accept the offer. Here in particular they will refer to the true value of products still in the development phase of the pipeline, but also the disadvantages and risks that the bidder is bringing with him, such as the risk of the loss of patent protection for Sanofi-Synthélabo's Plavix.

But a further task lies in examining the possibility of simply turning the tables with a counter-offer. Sanofi, along with both of its main shareholders Total and L'Oréal, is indeed still protected by a moratorium until the end of the year, but this puts Sanofi under time pressure as well.

A further important supporting role in the takeover battle is held by the French politics who are interested in a "French solution". This could mean a rocky road for a "white knight". The good relationship between the Sanofi boss Jean-Francois Dehecq and President Chirac and Finance Minister Francis is also well known. And even the German Chancellor Schröder could intervene, as a large number of jobs at the old Hoechst might also be affected.

At February 12, 2004, the French market regulatory authority AMF approves Sanofi's takeover bid for Aventis. However, Aventis applies to the Appeal Court in Paris to have the AMF decision declared invalid. It is to be supposed that Aventis is doing this to win time – time that is needed for instance to gain greater clarity about the imminent legal conflict about the patents for Sanofi's most important drug, Plavix. In principle the Plavix patent will still run until 2011. But a Canadian and Indian generics group, represented by US American lawyers, has apparently found sound arguments why this anti-clotting agent should not be protected by valid patents.

The management board of Sanofi-Synthélabo stresses the combined financial power of the two companies that will offer a real chance of effectively moving forward with a large number of the developments in the pipeline. Moreover, there is obviously political interest in a European pharmaceuticals group playing a leading role in R&D. The reason why a "non-negotiated" bid – in other words a "hostile" bid from the viewpoint of the management of Aventis – has been put forward to Aventis is related to the different company strategies of the two groups. Sorting this out would have taken up too much time.

From February 17, 2004, the shareholders are able to offer their shares to Sanofi, in other words to accept the existing takeover bid consisting of an exchange of shares with a cash element. The conclusion of the offer looks likely to be towards the end of June. However, without a single dissenting vote, the Aventis' Supervisory Board declined the offer from Sanofi and thus once again reinforced their position.

39.5 Act Two: Novartis Steps Forward as a Possible "White Knight"

Right from the beginning, the Aventis management makes clear that their preferred option is to maintain their independence, but if this was unsuccessful they would look out for a suitable "white knight". Once again a whole series of names crop up. Interest seems to be focused on Novartis in particular. As it later turned out, Aventis had already held talks with Novartis about a friendly merger at the end of 2003, which had not led to any agreement, but these were taken up again on January 27, 2004 – shortly after the hostile takeover was announced.

Aventis itself repeatedly refers to Novartis as a welcome "white knight" so as to fend off the takeover attempt by Sanofi. In fact, Novartis' CEO Vasella announced that he considered a further consolidation of the sector to be necessary, as the margins on both sides were coming under pressure: on the one hand, pressure on prices is growing, and on the other hand, R&D costs have risen to a record level. According to Vasella, there are currently no pharmaceuticals companies that are too large. "Amongst other things, this is a question of organisation. Size is certainly not a guarantee of success, but it helps in absorbing certain risks of the business. And furthermore substantially more resources are available for research and development, for marketing and licensing" (NZZ March 7, 2004). In an interview with the NZZ am Sonntag and Le Figaro, Vasella explicitly confirms that the role of the "white knight" is currently being examined ("We are analysing the consequences of a combination of Novartis both with Sanofi and also with Aventis."), Novartis considers Aventis to be undervalued, and that Novartis would fit well with Aventis.

The aim of such comments is most likely to test the reactions of the media and the capital market in the run-up to a possible offer and to signal to possible rivals for Aventis – such as for instance Johnson & Johnson – that they should keep out if they do not want to take on Novartis. The analysts as representatives of the capital market consider the Novartis-Aventis merger as promising since Novartis could help to resolve Aventis' growth problem and both companies could better manage the price and cost problems of drug invention, generics competitors, and growing safety requirements. In general, size is an argument as there is the question of developing market power in negotiations with customer groups (such as the managed care organisations in the USA). The question also arises of how the medical fraternity can be reached as efficiently and comprehensively as possible with mass products. And this is relevant not only for selling one's own products, but the question is also, how can the firms become attractive sales partners for pharmaceuticals manufacturers who have no sales force of their own? For there can only be a few sales organisations left that have the necessary power of worldwide penetration. The US American market is especially important for Novartis in this context, as it offers attractive growth prospects due to a relatively liberal pricing structure. If the two sales teams of Novartis and Aventis could be combined, they would come to around 11,000 sales representatives – only slightly less than Pfizer.

