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Case No COMP/M.4850 - CVC / DSI

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 25/09/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.4850 - CVC/ DSI
Notification of 21.08.2007 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 21.08.2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking MFG Holding (Deutschland) GmbH ("MFG", Germany) controlled by CVC Capital Partners Group Sarl ("CVC", Luxemburg), acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking DSI Holding GmbH ("DSI", Germany) 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 the Merger Regulation and does not significantly impede effective competition in the common market or in a substantial part of it.

I. THE PARTIES AND THE CONCENTRATION

3. MFG is a company controlled by CVC Capital Partners ("CVC"). CVC consists of privately owned advisory entities whose activity is providing investment advice to and/or managing investments on behalf of investment funds.

1 OJ L 24, 29.1.2004 p. 1.

4. DSI Group is active upstream the construction and mining industries. The company develops, manufactures and supplies individual components and integrated systems based on tensioning technology for a variety of applications in the construction and mining area.

5. The proposed transaction concerns the acquisition by MFG of all outstanding shares in DSI. After completion of the transaction CVC ultimately will have sole control over DSI. The notified operation constitutes therefore a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

II. COMMUNITY DIMENSION

6. The transaction has a Community dimension, since it satisfies the thresholds of Article 1(3) of the ECMR.[2] The parties have a combined worldwide turnover of more than EUR 2.5 billion[3]. In each of at least three Member States, the combined aggregate turnover of both undertakings concerned is more than EUR 100 million[4]. In each of at least three Member States, the aggregate turnover of each of the undertakings concerned is more than EUR 25 million[5]. The aggregate Community-wide turnover of each of the undertakings concerned is more than EUR 100 million[6]. Neither company achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.

III. RELEVANT PRODUCT MARKET

Upstream markets

7. In past merger decisions, there is only one precedent, RAG/Degussa[7] that touched on products used in somewhat similar applications as some of DSI Group's products, namely resin-based injection materials and PU foam-based systems. These products are used in mining, tunnelling and other underground construction applications to stabilize rock and soil and to seal gaps against gas leaks and water outflows (as well as in the building construction market for repairing concrete). The Commission did not make a final determination of the relevant product markets in that case.

8. The parties submit that, for the purpose of this transaction where the vertical relations are examined, the most appropriate relevant product market should be defined on the basis of the DSI Group's internal product categorization. Although this portfolio, as well as each of the five internally created sub-divisions, comprises a large variety of products (and related services), the parties do not consider it appropriate to assume overly narrow product markets for small numbers of (or even individual) components. Instead, the parties suggest starting from the different application areas and grouping together those components and integrated systems that serve the same type of end uses. The parties in RAG/Degussa

2 […].

3 CVC EUR […] billion; DSI EUR […] billion

4 […]

5 […]

6 CVC is EUR […] million and DSI is EUR […] million

7 Case COMP/M.2854, *RAG/Degussa*, Decision of November 18, 2002, paras. 23-25.

apparently took the same approach by combining different products used for the same stabilization and sealing purposes.

9. Therefore, the parties propose to define relevant product markets as follows: (i) Post-tensioning – range of products used to retain tension in a wide range of concrete structures, such as bridges, tanks or high-rise buildings; (ii) Geotechnical tensioning – group of products used for the fixation of structures and stabilization of the ground; (iii) Concrete accessories – a range of products serving as fixation and stabilization elements in concrete walls and floors; (iv) Roof support systems for mining applications; (v) Roof support systems for tunnelling applications. In any case, the market definitions for the products concerned can be left open as the transaction would not result in competition concerns irrespective of market definition.

Downstream markets

10. In the downstream area of the construction industry, the Commission's decision practice distinguishes between two distinct product markets for building construction and infrastructure construction, possibly with a further sub-segmentation of both markets based on project size in value (this question can be left open for purposes of assessing the transaction)[8]. According to these precedents those two markets differ in terms of required skills, personnel, machinery and other equipment. In any case, the market definitions for the construction can be left open as the transaction would not result in competition concerns irrespective of market definition.

IV. Relevant geographic market

Upstream market

11. In RAG/Degussa, the only precedent at the EU level with some relevance for the upstream products at issue, the parties had suggested that the market for resin-based injection materials and PU foam-based systems is at least EEA-wide. As main reasons, they referred to "the non-existence of any regulatory restrictions, the homogeneity of the products and their relatively low transport costs." The Commission did not have to take a definite position in that case.

12. The parties submit that the arguments put forward in RAG/Degussa, reinforced by the evidence of significant amounts of cross-border trade within the EEA, also apply to the upstream markets concerned by the transaction. The parties submit that the markets concerned by this transaction should therefore also be considered to be at least EEA-wide, if not world-wide. However for the sake of completeness the parties also provide the market shares on the national basis, which is the narrowest market definition - for the Netherlands where the downstream building company has its most significant activities.

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[8] Case COMP/M.3864, *FIMAG/Züblin*, Decision of October 14, 2005, para. 10; Case COMP/M.3754, *STRABAG/Dywidag*, Decision of June 23, 2005, para. 12; Case IV/M.1157, *Skanska/Scancem*, Decision of November 11, 1998, para. 52; Case IV/M.1670, *GERIL/FCC Construction/ENGIL*, Decision of September 10, 1999, para. 18; Case IV/M.874, *AMEC/Financière SPIE Batignolles/SPIE Batignolles*, Decision of February 6, 1997, para. 15; Case IV/M.873, *Bank Austria/Creditanstalt*, Decision of March 11, 1997, para. 74.

