

EN

***Case No COMP/M.6146
– XELLA/ H+H***

Only the German text is authentic.

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

Article 4(4)
Date: 01/03/2011



EUROPEAN COMMISSION

Brussels, 1.3.2011
SG-Greffe(2010) D/ 3226, 3227
C(2011) 1524 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 4(4) DECISION

To the notifying party:
To the Bundeskartellamt:

Dear Sir/Madam,

Subject: Case No COMP/M.6146 – XELLA/ H+H
Reasoned submission pursuant to Article 4(4) of Regulation No 139/2004¹
for referral of the case to Germany.

Date of filing: 25.01.2011

Legal deadline for response of Member States: 15.02.2011

Legal deadline for the Commission decision under Article 4(4): 01.03.2011

I. INTRODUCTION

1. On 25.01.2011, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the transaction cited above. The parties request the operation to be examined, as regards the German part of the transaction, by the competent authorities of Germany.
2. According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

where the concentration may significantly affect competition and which present all the characteristics of a distinct market.

3. A copy of this Reasoned Submission was transmitted to all Member States on 25.01.2011.
4. By letter of 14.02.2011 the Federal Cartel Office (Bundeskartellamt, hereinafter "FCO"), as the competent authority of Germany, informed the Commission that Germany agrees with the proposed referral.

II. THE PARTIES

5. Xella International Holdings S.à.r.l. ("Xella") is a holding company jointly controlled by private funds belonging to the Goldman Sachs Group, Inc. ("Goldman Sachs"), and PAI Partners S.A.S. ("PAI"). Xella is a diversified building materials group, organized around three business units: (i) Building Materials, which includes inter alia wall-building applications, aerated concrete wall units and insulation materials; (ii) Dry Lining Systems, active within the manufacture and supply of, mainly, gypsum fibre boards and, to a more limited extent, cement bonded boards; and (iii) Raw Materials, which produces burnt lime and limestone.
6. H+H international A/S ("H+H") is a public company incorporated in Denmark and listed on the Danish Stock Exchange. H+H manufactures and supplies aerated concrete blocks essentially for wall-building applications, and, to a more limited extent, aerated concrete wall units for industrial building projects. It also distributes dry mortar and small building tools (such as mortar sledges) produced by third parties.

III. THE OPERATION AND CONCENTRATION

7. On 14 January 2011, Xella publicly announced that it intends to acquire the majority of H+H's shares through a public bid. Therefore, the transaction in question involves the acquisition of sole control by Xella over H+H through a public bid, pursuant to Article 4(1), subparagraph 2, of the Merger Regulation. Thus, it amounts to a concentration within the meaning of Article 3(1) of the Merger Regulation.

IV. EU DIMENSION

8. The concentration has an EU dimension within the meaning of Article 1(3) of the Merger Regulation.

V. ASSESSMENT

9. As a preliminary remark, it has to be noted that, since the notifying party has requested the operation to be examined, as regards the German part of the transaction, by the competent authorities of Germany, the rest of the transaction will be assessed by the Commission. The following assessment, therefore, is only relative to the German part of the transaction.

A. Relevant product markets

10. On the basis of the information submitted in the Reasoned Submission, the transaction concerns the wall-building material sector. The Commission has defined the relevant product markets as (i) the market for wall-building materials for load-bearing walls and

(ii) the market for wall-building materials for non-load-bearing walls.² The FCO has consistently defined the relevant product market as aboveground masonry wall-building materials, without distinguishing between load-bearing and non-load bearing walls.³ The FCO also excludes for the relevant product market products such as gypsum plasterboards and steel sheets, which the Commission takes into account when considering the scope of the relevant product market.