In addition, size also helps to spread the risk of research projects and the profits from the existing drugs. Together with Aventis, Novartis would have seven blockbusters at its disposal and a number of other products that are just below the threshold of becoming blockbusters. Vasella once defined the goal as having twelve blockbusters. However, it would also most likely be problematical for Novartis that they would suddenly have more than 20,000 staff in France at their disposal. The restructuring needed would certainly be tied up with a large number of regulatory and political hurdles. Novartis would have gone through this experience once already during its own merger. And the market tends to consider the synergies in the research area as negative. As Aventis is also growing more slowly than Novartis, the product portfolio would be diluted. Nonetheless, the possible cost synergies for Novartis are assessed as being three times higher than those realisable by Sanofi, which could be reflected in a higher possible premium.

One risk of a major acquisition is of course always the productivity of one's own innovation processes, which has fallen on average throughout the sector in recent years. However, Aventis might not be the "ideal princess" for the "white knight" since Novartis' ideal candidate is Roche, in which they hold almost a third of the shares (as soon as it is actually a third, under Swiss law Novartis is obliged to submit an offer for the remaining shares).

39.6 Act Three: The French Government Sides with Sanofi

In the mid of March, the French Prime Minister, Jean-Pierre Raffarin, who is linked with the Sanofi boss Dehecq, as is President Jacques Chirac, has become involved in the fight for Aventis by stating that this German-French alliance is of strategic significance for France. The Prime Minister underlines that in the areas where France is displaying high dynamism, decisions on strategy and employment are subject to protection. In addition, Health Minister Philippe Douste-Blazy also stated: "Let us defend French industry. If we have the chance of having one of the largest pharmaceuticals groups in the world in our country, then we must seize it." Amongst other things, he said that this was because of the Aventis vaccines in the event of bio-terrorist threats and that a "national champion" would be preferable. This is all the more remarkable as in February Chirac had agreed with the German Chancellor that he would not get involved in the matter. In view of the wide international distribution of the share capital, the French government can scarcely exercise a direct influence on the transaction. But indirect influence must not be underestimated since the government pays most of the French medication bills at least indirectly. By getting involved in the company decisions, the French government has gained heavy international criticism. Foreign investors will now think more carefully about investing in companies in a country where the freedom of action of the company management and the market for the control of companies are so restricted.

As surprising countermove, Novartis announces that it is prepared to make a merger offer to Aventis under certain conditions. In face of the negative attitude of members of the

French government towards a Novartis-Aventis merger, the company will only enter into appropriate negotiations after a formal advance invitation by the Supervisory Board of Aventis and a statement of neutrality by the French government. Novartis makes this statement because the company has again been requested by the French stock market supervisory body to clarify its position in respect of Aventis. Although Novartis presents an initial merger plan, it is also made clear that no concrete negotiations have taken place yet at top management level. This is significant, as in the event that negotiations are taken up, according to French law Aventis must make all the documents it has made accessible to Novartis also available to Sanofi.

Novartis explains that the feasibility study shows that a merger is feasible and that value is added in particular in the areas of cancer, diabetes and cardiovascular products. It might also be conceivable to spin off the less research-intensive business areas of Aventis and Novartis which did not count as part of the core business (small and specialised drugs, preparations whose patent protection was shortly to expire and the Novartis generics division Sandoz), into a pharmaceuticals company with its own development, production, licensing and sales department. In this way jobs could be saved particularly in Germany and France.

How does the stock market react to the announcement by Novartis? A slight rise in the Aventis share price to 63.50 EUR makes it clear that the market shortly expects an explicit offer from Novartis which will be substantially higher than Sanofi's bid. In case of a bidding contest, the share prices of Sanofi-Synthelabo and Novartis are expected to fall due to higher financial burdens.

