

***Case No COMP/M.6935 - ARGOS/ SOPETRAL***

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 27/06/2013

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 6(1)(b)

### **To the notifying party**

Dear Sir/Madam,

**Subject: Case No COMP/M.6935 - Argos/ Sopetral  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

- (1) On 23 May 2013 the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Société par Actions Simplifiée Argos France Holding S.A.S (France), belonging to the Argos Group Holding B.V. ("Argos", the Netherlands), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of the undertaking Société par Actions Simplifiée Sopetral S.A.S. ("Sopetral", France), by way of purchase of shares. Sopetral in turn holds 100% of the share capital in the undertaking Société par Actions Simplifiée Établissements Joseph Wallach S.A.S ("Wallach", France) (Argos and Sopetral/Wallach are designated hereinafter as the "parties to the proposed transaction", or "the Parties").

#### **1. THE PARTIES**

- (2) **Argos** is active in the trade and supply of petroleum products for land and waterbound use in several countries, including France.<sup>2</sup> Its activities include the

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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.

bunkering of marine fuels, the storage of petroleum products, the non-retail sales of petroleum products, the retail sales of petroleum products and the international trading of bulk petroleum products and derivatives. Argos is primarily active in the Benelux and Germany and has substantial activities in Switzerland, France and the UK. In France, Argos' activities are limited to the non-retail sales of petroleum products and the storage of petroleum products available to third parties.

- (3) **Sopetral** is the holding company that owns all the shares in Wallach. Accordingly, it has no activities on any relevant product market.
- (4) **Wallach** is specialized in the non-retail sale of petroleum products for land use, selling primarily heating oil and diesel (including off-road diesel) as well as small quantities of gasoline.<sup>3</sup> It is exclusively active in the Eastern part of France (North and South).

## 2. THE CONCENTRATION

- (5) The proposed transaction consists of the acquisition of (indirect) sole control by Argos of Sopetral (including Wallach), by way of purchase of the whole of the latter's share capital. The transaction therefore constitutes a concentration within the meaning of Article 3(1) of the Merger Regulation.

## 3. EU DIMENSION

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Argos: approx. EUR [...] million in 2011; Wallach: EUR [...] million in 2012). Each of them has an EU-wide turnover in excess of EUR 250 million (Argos: EUR [...] million EUR in 2011; Wallach: [...] million EUR in 2012), 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 within the meaning of Article 1(2) of the Merger Regulation.

## 4. COMPETITIVE ASSESSMENT

- (7) The Parties to the proposed transaction are both active in the non-retail distribution of various refined oil (petroleum) products as well as in the storage of petroleum products in (various regions within) France.

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<sup>2</sup> Argos is a full-function joint venture between Reggeborgh and Argos Energy Group B.V. (the latter being ultimately held by [...]) as established in COMP/M.6261 North sea Group / Argos Groep / JV, of 27 September 2011. In line with paragraph 146 of the Commission's Jurisdictional Notice (2008/C 95/01), Argos and Sopetral are the undertakings concerned with the proposed acquisition. The two mother undertakings are not active in the affected markets (non-retail sales of heating oil and off-road diesel in the Eastern part of France). [...]. Reggeborgh is not active on the market for petroleum products or related markets.

<sup>3</sup> Wallach sold its retail activities to CPE, a subsidiary of Total, in 2010.

