

Case No COMP/M.6717 - WHIRLPOOL/ ALNO

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/11/2012

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EUROPEAN COMMISSION

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PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.6717 - WHIRLPOOL/ ALNO
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 12 October 2012, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Whirlpool Corporation ("Whirlpool") acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of ALNO AG ("ALNO") by way of purchase of shares following a restructuring of ALNO comprising a capital increase and the issue of new shares. Whirlpool and ALNO are hereinafter referred to as "the Parties".

I. THE PARTIES

2. Whirlpool manufactures and markets, on a global basis, a full line of household appliances and related products, such as laundry appliances, refrigerators, cooking appliances, and dishwashers. Whirlpool's primary brands in Europe are Whirlpool, Bauknecht, KitchenAid, Ignis, Laden and Polar.

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.

3. ALNO manufactures kitchen furniture and markets it with built-in domestic appliances (as part of a complete package comprising both kitchen furniture and built-in appliances). ALNO's major brands are ALNO, Wellmann, Impuls and Pino.

II. THE OPERATION AND CONCENTRATION

4. The proposed concentration concerns the acquisition of sole control over ALNO by Whirlpool as a consequence of ALNO's financial restructuring.
5. Currently Whirlpool holds 18.25% of shares in ALNO. On 11 July 2012 ALNO, Whirlpool, other ALNO shareholders and a number of ALNO's lender banks entered into a framework agreement relating to the restructuring of ALNO (the "Restructuring Agreement"). As a result of the Restructuring Agreement, new shares of ALNO will be issued in order to increase ALNO's capital and pay ALNO's debts.
6. Whirlpool has agreed on a backstop obligation regarding the issuance of new shares whereby Whirlpool is obliged to subscribe all the shares that are not subscribed by the current shareholders and institutional investors.² This may lead Whirlpool to acquire over 50% of the voting rights in ALNO and therefore control it. [...] Therefore, should Whirlpool acquire more than 50% of the shares of ALNO, it can be considered to have sole control over ALNO.
7. The arguments confirming Whirlpool's high likelihood to acquire the control over ALNO are the following: (i) [...]; (ii) in a recent capital increase linked to another recent restructuring of ALNO only [5-10]% of the new shares were subscribed for through the exercise of subscription rights; (iii) [...]; (iv) [...]; (v) immediately after completion of the capital increase and repayment of the credit lines of the banks, Whirlpool will additionally acquire from Kuchen Holding shares corresponding to [5-10]% of the voting rights in ALNO after the capital increase; (vi) the Federal Financial Supervisory Authority (BaFin) considered in its decision to exempt Whirlpool from the obligation to make a public offer for ALNO that it was very likely that Whirlpool would acquire control over ALNO; and (vii) [...]; (viii) the Parties have an exclusivity agreement by which ALNO is bound to purchase [a high amount] of the domestic appliances for its kitchens from Whirlpool. Therefore, it can be concluded that Whirlpool demonstrated its good faith intention to conclude an agreement for the acquisition of sole control of ALNO and that its plan is sufficiently concrete.
8. Therefore the transaction constitutes a notifiable concentration within the meaning of Article 4 of the Merger Regulation.
9. Based on the above, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million³ (Whirlpool: EUR 13 409 million; ALNO: EUR 453 million).

² Part of the capital increase is a rump placement, where institutional investors have the right to acquire shares of the Target.

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

Each of them has an EU-wide turnover in excess of EUR 250 million (Whirlpool: EUR [...] million; ALNO: EUR [...] million), but 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.

IV. COMPETITIVE ASSESSMENT

11. Whirlpool manufactures both freestanding appliances and major domestic appliances of the built-in category. ALNO manufactures and markets kitchen furniture and it sells major domestic appliances (of the built-in category) together with kitchen furniture. Indeed, the vast majority of these appliances are sourced from Whirlpool.⁴ Thus, the proposed transaction leads to a number of vertically related markets for the supply of domestic appliances and for the manufacturing and marketing of kitchen furniture.

