

***Case No COMP/M.3688 -
UTC / KIDDE***

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

Article 6(1)(b) NON-OPPOSITION
Date: 18/03/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.03.2005

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLES 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.3688 – UTC/Kidde
Notification of 11.2.2005 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 14.2.2005, United Technologies Corporation (“UTC”) notified its intention to acquire Kidde plc (“Kidde”) within the meaning of Article 3(1)(b) of the Council Regulation (EC) No 139/2004 (“EC Merger Regulation”) by means of a public bid announced on December 16, 2004.
2. After examination of the notification, the Commission has concluded that the notified operations falls within the scope of the Council Regulation No 139/2004 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I. THE PARTIES

3. **UTC**, based in the USA, is a global and diversified high technology products and services company. UTC is engaged in the active fire protection sector through Chubb, which UTC acquired in 2003.

¹ OJ L 24, 29.1.2004 p. 1.

4. **Kidde**, based in the UK, is a global supplier of fire and safety products, systems, and services for industrial, aerospace, residential and commercial uses.

II. THE OPERATION

5. The transaction involves the proposed acquisition by UTC (Chubb) of Kidde in the active fire protection sector.
6. Chubb and Kidde were both part of the Williams group from 1997 until the de-merger of Williams plc in 2000. In connection with the de-merger, the businesses of Chubb and Kidde were divided on the basis that Chubb would become principally a service-orientated business responsible for the Williams group's activities in relation to electronic security and some of Williams' fire protection activities. Kidde retained the group's manufacturing businesses in the areas of aerospace and specialist equipment, residential and commercial fire and safety products and the remaining parts of Williams' fire protection manufacturing and service business.

III. CONCENTRATION

7. The operation constitutes a concentration within the meaning of article 3(1)(b) of the EC Merger Regulation.

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (UTC: EUR 27,439.4 million; Kidde: EUR 1,449.5 million). Each of UTC and Kidde have a Community-wide turnover in excess of EUR 250 million (UTC: EUR [...] million; Kidde: 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.

V. COMPETITIVE ASSESSMENT

A. Relevant product markets

9. The parties' activities overlap in gaseous fire suppression systems ("GFSS") and commercial portable fire extinguishers ("CPFES"). In addition, fire fighting agents ("FFAs") constitute a vertically affected market.

1. Gaseous fire suppression systems

10. Fire suppression systems are used to contain and/or extinguish fires. The parties have submitted that fire suppression systems include (i) traditional water-based sprinkler systems, (ii) gaseous systems and (iii) systems using special fire suppression agents such as powder or foam. The parties' activities directly overlap only in the supply of *gaseous* fire suppression systems. GFSSs are designed to extinguish a fire, normally in

² 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, p 25). 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.

a relatively contained space such as a computer room or data storage facility. GFSSs use a variety of gases as suppression agents.

11. The parties have submitted that there are a number of different types of GFSS that can be segmented according to the type of gaseous fire fighting agent used and whether the system is designed for land- or marine-based applications. The parties contended that, since most suppliers of GFSSs offer a broad range of systems, the relevant product market is GFSSs as a whole. They have, however, analysed the overlaps separately for land- and marine-based applications.
12. Since GFSSs have to be adapted to the end customers' individual needs, they are installed either by independent systems integrators ("ISIs") or by the manufacturers' own service organisations. While Kidde sells GFSSs in "kit-form" to independent systems integrators and to end-users, Chubb sells exclusively to end customers. Therefore, the parties' activities in the GFSS business only overlap in the field of sales to end-users.
13. The results of the market investigation suggest that there are similarities between land- and marine-based systems from the supply side and the same technology and processes are applied to each sector. On the other hand, from the demand point of view, there appear to be differences as to which products (e.g. gas and foam) can be used for some specific land and marine based systems. In addition, it has been indicated that certain approvals are required for marine based systems which are not required for land-based systems.
14. However, the exact scope of the product market can be left open because competition concerns would not arise on whichever market definition is used.

