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***Case No COMP/M.7216 - REGGEBORGH / ARGOS GROUP  
HOLDING***

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: 10/07/2014

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## EUROPEAN COMMISSION

Brussels, 10.7.2014  
C(2014) 4992 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.7216 – REGGEBORGH / ARGOS GROUP HOLDING  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

- (1) On 4 June 2014, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004<sup>2</sup> by which Reggeborgh Invest B.V. ("Reggeborgh", the Netherlands) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over the Argos Group Holding ("Argos Holding", the Netherlands), by way of purchase of shares (the "proposed transaction"). Reggeborgh is hereinafter also referred to as the "Notifying Party", Argos Holding is also referred to as the "Target" and both Reggeborgh and Argos Holding are referred to as the "Parties".

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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 L 24, 29.1.2004, p. 1 (the "Merger Regulation").

## 1. THE PARTIES

- (2) Reggeborgh is a Dutch company active through Argos Holding in trade and supply of petroleum products for land and waterbound use, property development and through its controlled company Koninklijke Volker Wessels Stevin ("KVWS") in the construction services sector.
- (3) Argos Holding is active in trade in and the supply of petroleum products for land and waterbound use.
- (4) Argos Holding's current shareholders are Reggeborgh with [more than 50%] AEG Invest with [less than 25%], Ruby B.V. ("Ruby") [less than 20%] and Stichting Administratiekantoor with Managementsbelang NSP ("STAK") with [less than 5%].

## 2. THE CONCENTRATION

- (5) According to the Notifying Party, Reggeborgh acquired sole control over Argos Holding in several steps.

### *The 2011 Transaction*

- (6) In 2011, Reggeborgh and AEG Invest transferred the activities of their respective subsidiaries in the supply of petroleum products in a joint venture. This joint venture initially operated under the name of North Sea Group, but was later renamed Argos Holding.
- (7) The Commission cleared the transaction in its decision COMP/M.6261 North Sea Group / Argos Groep / JV dated 27 September 2011. The shareholder structure was as follows:

Reggeborgh: [more than 50%]  
AEG Invest: [more than 25%]  
Ruby: [less than 20%]  
STAK: [less than 5%]

- (8) In its decision the Commission noted that the adoption of the Business Plan and long-term cooperation with other undertakings require the prior approval of the General Assembly of Shareholders with a quorum of 75% of the share capital. The Commission therefore concluded that Reggeborgh and AEG Invest (at the time Argos Energy Group) acquire joint control over Argos Holding.

### *The 2013 Put-Transfer*

- (9) Under the 2011 Merger Agreement, AEG Invest had the contractual right to sell some of its shares in Argos Holding back to Reggeborgh ("put-option"). On 28 June 2013 AEG Invest exercised this put-option and transferred [less than 5%] of its shares to a bank, which then transferred approximately [less than 5%] of these shares to Reggeborgh and the remaining shares to Ruby. The legal transfer occurred on 4 and 5 July 2013 (the "Put-transfer").

- (10) As a result of this transaction Reggeborgh's share capital in Argos Holding increased to [more than 50%] and the share capital of AEG Invest decreased to [less than 25%], namely [less than 25%] threshold granting the power to veto certain decisions. After the Put-Transfer, the shareholder structure was as follows:

Reggeborgh: [more than 50%]  
AEG Invest: [less than 25%]  
Ruby: [less than 20%]  
STAK: [less than 5%]

