

***Case No COMP/M.6560 - EQT VI/ BSN MEDICAL***

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 07/08/2012

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EUROPEAN COMMISSION

Brussels, 7.8.2012

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PUBLIC VERSION

MERGER PROCEDURE

**To the notifying party:**

**Subject: Case No COMP M.6560 - EQT VI/ BSN Medical  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004**

Dear Sir/Madam,

1. On 09.07.2012, the European Commission received the notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004<sup>1</sup> by which the undertaking EQT VI ("EQT VI", Guernsey, the UK), part of the EQT group of private equity funds ("EQT", Guernsey, the UK), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of BSN medical Acquisition Holding GmbH ("BSN medical Acquisition Holding", Germany) and BSN medical Netherlands Holding BV BSN medical Netherlands ("BSN medical Netherlands", the Netherlands) and their respective subsidiaries (collectively "BSN Medical") by way of purchase of shares.

#### **(1) THE PARTIES**

2. EQT VI is an investment fund making investments primarily in Northern Europe. EQT VI is part of the EQT group of private equity funds.
3. EQT is a group of private equity funds, which are managed independently and on their merits and are not, even within each respective fund, financially or operationally consolidated.
4. BSN Medical is a medical device company that develops, manufactures and markets wound care, compression therapy and orthopaedics products. The company was founded in 2001 as a 50:50 joint venture between Beiersdorf AG and Smith & Nephew plc and has been controlled by Montagu III, a fund managed by Montagu Private Equity LLP (collectively "Montagu"), since February 2006.<sup>2</sup>

<sup>1</sup> OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

<sup>2</sup> See M.4064 – Montagu/BSN Medical, 10.02.2006.

## **(2) THE OPERATION**

5. The notifying party submits that through the transaction, EQT VI will ultimately acquire all shares in BSN medical Acquisition Holding and BSN medical Netherlands. Through these acquisitions, the holding companies of BSN Medical will be wholly acquired by EQT VI. EQT VI will thus acquire all BSN Medical's operations including all brands, trademarks, related trademark license agreements, patents and other rights owned by BSN Medical. The share purchase agreement was signed between EQT VI and Montagu on 8 and 9 June 2012.
6. Therefore, it can be concluded that EQT VI will acquire sole control of BSN Medical and that the notified transaction represents a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **(3) EU DIMENSION**

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>3</sup> (EQT: EUR [...] million, BSN Medical: EUR [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (EQT: EUR [...] million, BSN: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
8. Therefore, the transaction has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

## **(4) COMPETITIVE ASSESSMENT**

9. BSN Medical manufactures and supplies on a global basis a range of wound care, compression therapy and orthopaedics products.
10. The notifying party submits that none of the portfolio companies (solely or jointly) controlled by EQT, including those whose business activities comprise the manufacturing and supply of medical devices,<sup>4</sup> are active in the fields where BSN Medical is active. Therefore there are no markets with horizontal overlaps.
11. The notifying party however submits that one of the EQT funds, EQT Expansion Capital II, has invested in and jointly controls a manufacturer-neutral wholesale distributor of medical supplies, Roeser Medical ("Roeser", Germany). Roeser also offers logistics services and various other services.
12. Since a fraction ([0-5] %) of Roeser's total sales in 2011 related to sales of the types of products that BSN Medical manufactures and supplies, the notifying party submits that a potential and indirect vertical link could be deemed to exist between BSN Medical and Roeser, even if at present Roeser does not purchase any of BSN's products and its purchase of products of the type produced by BSN Medical represents a *de minimis* part of its total sales.

### **4.1. Market definitions**

#### *4.1.1. BSN Medical (Upstream activities)*

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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, p. 1).

<sup>4</sup> Those are active in Ear/Nose/Throat, cancer diagnostics, kidney/liver dialysis and blood micro sampling.

13. BSN Medical supplies (i) wound closure products (such as strips, skin staplers and topical adhesives); (ii) single-use surgical products (caps and masks and examination gloves); (iii) urology products (catheters and urine bags) and (iv) phlebology/lymphology medical garments.

