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***Case No COMP/M.6996 - SECOP/ ACC AUSTRIA***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 11/12/2013

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Brussels, 11.12.2013  
C(2013) 9329 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.6996 - SECOP/ ACC AUSTRIA  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 6 November 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which, via its subsidiary Secop Kompressoren GmbH, Secop GmbH ("Secop", Germany) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of certain assets of ACC Austria GmbH ("ACC Austria", Austria).<sup>2</sup> Secop and ACC Austria are hereinafter referred to as "the Parties", while Secop is referred to as the "Notifying Party".

**1. THE PARTIES**

2. **Secop** designs, develops, manufactures and distributes hermetic reciprocating refrigeration compressors for use in household appliances, as well as for use in light commercial and mobile applications. Secop's headquarters are located in Germany, and it owns manufacturing plants in Slovakia, Slovenia and China. Secop is

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<sup>1</sup> 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.

<sup>2</sup> Publication in the Official Journal of the European Union No C 330, 14.11.2013, p. 11.

ultimately controlled by Aurelius AG, a private equity group with investments varying across industries such as chemicals, business services, consumer goods, food & beverage, telecommunications, media and technology.<sup>3</sup>

3. **ACC Austria** is active in the manufacture and distribution of hermetic reciprocating refrigeration compressors for use in household appliances. Its parent company is ACC Compressors S.p.A. ("ACC Compressors", Italy), which is also active in the refrigerator compressors sector.<sup>4</sup> However, by effect of the on-going insolvency proceedings in Austria (see paragraph 7 below), ACC Compressors does not manage ACC Austria anymore.
4. On 20 December 2012, insolvency proceedings over the assets of ACC Austria (the "ACC Assets") were initiated by the Austrian Regional Court of Graz (*Landesgericht für Zivilrechtsachen Graz* – the "insolvency court"). The ACC Assets are all of the assets of ACC Austria that are essential and necessary for the operation of the business activities, including factory and office equipment, inventory (stock), customer and supplier data, regulatory authorisations, trademarks, patent rights, licences and other IP rights, and all other tangible and intangible assets. Neither ACC Compressors nor its assets and production plants are part of the proposed transaction.
5. As part of the initiation of the insolvency proceedings, the insolvency court appointed an independent insolvency receiver.<sup>5</sup> Insolvency receivers are selected by the insolvency court from a list taking into account their specific business experience. Insolvency receivers must be independent from the debtor in question, from any creditors and must also not represent the interests of competitors.
6. From 20 December 2012 to 7 February 2013, ACC Austria was in proceedings with self-administration where the insolvency receiver has a supervisory role and must give its approval for certain actions such as the sale of the business or the taking up of loans. During this period, ACC Austria continued to be managed by ACC Compressors.
7. On 7 February 2013, following an application by ACC Austria, the insolvency proceedings were changed to proceedings without self-administration: under these proceedings, only the insolvency receiver, and no longer ACC Compressors, has the right to manage, and to dispose of, the ACC assets. All actions taken in this context are subject to the monitoring and control of the insolvency court and the creditors' committee (in German *Gläubigerausschuss*). The creditors' committee is an insolvency institution similar to a board of directors, and oversees the activities the

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<sup>3</sup> Except for Secop, none of the Aurelius portfolio companies has any overlap or vertical link with ACC Austria.

<sup>4</sup> Unlike ACC Austria, ACC Compressors has no research and development department and is therefore not active in the design and development of compressors.

<sup>5</sup> See Articles 80, 80 (a) 80 (b) 81, 81(a) of the Austrian Insolvency Law. See reply to the request for information of 6 December 2013. Kapp Rechtsanwälts GmbH (now called Kapp & Strimitzer Rechtsanwälte GmbH) represented by Mag. Mario Kapp was appointed as insolvency receiver by order of the insolvency court on 20 December 2012.

insolvency receiver.<sup>6</sup> Since 7 February 2013, ACC Compressors thus no longer manages ACC Austria and its assets.<sup>7</sup>

8. During the proceedings without self-administration, ACC Austria proposed a reorganisation plan that was ultimately refused by the creditors' committee on 17 April 2013. As a consequence, on 19 April 2013, the reorganisation plan was withdrawn by ACC Austria, following the explicit approval of ACC Compressors.

