

***Case No COMP/M.6319 -  
TRITON/ EUROPART***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 30/09/2011

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EUROPEAN COMMISSION

Brussels, 30.09.2011

C(2011) 7116

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**To the notifying party:**

Dear Sir/Madam,

**Subject: Case No COMP/M.6319 - TRITON/ EUROPART  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004**

1. On 26 August 2011 the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004<sup>1</sup> by which the undertaking Triton ("Triton" or "the Notifying Party", Jersey) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking EUROPART ("EUROPART", Germany) by way of purchase of shares.<sup>2</sup> Triton and EUROPART together will be hereinafter referred to as "the Parties".

## **I. THE PARTIES AND THE OPERATION**

2. Triton is a private equity investment firm that provides management advice to, and manages investments on behalf of investment funds in mainly German-speaking and North-European businesses in different market sectors. One of its subsidiaries is Stabilus, a German company producing various types of hydro-pneumatic adjustment elements: gas springs, hydraulic dampers and related products. Its gas springs and dampers are used for among others automotive applications including commercial vehicles.

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<sup>1</sup> 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.

<sup>2</sup> Publication in the Official Journal of the European Union No C 261, 3.9.2011, p.8.

3. EUROPART is a leading European trading company in the field of spare parts and accessories for all classes and brands of commercial vehicles. Alongside vehicle parts, EUROPART also offers to its customers a wide range of tools, supplies and consumables for everyday work in vehicle garages, haulier and industrial companies, summarized in the range for workshop supplies.
4. The agreement according to which Triton acquires indirect sole control over EUROPART was concluded on 16 and 17 June 2011.

## **II. EU DIMENSION**

5. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>3</sup> (for Triton: [...], for EUROPART [...]). The EU-wide turnover of each of them exceeds EUR 250 million (for Triton: [...], for EUROPART [...]). They do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

## **III. RELEVANT MARKETS AND COMPETITIVE ASSESSMENT**

### **1. Introduction**

6. Triton does not have any interest in any company which is active in the same market as EUROPART. However, one of Triton's portfolio companies, Stabilus has activities that are vertically related to EUROPART.
7. Stabilus is active in the manufacturing of gas springs and dampers also used for automotive applications. In the automotive sector, Stabilus mainly sells its gas springs/hydraulic dampers to original equipment manufacturers ("OEMs"), partly to original equipment suppliers ("OESs") and only to a very limited extent (approx. [...] of its overall turnover), Stabilus sells its products in the independent aftermarket.
8. EUROPART is a trader of spare parts and accessories for commercial vehicles in the independent aftermarket and among its large portfolio of products it also sells Stabilus' gas springs and dampers. Thus there is a vertical link between the activities of the Parties.

### **2. The relevant market for gas springs and hydraulic dampers**

#### *Product market*

9. Gas springs are a type of spring using gas, contained in a cylinder and variably compressed by a piston rod to exert force. The power of a gas spring can be adjusted by changing the pressure of the gas inside the pressure tube. Gas springs are frequently used in automotive applications (e.g. supporting the weight of open vehicle doors, engine hoods, trunk lids, adjustment of passenger seats in buses and railway vehicles, etc.), industrial applications (e.g. hospital beds, roof windows, automatic telling

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<sup>3</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

machines, overhead lockers in aircraft, medical equipment etc.) and swivel chairs (for seat adjustment).

10. Hydraulic dampers are mechanical devices designed to smooth a sudden shock impulse and dissipate kinetic energy. They take the form of a cylinder, filled with a fluid (oil), with a sliding piston inside. Dampers are used among others in steering systems, engine vibration dampening, automatic trailer brakes, washing machines, seats and two-wheelers.
11. Gas springs and hydraulic dampers are used in different applications (such as automotive and different industrial applications) among others in commercial vehicles. They are partly sold to OEMs, partly to OESs and partly in the independent aftermarket.
12. The Notifying Party submits that the relevant market for the assessment of the proposed transaction is the independent after market for gas springs and hydraulic dampers. Due to the high supply-side substitutability between these products, it is not necessary to distinguish between gas springs and hydraulic dampers and to further delineate the relevant product market within gas springs on the one hand and hydraulic dampers on the other hand. The Notifying Party also submits that all relevant competitors have the required know-how and the capacity to manufacture both, gas springs and hydraulic dampers for all kinds of applications.
13. The Commission in previous decisions did not define the market for gas springs and hydraulic dampers. However, the Portuguese competition authority came to the conclusion in two decisions<sup>4</sup> that gas springs and hydraulic dampers constitute separate markets but did not delineate the markets any further.
14. The market investigation was not conclusive in determining whether gas springs and hydraulic dampers constitute separate markets or not, although respondents tended to consider these products rather belonging to separate markets. Also, based on the data submitted it appears that not all suppliers are producing both products. Although not all suppliers are producing these products for all above-listed applications, the vast majority of respondents do not consider that a sub-segmentation within gas springs and hydraulic dampers is relevant.
15. In any event for the purpose of the assessment of this transaction the question of potential differentiating between gas springs and hydraulic dampers can be left open. Furthermore, as the only link between the activities of the Parties occur with respect to gas springs and hydraulic dampers used for commercial vehicles sold on the independent aftermarket, also the issue of potential further subsegmentation of these products according to end-applications can be left open.

