

***Case No COMP/M.5012 -
3M / AEARO***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/03/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28/03/2008
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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.5012 – 3M / AEARO
Notification of 19.02.2008 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 19/02/2008, the Commission received a notification of a proposed concentration pursuant to Article 4(1) and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 by which the undertaking 3M Company ("3M", USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of Aero Holding Corporation ("AEARO", USA) 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 raise any serious doubts as to its compatibility with the common market and the EEA Agreement.

I. THE PARTIES

3. 3M is a diversified technology company active in six major business areas: (i) industrial and transportation, (ii) electronic and communications, (iii) health care, (iv) consumer and office, (v) display and graphics, and (vi) safety, security and protection services.
4. AEARO is a manufacturer and supplier of personal protective equipment ("PPE") like hearing protection, protective eyewear, face shields, hard hats, respiratory protection, protective clothing and fall protection. In addition, it is also a supplier of speciality composites, in particular thermal acoustic systems

¹ OJ L 24, 29.1.2004 p. 1.

II. THE OPERATION AND THE CONCENTRATION

5. On 14 November 2007, 3M agreed to acquire the entire share capital of AEARO. The transaction therefore constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The notified concentration does not have a Community dimension within the meaning of Article 1 of the EC Merger Regulation. However, on 4 January 2008, the notifying party informed the Commission in a reasoned submission pursuant to Article 4(5) of the EC Merger that the concentration was capable of being reviewed under the national competition laws of at least three Member States, namely Austria, Germany, Greece, Portugal, Spain, Sweden and the UK and requested the Commission to examine it. None of the Member States competent to examine the concentration indicated its disagreement with the request for referral within the period laid down by the Merger Regulation.
7. Therefore the concentration is deemed to have a Community dimension pursuant to Article 4(5) of the EC Merger Regulation.

IV. COMPETITIVE ASSESSMENT

8. According to the parties, this transaction primarily concerns the Personal protective equipment ("PPE") industry. PPE is designed to protect users from injuries or illnesses resulting from contact with radiological, chemical, physical, mechanical, electrical or other hazards. It includes a variety of products, such as hearing protection, protective footwear, protective gloves, and protective clothing. Within the PPE segment in the EEA 3M's and AEARO's activities overlap in the supply of hearing protection devices as well as in head, eye, and face protection equipment.

1. Relevant product markets

Hearing Protection Devices

9. The parties have submitted that hearing protection is designed to protect the wearer from outside noise by acting as a physical acoustic barrier or seal to help reduce sound levels entering the ear. This ability of hearing protection is captured by its noise reduction (or attenuation) capability. It informs customers or end-users to choose appropriate products.
10. Protection may come in the form of earplugs or earmuffs, may be disposable or reusable, and may be equipped with additional electronic features (e.g. radio, communication devices). All these devices – according to the notifying party - cover the complete range of noise attenuation capabilities.
11. Within hearing protection the parties distinguish between products which are solely designed to protect the wearer from outside noise ("passive hearing protection products") and those which protect, but in addition are equipped with an electronic unit for communication or entertainment ("active hearing protection").
12. In absence of any Commission precedent for this type of product the parties propose as the relevant market the market for hearing protection products. They argue that all hearing protection products serve the same noise attenuating function and can therefore be

substituted against each other by the final consumer. Form and additional functions are only secondary product characteristics serving as an incentive to wear the product.

13. The market investigation in the present case did not confirm the proposed delineation of the notifying party. While respondents agreed that all hearing protection devices have in general the same noise reduction capability, a vast majority of customer as well as competitors put forward in their replies that there is no or only limited demand or supply-side substitutability between active and passive hearing products.
14. Customers indicated that they would use an active hearing protection device only if the working environment requires the need of communication. When just hearing protection is of importance, passive products are considered to be sufficient. In addition, active products are much more expensive (by factor ten or more) than passive ones.
15. Producers of hearing protection devices broadly confirmed that according to their experience active and passive hearing protection devices are used by customers in different working environments. Moreover, competitors who replied to the investigation informed the Commission that active and passive hearing devices are produced on equipment which is based on different technologies. In addition, the market investigation confirmed that not all producers of passive hearing protection products are supplying active ones as well.
16. The Commission's market test gave no further indications for segmentation within passive hearing protection products into earplugs and earmuffs, or reusable or disposable earplugs.
17. Based on the results of the investigation and for the purpose of the present case, the relevant product markets are the market for active hearing protection products and the market for passive hearing protection products.

Head, Eye and Face Protection

18. Head, eye and face protection is used to protect the user against overhead hazards or from potentially toxic, corrosive, or infectious material. Head protection usually covers safety helmets, while face protection includes products such as medical visors, face shields, or metal mesh visors. Head and face protection according to the notifying party is often sold together. Eye protection includes a variety of lens types, in particular safety spectacles and goggles. All these products are used in a variety of industries e.g. construction, engineering and manufacturing, oil, gas as well as emergency services.
19. The parties consider that it is not necessary to distinguish between head, eye and face protection equipment, as many products will provide similar functionalities and are often sold together.
20. Ultimately, the question of whether the relevant product market is the market for head, eye and face protection or should be differentiated by type of protection device can be left open, since the planned operation does not give rise to competition concerns whatever the market definition applied.

