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***Case No COMP/M.7107 - CORDES & GRAEFE /
POMPAC / COMAFRANC***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/12/2013

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EUROPEAN COMMISSION

Brussels, 19.12.2013
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PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/ M. 7107 – Cordes & Graefe / Pompac / Comafranc
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

- (1) On 18 November 2013 the European Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Cordes & Graefe KG (Germany) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the undertakings Pompac SA (France) and Comafranc SA (France) by way of purchase of shares. Cordes & Graefe KG, Pompac SA and Comafranc SA are hereinafter collectively referred to as "the Parties".

I. THE PARTIES

- (2) Cordes & Graefe KG ("C&G") is active in the wholesale of building materials and in the retail sale of building materials to professional customers, such as craftsmen and engineers. Its services and products include plumbing fittings, heating, air conditioning/ventilation, electrical equipment, installation, roofing technology, as well as excavation and industrial technology. C&G operates exhibition centres and wholesale depots for building materials with a focus on Germany.
- (3) Pompac SA and Comafranc SA are the holding companies of the Pompac group. Pompac SA currently holds a controlling shareholding of 67.8% in Comafranc SA. Like C&G, the Pompac group is active in the wholesale and retail sale of certain building materials to professional customers, including plumbing fittings, heating,

¹ 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.

tiling and electrical equipment, with a focus on France. The Pompac group is currently mainly owned by three members of the Gay family who hold [...]%, [...]%, and [...]%, of the shares in Pompac SA and around [...]%, [...]%, and [...]%, of the direct shares in Comafranc SA respectively.

II. THE OPERATION

- (4) C&G and the Gay family members signed a Letter of Intent (LoI) on 31 October 2013. According to the LoI, Pompac SA and Comafranc SA will first be merged into a new entity. Subsequently, C&G will acquire [<50]%, of the shares in the merged Pompac SA/Comafranc SA entity² while the three Gay family members will each retain shareholdings of approximately [...]. The merged Pompac SA/Comafranc SA entity will hereinafter be referred to as “Pompac”.³
- (5) On 17 December 2013, C&G and the Gay family members entered into an Additional Agreement regarding certain amendments to the LoI.
- (6) According to Article 1 of the Additional Agreement, C&G will hold the majority [...]. The management of Pompac will be obliged to [...]. In particular, the supervisory board will have to [...].⁴
- (7) Furthermore, according to Article 2 of the Additional Agreement, the Gay family members are obliged to [...].
- (8) The Commission considers that control is normally acquired where an undertaking acquires a majority of the voting rights of a company.⁵ Even in the case of a minority shareholding sole control may occur in situations where specific rights are attached to this shareholding, which allow the minority shareholder to determine the strategic behaviour of the target company.⁶ Such specific rights can include the power to appoint more than half of the members of the supervisory board.⁷
- (9) Against this background, the Commission finds that according to the terms of the LoI in conjunction with the Additional Agreement, C&G will have the power to

² LoI, Annex 5.1/a. to the Form CO, page 21.

³ C&G submits that in a subsequent step it intends to acquire a majority stake of [...]% in Pompac. According to the LoI, C&G has the pull option and the Gay family members have the put option for C&G to acquire this additional stake in Pompac three years after the initial acquisition of the [...]% stake. However, if neither of the Parties exercises its option, the acquisition will not occur (LoI, Annex 5.1/a. to the Form CO, page 18). The Commission considers that the put and pull options should not be taken into account in the assessment of the present transaction. There is uncertainty as to the exercise of the options since the Parties’ preferences might change over time. The Commission therefore concludes that it can at this stage only assess the first step of the transaction, namely the acquisition of the controlling [...]% minority stake, since only that planned acquisition constitutes a matter of fact and law existing at the time of notification, see paragraph 60 of the Commission Consolidated Jurisdictional Notice, hereinafter referred to as “CJN” (OJ C95, 16.04.2008, p1).

⁴ Article 1(3) of the Additional Agreement in conjunction with the LoI, p. 17.

⁵ Paragraph 56 of the CJN.

⁶ Paragraph 57 of the CJN.

⁷ Ibid.

determine the strategic behaviour of Pompac by being able to [...]. C&G will thus acquire control over Pompac.

