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***Case No COMP/M.7058 - EQT VI / TERVEYSTALO  
HEALTHCARE***

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: 03/12/2013

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## EUROPEAN COMMISSION

Brussels, 3.12.2013  
C(2013) 8795 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

### **To the notifying party:**

Dear Sir/Madam,

**Subject: Case No COMP/M.7058 - EQT VI/Terveystalo Healthcare  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

- (1) On 28 October 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which EQT VI Limited ("EQT VI", Guernsey, the UK), part of the EQT group of private funds ("EQT"), acquires within the meaning of Article 3(1)(b) of the Merger Regulation, sole control of Terveystalo Healthcare Holding Oy ("Terveystalo"), by way of purchase of shares.

#### **1. THE PARTIES AND THE OPERATION**

- (2) EQT VI ("the notifying party") is an investment fund which was launched in 2011 and which makes investment primarily in Northern Europe. EQT VI is part of the EQT group of private equity funds and [details over the ownership structure of EQT VI]. EQT VI is owned by SEP Capital BV ("SEP"). [details over the ownership structure of SEP] . SEP is not controlled by any individual or company, and does not control any other company except for EQT group of private equity funds.
- (3) Terveystalo belongs to the Terveystalo Group of companies ("Terveystalo Group"). Terveystalo is currently owned by European Healthcare S.à.r.l. (owned by limited partnerships comprising Bridgepoint Europe IV Fund which are managed by

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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.

Bridgepoint Advisers Limited) and the management of Terveystalo. Terveystalo Group provides healthcare services almost exclusively in Finland; its customers include private individuals, companies and organizations, insurance companies as well as the public sector.

- (4) Pursuant to the Share Sale and Purchase Agreement of 7 September 2013, the transaction comprises the acquisition of [...] % of shares and sole control of Terveystalo by EQT VI, and concerns the market for healthcare services in Finland. It therefore constitutes a concentration.

## **2. EU DIMENSION**

- (5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>2</sup> (EQT VI: EUR [...] million, Terveystalo: EUR 306 million). Each of them has an EU-wide turnover in excess of EUR 250 million (EQT VI: EUR [...] million, Terveystalo: EUR 306 million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

## **3. ASSESSMENT**

- (6) EQT VI submits that none of the portfolio companies (solely or jointly) controlled by EQT, in particular those whose business activities include the healthcare sector are active in the fields where Terveystalo is present. The transaction therefore does not give rise to any horizontal overlaps.
- (7) The notifying party however submits that there are three portfolio companies in the EQT funds that provide supplies to healthcare providers, namely BSN Medical, Atos Medical and HTL-Strefa.
- (8) Specifically, BSN Medical manufactures and supplies on a global basis a range of wound care, compression therapy (i.e. phlebology/lymphology medical garments) and orthopaedics products. Atos Medical supplies ear, nose and throat (ENT) products whereas HTL-Strefa supplies blood micro-sampling devices. Since Terveystalo purchases these types of products, the notifying party submits that an actual or potential non-important vertical link could be deemed to exist between BSN Medical, Atos Medical and HTL-Strefa on the upstream markets for medical products and devices and Terveystalo on the downstream markets for healthcare services, even if at present Terveystalo's purchase of this type of products represents a de-minimis part of its total costs.

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<sup>2</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

### **3.1. Market definition**

#### **3.1.1. Upstream activities**

##### **3.1.1.1. BSN Medical**

###### Wound care products

- (9) The Commission has previously analysed the market for traditional wound care products and advanced wound care products, as well as the market for wound closure products. It has considered that traditional wound care products and advanced wound care products form separate product markets.<sup>3</sup> Traditional wound care products include wound care products like surgical dressings, fixation products and swabs. The market for advanced wound care products has previously been split in sub-markets consisting of moist wound care products, active wound care products and biologically active wound care products and their sub-categories.<sup>4</sup> The Commission has also assessed the market for wound closure products and considered that the relevant product market for wound closure products could potentially be segmented by the respective category of such products but ultimately left it open.<sup>5</sup> Wound closure products include sutures, needles, strips, skin staplers and topical adhesives (i.e. glues). The product market definition can be left open in this case since the competitive assessment would not change under any of these alternatives.
- (10) As regards the relevant geographic market(s), in previous decisions the Commission left open whether the relevant geographic markets are EEA-wide or national in scope.<sup>6</sup> The geographic market definition can be left open also in this case since under any plausible market definition no competition concerns would arise.