A. Relevant market definition

1. Domestic appliances

Relevant product market

12. In previous decisions the Commission has identified separate relevant product markets for each family of major domestic appliances.⁵ More precisely, the Commission has identified the following separate markets: (1) cooking appliances, (2) hoods, (3) dishwashers, (4) fridges ("cooling"), (5) freezers, (6) microwave ovens, (7) washing machines and (8) tumble dryers. In addition, the Commission has also subdivided the market of microwave ovens into (i) built-in and (ii) freestanding (counter-top) microwaves.⁶
13. The Parties agree with the Commission precedents and further submit that due to a high degree of supply-side substitutability there are no grounds for further segmenting each category of domestic appliances, in particular into built-in and freestanding appliances. They argue that all main producers of major domestic appliances offer a full range of products and since the manufacturing lines used to produce major domestic appliances are flexible, products that are differentiated both technically and aesthetically can be manufactured on the same line.
14. The majority of respondents in the market investigation have confirmed the Parties' view that each of the major domestic appliances constitutes a separate market with no further sub-segmentations. In particular, a vast majority of respondents considered built-in and freestanding appliances to be part of the same market.⁷ However, some of the respondents indicated that for some domestic appliances, in particular microwave ovens, the market could be further segmented into built-in and freestanding appliances.

⁴ Whirlpool and ALNO have had an exclusive supply agreement regarding domestic appliances for a number of years. According to the most recent agreement, which is valid since [...], ALNO is obliged to source [a high amount] of ALNO's requirements of major domestic appliances from Whirlpool's subsidiary Bauknecht Hausgeräte GmbH.

⁵ M.458 – Electrolux/AEG, paragraph 7; M.2703 – Merloni/GE/GDA JV, paragraphs 9 et seq.; M.5859 – Whirlpool/Privileg Rights, paragraph 11.

⁶ M.5421 – Panasonic/Sanyo, paragraphs 150-151.

⁷ Replies to questions 7 and 8 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Whirlpool's Competitors dated 16 October 2012.

15. Therefore, for the purposes of this decision the relevant product market will be each of (1) cooking appliances, (2) hoods, (3) dishwashers, (4) fridges ("cooling"), (5) freezers, (6) microwave ovens, (7) washing machines and (8) tumble dryers. As regards a possible segmentation between built-in and freestanding microwave ovens, the relevant product market definition can be left open since the transaction does not raise serious doubts as to its compatibility with the internal market even under the narrowest market definition.

Relevant geographic market

16. In its previous decision the Commission left open the question as to whether the markets for domestic appliances are EEA-wide or national in scope.⁸

17. The Parties submit that the markets for major domestic appliances are at least EEA-wide in scope because manufacturing is usually centralized in one or a few European sites. These sites supply the entire EEA and most manufacturers are present across Europe with a broadly similar range of products. Moreover, according to the Parties, contracts with multinational customers are negotiated on an EEA-wide basis.

18. Nevertheless, most of the respondents to the market investigation considered that there are substantial differences in terms of consumption habits for the major domestic appliances depending on the customer's geographic location, pointing towards the existence of national markets. As an example, they pointed to the fact that different types of washing machines were preferred in Scandinavia and Eastern Europe.⁹ The national character of the geographic markets is also reinforced by the fact that prices charged by domestic appliances manufacturers could vary across different countries¹⁰ as, according to some respondents, there are also high transport costs for sales of products outside the country where they are produced¹¹, contrary to the Parties' claim that the transportation costs are generally low.

19. The exact geographic market definition can, however, be left open since the transaction does not raise serious doubts as to its compatibility with the internal market even under the narrowest market definition.

2. Manufacturing and marketing of kitchen furniture

Relevant product market

20. There are no relevant Commission precedents concerning the market for the manufacturing and marketing of kitchen furniture so far.

21. The Parties submit that the relevant product market is not broader than the manufacturing and marketing of kitchen furniture and they claim that the relevant

⁸ M.2703 – Merloni/GE/GDA JV, paragraph 19; M.5859 – Whirlpool/Privileg Rights, paragraph 16; M.5421 – Panasonic/Sanyo, paragraph 152.

⁹ Replies to question 15 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Whirlpool's Competitors dated 16 October 2012.

¹⁰ Replies to question 13 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Whirlpool's competitors dated 16 October 2012.

¹¹ Replies to question 14 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Whirlpool's competitors dated 16 October 2012.

product market does not include manufacturing and marketing of other non-kitchen interior furniture such as upholstery, bedroom furniture, dining room furniture or bathroom furniture.

22. The market investigation has largely confirmed the Parties' position that the manufacturing and marketing of kitchen furniture forms a separate market from other, non-kitchen interior furniture.¹²
23. Therefore, for the purposes of this decision, manufacturing and marketing of kitchen furniture shall be considered the relevant product market. In any event, the exact product market definition can be left open since the transaction does not raise serious doubts as to its compatibility with the internal market even under the narrowest market definition.