- (10) The remaining shareholders will not be in a position to [...] and will not have [...] relating to the strategic behaviour of Pompac. The remaining shareholders will thus not have control over Pompac after the proposed transaction.
- (11) The Commission therefore concludes that C&G will acquire sole control over Pompac through the proposed transaction within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

- (12) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁸ (C&G: EUR [...]; Pompac SA/Comafranc SA: EUR [...]). Each of them has an EU-wide turnover in excess of EUR 250 million (C&G: EUR [...]; Pompac SA/Comafranc SA: EUR [...]), 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 pursuant to Article 1(2) of the Merger Regulation.

IV. PRELIMINARY ASSESSMENT

- (13) The activities of the Parties are complementary from a geographic point of view. C&G's activities are focused on Germany (>70% of its EU-wide turnover) while Pompac's activities are focused on France (>80% of its EU-wide turnover).
- (14) The proposed transaction therefore only leads to limited horizontal overlaps between the activities of C&G and Pompac with respect to the sale of plumbing, heating and air conditioning products as well as electrical products in Germany, France, Belgium and Luxembourg. Furthermore, both companies are active in the purchase of plumbing, heating and air conditioning products as well as electrical products.

1. Sale of plumbing, heating and air conditioning products

a. Product market definition

- (15) The sale of plumbing, heating and air conditioning products falls into the wider category of sales of building materials. The Commission has in previous cases delineated the relevant product markets for the sale of building materials on the basis of distribution channels and considered separate product markets for (i) the wholesale distribution of building materials, i.e. sales to retailers (ii) the retail sale of building materials to professional customers, primarily through builders'

⁸ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the CJN.

merchants and (iii) the retail sale of building materials to non-professional customers, primarily through DIY stores.⁹

- (16) Within the market for the retail sale of building materials to professional customers the Commission has further considered separate markets for specialised retailers and generalists without taking a final view on this aspect of the product market definition.¹⁰
- (17) The Parties are active mainly in the specialised retail sale of building materials (plumbing, heating and air conditioning products) to professional customers. They are not active in the retail sale to non-professional customers and have only marginal sales as wholesalers which will not be assessed further in this decision.¹¹
- (18) As regards different product groups of building materials, the Commission has in the past considered a separate product market for the retail sale to professional customers of heating, plumbing and sanitary products without taking a final view on this aspect of the product market definition.¹² The German Federal Cartel Office has found for the German market that the relevant market is the market for sales of plumbing, heating and air conditioning products.¹³

b. Geographic market definition

- (19) The Commission has found in previous cases that the market for the retail sale of building materials to professional customers could be regarded as national but has also considered a narrower scope of 40 to 100 km from the point of sale or of administrative districts in the case of Germany and France.¹⁴ This is similar to the German Federal Cartel Office's practice for the German market.¹⁵

⁹ See Cases COMP/M.3142, *CVC/Danske Traelast*, paragraphs 11-12; COMP/M. 3184 – *Wolseley/Pinault Bois & Matériaux*, paragraph 8ff; COMP/M.3407 – *Saint Gobain/Dahl*, paragraph 12; COMP/M.4050, *Goldman Sachs/Cinven/Ahlsell*, paragraph 9.

¹⁰ See Cases COMP M.1974, *Compagnie de Saint-Gobain/Raab Karcher*, paragraph 8; COMP/M.3184 – *Wolseley/Pinault Bois & Matériaux*, paragraphs 13-16.

¹¹ The Parties' activities in the wholesale distribution of building materials are marginal ([0-5]% of C&G's turnover and [0-5]% of Pompac's turnover) and do not overlap in the same relevant geographic markets because C&G's wholesale distribution activities are limited to Germany and Austria while Pompac's wholesale distribution activities are limited to France.

¹² See Case COMP/M.3184 – *Wolseley/Pinault Bois & Matériaux*, paragraph 12; however, the Commission did not consider such a differentiation in case COMP/M.3142 – *CVC/Danske Traelast*, paragraphs 11-12.

¹³ See FCO case report regarding B5-63/10, decision of 13.8.2010, and FCO case report regarding B5-47/09, decision of 27.8.2010.

¹⁴ See Cases COMP M.1974, *Compagnie de Saint-Gobain/Raab Karcher*, paragraphs 10-12; COMP/M.3142 – *CVC/Danske Traelast*; COMP/M.3142 – *CVC/Danske Traelast*, paragraph 14; COMP M.3184, *Wolseley/Pinault Bois & Matériaux*, paragraphs 18-22.