## **2. THE OPERATION**

9. On 20 March 2013, ACC Austria's insolvency receiver initiated a tender procedure for the sale of the ACC assets.<sup>8</sup>
10. On 18 April 2013, four bidders presented individual offers for the ACC assets to the insolvency court and to the creditors' committee. On that same date, the creditors' committee made a preliminary decision in favour of Secop, based on the latter's purchase price and on its experience in the sector. The asset purchase agreement ("APA") was concluded on 24 April 2013 and approved by the insolvency court on the same day.
11. Further to the APA, Secop will acquire control over the ACC Assets. Following the closing of the proposed transaction, Secop also intends to conclude new employment relationships with the existing personnel of ACC Austria.
12. In light of the above, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **3. EU DIMENSION**

13. The proposed transaction does not meet the thresholds under Article 1 of the Merger Regulation. On 6 August 2013, however, Secop informed the Commission by way of a reasoned submission under Article 4(5) of the Merger Regulation that the proposed transaction was capable of being reviewed under the national competition laws of at least three Member States (Germany, Poland and Hungary). As none of the Member States competent to examine the concentration under its national competition law expressed its disagreement with the request for referral within the 15 working day period, the proposed concentration is deemed to have an EU dimension.

## **4. COMPETITIVE ASSESSMENT**

14. The proposed transaction leads to a horizontal overlap between Secop and ACC Austria, as both are active in the manufacture and distribution of hermetic reciprocating refrigeration compressors for household appliances.<sup>9</sup>

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<sup>6</sup> See letter of the insolvency receiver of 9 December 2013.

<sup>7</sup> ACC Compressors has also been in economic and financial difficulties. By order of 28 June 2013, the *Tribunale di Pordenone* declared the status of insolvency for ACC Compressors according to Articles 3 and 8 of the Italian Legislative Decree 270/99 (see letter of 24 October 2013). However, ACC Compressors currently still produces and distributes refrigeration compressors.

<sup>8</sup> The tender procedure was launched in parallel to the reorganisation plan proposal.

## 4.1. Market definition

### 4.1.1. Product market definition

15. Refrigeration compressors are devices used to lower the temperature of an enclosed space by removing heat from that space and transferring it elsewhere. They use a circulating refrigerant as the medium that absorbs and removes heat from the space to be cooled and subsequently rejects that heat outside the enclosed space.
16. Today, nine main technologies are used in the compressor industry, namely stirling, linear, rotary, semi-hermetic reciprocating, hermetic scroll, semi-hermetic screw, screw open, centrifugal, and hermetic reciprocating. Only a few of these technologies are used in household appliances: the main technology is hermetic reciprocating although linear, rotary and hermetic scroll are also used to a limited extent.<sup>10</sup> In addition, the activities of the Parties overlap only as regards one of these technologies, hermetic reciprocating technology, i.e. compression generated with pistons attached to a rotary shaft.
17. In past cases, the Commission has left open the relevant product market definition for compressors.<sup>11</sup>
18. According to the Notifying Party, compressors used in refrigerators are part of a separate product market from compressors used for air-conditioning because the technologies are not substitutable. Since, however, certain companies are active both in relation to refrigerators and air-conditioning systems, the Notifying Party does not exclude that there may be an overall product market for compressor technologies including both types.
18. The Notifying Party further argues that the relevant product market is the market for hermetic reciprocating compressors. According to the Notifying Party, there is no need to further segment the market. In particular, the Notifying Party disagrees with a possible further segmentation according to: (i) the end use of the compressors (i.e. household appliances, light commercial, mobile applications); (ii) the efficiency category; or (iii) the fixed speed/variable speed technologies used.
19. As mentioned in paragraph 54 below, ACC Compressors has submitted an alternative market definition based on a number of criteria, including the quality of the compressor. The Commission will address this alternative market definition in paragraph 62 below.
20. A large majority of the customers and of the competitors that replied to the market investigation indicated that compressors for air-conditioning and for refrigeration

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<sup>9</sup> See paragraphs 180 and 224 of the Form CO. ACC Austria is not active in the light commercial compressors and mobile application segments and has no plans to enter such segments within the next two years.