Downstream markets

13. In past cases the Commission has tended to find the markets for building construction to be national in scope[9]. As main reasons, the Commission cited necessary proximity to the customer/construction site, knowledge of local conditions, language barriers, different regulations and transportation costs for the building materials.

14. Also with regard to the market for infrastructure construction, the Commission generally tended towards the assumption of national markets, relying on the same arguments as outlined above for the building construction market. However, in the two most recent of the relevant decisions, FIMAG/Züblin and STRABAG/Dywidag, the Commission stated that it may be more appropriate to confine this narrow approach to the sub-segment for road construction and to assume a Europe-wide dimension of the sub-segments for bridge construction, tunnel construction and other infrastructure construction projects.

15. In any case for the purposes of the present case, the question of the geographic market definition can be left open since – as will be shown below, the transaction does not raise any competitive concerns even if the infrastructure construction market is still considered to be only of national dimension.

V. Competition assessment

16. The transaction does not give rise to any horizontal overlap as neither CVC nor its portfolio companies have any presence in the markets in which the DSI Group is active. The transaction gives rise to vertical relationships between the parties' activities, which stem from the activities of the Dutch company Koninklijke Volker Wessels Stevin N.V. ("Volker Wessels"), a recently acquired portfolio company of CVC, active in the downstream markets for building construction and infrastructure construction[10].

17. DSI's market share is higher than 25% in the markets for post-tensioning ([30-40]% if defined to be EEA-wide and [50-60]% in Netherlands if defined to be national[11]) and geotechnical tensioning ([30-40]% in the EEA and [20-30]% in the Netherlands). Volker Wessels' market share never exceeds 25% regardless how narrowly the markets for building construction and infrastructure construction would be defined, even on a national basis (the Netherlands, where it has its main activities).

18. Given that both product markets where the DSI Group's EEA-wide market shares in 2006 exceeded the relevant 25% threshold are at the upstream level, the only concern that might theoretically arise is one of input foreclosure.

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9 Case COMP/M.3864, *FIMAG/Züblin*, Decision of October 14, 2005, para. 13; Case COMP/M.3754, *STRABAG/Dywidag*, Decision of June 23, 2005, para. 15; Case IV/M.1670, *GERIL/FCC Construction/ENGIL*, Decision of September 10, 1999, para. 18; Case IV/M.1157, *Skanska/Scancem*, Decision of November 11, 1998, paras. 60-61 (hinting at a possible narrower market delineation for small-size projects); Case IV/M.874, *AMEC/Financière SPIE Batignolles/SPIE Batignolles*, Decision of February 6, 1997, para. 17 (left open in the end); Case IV/M.873, *Bank Austria/Creditanstalt*, Decision of March 11, 1997, para. 84.

10 Case COMP/M.4643, *CVC/Victor Rijssen/Volker Wessels*, Decision of May 14, 2007

11 Only Netherlands could be a nationally affected market, as the downstream company Volker Wessels only has any meaningful market share in this country.

19. The analysis carried out by the Commission points to the conclusion that the merged entity would have no ability and no incentive to engage in an input foreclosure strategy neither in the EEA nor in the Netherlands.

20. The DSI Group faces a number of strong, multi-national players on the EEA level in both post-tensioning and geotechnical tensioning products, in particular: Freyssinet (a world largest tensioning company) with [20-30]% market share in post- tensioning and [0-10]% in geotechnical tensioning, VSL International ([10-20]% in post-tensioning and [0-10]% in geotechnical), Alga ([5-10]% in post- tensioning) and Ischebeck (Germany) having [20-30]% market share in geotechnical tensioning products in the EEA.

21. Also in the Netherlands there will remain competition from multi-nationals and regional players. In post-tensioning the main remaining competitors are: Spanstaal ([10-20]%), Freyssinet [5-15]%, VSL International ([0-10]%), Tensa ([0-10]%) and CCL ([0-10]%). It must be also noted that the DSI Group's share of sales in the Netherlands was higher in 2006 due to an unusual number of major infrastructure projects. Over the five years 2002-2006, DSI Group's average share of sales in the Netherlands amounted to [30-40]%. In geotechnical tensioning a market leader in the Netherlands is Van Leeuwen Verankeringen with [35-45]%, and other large players are: De Vries Werkendam, Bauer and Franki, all three with market share around [10-20]%. These competitors appear to be well-positioned to react quickly and effectively to any input foreclosure strategy by the merged entity post-transaction by increasing their supplies to downstream building companies. Most of the respondents to the market investigation considered it unlikely that post-transaction their relationship with DSI would deteriorate and that DSI would risk the deterioration of its position on the Dutch tensioning products market by engaging in more advantageous treatment of Volker Wessels.

22. The merged entity would not have the incentive to adopt input foreclosure as this strategy is unlikely to be profitable in the long run. The margins in the upstream business are generally higher (EBIT in the range of […]%) than in the downstream business (EBIT […]%), therefore it would be a risky decision to CVC to adopt a long term strategy compromising the profitability of the high margin business to increase sales in the low margin business. Moreover, CVC intends to keep the two businesses as completely separate entities, each focused on maximising its own profitability.

23. In view of the above, the Commission concludes that the vertical relationship resulting from this transaction would not raise serious doubts as to its compatibility with the common market.

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