2. Commercial portable fire extinguishers

15. CPFES are metal cylinders filled with a fire fighting agent, used as a portable device against fires in buildings, cars etc. CPFES are low technology, commodity products. There are over 100 different types of CPFES available in a range of sizes. CPFES can be filled with a variety of fire-fighting agents (water in liquid and mist form, foam, powder, wet chemicals, and gas), depending upon the type of fire they are designed to extinguish.
16. According to the parties, CPFES have to be distinguished from *residential* portable fire extinguishers (RPFES), since RPFES are mainly sold to private customers in retail stores while CPFES are distributed to commercial customers by specialised service organisations or independent fire traders ("IFTs"). The parties have submitted that it would not be appropriate to further separate sub-markets for CPFES, e.g. by reference to the different customers that purchase CPFES and related services or based on the different types of fire fighting agents with which they are filled, the storage mechanism used, or their weight.
17. With regard to servicing, the parties have submitted that the relevant product market should be defined as the market for all CPFES inclusive of associated after sales services.
18. The market investigation has confirmed that CPFES should be distinguished from RPFES, because CPFES are distributed to commercial customers by specialised service organisations ("SSOs") or IFTs, and conditions differ significantly in both markets.

19. The investigation has also supported the distinction between sales to IFTs and to end customers. Unlike IFT customers, most end customers need the advice and the service capacities of the SSOs/IFTs in order to comply with the legal requirements for commercial or public premises. IFTs buy significantly bigger volumes at lower prices than end customers.
20. A further distinction of the CPFE markets (e.g. between sales by IFTs and by manufacturers or separate servicing market) is not appropriate according to the results of the market investigation. In any event, competition concerns would not arise on all alternative market definitions used.

3. *Fire Fighting agents (FFAs)*

21. Fire-fighting agents may be considered vertically related to the markets for portable fire extinguishers and fire-fighting systems because they are used in portable fire extinguishers and fire-fighting systems to extinguish fires.
22. Fire-fighting agents include materials such as powder, foam, water, CO₂, other inert gases and liquid chemical agents. The parties have submitted that there is a single market for all types of fire-fighting agents.
23. The market investigation suggests that it would be appropriate to define different markets at least for fire fighting foam (“FFF”) and fire fighting powder (“FFP”), since the production process for these two types of agents differs significantly.
24. However, the exact scope of the product market can be left open because competition concerns would not arise on whichever market definition is used.

B. Relevant geographic markets

1. *Gaseous fire suppression systems (GFSS)*

25. The parties have argued that the geographic scope for GFSSs is likely to be EEA-wide, because the hardware used in the various types of systems is broadly similar and most major GFSS manufacturers sell their systems throughout the EEA, at least at the trade level.
26. The results of the market investigation suggest that manufacturers of GFSSs sell their systems wider than at the national level. It also appears that customers often source systems at a wider than national level. As will be discussed in more detail below, e.g in the Netherlands, most players active on the market have no manufacturing capacity within the country. In addition, the investigation shows that similar approvals are required for instance in the Netherlands and in Belgium, thereby suggesting wider than national markets.
27. For the purposes of this decision, however, the exact scope of the geographic market can be left open because competition concerns would not arise under either market definition.

2. Commercial portable fire extinguishers (CPFEs)

28. The parties have submitted that the relevant geographic market for CPFEs is at least EEA-wide due to uniform technical standards, high levels of intra-EEA trade and imports and EEA-wide sourcing by customers.
29. The market investigation shows on the one hand, that national approvals are still necessary in most of the Member States for imports from other countries. On the other hand there are a number of factors that militate for an EEA-wide market definition: The existing national standards do not seem to be insurmountable. Indeed, the adoption of common European norms in 1997 (e.g. the “EN3”-norm and the European Pressure Equipment Directive 97/23/EC) have facilitated imports, and many national regulators recognise foreign approvals based on the above mentioned standards today. Many of the producers asked in the market investigation have indicated that they started selling at a wider than national and even at an EEA-wide level. The investigation also shows that many larger customers purchase at a wider than national level. A study submitted by the parties, based on Eurostat data, suggests that both EU and non-EU imports have significantly increased since the harmonisation of the respective norms³.
30. For the purposes of this decision, however, the exact scope of the geographic market can be left open, because competition concerns would not arise on whichever market definition would be used.