###### Compression therapy products

- (11) In previous cases dealing with compression therapy products, the Commission considered that phlebology and lymphology could be part of the same product market (although it looked at potential phlebology product segments). Ultimately the product market definition was however left open.<sup>7</sup>
- (12) As regards the relevant geographic markets, the Commission left it open whether the market is EEA-wide or national in scope.<sup>8</sup> The product and geographic market

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<sup>3</sup> See M.3816 - Apax/Mölnlycke, para 19-24.

<sup>4</sup> See M.4367 APW/Apsa/Nordic Capital/Capio para 21-23; M.3816 - Apax/Mölnlycke para 21-24.

<sup>5</sup> See M.6560 EQT VI/ BSN Medical para 14-15; M.1223 - Tyco International Ltd/US Surgical Corp, para 5-8.

<sup>6</sup> See M.6560 EQT VI/ BSN Medical para 14-15, 27-28; M.4367 - APW/Apsa/Nordic Capital/Capio, para 41-42, 46; M.3816 - Apax/Mölnlycke, para 27-29; M.1223 - Tyco International Ltd/US Surgical Corp, para 9.

<sup>7</sup> See M.6560 - EQT VI/BSN Medical para 20-22; M.4229 - APhL/Netcare/General Healthcare, para 35, 47; JV.54 - Smith & Nephew /Beiersdorf/JV, para 23-32, 79-82.

<sup>8</sup> See M.4229 - APhL/Netcare/General Healthcare, para 35, 47; and JV.54 - Smith & Nephew & Beiersdorf/JV, para 23-32, 79-82.

definition can be left open also in this case since the competitive assessment would not change under any of these alternatives.

#### Orthopaedic products

- (13) BSN Medical supplies physiotherapy products (such as adhesives, strapping tapes, cohesive supports and miscellaneous bandaging products), fracture management products (such as plasters, synthetic castings, splints and accessories, stockinettes and paddings) and orthopaedic soft goods products in Finland. All these products comprise the orthopaedics products category.
- (14) The Commission has previously dealt with the market for orthopaedics products and indicated that different products within immobilisation products form separate product markets.<sup>9</sup> In the same decision, the Commission noted that within bandaging products, there are three product markets consisting of fixation bandages, support bandages and orthopaedic soft goods.
- (15) The notifying party therefore submitted information on all its orthopaedics products as well as on the three sub-categories: (i) physiotherapy products (i.e. bandaging products), (ii) fracture management products (i.e. immobilisation products) and (iii) orthopaedic soft goods products, in line with BSN Medical's internal segmentation.
- (16) As regards the geographical scope of the market, the Commission indicated that it is national for each segment.<sup>10</sup>
- (17) The precise product and geographic delimitation of the relevant markets described above can be left open, as due to the absence of overlap between the parties' activities and the insignificant vertical relationships between them, the Transaction does not give rise to competition concerns irrespective of the exact market definition.

#### 3.1.1.2. **Atos Medical**

##### Ear-nose-throat area products

- (18) The Commission has previously indicated that ear, nose and throat medical devices (ENT products) could form one product group but left the market definition open.<sup>11</sup> As regards the geographical scope of the market, the Commission indicated that it may be EEA-wide or national, ultimately leaving it open.<sup>12</sup> The product and geographic market definition can be left open also in this case since the competitive assessment would not change under any of these alternatives.

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<sup>9</sup> See JV.54 - Smith & Nephew & Beiersdorf/JV, para 48-53 and para 48-66.

<sup>10</sup> See JV.54 - Smith & Nephew & Beiersdorf/JV, para 32.

<sup>11</sup> See M.4367 - APW/Apsa/Nordic Capital/Capio para 17.

<sup>12</sup> See M.4367 - APW/Apsa/Nordic Capital/Capio para 45 and 46.

### 3.1.1.3. HTL-Strefa

#### Blood micro-sampling devices

- (19) The Commission has previously indicated that sterile single-use medical devices could constitute one product group within the medical devices while also noting that sterile single-use medical devices could be further split in a number of sub-markets, leaving ultimately the exact market definition open.<sup>13</sup> The notifying party submits that blood micro-sampling devices fall under the sterile single use medical devices category and provide information separately for safety lancets, personal lancets and pen needles where HTL Strefa is active. The product market definition can be left open also in this case since the competitive assessment would not change under any of these alternatives.
- (20) As regards the scope of the relevant geographic market, the Commission has indicated that it may be either EEA-wide or national.<sup>14</sup> The geographic market definition can be left open also in this case since under any plausible market definition no competition concerns would arise