#### 4.1 **Relevant product and geographic markets**

##### 4.1.1. *Non-retail sale of refined oil products*

- (8) As regards the distribution of refined oil products, the Commission has in several previous decisions considered distinguishing between sales made at the ex-refinery/cargo, retail and non-retail levels.<sup>4</sup> The exact definition of the product market was however ultimately left open.<sup>5</sup>
- (9) Furthermore, within the potential relevant product market for the non-retail sales of refined oil products, the Commission has previously considered a sub-segmentation along the various types of refined products, being gasoline, diesel, fuel oil, gas oil, (domestic) heating oil, biodiesel and ethanol.<sup>6</sup>
- (10) On the basis of previous Commission decision making practice, the Parties submit that their activities only overlap on the non-retail sale level of the distribution chain. According to the Parties, non-retail sales of refined oil products are characterised by sales consisting of smaller volumes, usually supplied directly from the suppliers' inland storage facilities to the clients' premises by secondary transport, usually in quantities equivalent to one tanker lorry.
- (11) In addition to the various types of fuels that were previously distinguished by the Commission<sup>7</sup>, the Parties consider that an additional separate relevant product market exists comprising the non-retail sale of *non-road diesel*. Non-road diesel is meant for use by non-road mobile machinery (including inland waterway vessels), agricultural and forestry tractors and recreational craft.<sup>8</sup> Although the product characteristics of diesel and non-road diesel are identical<sup>9</sup>, non-road diesel is not allowed to be used in all motor engines. Accordingly, producers are required to add a red colorant to non-road diesel in order to prevent misuse by road-going users. The Parties claim that the latter characteristic of non-road diesel excludes any substitutability with normal diesel fuel.
- (12) The Commission's market investigation largely confirmed the existence of separate relevant product markets for the non-retail sale and retail sale of different refined fuel products.
- (13) As regards non-road diesel, this type of fuel indeed seems to have a distinct type of customer as well as intended use, which are elements that hint toward the existence

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4 COMP/M.6801 Rosneft / TNK-BP, of 8 March 2013; COMP/M.6463 Marquard & Bahls, of 19 March 2012; COMP/M.6261 North Sea / Argos Group / JV, of 27 September 2011; COMP/M.6151 Petrochina / Ineos / JV, of 13 May 2011; COMP/M.4348 PKN/Mazeikiu, of 7 November 2006, para 7.

5 COMP/M.6151 Petrochina / Ineos / JV, of 13 May 2011; COMP/M.4934 Kazmunaigaz/Rompetrol, of 19 November 2007; COMP/IV.M.727 BP/Mobil, of 7 August 1996, paragraph 28.

6 COMP/M.6463 Marquard & Bahls, of 19 March 2012; COMP/M.6261 North Sea Group/Argos groep/JV, of 27 September 2011, paras. 10 and 28; Case COMP/M.5781 Total Holdings Europe Sas/ERG Spa/JV, of 21 May 2010, para. 12; COMP/M.4348 PKN/Mazeikiu, of 7 November 2006, para. 8; COMP/M.1628 TotalFina/Elf, of 9 February 2000.

7 Ibid.

8 In line with the definition set out in Directive 2009/30/EC.

9 Cf. Directive 2009/30/EC, Annex II; Arrêté du 10 décembre 2010 relatif aux caractéristiques du gazole non routier, and; <http://www.developpement-durable.gouv.fr/Le-gazole-non-routier,19966.html>.

of a separate relevant product market.<sup>10</sup> A large majority of respondents considered that, taking into account its characteristics, applicable legislation, customers' requirements, prices and intended use, non-road diesel constitutes a separate relevant product market, being distinct from the markets for heating oil and for diesel.

- (14) As regards the geographic delineation of the market for the non-retail sale of the various refined oil products, the Commission has previously considered that national, regional or local markets could exist, with the radius around each point of supply being between 100-150 kilometres.<sup>11</sup> The Commission ultimately left the precise definition of the relevant geographic markets open.<sup>12</sup>
- (15) The respondents to the Commission's market investigation in the current matter unanimously considered the relevant geographic market for the non-retail sale of refined oil products to correspond to a radius of 100 to 150 kilometres of the location of the final customer.
- (16) However, the precise definition of the relevant product and geographic markets can be left open, given that the proposed transaction is unlikely to raise serious doubts as to its compatibility with the internal market, regardless of the precise market definition retained. Accordingly, the competitive assessment below takes account of the Parties' share of the narrowest possible relevant product and geographic markets, being the potential relevant markets for the non-retail sale of (domestic) heating oil, the non-retail sale of non-road diesel, the non-retail sale of diesel, and the non-retail sale of gasoline in a radius of 100-150 kilometres around the Parties' points of supply in France.

