

***Case No COMP/M.6395 -  
ETEX/ LAFARGE  
GYPSUM ASSETS***

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: 27/10/2011

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EUROPEAN COMMISSION

Brussels, 27.10.2011  
C(2011) 7944 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**To the notifying party**

Dear Sir/Madam,

**Subject: Case No COMP/M.6395 – ETEX/ LAFARGE GYPSUM ASSETS  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 27 September 2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which Etex Group NV/SA ("Etex", Belgium) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of (i) the European entities of the Lafarge Group Gypsum Division in France, Germany, the United Kingdom, Spain, Italy, Poland, Belgium, the Netherlands, Romania, Bosnia, Serbia, Ukraine, Ireland and Cyprus ("the Lafarge European Entities") and (ii) the following companies which are currently jointly controlled by Etex and Lafarge S.A. (France): (i) Durlock S.A. (Argentina), (ii) Sociedad Industrial Romeral S.A. (Chile), (iii) Gyplac S.A. (Colombia) and (iv) Lafarge Gypsum Comércio Indústria e Importação S.A. (Brazil) ("the Latam Entities") by way of purchase of shares and assets.<sup>2</sup>

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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> OJ C 291, 4.10.2011, p. 10.

2. The Lafarge European Entities and the Latam Entities are collectively referred to hereinafter as the "Lafarge gypsum assets" or "the Target". The Lafarge gypsum assets and Etex are designated hereinafter as "the Parties".

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

3. Etex is active in the manufacture of building materials and systems. Through its subsidiaries, Etex offers small and large roofing materials, cladding and building boards, passive fire protection systems and ceramic tiles.
4. The Target is active in the manufacture and supply of gypsum-related systems and solutions including plasterboard systems.
5. Lafarge accepted Etex's binding offer to acquire the Target on 13 July 2011. The notified operation consists of Etex acquiring sole control over a newly incorporated company ('Newco') to which (i) Lafarge will transfer its stakes in the Lafarge European Entities and (ii) Lafarge and Etex will transfer their respective stakes in three South American companies (Durlock S.A., Gyplac S.A. and Lafarge Gypsum Comércio Indústria e Importação S.A.) they currently jointly control. Furthermore, Etex will purchase an additional 20% of the share capital of Sociedad Industrial Romeral S.A. (Chile) ("Romeral") from Lafarge.
6. The Lafarge European Entities will be transferred to Newco under the terms of a Share and Assets Sales Agreement ('SASA') to be entered into between Lafarge and Etex. The precise details of the transfer of Lafarge's interests in the three South American companies (Durlock, Gyplac and Lafarge Gypsum Comércio Indústria e Importação) have yet to be decided by the Parties but their transfer has been agreed upon in article 1 of the draft shareholders' agreement and in the accepted binding offer. The acquisition by Etex of the additional shares in Romeral will be the object of a separate agreement between the Parties.
7. Notwithstanding the fact that the transfer of the Lafarge European Entities and the three South American companies to Newco on the one hand and the acquisition of the additional shareholding in Romeral on the other hand are subject to two separate agreements, they have been agreed between the same parties (Etex and Lafarge) as evidenced by Lafarge's acceptance of the binding offer and are considered by the Parties to constitute one transaction with the same economic rationale.<sup>3</sup> Therefore, the two operations are deemed to constitute a single concentration ("the Transaction").<sup>4</sup>

## **II. CONCENTRATION**

8. The proposed Transaction will result in Etex acquiring sole control over the Target. The notified transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

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<sup>3</sup> The draft SASA states that these two operations 'shall be considered as an indivisible transaction.'

<sup>4</sup> Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95, 16 April 2008, recitals 38, 40 and 43.

### III. EU DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2 500 million<sup>5</sup> (Etex: EUR 1 956 million; Lafarge gypsum assets: EUR 977 million). In each of at least three Member States the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million (France, Germany and United Kingdom). The turnover of each undertaking concerned in the aforementioned Member States exceeds EUR 25 million and their individual EU-wide turnover is more than EUR 100 million (Etex: EUR 1 210 million; Lafarge gypsum assets: EUR 783 million). However, neither Etex nor the Lafarge gypsum assets achieves 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 within the meaning of Article 1(3) of the Merger Regulation.

### IV. COMPETITIVE ASSESSMENT

10. Etex is active in the manufacture of building materials and systems. Through its subsidiaries, Etex offers small and large roofing materials, cladding and building boards, passive fire protection systems and ceramic tiles. Etex used to be active in the markets for the production and sale of plaster based products and plasterboards (where the Target is active) but exited the market in 2003. Etex has now decided to re-enter these markets as it believes there are good growth prospects in the 'dry construction' sector where such products are used.<sup>6</sup>
11. As Etex sold its gypsum business, there are no horizontal overlaps between it and the Target in the gypsum-related product markets previously considered by the Commission.<sup>7</sup>
12. There are, however, certain overlaps between the Parties' activities in the production and sale of insulation materials;<sup>8</sup> "compartmentation" products for wet areas;<sup>9</sup> and passive fire

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<sup>5</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

<sup>6</sup> Dry construction is a construction method using a frame (timber or steel) and panels filling in this frame. This building method is used as an alternative to wet construction using concrete and bricks and mortar and offers certain advantages in terms of build cost and time.

