

***Case No COMP/M.2397 -  
BC FUNDS / SANITEC***

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**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 06/06/2001

*Also available in the CELEX database  
Document No 301M2397*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06.06.2001

SG (2001) /D288974

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

**Subject: Case No COMP/M.2397 – BC Funds/Sanitec**

Notification of 27.04.2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 27 April 2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>1</sup> by which Guernsey based BC European Capital Funds (“BC Funds”), acquire within the meaning of Article 3(1)(b) of the Council Regulation control of the Finnish undertaking Sanitec Oyj Apb (“Sanitec”) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

**I. THE PARTIES' ACTIVITIES AND THE OPERATION**

3. BC Funds consist of 4 active capital funds with CIE Management II Ltd. as general partner, who manages and controls all BC Funds. The Funds control a number of portfolio companies, among them jointly Grohe Holding GmbH (“Grohe”). Grohe designs, manufactures and markets sanitary taps and mixers as well as non-ceramic WC cisterns and flushing valves.
4. Sanitec designs, manufactures and markets bathroom ceramics, bath- and shower-related products and vacuum toilet systems for mobile and stationary sanitary use.

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<sup>1</sup> OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

5. The proposed concentration involves the acquisition of sole control of Sanitec by the 15 limited partnerships of the BC European Capital Fund VII. The 15 limited partnerships of the BC European Capital Fund VII will found a Luxembourg NewCo which in a Block Trade will firstly acquire, through an indirectly wholly-owned Finnish NewCo, 60.83 % of the outstanding shares of Sanitec from the major shareholder, Wärtsilä Corporation, and other shareholders, comprising a number of Finnish companies.

## II. COMMUNITY DIMENSION

6. Undertakings BC Funds and Sanitec have a combined aggregate worldwide turnover in excess of EUR 5 000 million<sup>2</sup> (BC Funds, EUR [...] million; and Sanitec, EUR [...] million). Each of them has a Community-wide turnover in excess of EUR 250 million (BC Funds, EUR [...] million; and Sanitec, EUR [...] million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension, but does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

## III. COMPETITIVE ASSESSMENT

### A. Relevant product markets

7. Sanitec and Grohe both manufacture and market bathroom products. Some relevant product markets for bathroom products were treated in IV/M.1578-*Sanitec/Sphinx*. There the Commission considered that *bathtubs*, *shower trays* and *shower screens* constitute distinct product markets both from the demand and the supply side point of view. With regard to *ceramic sanitary ware* the question whether the relevant product market should comprise ceramic sanitary ware as a whole or, alternatively, individual products (WCs, WC cisterns and washbasins) was left open. This question can also be left open for the purpose of this decision, given that in all alternative market definitions considered, the operation as notified would not lead to the creation or strengthening of a dominant position.
8. The market definition for *sanitary taps and mixers* and the wide range of *non-ceramic bathroom products* was of no relevance in the *Sanitec/Sphinx* decision. However even a very narrow market definition in these markets (e.g. *non-ceramic washbasins* as a separate market) would not lead to competitive concerns. Therefore the definition of these markets can be left open.

### B. Relevant geographic markets

9. In IV/M.1578-*Sanitec/Sphinx*, the Commission, with regard to relevant geographic markets, considered that there were several factors (national price lists, price differences, diverging market positions) pointing towards the existence of purely national markets for bathroom products, although the exact definition of the relevant market was left open. For the purpose of this decision this question can also be left open because, in all alternative

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<sup>2</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area. For the same reason, the exact definition can be left open also for sanitary taps and mixers.