#### *Geographic market*

16. With respect to the geographic scope of the market(s) for gas springs and hydraulic dampers, the Notifying Party submits that it is worldwide, as the customers purchase these products on a worldwide basis and the transportation costs are limited compared to the overall production costs and are not a decisive factor for the decision where to

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<sup>4</sup> Decisions of the Portuguese Competition Authority of 11/2010 Triton/Grupo Stabilus and of 17/2008 – Paine/Stabilus.

purchase. In KKR/Demag Holding/Siemens businesses<sup>5</sup> the parties submitted that the markets for gas springs are worldwide, but the issue was ultimately left open. In its past practices the Commission for the automotive spare parts sector<sup>6</sup>, considered that the automotive spare parts market(s) tend to be EEA-wide in scope. The market investigation suggested that the vast majority of wholesalers purchase their spare parts outside their home country and considered the market to be EEA-wide in scope.

17. In any case, the definition of the relevant geographic market (EEA or worldwide) for the products concerned can be left open since the transaction would not raise any competition concerns under any potential market definition.

### **3. The relevant market for the wholesale distribution of automotive spare parts**

#### *Product market*

18. The European Commission has stated in a number of decisions that the markets for automotive components are to be divided into products supplied to (i) OEMs as first install equipment, (ii) to OESs and (iii) to the independent aftermarket.<sup>7</sup> In the case Itochu/Speedy<sup>8</sup>, the Commission looked into an overall market for the wholesale supply of automotive spare parts which could potentially be further segmented according to whether the spare parts are aftermarket spare parts sold by independent wholesalers or original spare parts sold by vehicle manufactures and their respective supply chains. Finally, the automotive aftermarket can potentially be further subdivided by the type of a vehicle for which a product is supplied, i.e. passenger cars and commercial vehicles.
19. However, for the purpose of this decision the relevant product market definition can be left open since the transaction only leads to links between the Parties in the independent aftermarket of spare parts for commercial vehicles.

#### *Geographic market*

20. The Notifying Party submits that the geographic scope of the independent wholesale market is EEA-wide. The Commission considered in the case Itochu/Speedy<sup>9</sup> the independent aftermarket as national or even sub-national in scope.
21. The market investigation was not conclusive on the issue. In any case, the definition of the relevant geographic market (EEA, national or sub-national) can be left open since the transaction would not raise any competition concerns under any potential geographic market definition.

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<sup>5</sup> Commission decision of 29.6.2005 of Case M. 2930 KKR/Demag Holding/Siemens businesses.

<sup>6</sup> For instance: Commission decision of 24.06.1998, COMP M.1196 – Johnson Controls/Becker.

<sup>7</sup> Commission decision of 29.06.2005., COMP/M.3789 Johnson Control/Robert Bosch/Delphi SLI.

<sup>8</sup> Commission decision of 12.05.2011, COMP/M.6063 Itochu/Speedy.

<sup>9</sup> Commission's decision of 12.05.2011, COMP/M.6063 Itochu/Speedy.

#### 4. Competitive Assessment

22. The following table, based on the estimations of the Notifying Party, presents the market position of Stabilus and its competitors on the independent aftermarket for gas springs and for hydraulic dampers in the automotive application.<sup>10</sup> The market investigation did not fully confirm the market shares provided by the Notifying Party. However, the absence of competition concerns in the vertically affected markets, as explained below, does not depend on the exact level of these market shares. For this reason, the Commission has not found it necessary to conduct a precise reconstitution of the exact market shares.