Relevant geographic market

24. ALNO is active worldwide but its turnover is mainly realized in the EEA, where it markets kitchen furniture. Therefore, the Parties submit that the relevant geographic market is at least EEA-wide in scope.
25. The results of the market investigation concerning the relevant geographic scope of the market for the manufacturing and marketing of kitchen furniture were not clear. Some respondents claimed that the market is at least national because there are different consumption habits between Member States, based on the style, function, tradition, available space or purchasing power. However, other respondents perceived the market for the manufacturing and marketing of kitchen furniture as EEA-wide.¹³
26. The exact geographic market definition can, however, be left open since the transaction does not raise serious doubts as to its compatibility with the internal market even under the narrowest market definition.

B. Competitive assessment

Domestic appliances as input for the manufacturing and marketing of kitchen furniture

EEA

27. Should the market for major domestic appliance markets in which Whirlpool is active be considered to be at least EEA-wide in scope, no affected markets arise since Whirlpool's and ALNO's market shares are below 25% under any possible product market definition.
28. In particular, Whirlpool's market shares would amount to no more than [10-20]% (by volume and value) as regards any of the different product categories mentioned above.¹⁴

¹² Replies to question 8 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Whirlpool's Customers and Alno's Competitors dated 16 October 2012.

¹³ Replies to question 15 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Whirlpool's Customers and Alno's Competitors dated 16 October 2012.

¹⁴ Notably: [5-10]% based on value and [5-10]% based on volume for cooking appliances; [0-5]% by value and [5-10]% by volume for hoods; [5-10]% by value and [5-10]% by volume for dishwashers; [5-10]% based on value and [5-10]% based on volume for cooling; [5-10]% by value and [10-20]% by volume for

Its main competitors are the Electrolux Group, the BSH Group and the Indesit Group.¹⁵ ALNO is the fifth largest producer on the European kitchen furniture market with a market share of [0-5]% (by value) and [5-10]% (by volume).¹⁶ The market is very fragmented and ALNO's main competitors are the Nobia Group ([10-20%]), IKEA ([5-10%]), Nobilia ([5-10%]) and Howdens Joinery ([5-10%]).¹⁷

Germany

29. The transaction would only give rise to vertically affected markets in Germany, where ALNO generates more than [...] % of its turnover.¹⁸ In Germany, Whirlpool's market shares are the following:

| Germany | Whirlpool's market share by value (EUR) - 2011 | Whirlpool's market share by volume (units) - 2011 |
|-------------------------------------|---|--|
| Cooking | [5-10]% | [10-20]% |
| Hoods | [5-10]% | [5-10]% |
| Dishwashers | [5-10]% | [5-10]% |
| Cooling | [5-10]% | [10-20]% |
| Freezers | [5-10]% | [5-10]% |
| Microwave ovens¹⁹ | [0-5]% | [0-5]% |
| Washing machines | [10-20]% | [10-20]% |
| Tumble dryers | [5-10]% | [10-20]% |

Source: Form CO

30. In Germany, Whirlpool faces competition from suppliers such as BSH (cooking [30-40]%, dishwashers [50-60]%, cooling [20-30]%, freezers [20-30]%, microwave ovens [5-10]%, washing machines [30-40]% and tumble dryers [30-40]%), Electrolux (cooking [10-20]%, dishwashers [5-10]%, cooling [10-20]%, freezers [5-10]%, microwave ovens [0-5]%, washing machines [10-20]% and tumble dryers [10-20]%)

freezers; [10-20]% by value and [5-10]% by volume for microwave ovens; [5-10]% by value and [10-20]% by volume for washing machines; and [5-10]% by value and [5-10]% by volume for tumble dryers. If a segmentation between built-in and freestanding microwave ovens was taken into account, Whirlpool's market shares would be the following: freestanding microwave ovens ([5-10]% by value, [0-5]% by volume) and built-in microwave ovens ([10-20]% by value, [10-20]% by volume).

¹⁵ Form C.O., paragraph 13.

¹⁶ [...].

¹⁷ Form C.O., paragraph 160.

¹⁸ Whirlpool exceeded the 25% market share threshold in the following markets in 2011: (i) dishwashers in Slovakia ([20-30]%) and Romania ([40-50]%); (ii) freezers in Italy ([30-40]%), Greece ([20-30]%), Poland ([30-40]%), and Slovakia ([20-30]%); (iii) microwave ovens in Denmark ([20-30]%), Greece ([30-40]%), Italy ([20-30]%), Norway ([30-40]%) and Switzerland ([50-60]%); (iv) tumble dryers in Romania ([20-30]%); (v) washing machines in Slovakia ([30-40]%); and (vi) hoods in Romania ([30-40]%). However, ALNO is not present in any of these national markets (with the exception of Italy where its sales are *de minimis* and do not exceed [0-5]%).