In the backdrop of Vasella's scepticism towards a merger between Novartis and Aventis due to the resistance of the French government (in an interview with "Le Monde" Vasella describes it as only "très peu probable"), Novartis shares rise unusually strongly as the capital market apparently doubts that a Novartis bid will be successful. The deterrence to Novartis brought about by the French government's intervention causes Aventis' chairman Igor Landau to pay a visit to the French Prime Minister. Considering the fact that it is Landau's task to ensure the best price for his shareholders in the event of a sale, then it could perhaps be said that this visit – just under a week after the French intervention – is taking place rather late.

In the meantime, resistance is being organised in the Aventis shareholder circles as they are afraid of being forced into a detrimental merger with Sanofi at a cheap rate. As a result, the President of the organisation for the protection of shareholders' rights (ADAM), Colette Neuville, writes a letter to the French stock market regulatory authority, the AMF, calling upon them to take care to ensure that the regulations for a fair debate about the takeover and equal treatment of the offers are complied with. The AMF should also request clarification from the French government of their position. Moreover, investors from the US American Aventis shareholders (e.g. the capital fund Tweedy Brown) are considering a class action against the French government, which if successful would lead to compensation payments to all Aventis shareholders. The EU Commission has been also called for inter-

vention but they denied since they can only act in case of a public offer from Novartis. However, Article 21 of the EU regulation includes a loophole in the control of mergers as it is permitted that a member state is allowed to take "appropriate measures for the protection of justified interests", such as for example "public security". In the meantime, since the rumours of a takeover began in the middle of January, the Aventis market price has risen by 17 % while Novartis' shares has fallen by 6 %.

Faced with the unexpectedly catastrophic extent of the triumph by the combined Socialists, French President Chirac is forced to fundamentally review his strategy. The landslide victory by the Left has put him under pressure for an early removal of Prime Minister Raffarin. However, Chirac sticks to Raffarin and instructs him to form a new Cabinet.

39.7 Act Four: Aventis Invites Novartis to Negotiations and Drives up its Counter-Ordinance

At its meeting on April 2, 2004, the Aventis Supervisory Board discusses the current status of the hostile takeover bid by Sanofi and again stresses the fact that this bid is not in the interests of the shareholders and staff. By forbearing the option of independence, the Supervisory Board of Aventis unanimously empowered the Executive Board to enter into negotiations with Novartis on the outlined terms and conditions of a possible merger, and to continue the discussions with the German and French governments. "We want to invite Novartis to negotiate, as we are of the opinion that a merger of this kind could offer substantial benefits to the shareholders and staff of Aventis. This combination would give rise in Europe to one of the worldwide leading pharmaceuticals companies – with an attractive portfolio, a strong product pipeline and outstanding research competence", said Jürgen Dormann and Jean-René Fourtou, Chairman and Vice-Chairman of the Supervisory Board, in a joint statement. "We are aware of the positions of the German and French governments up to now and Aventis is desirous of taking this into consideration". The programme for a possible merger with Novartis that was published a little later bears the title "Maximizing Value for our Shareholders – An Invitation to Novartis". In this programme, the following three points are emphasised as justification:

1. Creation of a global leader
 - combination would create one of the leading global pharma companies
 - rank no. 2 worldwide and no. 4 in the US.
2. An attractive product offering
 - leadership positions in important therapeutic areas
 - focus on cardiovascular, oncology, vaccines and metabolism.

3. A compelling strategic fit

- complementary pipelines and broad offering of blockbusters
- strong top-line growth prospects
- strong product offering and pipeline
- outstanding R&D capabilities for long-term sustainability as a leader.

The Supervisory Board also includes an amendment to the Articles of Association to limit the voting rights of one shareholder at a General Meeting of Shareholders to 15 %. This restriction of voting rights would no longer apply if a shareholder were to acquire 50 % or more of the voting rights during a public takeover bid. The Aventis Supervisory Board also offered advice on how the Aventis shareholders could be protected from a threatened substantial loss of value in the event of Sanofi losing the patent protection for Plavix. Therefore a further resolution at the General Meeting of Shareholders was to be the issue of subscription rights (*Bons de Souscriptions d'Actions*), which would prevent Sanofi from transferring the Plavix patent risk onto the shareholders in Aventis. Under this proposal, Aventis shareholders would have a subscription right to an Aventis share, entitling them to subscribe to 0.28 new shares in Aventis at a notional price of 3.82 EUR per share. If all the subscription rights granted were to be exercised, these new shares in Aventis would correspond to around 22 % of the capital of Aventis after the increase. Many market participants see these innovative warrants as a "poison pill" for Sanofi. The question now is whether these warrants are compatible with the takeover regulations that have been in force since April 2002. As a consequence, Sanofi-Synthélabo requests the AMF to declare these warrants illegal.