<sup>10</sup> See page 60 of the Form CO and replies to question 4 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors - (Q2), dated 8 November 2013.

<sup>11</sup> See most recently COMP/M.5048 - *Ingersoll Rand/Trane*, paragraphs 8 and 9.

purposes are not substitutable as they have different technical characteristics.<sup>12</sup> As regards different compressor technologies, a majority of the customers and approximately half of the competitors that responded to the market investigation indicated that, in their view, the different compressor technologies are not substitutable.<sup>13</sup> As regards refrigeration compressors in particular, a majority of the competitors that responded to the market investigation considered that manufacturers cannot easily switch production between the different technologies for household refrigerators (such as hermetic reciprocating or linear).<sup>14</sup>

21. Regarding a possible segmentation by end use, from a demand side perspective, a majority of the customers that responded to the market investigation indicated that the same hermetic reciprocating compressor cannot be used in household appliances, light commercial appliance and mobile applications mostly because of technical requirements.<sup>15</sup> From the supply perspective, a majority of the competitors that responded to the market investigation indicated that compressors for different end uses are likely to belong to separate markets because the design and operating conditions of the compressors differ.<sup>16</sup>
22. Regarding a possible segmentation by efficiency category, a majority of the customers that responded to the market investigation indicated that energy efficiency, even if increasingly important, is only one of several criteria they take into account when they purchase a compressor.<sup>17</sup> Certain of the customers that responded to the market investigation also indicated that they procure a mix of compressors with different energy efficiencies.<sup>18</sup> A customer also specified that while the compressor is an important drive for the overall energy efficiency of the refrigerator, there are other ways to improve such efficiency (e.g. the design of the refrigerator) and that there is no distinct market for high-efficiency compressors.<sup>19</sup> Furthermore, some respondents to the market investigation indicated that most of the major compressor manufacturers, including certain Chinese producers, are able to offer high efficiency

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<sup>12</sup> See replies to question 7 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors - (Q2), dated 8 November 2013 and to question 8 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Compressors – (Q1), dated 8 November 2013.

<sup>13</sup> See replies to question 8 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors - (Q2), dated 8 November 2013 and to question 9 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Compressors – (Q1), dated 8 November 2013.

<sup>14</sup> See replies to question 12 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Compressors – (Q1), dated 8 November 2013.

<sup>15</sup> See replies to question 9 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors - (Q2), dated 8 November 2013.

<sup>16</sup> See replies to question 11 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Compressors – (Q1), dated 8 November 2013.

<sup>17</sup> See replies to questions 10.1 and 10.3 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors – (Q2), dated 8 November 2013. For example, customers also take into account the price of a compressor, its dimensions, its power range and the noise it generates. See also agreed minutes of a conference call with customers, 9 December 2013.

<sup>18</sup> See replies to question 10.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors – (Q2), dated 8 November 2013.

<sup>19</sup> See agreed minutes of a conference call with a customer, 9 December 2013.

compressors.<sup>20</sup> In light of the above, the Commission considers that there is no basis, in this case, to further segment the market according to the different energy efficiency levels of compressors.

23. Regarding a possible segmentation between fixed and variable speed compressors, it should be noted that fixed speed compressors are the most common type of compressors and can be produced by every manufacturer.<sup>21</sup> As regards variable speed compressors, differing positions were expressed during the market investigation: while certain manufacturers indicated that they can produce variable speed compressors, some customers indicated that they believed there were few producers doing so.<sup>22</sup> Some manufacturers also indicated that their customers sometimes require variable speed compressors.<sup>23</sup>
24. In any event, for the purposes of the assessment of the notified transaction, the exact delineation of the relevant product markets as regards end use and technology can be left open since the notified transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