#### 4.1.2 *Storage of petroleum products available to third parties*

- (17) The Parties explain that Argos furthermore provides storage capacity for various petroleum products to third parties. Argos namely owns two storage depots in France where it leases capacity to third parties, one storage facility being located in Châlons-sur-Saône (capacity: 20,000 m<sup>3</sup>) and the other one being located in Beaune-la-Rolande (capacity: app. 70,000 m<sup>3</sup>).
- (18) The lease of **storage depots for finished petroleum products to distributors of refined petroleum products** ("the storage of petroleum products available to third parties"<sup>13</sup>) has previously been defined by the Commission as a distinct product market, separate from relevant product markets for the storage of crude oil, vegetable oils, chemicals and gas, due to technical and commercial considerations.<sup>14</sup> The Commission explained that the offering of storage constitutes a prerequisite for operators to gain access to markets for the final distribution of the various finished

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10 COMP/M.3516 Repsol YPF / Shell Portugal, of 13 September 2004.

11 COMP/M.6261 North Sea Group/Argos groep/JV, of 13 May 2011, paras. 12 -13; COMP/M.5846 Shell/Cosan/JV, of 3 January 2011, para. 19; COMP/M.5781 Total Holdings Europe Sas/ERG Spa/JV, of 21 May 2010, para. 25; COMP/M.4348 PKN/Mazeikiu, of 7 November 2006, paragraphs 25 – 27; COMP/M.4208 – Petroplus/European Petroleum Holdings, of 29 May 2006, para. 10.

12 Ibid.

13 COMP/M.6261 North Sea Group /Argos groep/JV, of 27 September 2011.

14 COMP/M.6525 SESA/DISA/SAE/JV, of 21 June 2012, para. 29; COMP/M.6463 Marquard & Bahls / Bominflot, of 19 March 2012; COMP/M.4532 Lukoil/ConocoPhillips, of 21 February 2007, paras. 14 – 15; COMP/M.1621 Pakhoed/Van Ommeren, of 10 September 1999, para. 8; COMP/M.1464 Total / Petrofina (II), of 26 March 1999.

petroleum products.<sup>15</sup> The Commission also previously distinguished between the provision of storage capacity (i) using import facilities with very large capacity of between 30,000 m<sup>3</sup> to 50,000 m<sup>3</sup>, and (ii) using smaller secondary/coastal distribution facilities.<sup>16</sup> The Commission also considered a further sub-segmentation by distinguishing between in-house storage activities by refiners and storage by independent companies that lease it to operators active in the market.<sup>17</sup>

- (19) According to the Commission's decision making practice, the geographic market for the storage of petroleum products available to third parties depends on the size of the Member State at hand and is accordingly national, regional or limited to a radius that in average does not exceed 150 kilometres around the relevant storage depot.<sup>18</sup>
- (20) In any case, the precise definition of the relevant product and geographic markets can be left open for the purpose of the current notification, given that it is unlikely to raise serious doubts as to its compatibility with the internal market, regardless of the precise market definition retained. The competitive assessment below therefore takes account of the Parties' market share on the narrowest possible relevant markets.

## **4.2. Competitive Assessment**

### *4.2.1. Horizontal relationships*

- (21) The Parties' activities overlap horizontally on the potential relevant product markets for the non-retail sale of (i) gasoline, (ii) heating oil, (iii) diesel and (iv) non-road diesel.
- (22) In France, Argos is exclusively active at the non-retail level of the supply chain, selling refined petroleum products both to French wholesalers as well as to French retailers. Given that Wallach is only active in France, the geographical overlap is limited to the French territory. Wallach is exclusively active at the non-retail level as it only sells petroleum products to French retailers in the Eastern part of France.
- (23) The Parties' combined market shares at a national level do not exceed [5-10]% on any of the aforementioned potential relevant product markets. More specifically, the Parties' combined market shares amount to [0-5]% in the market for gasoline, [0-5]% for diesel, [0-5]% for non-road diesel and [5-10]% for heating oil.<sup>19</sup>

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15 COMP/M.6261 North Sea Group/Argos groep/JV, of 27 September 2011; COMP/M.1464 Total / Petrofina (II), of 26 March 1999.