Apart from these deterring subscription rights and limitation of voting rights, Aventis also discusses a share buy-back programme and an extension of all employee contracts as defensive measures. Thus, the acquisition is to be made more difficult for Sanofi as well as financially and operationally more unattractive, i.e. Sanofi cannot achieve swiftly its synergies by layoffs. Already existing defensive measures refer to the generous compensation regulations ('golden parachutes') for the executive committee and supervisory board. For instance, Chief executive Igor Landau is assured a payment of more than 20 million EUR if Aventis is bought up by a competitor and he has to leave.

On the opposite side, Sanofi-Synthélabo launches the takeover bid for Aventis in the USA due to acceptance by the US regulatory authority SEC. Moreover, it also sells two of its drugs (Arixtra and Fraxiparine) along with a production site for 453 million EUR in cash to the British pharmaceuticals group GlaxoSmithKline. In this way, Sanofi is fulfilling the requirements expected from the EU competition authorities in the event of a takeover of Aventis. Sanofi demonstrates with this deal its determination to see the hostile takeover of Aventis through. To convince the Aventis shareholders and staff of the advantages of the planned merger, Sanofi runs large full-page advertisements in leading daily newspapers and emphasises Sanofi's supposed leading position in research: **"Amongst the best research worldwide. We can make it possible."**

39.8 Act Five: Novartis Ready to Bid for Aventis

At the April 22, 2004, Novartis enters into merger negotiations with Aventis although the French government has still issued no declaration of neutrality in the event of a bid for Aventis by Novartis. In a telephone conference with news agencies, the Novartis CFO Raymund Breu makes clear that these are no longer purely exploratory discussions, but actual negotiations. According to a report by the Wall Street Journal, Novartis is considering an offer of between 67 and 70 dollars per Aventis share. After the number 1 Pfizer (with sales of 39.6 billion USD in 2003), Novartis/Aventis would take 2nd place with joint sales of 34.9 billion USD. GlaxoSmithKline would follow in 3rd place with sales of 29.8 billion USD. The remaining places in the top ten are: Merck (22.5), Johnson & Johnson (19.5), Astra-Zeneca (18.3), Hoffmann-La-Roche (14.7), Bristol-Myers Squibb (12.7), Eli Lilly (11.9) and Wyeth (11.8). The fact that Novartis enters into negotiations is surprising since the condition they originally set (the declaration of neutrality of the national governments) has not yet been recognisably fulfilled. They are obviously now referring to the statement made in this context by President Jacques Chirac during his meeting with the Federal Chancellor Schröder on February 9, 2004: "These are private companies which are listed on the stock exchange, and their decisions do not depend on governments".

However, it is hard to imagine at the moment that the French government will adopt a genuinely neutral position. One minister puts it in a nutshell as follows: "Legally, we might be neutral, but there are political concerns relating to health and national security that require public authorities to be able to act." And the French government's position is also strongly supported by the unions of Aventis who promised in a letter to Sarkozy "to use all efforts to make it fail". On the one hand, the French government must also take care (e.g. with protectionist statements) not to become subject to legal action for example by Novartis, on the part of the EU Commission or by representatives of the shareholders. On the other hand, although it does not hold any shares in Aventis, it does nonetheless have a great deal of influence on the success of such an acquisition during the integration phase. The French state, as supposedly the largest buyer of drugs in France, can change its purchasing policy or prevent the closings of factories in France (in the aim of achieving synergies). In order to soften the position of the French government, Novartis could also imagine an Aventis sub-brand and a certain independence of Aventis. It would also be possible to give the company a visibly "French" appearance. And in view of the French government's concerns about safety, it could even be possible to hive off the vaccine business and float this on the stock exchange.