#### **4.1.2. Geographic market definition**

25. In past cases, the Commission has left open the relevant geographic market definition for compressors.<sup>24</sup>
26. The Notifying Party claims that the relevant geographic market (regardless of the product market definition) is: (i) world-wide in scope; or (ii) at least EEA-wide in scope and including Belarus, Ukraine, Russia, Serbia, Switzerland and Turkey ("EEA+"); or (iii) at least EEA-wide in scope. According to the Notifying Party, there are large cross-border trade flows and low transportation costs, both at global and EEA level.
27. The overwhelming majority of respondents to the market investigation indicated that they source hermetic reciprocating refrigeration compressors on a worldwide level for production plants located in the EEA.<sup>25</sup> Furthermore, the respondents indicated that there are no limitations as such to sourcing compressors from any geographic area, although one respondent mentioned transport costs, delivery time and customs as

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<sup>20</sup> See the agreed minutes of conference calls with customers, 21 November 2013 and 9 December 2013.

<sup>21</sup> See for instance agreed minutes of a conference call with a customer, 17 October 2013, describing fixed speed compressors as a commodity.

<sup>22</sup> See replies to question 5 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Compressors – (Q1), dated 8 November 2013. See also, for example, reply to question 29 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors – (Q2), dated 8 November 2013.

<sup>23</sup> See replies to question 15 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Compressors – (Q1), dated 8 November 2013.

<sup>24</sup> See most recently for example COMP/M.5048 - *Ingersoll Rand/Trane*, paragraph 10.

<sup>25</sup> See replies to question 14 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors - (Q2), dated 8 November 2013.

limitations.<sup>26</sup> The majority of respondents also indicated that transport costs normally represent only 0–5% of the final price of refrigeration compressors.<sup>27</sup>

28. In the light of the above, the Commission considers that the geographic market of the market for hermetic reciprocating compressors (and its possible segments) is at least EEA-wide, although for the purpose of this decision the precise geographic market definition can be left open since the notified transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

#### **4.2. Competitive assessment**

29. The transaction will lead to horizontally affected markets on a potential market encompassing all types of hermetic reciprocating refrigeration compressors in the EEA and on a potential narrower market encompassing only hermetic reciprocating refrigeration compressors for household appliances in the EEA.<sup>28</sup>

##### 4.2.1. Non-coordinated effects

30. On the EEA market for all types of hermetic reciprocating compressors, the Parties estimate that their combined 2012 market share was below [30-40]% both in value and in volume ([20-30]% in value and [20-30]% in volume). On this market, according to their estimates, the Parties will face strong competition from both Embraco (2012 market share of [20-30]% in value and [20-30]% in volume) and Jiaxipera (2012 market share of [10-20]% in value and [10-20]% in volume).
31. During the course of its market investigation, the Commission gathered sales data in order to reconstruct the EEA market for hermetic reciprocating refrigeration compressors for household appliances. The Commission's calculations are based on the replies of a number of manufacturers of compressors active on the merchant market and on the reply of one manufacturer with only captive sales. Since certain manufacturers did not respond to the Commission's request for information, the market value is lower than in reality, with the consequence that the market shares provided in the tables below overestimate the position of the various players. Even on that basis, however, the market shares of ACC Austria and Secop remain lower than the 2012 market shares estimates provided by Secop in the notification.
32. Merchant market share estimates for the Parties and their main competitors on the narrower EEA market for hermetic reciprocating refrigeration compressors for household appliances, as calculated by the Commission on the basis of the results of the market investigation, are indicated in the table below:

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<sup>26</sup> See replies to question 16 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors - (Q2), dated 8 November 2013.

<sup>27</sup> See replies to question 14.2 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors - (Q2), dated 8 November 2013.

<sup>28</sup> According to the Parties' estimates, on a potential market encompassing all compressors for refrigeration and air-conditioning, the Parties' combined 2012 market share was [10-20]% in volume in the EEA (2012 market shares in value do not lead to an affected market). Since the proposed transaction does not raise serious doubts as to its compatibility with the internal market under narrower market definitions (namely the EEA-wide markets for all types of hermetic reciprocating refrigeration compressors and for hermetic reciprocating refrigeration compressors for household appliances), this affected market will not be discussed further in the decision.