### 3.1.2. *Downstream activities*

#### 3.1.2.1. Terveystalo

##### Healthcare services

- (21) There is no Commission precedent dealing with the Finnish market for healthcare services. However, the Finnish Competition and Consumer Authority ("FCCA") has previously examined the healthcare services market in Finland and segmented it by customer type (i.e. who pays for the service):
- (i) occupational healthcare services produced by private and public service providers (employer as a payer). In Finland, employers are under an obligation, regardless of their size, to organise occupational healthcare services for their employees.<sup>15</sup>
  - (ii) healthcare services purchased by public actors from private companies (municipality or other public actor as a payer). Municipalities in Finland are under a duty to organise healthcare services and within that duty have full discretion to organise the services themselves, jointly with other municipalities or to source them from public or private third-parties. The end-customers are mainly the inhabitants of the municipality in question.
  - (iii) healthcare services purchased by insurance companies (insurance company as a payer). Insurance companies sign contracts with private healthcare providers for compensating certain physicians' services (i) on the basis of occupational and traffic accident insurances or (ii) on the basis of voluntary insurances taken by private persons.

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<sup>13</sup> See M.4367 - APW/Apsa/Nordic Capital/Capio, para 17 and 28.

<sup>14</sup> See M.4367 - APW/Apsa/Nordic Capital/Capio, para 44 and 46.

<sup>15</sup> Under the Finnish Occupational Healthcare Act (1383/2001).

- (iv) healthcare services offered to private customers that are not referred through any of the channels in (i)-(iii) (private individual as a payer).
- (22) The FCCA considered that these four types of services could possibly be further segmented according to the type of healthcare service provider (public, private), the size of customers (large public or private organisations with a network of offices in several municipalities vs. companies that operate in a narrower geographical area) or the kind of service rendered (e.g. physician vs. hospital services, by specialisation, etc.). Nevertheless, in its previous decision, the FCCA did not have to decide on such delineations, and therefore left the precise market definition open.<sup>16</sup>
- (23) The notifying party submits that the four above mentioned markets are the relevant product markets in this case. As regards occupational healthcare services, the notifying party states that, in addition to the supply from private and public service providers, the relevant market also includes services provided in-house by the employer, since the content of the occupational healthcare services, as an obligation from the legislation, does not differ depending on the way they are provided, and since the market is constantly changing with employers being able to switch from one mode to the other.
- (24) There are indications from the market investigation that a distinction should be done at least between private and public suppliers, which do not necessarily provide the same kind of services.
- (25) The market investigation furthermore reveals in addition three basic models of organising occupational healthcare services in Finland: (i) fully private, (ii) fully public, (iii) a combined model in which the private healthcare supplier deals with the provision of staff only and uses third-party facilities (owned by the public (municipality) or sometimes by private companies).
- (26) Nevertheless, for the purpose of this case the precise product market definitions can be left open as the assessment would not change under any plausible definition.
- (27) The notifying party submits that the relevant geographic market for each segment of healthcare services is national.
- (28) The FCCA has found in its precedent case that none of the relevant healthcare services markets are wider than national in their geographic scope<sup>17</sup>. Some of the markets could even be narrower, i.e. regional or local.
- (29) The responses to the Commission market investigation were in favour of considering narrower than national geographic markets, in particular in view of the specificities of the tendering processes and the presence of big university hospitals for the various Finnish districts. In addition, although some local players appear to ally as a network to compete at a national level, the results of the market investigation showed that there are very few national actors like Terveystalo and that the few players active nation-wide rather compete with a number of different smaller service providers at regional level.

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<sup>16</sup> Decision of the FCCA 1116/14.00.10/2010 of 11 May 2011 (Terveystalo / ODL).

<sup>17</sup> Decision of the FCCA 1116/14.00.10/2010 of 11 May 2011 (Terveystalo / ODL).

- (30) Since the notified concentration would not raise any competitive concerns on any plausible market definition, the precise geographic market definition can be left open in the case at hand.

