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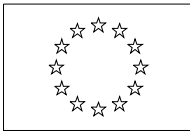
*Case No COMP/ M.3832 –
MatlinPatterson/
Matussière & Forest*

Only the English text is available and authentic.

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

Article 7(3)

Date: 31/05/2005



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.05.2005

SG-Greffe(2005) D/202401

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 7(3) DECISION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the Notifying party:

Dear Sir/Madam,

Subject: Case No COMP/M.3832 – MatlinPatterson/ Matussière & Forest

Request of derogation pursuant to Article 7 (3) of Council Regulation No. 139/2004

1. We refer to your application for a derogation from the suspension obligation provided for in Article 7(1) of Council Regulation (EC) No 139/2004 (“the Merger Regulation”) with regard to the proposed acquisition by MatlinPatterson Global Advisers LLC (“MatlinPatterson”, USA) of sole control of parts of the French undertakings Matussière & Forest SA (“MFSA”) and Papeteries Matussière & Forests (“PMF”) (referred to as the “Matussière Assets”), submitted pursuant to Article 7(3) of the Merger Regulation on 26.05.2005, as well as to the complementary information in form of draft Form CO of 26.05.2005.

I. THE PARTIES AND THE OPERATION

2. MatlinPatterson is an investment fund which invests globally in the discounted securities and obligations of companies in financial difficulties with the objective of acquiring corporate control and subsequently directing the reorganisation process.
3. Matussière Assets comprise the following assets for the manufacturing of publication papers (such as newsprint and magazine paper): (i) four paper mill companies: Papeterie Lancey, Lédar, Turckheim and Voiron, (ii) four companies for the processing and supply of raw materials to these paper mills, namely AVP (purchase of used paper to be recycled), Sofar and Sud-Abies (purchase of wood) and Sorepar (collection and recycling of used paper, and (iii) three trade offices located in Paris (Bureau Commercial), Germany (MFD) and Spain (MFE). Matussière Assets also include two additional companies (MF Expansion which manages MFSA’s companies and Fertisère Company which builds and manages recycling facilities) and the production of a small quantity of electricity through

Meylan 20 and Papeterie Lancey. This electricity is sold in its entirety to EDF in accordance with a 20-year purchase contract signed in 2002.

II. THE APPLICATION FOR DEROGATION

4. On April 30th, 2004, the Court of Commerce of Grenoble placed MFSA's main subsidiary, Papeterie Matussière Forest ("PMF"), which holds a great part of Matussière Assets (Meylan 20 and Papeterie Lancey are also ultimately owned by MFSA but not through PMF), in bankruptcy proceedings. On April 27th, 2005, MatlinPatterson made an offer pursuant to which it proposed to participate in the recapitalization of MFSA and would consequently take control of the Matussière Assets if MFSA were successful in filing a "plan de cession" acquisition with the Court of Commerce of Grenoble covering only the Matussière Assets
5. You have explained that, on May 3rd, 2005, the Board of Directors of MFSA accepted this offer, and that the MatlinPatterson's offer to acquire Matussière Assets will consequently be filed with the Court of Commerce of Grenoble, and will bind MatlinPatterson as from that date. As a result of this definitive judgment, tentatively scheduled for early June, if MatlinPatterson's offer is retained, the company will be bound to acquire sole control over the Matussière Assets through MFSA. .
6. The derogation request also stated that under French Commercial Law, MatlinPatterson's offer would not be considered as serious or valid by the Court of Commerce of Grenoble if the takeover offer is conditional to the person of the purchaser, which would be the case if the offer is conditional upon the approval by the Commission of the Proposed Transaction.
7. Therefore, MatlinPatterson request a derogation pursuant to Article 7 (3) of the Merger Regulation so that its offer is not rejected on the grounds of not being unconditional by the Court of Commerce of Grenoble.
8. MatlinPatterson's application also explains that PMF is in financial difficulty and, according to a note prepared by the auditing company Scacchi & Associés describing the Matussière Group's financial situation, the intervention of a financial investor is urgently required to preserve the assets viability.