2. Relevant geographic markets

21. The parties to the transaction submit that the relevant geographic market for hearing protection as well as for head, eye and face protection should be considered to be EEA-

wide for several reasons: Firstly, there are EEA-wide regulatory standards set by the EC Directives on PPE and workplace safety.² Secondly, there are no barriers to trade within the EEA and transport costs account for less than [0-5%] of the sales price of the respective product. Trade flows between Member States are considerable. Thirdly, prices do not differ between Member States and finally, suppliers are serving the whole of the EEA using one or a few sales hubs within the EEA.

22. A majority of customers confirmed that the most important suppliers like 3M, AEARO, Sperian, Moldex, MSA Sordin or Uvex are present across various Member States, while smaller competitors accounting for roughly [25-35%] on EEA-level tend to have a more regional/national focus.
23. In addition, several customers explained that prices would differ across Member States and that suppliers often apply national or regional price lists. Moreover, a majority of respondents stressed the importance of a local sales force and marketing. At the same time however a significant number of respondents told the Commission that they have one contract with suppliers covering several countries (“multiframework agreements”) based on a European price list.
24. In any event, the question whether the relevant geographic market for hearing protection devices as well as for head, eye and face protection is EEA-wide or national can be left open as the planned operation does not give rise to competition concerns whatever the market definition applied.

3. Competitive assessment

25. The parties have submitted market shares for the market for active hearing protection as well as for passive hearing protection. According to this information – which was broadly confirmed by the market investigation – the proposed transaction will allow the merging parties to become the market leader for active as well as passive hearing protection products with a combined market share of [20-30%] (active) and of [30-40%] (passive) on an EEA-wide market.

Active Hearing Protection

26. In active hearing protection products the combined entity and Racal will on the EEA level both have a market share of [20-30 %], followed by CeoTronics, David Clarke, and MSA Sordin with market shares between [0-10%].

² Directive 89/686/EEC of December 21, 1989, on the approximation of the laws of the Member States relating to personal protective equipment; Directive 2003/10/EC of February 6, 2003, on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise).

Shares of sales of the Parties and their major competitors in active hearing protection in the EEA in 2006							
	3M	Aearo	Racal	Ceo Tronics	David Clarke	MSA Sordin	Elno
Active hearing protection	[<5%]	[20-30 %]	[20-30%]	[5-15%]	[5-15%]	[0-10%]	[0-10%]

Table 1: Shares of Sale Active Hearing Protection. Source: Form CO.

27. Since 3M hardly supplies any active hearing devices – [...] – the increment in sales shares on an EEA-wide or national market will be minimal, as 3M accounts for less than [0-5%] of the EEA-wide active hearing sales. In addition, a vast majority of customers does not perceive 3M to be active in this market. The picture is not different if national markets for active hearing production devices would be considered.
28. Given the minimal overlap as well as the presence of several strong suppliers, the Commission concluded that the proposed concentration does not raise any concerns on the market for active hearing protection products.

Passive Hearing Protection

29. For passive hearing protection products, the parties would be the market leader with a combined share of [30-40%] (AEARO [25-35%], 3M [0-10%]) in the EEA. Other market participants are Sperian Protection ([15-25%]), Moldex ([0-10%]), Cotral ([0-10%]), Elcea ([0-10%]), MSA Sordin ([0-10%]), Uvex ([<5%]), North Safety ([<5%]), and a large number of medium sized or smaller competitors (combined share of [15-25%]).

Shares of sales of the Parties and their major competitors in passive hearing protection in the EEA in 2006									
	3M	Aearo	Sperian	Moldex	Cotral	Elcea	MSA Sordin	Uvex	North Safety
Passive hearing protection	[0-10%]	[25-35%]	[15-25%]	[0-10%]	[0-10%]	[0-10%]	[0-10%]	[<5%]	[<5%]

Table 2: Shares of Sale Passive Hearing Protection. Source: Form CO.

30. At national level, the combined market shares of the parties would exceed 25 % and lead to an increment of more than 5 % in the following ones: Austria ([20-30%]), Bulgaria ([25-35%]), the Czech Republic ([20-30%]), Denmark ([45-55%]), Estonia ([35-45%]), Finland ([40-50%]), Hungary ([25-35%]), Italy ([40-50%]), Poland ([30-40%]), Portugal ([35-45%]), Romania ([20-30%]), Spain ([40-50%]), Iceland ([30-40%]) and Norway ([40-50%]).
31. Some customers – in particular from the Nordic countries – raised some concerns. They pointed to the strong combined market position, while competitors hinted that the combined entity would achieve an advantage as it were in a position to offer a portfolio of different branded products in PPE to customers.
32. Despite the high market shares in the above mentioned Member States the combined entity will face several competitors like Sperian, MSA Sordin, Moldex, North and

Cotral. Most of them confirmed in the market investigation, that they could easily extend their capacity in case of additional demand by simply adding extra shifts.