### **3.2. Competitive assessment**

- (31) On the basis of the above market definitions, the take-over would lead to the following vertically affected markets:
- a) occupational healthcare services in Finland, nationally and/or regionally;
  - b) healthcare services purchased by insurance companies in Finland, nationally and/or regionally;
  - c) healthcare services offered to private customers in Finland at regional level;
  - d) healthcare services that public actors purchase from private companies in Finland at regional level;
  - e) wound care products (with sub-categories) in Finland/EEA;
  - f) orthopaedics products (with sub-categories) in Finland/EEA;
  - g) compression therapy products (with sub-categories) in Finland/EEA;
  - h) medical products within the ear, nose and throat (ENT) area (with sub-categories) in Finland/EEA;
  - i) blood micro-sampling devices in Finland/EEA.
- (32) According to data submitted by the notifying party on the downstream side of the market, Terveystalo's market shares are below [30-40]% at a national level ([30-40]% for occupational healthcare, [20-30]% for healthcare services purchased by insurance companies, [10-20]% for healthcare services offered to private customers and [5-10]% for healthcare services that public actors purchase from private companies) and would remain below 40 % at regional level.
- (33) On the upstream side of the market, for each of BSN Medical, Atos Medical and HTL-Strefa, market shares are almost always below 25% and often below 10%. The only two exceptions concern the Finnish markets for orthopaedic products, where BSN market shares are significant, namely (i) physiotherapy products (with [40-50]% market share) and (ii) fracture management products (with [40-50]% market share) but not exceeding [50-60]% at the sub-category level for any of these two markets.
- (34) Based on the information submitted by the parties and the responses from the market investigation, the Commission considers that the resulting vertically affected markets would not give rise to serious doubts for the reasons explained below.
- (35) The notifying party submits that there will be no integration between either Atos Medical or HTL-Strefa, and Terveystalo, since they are controlled by two different EQT funds and each EQT fund investment is a separate and independent business case involving various investors and a separate envisaged exit horizon.



- (36) The notifying party furthermore submits that there will be no integration between BSN and Terveystalo, despite belonging to the same investment fund EQT VI. It explains that each EQT Funds' investment is a separate and independent business case involving a separate envisaged exit horizon. The notifying party indicates that BSN Medical and Terveystalo are separate business cases, and hence the intention is to develop them independently in line with what is best for each company, and eventually to exit them separately. Furthermore, from a geographical perspective, BSN Medical is active worldwide while Terveystalo is active almost exclusively in Finland. As BSN Medical has centralised important parts of its operations, including a central pricing policy for EEA countries, any integration with Terveystalo would not be in line with the operating model applied by BSN Medical.
- (37) Even if EQT were to instruct Terveystalo and its three portfolio companies BSN, Atos Medical and HTL-Strefa to conclude exclusive supply and purchase agreements between the two companies, EQT is unlikely to have the ability or incentive to engage in input and/or customer foreclosure in any meaningful way, as will be described below.
- (38) The vertical relationship is relatively insignificant since Terveystalo's purchases from any of the three portfolio companies do not exceed 5% of the total sales of these firms in any of the product markets and are less than 5% of the total market demand for these products in Finland.

*No ability or incentive for input foreclosure*

- (39) There is no ability for an input foreclosure strategy vis-à-vis Terveystalo's competitors, since the products supplied by BSN Medical as well as those of Atos Medical and HTL Strefa do not constitute an "important input" for Terveystalo and for its competitors, as they are rather standard products with relatively low barriers to entry and expansion. This is underpinned by the fact that Terveystalo itself is not dependent on supplies from any of these three suppliers and is currently purchasing or could purchase from other suppliers as well.<sup>18</sup> With respect to Atos Medical and HTL-Strefa, their products are exclusively sold via wholesalers which would not allow discriminating against end-customers.
- (40) In any event, each of BSN Medical, Atos Medical and HTL-Strefa face competition from other large international manufacturers for all products supplied and lack any significant degree of market power in any upstream market, which would be a prerequisite for input foreclosure.
- (41) HTL-Strefa faces competition from a number of competitors, e.g. Owen Mumford, Sterilance and Novo Nordisk, whereas Atos Medical's competitors include Otoplug, Olympus Finland and Medtronic Finland.
- (42) Even for products where BSN Medical's market shares are above 25%, such as the two subsegments for orthopaedic products ([40-50]% market share for physiotherapy and [40-50]% for fracture management), alternative suppliers are

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<sup>18</sup> Approximately [80-90]% of Terveystalo's purchases were made via wholesale distributors, varying from [50-60]% for compression therapy products to [80-90]% for orthopaedic products and [90-100]% for wound care products.

active in Finland. Thus, should BSN Medical hypothetically try to implement an input foreclosure strategy vis-à-vis Terveystalo's competitors, these companies would have other readily available internationally active suppliers (for instance, Smith & Nephew ([10-20]% market share in Finland) and Mölnlycke ([10-20]%) for wound care products; 3M ([10-20]%) and Lohmann & Rauscher ([5-10]%) for orthopaedics products; Juzo ([10-20]%) and Medi ([10-20]%) for compression therapy products).