¹⁵ See FCO case report regarding B5-63/10, decision of 13.8.2010, and FCO case report regarding B5-47/09, decision of 27.8.2010.

c. Competitive assessment

- (20) The activities of the Parties are largely complementary from a geographic point of view and overlap only marginally due to limited cross-border exports in Belgium, France, Germany and Luxembourg. The transaction leads to affected markets for the sale of plumbing, heating and air conditioning products at the national and local level in Germany and at the local level in France.

Table 1 Market shares at the national and local level¹⁶

Market shares for plumbing, heating and air conditioning products, 2012			
	C&G	Pompac	Combined
Belgium	[0-5]%	[0-5]%	[0-5]%
France	[0-5]%	[5-10]%	[5-10]%
Lorraine	[0-5]%	[20-30]%	[20-30]%
Alsace	[0-5]%	[30-40]%	[30-40]%
Germany¹⁷	[20-30]%	[0-5]%	[20-30]%
Southern Rhineland-Palatinate and Saarland	[10-20]%	[0-5]%	[10-20]%
Luxembourg	[5-10]%	[0-5]%	[5-10]%

Source: Form CO – market shares calculated on the basis of the parties' estimates using publicly available information on the turnover of craftsmen in the plumbing, heating and air conditioning sector

- (21) The increments in market shares are marginal in all relevant markets. C&G does not have any points of sale in France and exported products into France of a total value of EUR [...] in 2012. Similarly, Pompac does not have any points of sale in Germany and exported products into Germany of a total value of less than EUR [...] in 2012.
- (22) In the light of the information above, the Commission concludes that the competitive pressure imposed by the Parties' on each other's business operations in the retail sale of plumbing, heating and air conditioning products to professional customers is negligible. Therefore the transaction does not change the competitive situation to an appreciable extent and thus does not give rise to competitive concerns.

2. Sale of electrical products

- (23) Regarding the sale of electrical products, the Commission has considered a separate market for the wholesale distribution of electrical products to professional

¹⁶ Pompac's exports into Germany are exclusively into the regions of the Black Forest, Karlsruhe, Southern Rhineland-Palatinate and Saarland; C&G's exports into France are almost exclusively ([...])% into the regions of Lorraine and Alsace.

¹⁷ The German market share of C&G includes sales made by the Wilhelm Gienger group. C&G and the Wilhelm Gienger group cooperate in the purchasing and in certain marketing activities of building materials. Including the turnover of the Wilhelm Gienger group in the calculation of C&G's turnover in Germany therefore constitutes the most conservative approach without taking a final view on the competitive dynamics between C&G and the Wilhelm Gienger group. C&G is not active in the regions Karlsruhe and Black Forest.

customers excluding direct sales by manufacturers.¹⁸ Such electrical products include electrical installation equipment, cables, lighting sources and equipment, communication and security products. The market was found to be national in geographic scope.¹⁹

- (24) The activities of the Parties in the wholesale distribution of electrical products overlap in Germany but do not lead to affected markets with a combined market share of [0-5]% and an increment through Pompac's activities of [0-5]%.

3. Purchase of plumbing, heating, air conditioning and electrical products

- (25) The Commission has considered the market for the procurement of electrical products by wholesalers from suppliers to be national in geographic scope.²⁰ Moreover, the German Competition Authority has considered the market for the procurement of plumbing, heating and air conditioning products by wholesalers to be equally national in geographic scope.²¹
- (26) The Parties do not purchase plumbing, heating, air conditioning and electrical products in the same national markets. The transaction therefore does not lead to an overlap between the activities of the Parties in the same relevant geographic market.

V. CONCLUSION

- (27) 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

¹⁸ See Case COMP/M.4963, *Rexel/Hagemeyer*, paragraphs 14-22; COMP/M.2034 – *Hagemeyer/WF Electrical*, paragraph 9.

¹⁹ See Case COMP/M.4963, *Rexel/Hagemeyer*, paragraph 27; COMP/M.2034 – *Hagemeyer/WF Electrical*, paragraph 12.

²⁰ See f. e. case COMP M.4963, *Rexel/Hagemeyer*, paragraph 28.

²¹ See FCO case report regarding B5-63/10, decision of 13.8.2010, and FCO case report regarding B5-47/09, decision of 27.8.2010.