<b>EEA market for hermetic reciprocating refrigeration compressors for household appliances, 2012</b>							
	<b>Secop</b>	<b>ACC Austria</b>	<b>Combined</b>	<b>Embraco</b>	<b>Jiaxipera</b>	<b>ACC Compressors</b>	<b>Others</b>
<b>EEA-wide (value)</b>	[0-5]%	[10-20]%	<b>[20-30]%</b>	<b>[40-50]%</b>	<b>[20-30]%</b>	<b>[0-10]%</b>	--
<b>EEA-wide (volume)</b>	[0-5]%	[10-20]%	<b>[20-30]%</b>	<b>[30-40]%</b>	<b>[30-40]%</b>	<b>[0-10]%</b>	--

Source: Commission's market reconstruction

33. The table below also provides the Parties' combined market share with or without captive sales, both in 2012 and during the first semester of 2013.

<b>EEA market for hermetic reciprocating refrigeration compressors for household appliances</b>				
<b>Year</b>	<b>Parties' combined EEA market share, merchant market</b>		<b>Parties' combined EEA market share, captive use included</b>	
	<b>Value</b>	<b>Volume</b>	<b>Value</b>	<b>Volume</b>
<b>2012</b>	<b>[20-30]%</b>	<b>[20-30]%</b>	<b>[10-20]%</b>	<b>[10-20]%</b>
<b>January-June 2013</b>	<b>[10-20]%</b>	<b>[10-20]%</b>	<b>[10-20]%</b>	<b>[10-20]%</b>

Source: Commission's market reconstruction

34. As indicated in the tables above, post-transaction, a number of suppliers will remain active on the market. These include Embraco,<sup>29</sup> that will remain the market leader and is described by some customers as a company with a strong capacity to innovate and the widest variety of products,<sup>30</sup> and Jiaxipera, a Chinese company with a similar market share to that of Parties. Certain customers and competitors also mention Donper, a Chinese company, as an alternative supplier,<sup>31</sup> as well as the recent entry of the Chinese manufacturer, Wanbao.<sup>32</sup> Certain competitors and customers stated that the Chinese manufacturers compete quite aggressively in the EEA.<sup>33</sup>
35. The market data collected by the Commission during the market investigation indicates that between 2010 and 2012, the merchant market grew by approximately [10-20]% both in value and volume. Over that same period, Secop's and ACC Austria's sales decreased both in value and volume whereas Embraco's and Jiaxipera's

<sup>29</sup> Embraco, part of the Whirlpool group, sells hermetic refrigeration compressors to a number of Whirlpool's competitors. In addition, Whirlpool sources hermetic refrigeration compressors from other companies [...] (see agreed minutes of 21 October 2013).

<sup>30</sup> See agreed minutes of conference calls with customers, 17 October 2013, and 21 November 2013.

<sup>31</sup> See replies to question 28 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Compressors - (Q1), dated 8 November 2013 and replies to question 18 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors – (Q2), dated 8 November 2013.

<sup>32</sup> See replies to question 26 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors – (Q2), dated 8 November 2013 and replies to question 28 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Compressors - (Q1),

<sup>33</sup> See replies to question 28 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Compressors - (Q1) and agreed minutes of a conference call with a customer, 9 December 2013.

increased, both in value and volume. In a growing market, the Parties were therefore unable to maintain the value and volume of their sales whereas their main competitors grew theirs. The Commission considers that this trend further emphasises the limited market position of the Parties.