#### Wound closure products

14. Wound closure strips are sterile adhesive strips used to close open wounds without the use of stitches and work by holding the edges of the wound in place whilst the skin tissue heals. Skin staplers perform the same function using metal staples and are pre-loaded disposable products which operate on the same principle as the office variety. Topical adhesives (i.e. glues) are highly viscous and are also reabsorbed by the patient as the skin tissue heals (again performing the same function as other wound closure products).
15. The notifying party notes that the Commission in a previous case considered that the relevant product market for wound closure products - such as sutures and needles, staplers and staples, clips and clip applicators, and adhesives/glues - could potentially be segmented by the respective category but ultimately left it open. As regards the relevant geographic market(s), the Commission left open whether the market is EEA-wide or national in scope.<sup>5</sup>

#### Single-use surgical products (caps and masks and examination gloves)

16. Surgical products help minimizing the risk of infections for patients and protect healthcare workers who wear them at the operation table. Examination gloves on the other hand are not sterile and are used outside the operating theatre for protection during the examination of patients.
17. The notifying party notes that in previous cases concerning surgical products,<sup>6</sup> the Commission considered separate relevant product markets for different surgical textile products, such as surgical gowns, drapes, caps, masks, scrubs suits and swabs, as well as a single-use/multiple-use distinction. As regards the relevant geographic market for surgical products, the Commission considered it to be EEA-wide scope.<sup>7</sup>

#### Urology products (catheters and urine bags)

18. Urology catheters are inserted into a patient's bladder via the urethra to allow urine to drain for collection or to inject liquids used for treatment or diagnosis of bladder conditions. Urine bags hold the drained urine and has a bacteria and moisture impermeable venting system to ensures permanent pressure compensation so that even small amounts of urine can flow unhindered into the bag for collection and anti-reflux

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<sup>5</sup> See M.1223 - Tyco International Ltd/US Surgical Corp, 07.08.1998, p. 5-9.

<sup>6</sup> The notifying party is not aware of any past Commission case considering examination gloves.

<sup>7</sup> See e.g. M.4367 - APW/APSA/Nordic Capital/Capio, 16.03.2006, p. 18-19, 40; M.4229 - APHL/Netcare/General Healthcare, 25.07.2006, p. 24-25, 41-42; and M.3816 - Apax/Mölnlycke, 15.06.2005, p. 13-14, 16. As to the product market delineation, the Commission also considered that surgical gloves can be powdered, non-powdered or synthetic as well as that there are both single-use and multiple-use surgical gloves.

valve that prevents retrograde flow of urine into the bladder, reducing the risk of ascending infections.

19. The notifying party notes that in previous cases, the Commission considered separate relevant product markets for different urology products (such as urology catheters, urinary drainage bags and urine meters). As regards the relevant geographic markets, the Commission left it open whether the market is EEA-wide or national in scope.<sup>8</sup>

#### Phlebology/lymphology medical garments

20. BSN Medical supplies a range of products for different stages of treatment and prevention of venous (phlebology) and lymphatic (lymphology) diseases. Products supplied by BSN Medical comprise various types of medical compression hosiery (ready-to-wear medical leg wear, anti-embolism stockings, compression stockings and travel socks, ready-to-wear support, and custom-made compression garments) and compression bandages.
21. The notifying party submits that from a demand-side perspective, compression products are specifically designed to treat venous and lymphatic complaints. There is a continuum of products depending on the severity of the disease and the level of compression needed.<sup>9</sup> From a supply-side perspective, according to the notifying party, it may be sufficient to have the technology, expertise and equipment to manufacture compression products as such in order to be able to supply different kinds of compression products. A number of BSN Medical's competitors with respect to compression products, such as Medi, Sigvaris, Juzo and Hartmann, also offer a range of different compression products.
22. The notifying party notes that in previous cases, the Commission considered that phlebology and lymphology could be part of the same product market (although the Commission also looked at potential phlebology product segments). Ultimately the product market definition was however left open. As regards the relevant geographic markets, the Commission left it open whether the market is EEA-wide or national in scope.<sup>10</sup>