33. The market investigation also indicated that Aearo and 3M are not perceived to be the closest competitors. A significant number of respondents argued that Sperian Protection is the closest competitor to Aearo. This also corresponds to Sperian's strong market position, being the second largest player on a EEA-wide basis for passive hearing protection.
34. In addition, customers also indicated that regional producers have started to expand their geographic coverage into neighbouring countries. One example is the company Johnson Safety Products, expanding from the UK, which has opened a sales office in France in 2006 and has a distribution agreement with the French company Delta Plus active among others in Spain and Italy. The Finnish company Silenta, who has been manufacturing active and passive hearing protection devices for over 40 years, now exports the vast majority of its production. The Swedish supplier Hellberg Safety has developed distribution channels in the UK and more recently in new EU Member States (Bulgaria, Latvia and Poland).
35. Furthermore, hearing protection products are predominantly distributed via distributors who mostly multisource products from various suppliers, and which can facilitate the expansion of the parties' competitors. The market leader Aearo does not have sales offices in all European countries (only in France, Germany, Italy, Spain, Norway, Sweden and the UK) and it serves other Member states from these offices or employs local representatives. There are no regulatory barriers to expand in neighbouring markets. Customers across the EEA can rely on the compliance of all marketed hearing protection devices with European standards. Transport costs are low and there are no particular logistic challenges for distribution of hearing protection devices.
36. Moreover, suppliers active in neighbouring product markets are able to expand into hearing protection. Uvex started as a manufacturer of protective eyewear and later started expanding its activity into hearing protection. It originally outsourced the production and later started developing its own branded line of products and it lately acquired in 2007 a majority in SwedeSafe, a producer of passive hearing protection products.
37. While the share of private label products is currently around [0-5%], some customers and competitors expect a growing importance of these products and further imports and new entry from Asia like Pan Taiwan Enterprise and Special Thing (HK). Although the quantities are still low, they exert competitive pressure on the existing suppliers in the market.
38. With respect to the portfolio argument it should be noted that a significant number of customers informed the Commission in the market investigation, that they normally source each PPE product separately and that the overall product portfolio would not be of importance. Even if the variety of products were a decisive factor, the merging parties would not have post-transaction a broader PPE portfolio compared to their competitors. Sperian, Delta, North Safety, Uvex, MSA and Johnson have a larger or identical range (see table below).

Overview of activities of the major PPE suppliers in the EEA							
Company	Hearing	Head, Eye and Face	Respiratory	Protective Clothing	Protective Footwear	Protective Gloves	Fall Protection
3M	X	X	X	X			
Aearo	X	X					
Sperian Protection	X	X	X	X	X	X	X
Delta Plus	X	X	X	X	X	X	X
North Safety	X	X	X	X	X	X	
Uvex	X	X		X	X	X	
MSA	X	X	X	X			
JSP	X	X	X	X			
Tyco/Scott	X	X	X				
Dräger		X	X	X			
Moldex	X		X				
Hellberg	X	X					
Schuberth Helme		X					
Bollé		X					

Table 3: Overview of product portfolio in PPE – Source: Form CO.

39. Based on the above, the Commission has concluded that the proposed transaction is unlikely to give rise to competition concerns on any market for the passive hearing protection products.

Head, Eye and Face Protection

40. The parties submit that their sales shares in head, eye and face protection products in the EEA in 2006 amounted to approximately [5-15%], with 3M accounting for approximately [0-5%] and Aearo for approximately [5-15%]. On a national level the combined market shares of the parties exceed 15 % in Denmark ([20-30%]), Finland ([25-35%]), Sweden ([15-25%]), Iceland ([15-25%]) and Norway ([20-30%]).

41. The parties' combined sales shares in the sub segment head and face protection products in the EEA in 2006 amounted to approximately [5-15%] (3M [0-5%] and Aearo [5-15%]). On a national level the combined sales shares of the Parties exceed 15 % in Denmark ([25-35%]), Finland ([25-35%]), Sweden ([25-35%]), Iceland ([25-35%]) and Norway ([20-30%]).

42. The Parties' combined sales shares in the smallest sub segment eye protection products amount to approximately [5-15%] (3M [0-5%] and Aearo [0-10%]). On a national level the combined sales shares of the Parties only exceed 25 % in Iceland ([20-30%]).

43. In all potential relevant product markets the combined entity would not become the market leader and would face several competitors of similar or larger size. Therefore the Commission has concluded that it is unlikely that the proposed transaction gives rise to competition concerns on any market in the head, eye and face protection segment.

V. CONCLUSION

44. 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