36. The Commission also notes that certain original equipment manufacturers (OEMs) of refrigerators, such as Panasonic, LG and Samsung, produce their own hermetic refrigeration compressors in-house and have started to be active on the merchant market for hermetic reciprocating refrigeration compressors.<sup>34</sup> According to the data collected by the Commission during the market investigation, the value of the captive market was approximately [40-50]% of the value of the merchant market in 2012.
37. In addition, all customers that responded to the market investigation indicated that in addition to Embraco and Jiaxipera, there will remain, post-transaction, a sufficient number of alternative suppliers to Secop and ACC Austria for hermetic reciprocating compressors such as Donper, Wanbao, LG, and Panasonic.<sup>35</sup> A large majority of customers and of competitors also considered that there is sufficient spare production capacity for refrigeration compressors.<sup>36</sup>
38. In addition, the market investigation supported the Notifying Party's position according to which Secop and ACC Austria are not each other's closest competitors on the market for hermetic reciprocating refrigeration compressors for household appliances.<sup>37</sup> A majority of customers consider that Secop's closest competitors are Embraco (mostly due to its technology and product portfolio) and Jiaxipera while ACC Austria's closest competitors are also Embraco and Jiaxipera.<sup>38</sup> A majority of competitors also did not mention ACC Austria as Secop's closest competitor and vice versa.<sup>39</sup>
39. As noted above, the Parties' market shares are lower if captive use by integrated OEMs is taken into account. Some customers mentioned that certain OEMs, namely

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<sup>34</sup> See agreed minutes of conference calls with customers, 17 October 2013, 18 October 2013, 21 October and 21 November. See also replies to question 18.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors – (Q2), dated 8 November 2013.

<sup>35</sup> See replies to question 18 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors - (Q2), dated 8 November 2013.

<sup>36</sup> See replies to question 27 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors - (Q2), dated 8 November 2013 and replies to question 26 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Compressors - (Q1), dated 8 November 2013.

<sup>37</sup> See replies to question 19 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors - (Q2), dated 8 November 2013.

<sup>38</sup> See replies to question 19 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors - (Q2), dated 8 November 2013.

<sup>39</sup> See replies to question 21 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Compressors - (Q1), dated 8 November 2013.

Samsung, LG and Panasonic, have started to be active on the merchant market for hermetic reciprocating refrigeration compressors.<sup>40</sup>

40. Moreover, the customers of hermetic reciprocating refrigeration compressor manufacturers are large multinational OEMs such as BSH, Whirlpool, Liebherr or Electrolux and respondents to the market investigation indicated that these customers have buyer power that they use, during negotiations with compressor manufacturers, to impose higher quality requirements and lower prices.<sup>41</sup>
41. As regards competition on the possible segment for variable speed compressors, some respondents to the market investigation indicated that they generally have a higher efficiency and that the segment for this category of products in the EEA is small but growing.<sup>42</sup> ACC Austria does, however, not sell variable speed compressors and Secop has only recently started supplying them. As a result, the transaction will not lead to any overlap in the variable speed compressors segment and will not eliminate an important innovator on the market.
42. As regards the possible segment for fixed-speed compressors, in light of the limited number of variable speed compressors sold on the market, and the even smaller number of such compressors sold by Secop,<sup>43</sup> the combined 2012 market share of the Parties on a segment comprising only fixed speed compressors in the EEA was roughly equivalent to the market share of the Parties on the overall market for hermetic reciprocating compressors for household appliances. The competitive conditions on the fixed-speed compressors segment, in particular the existence of a number of alternative suppliers, the pressure from Chinese manufacturers and from integrated OEMs, as well as the existence of buyer power, are the same as on the market for hermetic reciprocating refrigeration compressors for household appliances.
43. Finally, while one niche customer expressed certain concerns,<sup>44</sup> a majority of the customers that responded to the market investigation indicated that the transaction will either not have a negative effect on the market for household compressors,<sup>45</sup> or

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<sup>40</sup> See agreed minutes of conference calls with customers, 17 October 2013, 18 October 2013, and 21 November. See also replies to question 18.1 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors – (Q2), dated 8 November 2013.

<sup>41</sup> See replies to question 28 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors - (Q2), dated 8 November 2013. This capacity to impose lower prices is also mentioned by a majority of competitors (see replies to question 30 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Compressors - (Q1), dated 8 November 2013).

<sup>42</sup> See replies to question 13 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors - (Q2), dated 8 November 2013, replies to question 5 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Compressors - (Q1), dated 8 November 2013) and the agreed minutes of a conference call with a customer, 17 October 2013.

<sup>43</sup> Secop estimates its 2012 market share for variable speed compressors did not exceed 10% in the EEA.