- (43) The Commission has confirmed the existence of valid alternatives to BSN Medical's products by strong competitors in Finland on the basis of the results of the market investigation. Competitors in the field of medical supplies have indicated that similar products such as those supplied by EQT's portfolio companies are produced by competitors and easily accessible to customers. In addition, there are few technical entry barriers since these are rather standard products and there are no regulatory provisions that would impede suppliers to expanding their offerings in case EQT's portfolio companies would try to raise prices. Other healthcare providers purchasing medical products and devices as inputs for the provision of their services confirmed during the market investigation that they were not dependent on any of the EQT portfolio companies for medical supplies. If needed they could always find alternative suppliers (amongst other producers or through wholesalers).
- (44) Consequently, the risk that Terveystalo's competitors would be dependent on being supplied by BSN Medical, Atos Medical or HTL-Strefa is remote.
- (45) The incentive to foreclose depends on the degree to which it is profitable to do so and this involves a trade-off between the profit lost upstream and the profit gained downstream. Terveystalo's purchases are rather limited and do not amount to more than 5% in any of the markets considered. Not supplying Terveystalo's competitors anymore would entail a very significant loss of sales on these upstream markets. Furthermore none of the inputs provided by any of the three medical suppliers (BSN Medical, Atos Medical and HTL-Strefa) are critical for Terveystalo's competitors since there are significant alternative suppliers for all these medical inputs. Hence any such foreclosure strategy would not allow Terveystalo to charge higher prices downstream and recoup the profits lost by BSN Medical or by the other two EQT medical suppliers on the upstream markets. Therefore such an input foreclosure strategy would be unprofitable.

*No ability or incentive for customer foreclosure*

- (46) There is also no ability or incentive for a hypothetical customer foreclosure vis-à-vis Atos Medical's, HTL-Strefa's and BSN Medical's competitors, since none of Atos Medical's, HTL-Strefa's and BSN Medical's competitors is dependent on selling its products to Terveystalo for any of their product categories. Terveystalo cannot be considered as an unavoidable "important customer" in Finland for the different types of products supplied by Atos Medical, HTL-Strefa and BSN Medical as there are other important healthcare providers that compete with Terveystalo and buy medical products and devices such as Mehiläinen ([20-30]% market share), Diacor ([5-10]%), Aava ([0-5]%), Attendo ([0-5]%), Pihlajalinna ([0-5]%).

- (47) Overall, the EUR [...] million total purchases by Terveystalo of medical supplies in the products categories where the three medical suppliers belonging to EQT are active represent only [0-5]% of the total demand for these products in Finland. The contestable share of the medical supplies on the Finnish market is therefore [90-100]%.
- (48) Specifically, Terveystalo's share of purchases of the various product categories that BSN Medical, Atos Medical and HTL-Strefa supply to it is quite low, which means that Terveystalo does not enjoy the downstream market power which is a prerequisite for a customer foreclosure strategy. In any of the product markets in which BSN Medical, Atos Medical and HTL-Strefa are active, Terveystalo's purchases represent less than 5% of the total demand in Finland and far less than 1% in the EEA. Moreover, Terveystalo could not rely exclusively on the three above-mentioned suppliers because it needs to buy many various types of medical products that the three EQT portfolio companies are not currently offering and would most likely not be able to provide.
- (49) The Commission has confirmed the existence of valid alternative customers of medical products and devices excluding Terveystalo in Finland on the basis of the replies to the market investigation. Aava, Mehiläinen and Diacor have been mentioned as large private healthcare providers and main competitors of Terveystalo. As mentioned above, some smaller players compete effectively on the market for healthcare services on a regional basis and sometimes ally to compete at a broader level.
- (50) Therefore, even if Terveystalo were instructed by EQT to exclusively purchase from BSN Medical, Atos Medical or HTL-Strefa in the future, the customer foreclosure effect for competitors of these three firms would be insignificant. Consequently, even in the hypothetical scenario where Terveystalo were to source products exclusively from BSN Medical, Atos Medical and HTL-Strefa, this would not restrict the access of competitors to these companies to a sufficient customer base.

#### *Conclusion*

- (51) The Commission therefore considers that due to the limited scope of the identified vertical relationship, the notified concentration does not raise serious doubts as regards its compatibility with the internal market.

#### **4. CONCLUSION**

- (52) For 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*