### C. Assessment

10. The activities of Grohe and Sanitec are almost complementary in terms of products. In particular, Grohe is not active on the market of *ceramic sanitary ware* at all and Sanitec only sells, to a very minor extent, mainly third party-branded *sanitary taps and mixers*.
11. If the geographic markets were to be considered as national and by considering a narrow market definition on non-ceramic sanitary ware, the concentration would only lead to marginal horizontal relationships. However these horizontal overlaps would exist for *non-ceramic washbasins* in Germany (Grohe: [15-25] %, Sanitec [<5] %) as well as for *sanitary taps and mixers* in Austria (Grohe [25-35] %, Sanitec [<5] %), Belgium/Luxembourg (Grohe [45-55] %, Sanitec [<5] %), France (Grohe [20-30] %, Sanitec [<5] %), Germany (Grohe [20-30] %, Sanitec [<5] %) and the Netherlands (Grohe [50-60] %, Sanitec [<5] %).
12. In view of either the relatively moderate combined market shares concerning *non-ceramic wash basins* or the *de minimis* increment of market share in *taps and mixers*, the horizontal overlaps do not lead to any adverse competition effects. The results of the market investigation support this conclusion.
13. Sanitec's high market shares for *bathtubs* and *ceramic sanitary ware* in the Nordic countries (between [30-40] % and [80-90] %) do not raise competitive concerns. Grohe's presence in this area is marginal and there is no horizontal relationship.
14. There are no vertical relationships between Sanitec and Grohe.
15. With regard to conglomerate aspects, both Grohe and Sanitec have high market shares on different bathroom products on the national product markets in the Netherlands and Belgium/Luxembourg. Sanitec's market shares for *ceramic sanitary ware* amount to some [50-60] % in the Netherlands and some [40-50] % in Belgium/Luxembourg. If considering the different products constituting ceramic sanitary ware separately, these market shares would not be materially different and the assessment of the case would not be affected. Grohe's and Sanitec's combined market shares for *sanitary taps and mixers* on these national markets would be some [50-60] % in the Netherlands and about [40-50] % in Belgium/Luxembourg.
16. The potential combination of Sanitec's ceramic sanitary ware and Grohe's taps and mixers raises the question, whether these products could be bundled. The investigation lead to the following conclusions:
17. For bathroom products, pure bundling can be excluded. For the purposes of this decision, pure bundling refers to a situation where the wholesaler would be required to take a whole range of products and would not have the possibility to purchase only a part of the products of the range. Given in particular the existence of competing suppliers, the Commission considers that BC Funds is not able to cause Grohe to refuse to supply *taps and mixers* in case wholesalers were not prepared to take the whole range of bathroom products from Sanitec. This has been confirmed by third parties in this case.

18. The investigation showed, on the other hand, that mixed bundling would be possible. For the purposes of this decision, mixed bundling refers to a situation where the seller grants rebates for a whole range of products. The wholesaler would, however, also have the possibility to buy only some of the products of the range. Sanitec could offer post-transaction a whole range of *ceramic sanitary ware* and other bathroom products together with Grohe's *taps and mixers* and grant larger rebates for purchases of such packages. Therefore, those wholesalers, who take the whole package, would be able to sell the same products at a lower price than those wholesalers who take only parts of the package.
19. However, the investigation showed that this possibility could not squeeze competitors out of the market. Firstly, there are established players on the Benelux *ceramic sanitary ware* and *taps and mixers* markets. A number of these competitors - including Ideal Standard and Roca/Laufen – can offer a full range of *ceramic sanitary ware* and other bathroom products (from the low-end to high-quality products) together with *taps and mixers*. Secondly, the customers of the manufacturers of bathroom products (i.e. mainly the wholesalers and DIY chains) typically buy *ceramic sanitary ware* and *taps and mixers* from a multitude of manufacturers, in order to satisfy their customers' (i.e. the end-consumers') wish to choose between different products and brands. Thirdly, there are no technical or commercial obstacles for the wholesalers to re-arrange the product mix and sell products either in packages or individually. Furthermore the products in question are comparatively low-tech products. Finally, wholesalers who are the main customers of Sanitec and Grohe are large buyers on the Benelux market. Grohe's 5 largest customers account for [65-75] % of Grohe's total sales in the Netherlands and [45-55] % in Belgium/Luxembourg. Sanitec's 5 largest customers account for [60-70] % of the sales in the Netherlands and [35-45] % in Belgium/Luxembourg. Therefore, in view that there are also alternative producers capable of supplying similar packages and that there are no technical obstacles to combine products from different manufacturers, these wholesalers could switch their supplies from Sanitec.
20. In view of the foregoing, the Commission considers that the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

#### **IV. CONCLUSION**

21. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission

Mario MONTI  
Member of the Commission