16 COMP/M.6525 SESA/DISA/SAE/JV, of 21 June 2012, para. 30; COMP/M.4532 Lukoil/ConocoPhillips, of 21 February 2007, paragraphs 14 – 15; COMP/M.1628 TotalFina/Elf, of 9 February 2000, para. 103.

17 COMP/M.6525 SESA/DISA/SAE/JV, of 21 June 2012, para. 32; COMP/M.1464 Total / Petrofina, paragraphs 25 - 28.

18 COMP/M.1464 Total Petrofina (II) of 26 March 1999, §§ 29, 30; COMP/M.6525 SESA/DISA/SAE/JV, of 21 June 2012, para. 30; COMP/M.1628 TotalFina/Elf, of 9 February 2000, para. 48; COMP/M.6261 – North Sea Group/Argos groep/JV, of 27 September 2011, paragraphs 42 – 43.

19 The Parties explain that all relevant market share data is collated using the "data origin" methodology that is commonly used by the relevant sectorial organisation (the Comité Professionnel du Pétrole). Pursuant to said methodology, sales are allocated in full to the province (département) in which the relevant point of supply is located. Furthermore, a percentage of total sales per province has been allocated to the 100 km and 150 km radiuses, in accordance with the extent to which the latter radiuses overlap with the various provinces.

- (24) When looking at the narrowest possible *geographic* delineation of the potential relevant product markets, the Parties' points of supply only overlap to a significant extent in the regions covered by a respective radius of 100 kilometres and 150 kilometres around Lyon, Strasbourg (the "Strasbourg-regions"), Dijon and Nuisement-sur-Cooles. Furthermore, the Parties' combined market share on any of the potential relevant product markets does not exceed [5-10]% in any of the aforementioned regions except for **Strasbourg**. In the Strasbourg-regions, the markets for the non-retail sale of domestic heating oil and the non-retail sale of non-road diesel would be horizontally affected as can be seen from the tables below. On the basis of the 150 kilometre radius, only the market for the non-retail sale of heating oil would constitute an affected market.

2012 market share data (value) – Strasbourg <b>100 km radius</b>							
	Argos	Wallach	Combined	UDP	Bolloré	Zeller+Cie	BP
Heating oil	[0-5]%	[30-40]%	<b>[30-40]%</b>	25-30%	15-20%	7-10%	5-7%
Non-road diesel	[0-5]%	[10-20]%	<b>[10-20]%</b>	25-30%	15-20%	7-10%	5-7%
2012 market share data (value) – Strasbourg <b>150 km radius</b>							
	Argos	Wallach	Combined	UDP	Bolloré	Zeller+Cie	BP
Heating oil	[0-5]%	[20-30]%	<b>[20-30]%</b>	25-30%	15-20%	7-10%	5-7%
Non-road diesel	[0-5]%	[10-20]%	<b>[10-20]%</b>	25-30%	15-20%	7-10%	5-7%

- (25) Regardless of the precise geographic scope of the product markets retained, the Parties submit that the proposed transaction is unlikely to give rise to competition concerns, given that (i) the increment in the Parties' market share on any potentially affected market would amount to [0-5]%, (ii) the delta HHI will remain below 250 for each alternative geographic market delineation retained (cf. the table below) and below 150 for two out of three potentially affected markets; (iii) at least four strong competitors will continue to exert significant competitive pressure on the Parties post-merger for each potentially affected market; (iv) sufficient excess storage capacity is available in the Strasbourg region<sup>20</sup>, and; (v) the product markets concerned seem

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<sup>20</sup> Storage capacity constitutes a prerequisite for operators to gain access to markets for the final distribution of the various finished petroleum products; cf. COMP/M.1464 Total / Petrofina (II), of 26 March 1999. The Parties furthermore explain that relatively small storage facilities suffice to be capable of becoming a large player on the market given that e.g. Wallach only uses a [< 10,000] m<sup>3</sup> storage facility for supplying [> 150,000] m<sup>3</sup>.

contestable, given that the Parties indicate that Dyneff, Omnéo and Atlantic are recent and successful new entrants. Argos would have entered the product markets concerned with the proposed transaction only in 2011 while it has already achieved a market share of app. [0-5]% in 2012. Furthermore, Dyneff and Omnéo would have entered these product markets in around 2008 and 2010 respectively while obtaining market shares of app. 5% and 3-5%. Finally, Atlantic would have entered the markets concerned as recent as January 2013.