3. Fire fighting agents

31. The parties have submitted that the relevant geographic market for fire-fighting agents is world-wide. They have, however, also analysed their market shares on an EEA-wide level.
32. The investigation has clearly supported the parties view that the FFA markets are at least European-wide in scope. While some bigger CPFE producers purchase their FFAs from outside Europe and use worldwide tenders, smaller national CPFE producers still seem to have a preference for European FFA producers.
33. For the purposes of this decision, however, the exact scope of the geographic market can be left open because competition concerns would not arise under either market definition.

C. Competitive assessment

1. Gaseous fire suppression systems (GFSS)

34. The parties’ activities overlap in GFSSs to any significant extent only in the Netherlands and only in the field of sales to end-users. Should a wider geographic market be considered, the parties’ market shares would be smaller.
35. If one single market comprising *both land-based and marine-based systems* was defined, the parties’ combined market share would be around [30-40]% (increment

³ See: Study by RBB Economics, submitted by the parties on 9 Mars 2005, p. 2 et seq.

[0-10]%). The parties' largest competitors are Tyco [20-30]%, HiSafe [10-20]% and Saval [10-20%]. If considering *land-based systems* separately, the parties would have a combined share of supply of GFSSs to end-users of [20-30]% (increment [10-20]%). The highest hypothetical market share would be held by the parties in the Dutch market for *marine-based GFSS*, where the combined share of supply would be [40-50]%, but with a very small increment of [0-10]% stemming from Chubb's activities. Tyco has some [20-30]% of the market, HiSafe [10-20]% and Unitor [0-10]%).

36. The analysis shows that the parties would have high market shares only in the hypothetical niche market of marine-based GFSS. Given that Chubb, who sold only [...] systems in 2004, has *de minimis* activities in the field of marine-based systems, the transaction is unlikely to lead to any substantial change in the market structure (market share increment: [0-10]%). Moreover, as discussed above, the relevant market is likely to be wider than the Netherlands, since more than 85% of all GFSS sold are imported from other countries and competitors suggest including at least Belgium into the Dutch market. Existing national certification requirements do not seem to constitute an important barrier to imports from competitors from other countries. Similar certification standards seem to prevail both in the Netherlands and in Belgium. Furthermore, the large German-based GFSS producer Minimax, the previous owner of the Dutch competitor Ajax, has recently entered the market and is considered as a viable competitor on the Dutch GFSS market (both for land- and marine-based systems).
37. For all these reasons, competition concerns are unlikely to arise in GFSSs or in any sub-market in the Netherlands or on any wider geographic area, where the parties' market shares would even be smaller.

2. *Commercial portable fire extinguishers*

38. The market investigation has widely confirmed the market shares submitted by the parties. On the basis of a European-wide market definition, the parties' market shares would not exceed 30% on either market (sales to IFTs and to end customers). On a national basis, the parties' activities overlap to a larger extent in four countries, the United Kingdom, the Netherlands, France and Germany.

End customer market

39. The following table shows the consolidated market shares (volume shares 2004 in %) for sales to end customers:

I. CPFE Sales to End Customers:

	Chubb	Kidde	Combined	Competitor1	Competitor2	Competitor3
UK	[20-30]	[0-10]	[30-40]	[0-10]	[0-10]	[0-10]
NL	[0-10]	[10-20]	[20-30]	[10-20]	[10-20]	[0-10]
FR	[10-20]	[10-20]	[30-40]	[10-20]	[10-20]	[0-10]
DE	[0-10]	[10-20]	[10-20]	[10-20]	[0-10]	[0-10]

40. Competition problems are unlikely to arise even under a national market definition on the *end customer market*. On this market, the parties' share does not exceed [30-40]% in any country and a wide number of IFTs and SSOs compete for the customer base. As customer service is an important factor for the success in the highly fragmented CPFE end customer market⁴, many IFTs are confident that their specific strengths in the field of customer knowledge and local service will allow them to effectively compete with the parties in the future. There are no important technical differences between CPFEs of different producers which could prevent customers from switching. IFTs and SSOs have explained to us that they could service all kinds of CPFEs and that end customers were not bound to acquire such services and parts from the supplier that provided the original CPFE.