B. Relevant geographic market

11. The Commission considered the abovementioned markets to be national in previous cases. According to FCO these markets are even narrower and extend to a 150 km radius around the production plant. The FCO also considered in its decisions that the markets should be limited to the territory of Germany.⁴

C. Assessment

12. On the basis of the information provided by the parties in the Reasoned Submission, the proposed transaction is an appropriate candidate for pre-filing referral from the Commission to the FCO as regards the German part of the transaction in accordance with Article 4(4) of the Merger Regulation.
13. The transaction meets the legal requirements set out in Article 4(4) of the Merger Regulation. The transaction is a concentration within the meaning of Article 3 of the Merger Regulation, it has an EU dimension and it may significantly affect competition in distinct markets in Germany.
14. The relevant geographic markets present all the characteristics of a distinct market. As outlined above, the merged entity will be active within Germany as regards wall-building materials.
15. The conditions related to the existence of an affected market in the sense of the Form RS⁵ are met as the companies involved are engaged in business activities in the same product market and the concentration will lead to a combined market share greater than 15 % in two German regions.⁶ On the basis on the information provided in the Reasoned Submission, the proposed transaction also gives rise to some vertical relationships. Xella manufactures and supplies burnt lime, used as raw material for aerated concrete and calcium silicate bricks. In previous decisions, the Commission

² See for example Commission decision of 21 February 2002, COMP/M.2495 – Haniel/Fels, and Commission decision of 9 April 2002, COMP/M.2568 – Haniel/Ytong.

³ See, e.g. the most recent decision of the FCO, decision of 26 March 2002, Haniel/Ytong – B1-263/01, p. 8; and FCO, decision of 9 August 2006, Nord-KS/Xella – B1-116/04, para. 32.

⁴ The regional aspect in Germany was acknowledged by the Commission in the Haniel/Fels and Haniel/Ytong Article 9 referral decisions. See references above.

⁵ Section 4 of Annex III of Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 134/2004 on the control of concentrations between undertakings, O J L 133, 30/04/2004, p. 1-39.

⁶ Affected markets occur independently of whether the previous product market definition of the FCO or of the Commission are used.

held that the geographical market could be regional or national. H+H does not produce burnt lime and orders only relatively small quantities. While Xella holds a market share of approximately [20-30]%, H+H's share of the demand for burnt lime is very limited, less than [0-5]% of the total market. The production of aerated concrete blocks also requires cement and sand. However, according to the notifying party, no vertically affected markets arise for cement and sand in Germany.

16. The preliminary assessment suggests that the principal effects of the proposed operation would be in Germany, where the combined market share in a potential Northern regional market would be [30-40]% with an increment of [5-10]%.⁷

Additional factors

17. Given that the likely focus of the competitive effects of the proposed transaction is in Germany, the Federal Cartel Office of Germany seems well placed to examine the case, since they have extensive experience in assessing wall-building materials.
18. In that regard, it shall be observed that, in a recent case on wall-building materials in Germany, the Commission referred the case to the FCO.⁸

VI. REFERRAL

19. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission notice on case referral in respect of concentrations⁹ (point 17) indicates that, in seeking a referral under Article 4(4), “*the requesting parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition on a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny*”, and that “*such indications may be no more than preliminary in nature [...]*”. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the concentration is liable to take place on distinct markets in Germany, and that the requested referral would be consistent with point 20 of the notice.

⁷ The transaction gives also rise to affected market in the following Member States: the Netherlands, Czech Republic, Slovakia, Poland and Belgium. However, according to the Form RS in these Member States the combined market share is below [20-30]% and the increment is usually limited (below [0-5]%). The Parties' combined market shares will not exceed [10-20]% in Denmark, the United Kingdom, Lithuania, Latvia, Sweden and Norway.

⁸ Commission decision of 14 August 2009, COMP/M.5561 – Xella/Heidelberg Cement/UNK.

⁹ http://europa.eu.int/comm/competition/mergers/legislation/consultation/case_allocation_tru.pdf

VII. CONCLUSION

20. For the above reasons and given that Germany expressed its agreement with respect to the German part of the transaction, the Commission has decided to refer the German part of the transaction to be examined by Germany. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 6(1) of Protocol 24 to the EEA Agreement.

*For the Commission
(signed)
Alexander ITALIANER
Director General*