¹⁹ If a segmentation between built-in and freestanding microwave ovens would be made, Whirlpool would have a [0-5]% market share in built-in microwave ovens and a [5-10]% market share in freestanding microwave ovens.

and Amica (cooking [0-5]%, dishwashers [0-5]%, cooling [0-5]%, freezers [0-5]%, microwave ovens [0-5]%, washing machines [0-5]% and tumble dryers [0-5]%).²⁰

31. ALNO's market shares in Germany vary according to the data source. According to [...] data ALNO's market share in the manufacturing and marketing of kitchen furniture in Germany was [10-20]% (by value) and [20-30]% (by volume) in 2011. However, under [...] data ALNO's market share by units would exceed the [20-30]% market threshold amounting to [20-30]%.²¹ ALNO's main competitors in Germany are Nobilia ([10-20]%), IKEA ([5-10]%) and Nolte Küchen ([5-10]%).
32. During the market investigation, the majority of respondents confirmed the Parties' views that the transaction is not likely to lead to competition concerns. However, some respondents, in particular competitors of ALNO, pointed that post transaction ALNO would be able to source domestic appliances from Whirlpool at lower prices than those offered to other kitchen manufacturers. As a result, ALNO would be able to offer kitchen furniture to the end customer at lower prices than its competitors.²²
33. However, taking into account also the evidence gathered during the market investigation the merged entity would not have the ability or the incentive to stop supplying ALNO's competitors or otherwise deteriorate the supply conditions.
34. First, the Parties' market shares in the downstream and upstream markets are moderate and there exist a number of alternative suppliers with significant market shares at both levels.
35. Second, during the market investigation the majority of ALNO's competitors indicated that they could easily switch their purchases of domestic appliances to one of Whirlpool's competitors as an alternative source of supply.²³
36. Third, the merged entity would not have the incentive to foreclose input of domestic appliances to kitchen furniture manufacturers. ALNO is a small player in the EEA with a market share of [0-5]% by value and [5-10]% by volume.²⁴ Furthermore, sales to ALNO account currently for less than [0-5]% of all sales made by Whirlpool in the EEA. Therefore it would be highly detrimental to Whirlpool's business to foreclose to supply other kitchen furniture manufacturers and to deny them access to Whirlpool's products.
37. In addition, the market investigation also indicates that the merged entity is unlikely to engage in customer foreclosure. This is due to the fact that ALNO's market share on the

²⁰ Market shares by volume based on [...] data. According to the Parties, [...] data does not provide market share data for competitors with respect to hoods.

²¹ Source: [...].

²² Replies to question 23 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Whirlpool's Customers and ALNO's Competitors dated 16 October 2012.

²³ Replies to question 23 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Whirlpool's Customers and ALNO's Competitors dated 16 October 2012.

²⁴ In Germany, though according to [...] data ALNO's market share by volume would be just around 25%, by value its market share is lower ([10-20]%).

purchasing market for major domestic appliances is lower than [0-5]%²⁵ in the EEA and [10-20]%²⁶ in Germany. This was further confirmed by a majority of Whirlpool's competitors, who indicated that they would have a sufficient alternative customer base in case ALNO sourced all its domestic appliances requirements from Whirlpool, stressing that ALNO was only one out of many kitchen furniture manufacturers.²⁷

38. Furthermore, pre transaction Whirlpool and ALNO already have an exclusive supply agreement regarding domestic appliances. ALNO is obliged to source [a high amount]²⁸ of ALNO's requirements of major domestic appliances from Whirlpool's subsidiary Bauknecht Hausgeräte GmbH. This supply agreement was entered into in [...], is valid until [...] and it follows previous similar supply agreements between ALNO and Whirlpool. For instance, under the previous supply agreement dated [...] ALNO was also obliged to source [a high amount] of its requirements of major domestic appliances from Whirlpool.²⁹
39. Therefore, ALNO already sources the majority of its requirements for domestic appliances from Whirlpool and thus the transaction is unlikely to lead to substantial changes in the relevant markets.
40. In light of the above, it can be concluded that the transaction does not raise serious doubts as to its compatibility with the internal market in relation to any of the relevant markets.

V. CONCLUSION

41. For the above reasons, the 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*

²⁵ Market share by value.

²⁶ Market shares by value. The market share by volume is [20-30]%.

²⁷ Replies to question 19 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Whirlpool's Competitors dated 16 October 2012.

²⁸ [...].

²⁹ [...].