CPFE sales to IFTs

41. The following table shows the consolidated market shares (volume shares 2004 in %) for sales to IFTs:

II. CPFE Sales to IFTs:

	Chubb	Kidde	Combined	Competitor1	Competitor2	Competitor3
UK	[40-50]	[10-20]	[50-60]	[10-20]	[0-10]	[0-10]
NL	[0-10]	[30-40]	[30-40]	[10-20]	[0-10]	[0-10]
FR	[10-20]	[10-20]	[30-40]	[30-40]	[30-40]	[10-20]
DE	0	[50-60]	[50-60]	[10-20]	[10-20]	[0-10]

42. In the market for sales to IFTs, the situation in Germany would not change after the transaction, since Chubb is not active in this market. The market investigation for France has shown that the parties have underestimated the position of their competitors, who are more or less at the same level as the parties [30-40]%.
43. If the markets were to be defined on a national basis, the concentration would lead to seemingly high market shares in two countries: the United Kingdom and the Netherlands. An extensive market investigation of the fire extinguisher market in both countries has, however, not confirmed the existence of potential competition problems. Conversely, the investigation has confirmed that the markets remain competitive even after Chubb's takeover of Kidde.
44. The most directly affected customer group of the parties in the United Kingdom and the Netherlands are the IFTs, who do not produce CPFEs but source them from manufacturers such as the parties. Most of the IFTs contacted by the Commission did, nevertheless, not express concerns about the transaction. Indeed, IFTs have explained to the Commission that the markets for CPFE are highly competitive and that sufficient

⁴ See: The Fire Industry Council (ed.): *Competitive Analysis - UK Fire Protection Industry*, Kingston upon Thames 1999, p.30.

choice would remain even after a merger of Chubb and Kidde. This is not only because CPFES are, from a technical point of view, easy to produce and can be regarded as commodity products. According to IFTs, a large number of suppliers inside and outside the United Kingdom and the Netherlands would be able to supply them with CPFES. These suppliers include large multi-national companies such as Anaf, Minimax, Tyco or London Security. Indeed, the Commission has found many examples of IFTs who have switched their supplier in the past. In addition, it was indicated to the Commission that competitors based on the continent compete for supply contracts and that IFTs, if facing a permanent increase of prices in the order of 5-10%, would not hesitate to look for suppliers outside their national markets.

45. None of the competitors indicated that they would face capacity constraints. On the contrary, due to overcapacities in Europe and increasing imports, prices for CPFES have been going down significantly over the past years.
46. On the *United Kingdom* IFT market, the parties, holding about [50-60]% of the market, would still face competition from three well-established competitors, Saffire, FPS Bristol and UK Fire, none of which are facing capacity constraints. Tyco, the world market leader in security and fire protection services, has so far been active only in the end customer business in the UK, but Tyco is also seen as a potential supplier of IFTs, given its strong position in other national IFT markets and its spare capacity of about 50%.
47. In the *Netherlands*, Tyco [10-20]% is already today the main competitor of the parties [30-40]% in the IFT market, and IFTs are also supplied by other major producers from inside and outside the country (e.g. the German manufacturers Jockel, [0-10]%, and Bavaria, [0-10] %). In addition, with a market share of [0-10]%, Chubb has only been a minor competitor on the IFT market.
48. In both countries, the parties' ability to impede competition is effectively constrained by competitors from foreign countries. While national legislation and certification requirements may still play a certain role in Germany and France, market participants have confirmed that administrative barriers to enter the UK and the Dutch CPFE markets are relatively low and costs for an additional national approval are not prohibitive. According to a study of the Fire Industry Council, about 20% of all CPFES bought by IFTs in the United Kingdom were imported already in 1999⁵. According to Eurostat data submitted by the parties⁶, imports into the UK have even increased since then. In the Netherlands, only Saval manufactures CPFES within the country, while all other competitors import their CPFES.
49. Furthermore, the market investigation has shown that in particular Chinese suppliers are regarded as strong actual and potential competitors for the parties. Already today many of the components for CPFES assembled in Europe are imported from China. Both IFTs and competitors have reported that Chinese suppliers have recently managed to fully comply with Western European quality standards and are expected to play an increasing role in Europe also in the supply of fully assembled CPFES. While only

⁵ See: The Fire Industry Council (ed.): *Competitive Analysis - UK Fire Protection Industry*, Kingston upon Thames 1999, p.29.