At April 23, 2004, Finance and Industry Minister Nicolas Sarkozy suddenly arranges a meeting between the two CEOs of Sanofi (Dehecq) and Aventis (Landau). The aim of this meeting was apparently to block the bid from Novartis. "Basically, he told Dehecq to raise his offer and he told Landau to start friendly discussions," said an individual privy to the matter. "We are not going to let the Swiss put their hands on something it has taken us years to build," said another individual from the French government. In contrast, the President of the Swiss Confederation, Joseph Deiss, and the Federal Chancellor, Gerhard

Schröder, once again reinforce their view that politics is obliged to remain neutral in company decisions. Just one day earlier, the German Trade Minister, Wolfgang Clement, also underlined the neutral stance of the German government during a conversation with Daniel Vasella.

As a severe setback for Aventis' defence strategy, the French AMF declares Aventis subscription rights plan to be unlawful. It is not in accordance with the principles of public offers, as the offer is a means of unilaterally increasing the price offered for the takeover. This would lead to uncertainty during the progress of the offer. The decision is not actually binding, but will influence the Aventis shareholders. It jeopardises not only the defence against the French company Sanofi, but also the merger with the Swiss pharmaceuticals group Novartis that is sought by Aventis. Taken together with the increased pressure from Paris, this would mean the end of the takeover battle and victory for Sanofi-Synthélabo. If they want to capitalise on the chance offered to them, Sanofi must subsequently come up with a significantly improved offer in order to satisfy the shareholders.

Assignments

1. Reasons and motives for the offer to Aventis:

How can the fact be explained that this takeover bid came about? What were the motives that moved Sanofi-Synthélabo to mount a hostile takeover of a major competitor that was twice its size in terms of sales? What risks did Sanofi-Synthélabo consciously enter into in this way?

2. The options of Sanofi:

What strategic alternatives did Sanofi-Synthélabo have alongside the hostile takeover attempt?

3. Preventive measures of the "victim" of hostile takeover bids:

How can the companies that are going to be taken over protect themselves when rumours of a hostile takeover emerge?

4. Preventive measures of the "attacker" in the face of the rising share price of the target company before the offer is submitted:

To what extent can companies protect themselves against the circulation of rumours when they want to make a hostile takeover of a company and do not want to risk a rise in the share price of the target company?

5. Defensive measures of the "victim" after the hostile takeover bid has been submitted:

How can a company defend itself after the announcement of a takeover bid that is classed as hostile by the management? Give details of financial, legal, political and social measures.

6. Now let us address the actual case: it is Monday morning, January 26, 2004, and the Sanofi offer is physically lying on the desk at Aventis:

- a. Aventis: Assume you are sitting at the Aventis group headquarters and structuring the defence. How will you argue or proceed?
- b. Sanofi: You anticipate the defence from Aventis shortly. How will you argue and what will you attempt to do so as to undermine the defence of Aventis?

7. Role of investment banks:

Which tasks can M&A consultants and investment banks take over in a transaction of this kind? Analyse the field of activity and the mandate of investment banks. What are the advantages of engaging several investment banks as Sanofi (Merrill Lynch, BNP Paribas) and Aventis (Goldman Sachs, Rothschild, Morgan Stanley) did? To what extent do investment banks benefit, and how much are they restricted, by their networks and personal connections?

8. Role of communication consultants:

Which tasks can communications and media consultants take over in a transaction of this kind? To what extent do PR advisers (such as Brunswick, Financial Dynamics, Maitland, Publicis) complement and to what extent do they replace the classical field of M&A tasks of an investment bank?

9. Plan for integration:

Often the two parties agree the major planning decisions concerning integration when they conclude the contract. What could the contents of such a settlement look like? Sketch out the rough contents of such an agreement under the following points:

- a. What options are open to you regarding the choice of name for the new company? What are the advantages and disadvantages of these options? Which name would you decide on?
- b. What should the future integration structure (formation, management and executive board) look like? Which integration model would the selection and appointment most closely correspond to?
- c. Which type of integration would you prefer in the case under discussion?
- d. How would you decide on the organisation of the integration project (integration committee etc.)?
- e. Draw up a rough integration agenda with route map!

10. Integration Agreement (also be treated as a role play):

- a. Aventis: Present a brief summary of your demands for the conceptual integration agreements.
- b. Sanofi: Comment on the demands from Aventis. To what extent do you want to get involved in the demands from Aventis and why? Which conceptual agreements do you want to insist on?