#### *4.1.2. Roeser (Downstream activities)*

23. Roeser is a wholesale distributor and acts as intermediary between manufacturers and customers, i.e. it purchases medical supplies from manufacturers and resells these products to their customers (e.g. hospitals). Most manufacturers of medical products sell their products through multiple sales channels.
24. In the area of medical supplies, wholesale distributors are expected to provide a broad range of supplies. For example, Roeser can source and provide around 800,000 different articles from more than 900 suppliers. Manufacturers, on the other hand, also sell themselves directly their own products and brands. Furthermore, since wholesale distributors' profits derive from a mark-up on the purchase price from the manufacturers,

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<sup>8</sup> See M.4367 - APW/APSA/Nordic Capital/Capio, 16.03.2006, p. 28, 44; and M.2505 - Tyco/CR Bard, 04.10.2001, p. 7, 9-13.

<sup>9</sup> For example, BSN Medical's ready-to-wear leg wear exert a pressure of between 15-40 mmHg (mmHg: millimeters of mercury) anti-embolism stockings exert a pressure of 18+ mmHg, support wear exert a pressure of 8-15 mmHg, compression bandages exert a variable compression, and custom-made garments exert a pressure of between 15-40 mmHg.

<sup>10</sup> See M.4229 - APHL/Netcare/General Healthcare, 25.07.2006, p. 35, 47; and JV.54 - Smith & Nephew & Beiersdorf/JV, 30.01.2001, p. 23-32, 79-82.

it is necessary for these distributors to differentiate their offering vis-à-vis manufacturers selling directly, primarily through a broad offering allowing for bundled sales or value-added services.

25. The notifying party notes that the Commission in previous cases made a distinction between direct sales from upstream manufacturers and wholesalers,<sup>11</sup> and, moreover, considered that wholesalers compete on the basis of a whole range of products rather than individual products.<sup>12</sup>
26. As regards the relevant geographic market, wholesale distribution of medical supplies is considered to be national in scope. There are several large wholesalers with national and pan-European presence, such as Gehe/AAH, Unichem/Alliance, Tamro, OneMed, Phoenix, Sanacorp, Anzag and OPG. In any event, within Germany, the only country where Roeser operates, regulatory and competitive conditions are homogenous. Moreover, the German hospital market has seen significant consolidation in recent years and hospitals are to an increasing extent member of purchasing groups which make centralized purchases, often through tender procedures.

#### *4.1.3. Conclusions on market definitions*

27. The notifying party submits that ultimately the precise relevant product and geographic market definitions can be left open since the notified concentration, regardless of market definitions, would not raise any competitive concerns. In any case, market share data was provided for all possible product and geographic (EEA and Germany) market definitions.
28. For the purposes of the present case there is no reason to deviate from the previous positions of the Commission on product and geographic market definitions. Absent competitive concerns on any possible market definition, the precise market definitions can be left open in the case at hand.

## **4.2. Competitive assessment**

29. According to data submitted by the notifying party, on the downstream side of the market, Roeser's market shares are well below 25% (never above [10-20]%) under all possible product and geographic market definitions.
30. On the upstream side of the market, BSN Medical's market shares are almost always below 25%. The only exceptions are (i) the EEA market for lymphology medical garments ([30-40]%), (ii) the EEA market for of anti-embolism stockings ([20-30]%) and (iii) the German market for anti-embolism stockings ([40-50]%).
31. The Commission considers that the resulting vertically affected markets are of no concern for the following reasons:

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<sup>11</sup> See e.g. M.5385 - Avnet/Abacus, 19.01.2009, p. 17-22; and M.2020 - Metsä-Serla/Modo, 04.08.2000, p. 13-20. In a number of decisions, the Commission also considered that wholesale of pharmaceutical products is a relevant product market distinct e.g. from the direct distribution of products by manufacturers; see e.g. M.6044 - Alliance Boots/Andrae-Noris Zahn, 16.12.2010, p. 14; M.4301 - Alliance Boots/Cardinal Health, 22.09.2006, p. 14; M.2573 - A&C/Grossfarma, 30.08.2001, p. 12; and M.2432 - Angelini/Phoenix/JV, 06.07.2001, p. 11.