<sup>44</sup> It should be noted that this customer subsequently explained that it is capable of sourcing from different suppliers and that there is price pressure from the Chinese manufacturers. See agreed minutes, 15 November 2013.

<sup>45</sup> See replies to question 33 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors - (Q2), dated 8 November 2013.

have a positive impact on innovation and from a logistical point of view.<sup>46</sup> As regards competitors, one respondent mentioned the possibility that the merged entity may increase its capacity to reduce its prices.<sup>47</sup> One integrated OEM expressed concerns regarding access to the merged entity's products. This concern, however, was not substantiated and the respondent subsequently confirmed that sufficient alternative and innovative suppliers will remain.<sup>48</sup>

44. In light of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as a result of non-coordinated effects.

#### 4.2.2. Coordinated effects

45. Despite the existence of past coordination on the market,<sup>49</sup> the Notifying Party claims that the proposed transaction will not lead to any coordinated effects *inter alia* because of a lack of transparency on the market, the strong influence of Chinese manufacturers and the fact that customers are sophisticated buyers.
46. For the reasons set out below, the Commission considers that the proposed transaction will not lead to any coordinated effects. First, customers have significant buyer power (see paragraph 40 above) and can play different suppliers against each other. As also stated above, all customers confirmed that sufficient competitive alternatives will remain.
47. Second, several OEMs with in-house production capacities exercise a competitive pressure on the hermetic reciprocating compressor manufacturers (see paragraph 36 above), and there are indications that some of them have started to be active on the merchant market. Such entry (and/or its threat) will further deter the established players from possibly coordinating their behaviour.
48. Third, Chinese manufacturers play an increasing role on the hermetic reciprocating compressors market and customers are increasingly relying on them (see paragraphs 34 and 40 above). Indeed, a majority of competitors and approximately half of the customers that responded to the market investigation noted that the price of

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<sup>46</sup> See replies to questions 33 and 34 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors - (Q2), dated 8 November 2013. See agreed minutes of a pre-notification call with a customer, 17 October 2013.

<sup>47</sup> See replies to questions 35 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Compressors - (Q1), dated 8 November 2013.

<sup>48</sup> See replies to questions 38 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Compressors - (Q1), dated 8 November 2013 and agreed minutes of a conference call with a competitor, 27 November.

<sup>49</sup> On 7 December 2011, the Commission adopted a decision in which it established that for some or all of the period between April 2004 and October 2007, a number of undertakings (including the Parties) infringed Article 101 TFEU and Article 53 of the EEA Agreement by participating in anti-competitive practices with a view to restricting price competition within the EEA in the market for small hermetic reciprocating compressors (maximum 1,5 horsepower). See Case COMP/39600 – *Refrigeration compressors*.

compressors has been steadily declining over the past five years, one of the main reasons being the competitive pressure exercised by Chinese manufacturers.<sup>50</sup>

49. In light of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as a result of coordinated effects.

#### 4.2.3. The claims by ACC Compressors

50. [...].

51. [...].

52. [...].

53. [...] ACC Compressors [...] argued that [...] there has been an early implementation of the transaction.

54. [...].

55. [...] ACC Compressors argues that there is a separate European market for premium compressors for household refrigerators. Such a separate market exists due to an array of criteria, including quality and the geographical proximity of the manufacturer with top brand refrigerators that guarantees short delivery time with high flexibility on product mix, superior customer services and joint research and development activities with the customers. According to ACC Compressors, only ACC Compressors, ACC Austria, Secop and Embraco are active on such a market. [...]<sup>51</sup>

56. [...].

57. First, the Commission has not found any evidence that the transaction was implemented early. In particular, there is no evidence that the circumstances mentioned in paragraph 35 of the Consolidated Jurisdictional notice are fulfilled.<sup>52</sup> The insolvency receiver was appointed before the tender procedure and is required by Austrian law to be independent from both the debtor and competitors. Its actions are checked and controlled by the insolvency court and the creditors' committee.<sup>53</sup> In addition, in this particular case, the insolvency receiver bears the economic risk of the on-going business of ACC Austria as it concluded an overdraft facility agreement of 7.5 million with a bank.<sup>54</sup>

58. [...] ACC Compressors is currently in insolvency proceedings.