<b>Strasbourg – 100 km radius</b>		<b>Strasbourg – 150 km radius</b>	
	HHI Delta 2012		HHI Delta 2012
Heating Oil	[< 250]	Heating Oil	[< 150]
Non-road diesel	[< 150]	Non-road diesel	[< 150]

- (26) Moreover, according to the Parties it should be considered that post transaction the combined entity will continue to face strong buyer power on the part of its customers.
- (27) The respondents to the Commission's market investigation confirmed that the potential relevant markets involved with the proposed transaction are characterised by strong competition, while the majority of respondents considered that no significant entry barriers exist.
- (28) Furthermore, respondents on the demand side of the potential relevant markets unanimously confirmed that, post-transaction, they would be capable of fully sourcing their diesel, non-road diesel and heating oil needs from suppliers other than the Parties. Also, the majority of respondents considered that sufficient excess storage capacity is available in the Strasbourg-regions, in order to allow a potential new entrant to successfully enter the market for the non-retail sale of refined fuel products.
- (29) On the basis of all of the foregoing, the Commission takes the view that the proposed transaction is unlikely to raise serious doubts as to its compatibility with the internal market, in particular given that: (i) several strong competitors will continue to exert significant competitive pressure on the Parties post-merger in each of the potential horizontally affected markets; (ii) the proposed transaction brings about a minor increment in the Parties' market shares on the markets concerned; (iii) the Commission's market investigation indicated that sufficient alternative suppliers to cover customer demand are likely to remain post-merger; and (iv) the Commission's market investigation indicated that considerable excess storage capacity is available in the market, and no significant entry barriers were considered to exist.

#### 4.2.2. *Vertical relationships*

- (30) Argos owns two storage depots for petroleum products in France (in Châlon-sur-Saône and in Beaune-la-Rolande) on which it leases capacity to third parties. Wallach rents capacity for own use on six storage depots owned by third operators. Given that Wallach is thus not active on the market for the storage of petroleum products available to third parties, the proposed transaction does not give rise to a horizontal overlap on the market for the storage of petroleum products available to third parties under any alternative geographic market definition retained.



- (31) The possible vertical relationship between Argos' activities in the storage of petroleum products available to third parties and Wallach's activities in the non-retail sale of various refined fuel products does not give rise to competition concerns.
- (32) The Parties' share of the respective markets for the non-retail sales of heating oil and gas oil exceeds 25% only in the Strasbourg-regions. However, given that neither of the aforementioned storage depots of Argos are located within these Strasbourg-regions and given that a radius of 150 kilometres around either of Argos' storage depots does not overlap to a significant extent with the Strasbourg-regions, the Parties would not have the ability of using their position in the respective markets for storage of petroleum products and the non-retail sale of heating oil and non-road diesel to foreclose competitors and customers.
- (33) At the same time, the relationship between the storage of petroleum products available to third parties and the non-retail sales of heating oil and non-road diesel could theoretically give rise to vertically affected markets, when taking the non-retail sales market for petroleum products to be *national* in scope. However, the Parties' activities on the narrowest geographic delineation of the market for the storage of petroleum products combined with their activities on a national market for the non-retail sales of different refined fuel products do not give rise to any vertically affected market, given that their market shares do not exceed 25% at either level.
- (34) In view of all of the foregoing, the proposed transaction is unlikely to raise serious doubts as to its compatibility with the internal market as a result of vertical effects.

## **5. CONCLUSION**

- (35) 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*