III. THE CONDITIONS FOR A DEROGATION PURSUANT TO ARTICLE 7(3) OF THE EC MERGER REGULATION

9. Pursuant to Article 7(1) of the Merger Regulation, a concentration falling under that Regulation shall not be implemented either before its notification or until it has been declared compatible with the common market. Pursuant to Article 7(3) of the Merger Regulation, the Commission may, on reasoned request, grant a derogation from the obligation imposed in Article 7(1). In deciding on the request, the Commission must take into account, *inter alia*, the effects of the suspension on one or more undertakings concerned by the concentration or on a third party and the threat to competition posed by the concentration.

A. THE OPERATION FALLS UNDER THE SUSPENSION OBLIGATION PURSUANT TO ARTICLE 7(1) OF THE EC MERGER REGULATION

10. The operation consists in the acquisition of sole control by MatlinPatterson of the Matussière Assets.
11. It has a Community dimension. In 2004, MatlinPatterson had a world-wide turnover of EUR [...] million and an EU-wide turnover of EUR [...] million, and Matussière Assets had a world-wide turnover of EUR [...] million and an EU-wide turnover of EUR [...] million. The undertakings concerned did not achieve more than two thirds of their EU-wide turnover within one and the same Member State.
12. On that basis, the operation falls under the suspension obligation laid down in Art. 7(1) of the Merger Regulation.

B. THE EFFECTS OF THE SUSPENSION ON THE UNDERTAKINGS CONCERNED AND ON THIRD PARTIES

13. As stated in MatlinPatterson's application, the suspension of the operation could imply that MatlinPatterson's offer on Matussière Assets will be rejected by the Court of Commerce on the grounds of it being conditional on the approval of the transaction by the Commission.
14. According to the application, a derogation from the suspension obligation would not have adverse effects on one or more of the parties or on any third party.

C. THE THREAT TO COMPETITION POSED BY THE CONCENTRATION

15. According to MatlinPatterson, none of its portfolio companies is active in the paper industry. The proposed transaction will not lead to any increase in market share in any market or to any vertical or conglomerate effects.

With respect to Matussière Assets' activities in the electricity sector, its production is negligible (<1% of the French market) and, although some of MatlinPatterson's portfolio companies are active in the energy sector, these activities are carried out outside France, and therefore do not give rise to any kind of competition concern.

16. Therefore, according to the information currently available to the Commission, the operation does not seem to give rise to a threat to competition.

D. BALANCE OF INTERESTS

17. Based on the above, it appears that whilst the suspension obligation could seriously affect the financial interests of both MatlinPatterson and the Matussière Assets, no threat to competition caused by the operation can currently be identified, and a derogation does not appear to have adverse effects on one or more of the parties or on any third party. Therefore the Commission finds that a derogation can be granted in accordance with the application and to the extent requested.

IV. CONDITIONS AND OBLIGATIONS

18. According to Article 7(3), 3rd sentence, of the Merger Regulation, the derogation may be made subject to conditions and obligations.
19. The derogation is made subject to the condition that MatlinPatterson does not exercise any voting or other shareholder rights attached to the acquired shares for any purpose other than those mentioned in the request prior to the operation being declared compatible with the common market by the Commission.

V. CONCLUSION

20. Based on the above considerations, the Commission has decided, by way of a derogation from the obligation imposed by Article 7(1) of the Merger Regulation, to authorise MatlinPatterson to acquire sole control in the Matussière Assets as set out above, under the conditions presented in the offer letter sent by MatlinPatterson and dated April 27th, 2005.
21. The derogation is subject to the condition that MatlinPatterson does not exercise any voting or other shareholder rights for any purpose other than those mentioned in the request until the operation has been declared compatible with the common market.
22. This decision is adopted in application of Article 7(3) of the EC Merger Regulation.

For the Commission
(signed)
Neelie KROES
Member of the Commission