- (11) According to the Notifying Party, as a result of this transaction, AEG Invest lost the veto right with regard to a number of strategic decisions including the adoption of the Business Plan. The Notifying Party concludes that AEG Invest thereby lost its negative joint control over the joint venture. However, the Notifying Party states that it was only due to AEG Invest's unilateral action, that Reggeborgh acquired sole control over the Target.
- (12) In line with paragraph 58 of the Consolidated Jurisdictional Notice<sup>3</sup> the Commission notes that negative sole control usually occurs where only one shareholder holds 50% in an undertaking whilst the remaining 50% is held by several other shareholders. Besides, negative sole control usually occurs where there is a supermajority required for strategic decisions which confers a veto right upon only one shareholder.
- (13) In the case at hand, Reggeborgh holds more than 50% of the share in the Target, whilst the remaining shares are split between three other shareholders. Moreover, AEG Invest lost its veto right regarding many strategic decisions such as the adoption of the Business Plan, the nomination of directors and long-term cooperation with other undertakings. After the exercise of the Put-Transfer, Reggeborgh is the only shareholders with a veto right regarding these decisions.
- (14) In view of the above, the Commission considers that the exercise of the put-option by AEG Invest and the subsequent implementation of the Put-Transfer, led to a change in the control structure of the Target from joint control by AEG Invest and Reggeborgh to sole control by Reggeborgh.
- (15) The change from joint control to sole control constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
- (16) The Commission therefore considers on the basis of the information at hand, that the exercise of the put-option and the Put-transfer constitute a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

#### *The 2014 Transaction*

- (17) By way of the now envisaged transaction, AEG Invest will sell its remaining 23.67% share in Argos Holding to Reggeborgh and Ruby. As a result of this transaction, the shareholder structure will be as follows:

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<sup>3</sup> Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings ("Jurisdictional Notice"), OJ C95, 16 April 2008, p.1.

Reggeborgh: [more than 70%]  
Ruby: [less than 25%]  
STAK: [less than 5%]

- (18) However, the Commission considers that this transaction does not constitute a change in control, since Reggeborgh already acquired sole control as a result of the 2013 Put-Transfer.

### **3. EU DIMENSION**

- (19) The undertakings concerned have a combined aggregate world-wide turnover in 2013 of more than EUR [...] million (Reggeborgh: EUR [...]million and Argos Holding: EUR [...] million). Each of them has an EU-wide turnover in 2013 in excess of EUR [...] million (Reggeborgh: EUR [...] million, Argos Holding: 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 proposed transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

### **4. COMPETITIVE ASSESSMENT**

- (20) Reggeborgh is active in construction, civil engineering and real estate development, in the Netherlands, Belgium and Germany, the UK, Canada and the United States, mainly through its subsidiary KVWS.
- (21) Argos Holding is active in the international trading of bulk petroleum products and derivatives, the storage of petroleum products, the non-retail sale of petroleum products, the retail sale of petroleum products and the bunkering of marine fuels. Its activities focus on the Benelux and Germany but Argos Holding is also active in Switzerland, France and the United Kingdom.
- (22) The transaction does not lead to any horizontally or vertically affected markets.
- (23) Furthermore, the Notifying Party submits that as a result of the change from joint to sole control, the acquisition of sole control by Reggeborgh over Argos Holding cannot be expected to result in a different strategic competitive behaviour of Argos Holding.
- (24) The Commission considers that Reggeborgh does not have incentives going beyond its interests as a financial investor in Argos Holding. In particular, Reggeborgh does not compete with any activities of Argos Holding. Moreover, Argos Holding is neither an important supplier, nor an important customer to Reggeborgh and its competitors. Therefore the Commission considers that Reggeborgh has no incentives to strategically influence the policies of Argos Holding for the benefit of its own group companies or to the detriment of competitors.
- (25) In view of the above and all available evidence, the Commission considers it unlikely that the acquisition of sole control by Reggeborgh over the Target will lead to a different strategic competitive behaviour of Argos Holding. The Commission therefore considers that the transaction does not raise serious doubts as to its compatibility with the internal market.

**5. CONCLUSION**

- (26) 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.
- (27) However, in view of the facts described above with regard to the change in the quality of control, the Commission takes the view that an infringement of the stand-still obligation in Article 7(1) and of the notification requirement in Article 4(1) of the Merger Regulation cannot be excluded in the present case and the Commission may examine in a separate procedure whether a sanction under Article 14(2) the Merger Regulation is appropriate.

*For the Commission*

*(signed)*

*Joaquín ALMUNIA*

*Vice-President*