<sup>7</sup> In case COMP/M.3943 – Saint-Gobain/BPB the Commission considered gypsum-related markets and in particular; (i) the procurement of plaster-based products; (ii) the production and sale of prefabricated insulated plasterboards and (iii) the production and sale of accessories (frames and fixing) for plasterboards.

<sup>8</sup> Insulation materials in general are products which reduce the thermal and acoustic exchange between different elements of a construction. Insulation materials for building applications are normally used to insulate walls, floors, roofs and ducts. Generally speaking, they are produced either from foams (expanded polystyrene, extruded polystyrene and polyurethane) or mineral wools (stone wools or glass wools).

<sup>9</sup> Compartmentation in structures, such as land-based buildings, traffic tunnels, ships, aerospace vehicles, or submarines, is the fundamental basis and aim of passive fire protection. A structure is divided into "fire compartments", which may contain single or multiple rooms for the purpose of limiting the spread of fire, smoke and flue gases.

In general dry systems (e.g. plasterboard systems) compete against wet systems (e.g. concrete walls, bricks and mortar) for interior building solutions (partition, wall). However, plasterboard is damaged by

protection systems. However, the only affected market, under any plausible market definition arises with respect to the sale of passive fire protection systems, and therefore, only this market is addressed in detail in this decision.

## **A. Relevant market definition**

### *Relevant product market*

13. In relation to fire protection systems, the Commission has in the past made a distinction between active and passive fire protection systems.<sup>10</sup>
14. Active fire protection systems are designed to detect and suppress fire by various means (e.g. heat, smoke, and gas detectors, sprinklers, and fire extinguishers). In contrast, passive fire protection systems are designed to slow down and/or contain the spread of a fire and its effects. They comprise different products such as boards, paints, sprays and other materials which all serve the same purpose even if the characteristics of the products are different. According to the notifying party, this would justify their being included in the same product market.
15. While Etex manufactures and supplies a broad range of products (*inter alia* boards made of calcium silicate ('CaSi Boards'), spray or trowel applied coatings, intumescent paints, adhesives/keycoats, topcoats/sealers and reinforcement/fixings, Lafarge gypsum assets only supplies plasterboards filled with certain fireproof additives, as well as air ducting equipments. However, the notifying party submits that all such products belong to the single market of passive fire protection systems.
16. For the purposes of the present case, the precise definition of the relevant product market can be left open as the transaction would not lead to any competition concerns under any alternative plausible market definition.

### *Relevant geographic market*

17. The notifying party submits that the geographic market is European in scope, or at least national, given that the products at issue are widely transported within, and sometimes between, national borders. The market investigation has broadly confirmed that the geographic market is at least national and could be broader in scope.
18. For the purposes of the present case, however, the exact relevant geographic market definition can be left open as the transaction would not lead to any competition concerns under any alternative potential market definition.

## **B. Competitive assessment**

19. Both Etex and Lafarge gypsum assets are active in the EEA in the manufacture and sale of passive fire protection systems.<sup>11</sup> As regards the Parties' activities in the sale of passive fire

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exposure to water. As such, in wet areas installers will arbitrage between specific water resistant products which can be either masonry products/wet systems (bricks, concrete, tiles) or water resistant boards.

<sup>10</sup> COMP/M.5735 – UTC/GE Security.

<sup>11</sup> The Latam Entities have no turnover in the EEA.

protection systems, their combined market share will remain below 15% at the EEA level. At a national level, the transaction would result in an affected market only in the Netherlands. Even in the Netherlands, however, the increment arising from the proposed Transaction is marginal at 1% and the merged entity's market share would only reach [15-25]%.<sup>12</sup>

20. Even if a narrower segment comprising only of boards used in passive fire protection were considered, the merged entity's market share would remain below 15% at the EEA level.<sup>12</sup> At a national level, the Transaction would only lead to an affected market in the Netherlands where the merged entity's market share would reach [15-25]% with a relatively limited increment of less than 2%.
21. Additionally, the notifying party submits, and the market investigation has confirmed, that Etex and Lafarge gypsum assets are not each other's closest competitors in passive fire protection systems. This is because the boards offered by Etex, which are based on calcium silicate, are more expensive and technically superior in terms of fire resistance performance to the plaster-based products offered by the Lafarge gypsum assets. In addition, none of the respondent to the market investigation raised substantiated concerns with respect to the potential impact of the proposed Transaction on either their business or the market for passive fire protection systems.
22. In view of the above, it is concluded that the proposed Transaction does not raise serious doubts as to its compatibility with the internal market.

## **V. CONCLUSION**

23. 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)  
Michel BARNIER  
Member of the Commission

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<sup>12</sup> According to the notifying party, boards are used as an alternative to other passive fire protection products rather than in combination with them. For example, paints and sprays are not applied to boards. This was confirmed in the market investigation. See non-confidential minutes of a telephone conversation with a competitor, 10 October 2011.