⁶ Study by RBB Economics, submitted by the parties on 9 Mars 2005, p. 9.

some IFTs in the United Kingdom and the Netherlands are sourcing from non-EEA producers in Turkey or China today (non-EU imports are below 10%), many more have indicated that they intend to do so in the near future. An analysis of the development of imports, based on Eurostat data, has shown that imports from outside the EU have already been increasing significantly in recent years in both countries. The parties themselves have already announced to shift Chubb's CPFE production to China in autumn 2005 and industry participants expect such a trend to prevail increasingly in the near future.

50. The vast majority of third parties expressing concerns about the proposed merger are smaller, non-integrated competitors. Even these complainants have confirmed that prices have been going down in the CPFE market and that imports do play an increasing role on all European markets. In fact, many competitors fear that a production facility in China would allow the parties to reduce their cost base significantly and to offer CPFEs at lower prices in Europe.
51. While most competitors admit that IFTs would still have the choice between a number of potential suppliers in all markets after the merger, many are afraid of the level of vertical integration of Chubb/Kidde, which would become the major producer of fire protection products in Europe. Although the new entity will be able to offer a wide portfolio of different fire protection products after the merger, the results of the market investigation do not suggest that the parties would have an opportunity to use their vertical integration and their wide product portfolio to foreclose the CPFE or any other markets. Refusal to supply or bundling has not been an issue in the investigation, and most competitors seem to be rather concerned about the efficiency brought about by cost reductions rather than about a possible anticompetitive behaviour of the parties.
52. It follows from the above that, even if considering the CPFE market at the national level, there is sufficient actual and potential competition to offset any attempt to use market power by the new entity. Therefore, it cannot be expected that the concentration will significantly impede competition on the CPFE markets in Europe.

3. *Fire fighting agents*

53. The concentration leads also to vertically affected markets in the field of FFAs, because Kidde manufactures FFF, FFP and fire-fighting gas ("FFG") as part of a GFSS. Chubb does not compete with Kidde in the supply of fire-fighting agents. Chubb does, however, source some of its requirements from Kidde for use in its downstream activities.
54. The OFT has recently analysed the FFA markets⁷ and has come to the conclusion that they would remain competitive, mainly with a view to low barriers to entry and to the customers' strong buyer power. The market investigation in this case also shows that competition problems are unlikely to arise from the notified transaction.
55. Kidde holds between [30-40]% (FFP) and [40-50]% (FFF) of the European FFA markets. In both sub-markets, Kidde would still face competition from other large suppliers including Tyco ([20-30]%, FFF), Solberg ([10-20]%, FFF), Ruehl ([10-20]%, FFP) or Caldic ([10-20]%, FFP). Many other smaller and bigger European suppliers

⁷ OFT decision of 15 March 2004 (Kidde / Croda).

(including DuPont) are competing for CPFE customers in the FFA markets. The market share would even be lower ([20-30]%) should a hypothetical market comprising all FFAs be considered.

56. Indeed, FFAs are commodity products, and CPFE producers buy them from a large number of producers in the whole world. Accordingly, the OFT has defined the FFA markets worldwide in scope in its decision. Even if the FFA markets were not worldwide, but European-wide, sufficient alternative European FFA producers (e.g. Tyco, Solberg, Sthamer, Ruehl or Caldic) are able to supply CPFE producers with foam and powder. Indeed, none of the major producers faces capacity constraints and could therefore offer powder and foam of comparable quality and at a comparable price as the parties on short notice.
57. The market investigation has shown that FFA customers have never previously faced problems in the supply of FFAs and are not expecting to face such problems in the future. Producers have confirmed that they are not afraid of losing Chubb as a key customer, since they dispose of a wide customer base and do not depend on one or two key customers. Other acquisitions in the past (e.g. Kidde's acquisition of the German CPFE producer Gloria) had shown that the disappearance of a major customer had only a limited effect on the business of Kidde's FFA competitors, who even claim that they had been able to increase their sales over the past years.
58. Accordingly, Chubb's acquisition of Kidde will not significantly change the competitive situation in the upstream FFA market; neither will it allow the parties to impede competition on downstream CPFE markets.

VI. CONCLUSION

59. 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 (EC) No 139/2004.

For the Commission

Mr J. Barrot (*signed*)
Member of the Commission