<sup>12</sup> See e.g. M.5385 - Avnet/Abacus, 19.01.2009; M.3108 - Office Depot/Guilbert, 23.05.2003; and M.2286 - Buhrmann/Samas Office Supplies, 11.04.2001.

32. Firstly, according to the information provided by the notifying party, there is no integration between BSN and Roeser, since these two companies are controlled by two different EQT funds and each EQT fund investment is a separate and independent business case involving various investors and a separate envisaged exit horizon.
33. Secondly, the vertical relationship is both potential (since Roeser currently does not source, and has historically never sourced the relevant products from BSN Medical) and insignificant (since the products in question represent very small fractions of the two companies' respective businesses; for Germany [5-10]% for BSN Medical and [0-5]% for Roeser).
34. Thirdly, there is no ability for a hypothetical input foreclosure vis-à-vis Roeser's competitors, since (i) the products supplied by BSN Medical do not constitute an "important input" for wholesale distributors such as Roeser and its competitors (added to the fact that Roeser itself does not rely on any supplies from BSN Medical for its wholesale distribution business); (ii) with respect to lymphology medical garments and anti-embolism stockings, BSN Medical's sales in Germany were made directly to sanitary shops and not to wholesalers and distributors, where sale volumes are non-existent or insignificant (for 2011 [0-5]% and [0-5]% respectively); (iii) BSN Medical faces competition from other large manufacturers in Germany for all products supplied and lacks any significant degree of market power in any upstream market, which would be a prerequisite for input foreclosure. Thus, should BSN Medical hypothetically try to implement a foreclosure strategy vis-à-vis Roeser's competitors, these companies would have other readily available suppliers. Consequently, Roeser's competitors are not, and would not be dependent on being supplied by BSN Medical.
35. Fourthly, there is no ability for a hypothetical customer foreclosure vis-à-vis BSN Medical's competitors, since (i) neither BSN Medical nor any of its competitors are dependent on distribution via Roeser for any of their product categories and Roeser cannot be considered an "important customer" in Germany for the different types of products supplied by BSN Medical; (ii) Roeser's sales in the product categories where BSN Medical is active amounted to a tiny fraction of BSN Medical's overall sales (EUR [...] million out of EUR [...] million); (iii) Roeser's shares in the purchases for lymphology medical garments and anti-embolism stockings are very small ([0-5]% in the EEA and [0-5]% in Germany and [0-5]% in the EEA and [0-5]% in Germany respectively), which means that Roeser lacks any downstream market power, a prerequisite for a customer foreclosure strategy. Consequently, even in the hypothetical scenario where Roeser were to source products exclusively from BSN Medical, this would not restrict the access of BSN Medical's competitors to a sufficient customer base.
36. Finally, the incentive to foreclose depends on the degree to which it is profitable to do so and this involves a trade-off between the profit lost and the profit gained. From a business perspective it appears unlikely that either Cosma Invest AG and AvG GmbH (which have shareholdings and key management positions in Roeser) or the investors of EQT Expansion Capital II would accept any coordination between BSN Medical and Roeser to the benefit of BSN Medical; or that the investors in EQT VI (or the management of BSN Medical, which will make private investments in BSN Medical) would accept any coordination between BSN Medical and Roeser to the benefit of Roeser.

### **4.3. Conclusion**

37. The Commission therefore considers that the indirect and potential nature and limited scope of the identified vertical relationship does not raise serious doubts as regards the transaction's compatibility with the internal market.

### **(5) CONCLUSION**

38. 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)  
Andris PIEBALGS  
Member of the Commission*