

***Case No COMP/M.3930 -
LBO /
WHEELABRATOR
ALLEVARD***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 29/09/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29/09/2005
SG-Greffe(2005) 205256

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

PUBLIC VERSION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.3930 –LBO / WHEELABRATOR ALLEVARD
Notification of 25.08.2005 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 25.08.2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of the EC Merger Regulation by which the undertaking WHA Holding SAS, controlled by LBO France Gestion (“LBO”), acquires within the meaning of Article 3(1)(b) of the EC Merger Regulation control of the whole of the undertaking Wheelabrator Allevard SA (“WHA”) by way of purchase of shares.
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. **LBO** is a French investment company, which manages a number of investment funds that are involved in small-cap or mid-cap acquisitions. It focuses on leverage buy-outs and has interests in a broad range of businesses in different sectors.

¹ OJ L 24, 29.1.2004 p. 1.

4. **WHA**, a French Société Anonyme, produces metallic abrasives and diamond tools. It has operations in the EU, North and South America, South Africa and Asia. Prior to the proposed concentration it is controlled by Wendel Investissement.

II. THE OPERATION

5. The transaction involves the proposed acquisition of 95.5% of the shares of WHA by WHA Holding SAS, controlled by LBO. WHA Holding SAS will acquire these shares from Wendel Investissement. WHA Holding SAS will also purchase a call option, to acquire a further 4.5% of the shares in WHA from WA Invest, approximately 98.9% of whose shares are owned by Wendel Investissement.

III. CONCENTRATION

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

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2.5 billion² (LBO € [...million], WHA € [...million] in 2004) and the aggregate Community-wide turnover of both concerned parties is more than EUR 100 million (LBO € [...million], WHA € [...million] in 2004). In the following Member States the combined aggregate turnover of all the undertakings concerned is more than € 100 million as well as the aggregate turnover of each is more than EUR 25 million: France (LBO € [...million], WHA € [...million] in 2004), Italy (LBO € [...million], WHA € [...million] in 2004), Germany (LBO € [...million], WHA € [...million] in 2004) and Spain (LBO € [...million], WHA € [...million] in 2004). LBO and WHA do not both achieve more than two thirds of their Community-wide turnover in one and the same Member State The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

A. Relevant product markets

Metallic Abrasives

8. Metallic abrasives are shots and grits of various sizes made from steel or cast iron. They are produced by melting scrap metal and alloys, atomising the molten metal and sorting the resulting granules into round abrasives (shots) and angular abrasives (grits), both of which are then heat-treated (and, in the case of grits, crushed) before screening and packaging. Metallic abrasives are (i) blasted on to metal to sand, clean, prepare and harden surfaces or (ii) mixed with lime and water and used as gang saw teeth to cut blocks of granite into fine slabs. They are used in the quarrying/cutting, automotive, construction, equipment goods, and transportation industries.

² The 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.

9. The parties consider that the definition of the relevant product market should comprise all metallic abrasives since they are relatively homogeneous products. Although angular abrasives have greater force than round abrasives and tend to be used for cutting hard stone, mainly granite, and round abrasives tend to be used for cleaning and tempering surfaces, the parties argue that there is a very high degree of supply-side substitutability between the two types, since, with the exception of crushing, both undergo the same production process.
10. If the supply of metallic abrasives were to be further segmented, the parties propose a separation between metallic abrasives used in the quarrying/stonecutting industries (in which only grits are used) and the ones used in other industries for different applications.
11. In the present case the question on whether all metallic abrasives constitute a relevant market or should be divided into different application groups can be left open, since the transaction does not raise competition concerns on any of the alternative market definitions considered above.