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<sup>50</sup> See replies to question 31 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Compressors - (Q1), dated 8 November 2013 and replies to question 29 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors - (Q2), dated 8 November 2013.

<sup>51</sup> [...]

<sup>52</sup> Commission's Consolidated Jurisdictional Notice (OJ 16.4.2008 C 95/1). See reply to the request for information dated 25 November 2013.

<sup>53</sup> See replies to the request for information dated 25 November 2013 and 6 December 2013.

<sup>54</sup> See reply to the request for information dated 25 November 2013.

59. [...] A majority of customers that responded to the market investigation indicated that enough alternative compressors manufacturers would continue to produce refrigeration compressors post-transaction, [...].<sup>55</sup> A majority of customers that responded to the market investigation also indicated that enough innovation would remain post-transaction [...].<sup>56</sup>
60. In its assessment, the Commission also considered the possibility that, [...], customers of ACC Compressors would turn to ACC Austria as both companies produce similar refrigeration compressors, in particular the so-called "KAPPA-line" compressors. However, the sales data provided by ACC Austria and ACC Compressors suggests that customers are unlikely to adopt such behaviour. Indeed, between 2010 and the first semester of 2013, the sales of ACC Austria and ACC Compressors both simultaneously decreased (there was a particularly strong decrease in the first semester of 2013). This indicates [...], ACC Compressors customers would likely turn to a manufacturer of refrigeration compressors other than ACC Austria.
61. The Commission has nonetheless investigated the scenario in which all ACC Compressors' sales would be transferred to ACC Austria based on sales figures pre-dating the drop in ACC Austria's sales in 2013.
62. First, the Commission considers unfounded ACC Compressors' claim that a "premium" market exists, based on a number of criteria involving product-specific elements, geographical elements and elements that relate to the specific relationships between customers and manufacturers. This is because such criteria do not correspond to the basic principles used by the Commission in its notice on the definition of relevant market for the purposes of competition law to define a relevant product market.<sup>57</sup> In addition, not only did no respondent to the market investigation refer to the possible existence of a premium market, but certain customers specifically mentioned both that no such high-quality or high-efficiency market exists and that all refrigeration compressor manufacturers, including those located in China, are able to produce high quality refrigeration compressors.<sup>58</sup>
63. Second, the Commission considers, in light of its market reconstruction, that even if all the sales of ACC Compressors were transferred to the merged entity, the latter would become only the number two player on the EEA market for all hermetic reciprocating compressors for household appliances, with 2012 market shares in the range of 30-40% in volume and 20-30% in value. On this market, Embraco would remain the market leader with 2012 shares in the range of 30-40% in volume and 40-

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<sup>55</sup> See replies to question 20 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors - (Q2), dated 8 November 2013. See also replies to question 22 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to competitors – Compressors - (Q1), dated 8 November 2013.

<sup>56</sup> See replies to question 20 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors – (Q2), dated 8 November 2013.

<sup>57</sup> OJ 912.1997, C 372/3.

<sup>58</sup> See replies to question 10.2 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to customers – Compressors – (Q2), dated 8 November 2013. See also agreed minutes of conference calls with customers, 21 November 2013, and 9 December 2013. See also agreed minutes of a conference call with a competitor, 27 November 2013 that indicated that Chinese manufacturers produce compressors of a quality equal to European manufacturers.

50% in value. Jiaxipera would also continue to exert significant pressure with 2012 market shares close to the merged entity (in the range of 30-40% in volume and 20-30% in value).<sup>59</sup> In addition, the competitive pressure from Chinese manufacturers and OEMs with in-house capacity described in paragraphs 34 and 36 above would also remain. OEMs would also continue to exercise buyer power.

64. [...].

## 5. CONCLUSION

65. For all the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission  
(signed)  
Joaquín ALMUNIA  
Vice-President*

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<sup>59</sup> Figures based on the Commission's market reconstruction for 2012, see table above.