<b>Automotive applications Independent After market only Source: Form CO.</b>	Stabilus	Triscan	Lesjöfors	QH	Krosno	Others
Europe (EEA) (Springs + Dampers)	[20-30]%	[20-30]%	[20-30]%	[10-20]%	[5-10]%	[5-10]%
Europe (EEA) (only Springs)	[20-30]%	[20-30]%	[20-30]%	[10-20]%	[5-10]%	[0-5]%
Europe (EEA) (only Dampers)	[40-50]%	[20-30]%	[10-20]%	[5-10]%	[5-10]%	[5-10]%
Worldwide (Springs + Dampers)	[20-30]%					
Worldwide (only Springs)	[10-20]%					
Worldwide (only Dampers)	[40-50]%					

23. Concerning sales in the independent aftermarket for commercial vehicles only, the market shares of Stabilus would be [20-30]% for gas springs and [40-50]% for hydraulic dampers.

24. The Notifying Party submits that EUROPART's market shares in the area of wholesale distribution for automotive spare parts for commercial vehicles at EEA level is around [0-5]% and exceeds 10% on a national basis only in Germany ([20-30]%), Denmark ([20-30]%), Hungary ([10-20]%) and Latvia ([20-30]%). The Notifying Party also submitted that EUROPART's market shares on the market for wholesale distribution of automotive spare parts would not exceed 25% even on a potential sub-national market in Germany where it achieves most of its turnover.

#### *Input foreclosure*

25. It is unlikely that the transaction will lead to input foreclosure. Stabilus produces and sells gas springs and hydraulic dampers in competition with other suppliers: Triscan, Levjöfors, QH, Krosno on the independent aftermarket. The vast majority of customers during the market investigation considered that there are available alternative suppliers.

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<sup>10</sup> The Notifying Party submits that the market shares are best estimates. The Notifying Party is not able to submit the market shares in the independent aftermarket *only* for commercial vehicles for its competitors. The independent aftermarket in general is a marginal segment for Stabilus since it represents in total only [...] of its overall turnover. Stabilus' products in the automotive sector go to the largest extent into passenger cars.

Furthermore, competitors during the market investigation indicated that they have available capacity to increase their supply if required so. It appears that in the hypothetical scenario that Stabilus ceases to supply other wholesalers than EUROPART, wholesalers could turn to other suppliers.

26. Also, the products of Stabilus do not seem to be indispensable. Already today a number of wholesalers purchase and resell these products from other suppliers. In this respect, it should be noted that EUROPART, similarly to its competitors sells more than 500 000 different spare parts, and generates little sales with gas springs and hydraulic dampers.
27. Finally, based on the information submitted by the Notifying Party and the market investigation, it appears that the clients of wholesalers multi-source and do not have long-term agreements with their respective wholesaler(s) making any potential foreclosure strategy unviable. As these clients explained during the market investigation, they would not terminate their commercial relationship with their respective wholesaler should Stabiuls's products not any more be available. Should only EUROPART offer Stabilus' products, customers of other wholesalers could remain with their respective wholesaler to purchase all spare parts and turn to EUROPART for Stabilus' gas springs and hydraulic dampers. Thus as the market investigation confirmed that wholesalers can continue to run their business without gas springs and hydraulic dampers of Stabilus making any potential foreclosure strategy unviable.
28. For the reasons set out above, it is concluded that the transaction does not raise serious doubts as to its compatibility with the internal market by input foreclosure.

#### *Customer foreclosure*

29. It is also unlikely that the transaction will lead to customer foreclosure. As outlined above, gas springs and hydraulic dampers are not only sold via the independent aftermarket channel<sup>11</sup>, thus competitors of these products have OEM's and OES's as actual/potential customers. By way of illustration, the independent aftermarket in general is a marginal segment for Stabilus since it represents in total only [...] of its overall turnover and of this, only [...] of this turnover was generated with sales to EUROPART as Stabilus sells its products in the independent after market to several other wholesalers. This is also the case more generally, since in the independent aftermarket, as the market share data submitted by the Notifying Party show, EUROPART is not a crucial player.<sup>12</sup>

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<sup>11</sup> For dampers the independent aftermarket only represents [40-50]% of the overall automotive application and for gas springs the independent aftermarket only represents [10-20]% of the overall automotive application.

<sup>12</sup> In 2010, EUROPART has sold spare parts in all EEA and EFTA states with a total turnover of [...] apart from Cyprus, Greece, Ireland, Malta, Iceland and Liechtenstein. However, its turnover in most countries is very low as the key market for EUROPART is Germany ([...]). The only other 3 countries with substantial sales are [...].

#### **IV. CONCLUSION**

30. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission  
(Signed)  
Joaquín ALMUNIA  
Vice-President*