Diamond tools

12. Diamond tools can be divided into (i) diamond wires and discs used for the extraction and primary cutting of marble and granite, and (ii) diamond discs, saws and special tools used for the secondary cutting milling, grinding and polishing of marble and granite. Diamond cutting tools can be used to dry-cut or wet-cut materials for the construction industry and in civil engineering projects. They are also used by sawing and drilling specialists, fire materials producers, reinforced concrete manufacturers, reinforced pipe producers and construction and refitting professionals.
13. The production of diamond tools involves the manufacture and fixing of abrasive segments on to supports or "cores", which are normally discs, wheels and wires. Synthetic diamonds are distributed evenly through a blend of metallic powders and binder products, and the mixture is solidified by being compressed at very high temperatures. The solidified segment is then soldered on to the core. Segments wear out with use (although diamond-based segments are much harder-wearing than other abrasive segments) and need to be replaced regularly.
14. The parties submit that diamond tools constitute the relevant product market. They refer to Case No IV/M.774 – Saint Gobain/Wacker-Chemie/NOM, where the Commission found that abrasive segments made with synthetic diamonds were likely to be in a separate market from those made with silicon carbide (SiC).
15. In the present case the definition question on whether diamond tools constitute the relevant market or should be divided into different application groups can be left open, since the transaction will not raise competition concerns on any of the alternative market definitions considered above.

B. Relevant geographic markets

Metallic Abrasives

16. As to the geographic market for metallic abrasives, the parties propose that it is at least EEA-wide, if not worldwide, since buyers of metallic abrasives source their purchases on a worldwide basis and suppliers supply on a worldwide basis.

17. According to the parties, metallic abrasives can be transported long distances. The cost of transporting one metric tonne over 1,000 kilometres, in proportion to the average sales price for metallic abrasives in 2004, amount to around [5% – 10%].

Diamond tools

18. According to the parties the geographic market for diamond tools is at least EEA-wide. They refer to Case No IV/M.774 – Saint Gobain/Wacker-Chemie/NOM, in which it is stated that the geographic market for SiC-bound abrasives was likely to be EEA-wide. The parties submit that diamond tools are transported over long distances and at freight costs similar to those of metallic abrasives. The geographic scope of the diamond tools market might therefore even be wider than the EEA.
19. The definition of the geographic market for the relevant product market, can be left open, since the transaction will not raise competition concerns on any of the alternative geographical market definitions considered above.

C. Competitive Assessment

20. LBO neither produces metallic abrasives nor diamond tools. The concentration therefore does not lead to horizontally affected markets. As shown below, also the vertical integration is insignificant and does not impede effective competition.

Metallic abrasives

21. In an overall EEA-wide market for metallic abrasives, WHA's volume-based market share is approximately [50% – 60%], and its value-based market share is [50% - 60%]. On a world-wide level, the company's volume-based sales correspond to [40% - 50%], and its value-based sales to [40% - 50%] of all sales. In France, WHA's volume-based market share is approximately [60%-80%] and its value-based market share [60% - 80%].
22. On the basis of a further segmentation of the metallic abrasives market in quarrying/stonecutting industries and other industries, WHA's 2004 market shares were [60% - 70%] in the EEA and [50% - 60%] world-wide. In the segment of other industries, the company's shares on an EEA-level were [50% - 60%] and [40% -50%] worldwide.
23. LBO recently acquired Rocamat, a French company that uses metallic abrasives and diamond tools in its downstream activities of quarrying and stone-cutting. Rocamat's purchases of metallic abrasives (grits only) accounted for less than 1% of total grits purchased in France. Considering this very minor vertical relationship between the parties' activities the transaction does not give rise to any competition concerns in the field of metallic abrasives, on any possible product and geographic market definition.

Diamond tools

24. WHA's sales of diamond tools represented approximately [0% - 5%] of world-wide sales, [5% - 10%] of EEA-wide sales and [15% - 20%] of French sales in 2004. Rocamat's 2004 purchases of diamond tools corresponded to around [< 1%] of all EEA-level sales, and [< 1%] of French sales. Considering the market shares and the very minor vertical relationship between the parties' activities, the transaction does not

give rise to any competition concerns in the field of diamond tools, on any possible product and geographic market definition.

VI. CONCLUSION

24. 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,
signed,
Neelie KROES
Member of the Commission