

***Case No COMP/M.7249 - CVC/ PAREXGROUP***

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: 13/06/2014

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 13.06.2014

C(2014) 4047 final

PUBLIC VERSION

MERGER PROCEDURE

**To the notifying party**

Dear Madam, Dear Sirs

**Subject: Case M.7249 - CVC/ PAREXGROUP**

**Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004<sup>1</sup>**

- (1) On 8 May 2014, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking CVC Capital Partners SICAV-FIS S.A. ("CVC" or "Notifying Party", Luxembourg) intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking ParexGroup Participations SAS ("ParexGroup", France) and certain affiliated companies (collectively the "Target") by way of purchase of shares.<sup>2</sup> CVC and the Target are collectively referred to as the "Parties".

**1. THE PARTIES AND THE TRANSACTION**

- (2) The Target is the specialty dry mix solutions business of the Materis group and is active mainly in the production and commercialisation of mortar products used in the construction industry. Target's products fall mainly into three business lines: (i) façade protection and decoration (comprising renders and insulation systems), (ii)

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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> Publication in the Official Journal of the European Union No C 150, 17.5.2014, p. 7.

ceramic tile setting materials (such as tile adhesives, self levelling compounds or grouts) and (iii) concrete repair and waterproofing systems (technical products used on existing concrete works).

- (3) CVC advises and manages investment funds which hold interests in companies active in various industries including chemicals, utilities, manufacturing, retailing and distribution. One of the portfolio companies of CVC<sup>3</sup> is Univar, a company active in the distribution of commodity and specialty chemicals.
- (4) On 26 March 2014 Financière Santec S.A. ("Bidco"), a special purpose vehicle controlled by CVC funds, entered into an Offer Letter with Materis Corporate Services S.A.S. and Materis Holding Luxembourg (jointly referred to as the "Seller"). The Offer Letter granted a put option to the Seller allowing it, upon completion of a works council consultation process, to sell to Bidco the shares of the various companies which together constitute the Target in accordance with the terms and conditions of an agreed form sale and purchase agreement ("SPA") attached to the Offer Letter. The works council consultation process was completed on 29 April 2014 and on 5 May 2014 the put option was exercised resulting in the Seller's commitment to sell the Target and confirmation of Bidco's commitment to acquire the Target subject to the SPA conditions.
- (5) As a result of the proposed Transaction CVC will solely control<sup>4</sup> the Target, within the meaning of Article 3(1)(b) of the Merger Regulation.

## **2. EU DIMENSION**

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million [CONFIDENTIAL]. Each of them has an EU-wide turnover in excess of EUR 250 million [CONFIDENTIAL] but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified Transaction therefore has an EU dimension.

## **3. RELEVANT MARKETS AND COMPETITIVE ASSESSMENT**

- (7) The proposed Transaction does not give rise to any horizontal overlaps as neither CVC nor any of its portfolio companies is active in the same market as the Target. The proposed Transaction does however give rise to a vertical link between the activities of the Target and Univar (one of CVC's portfolio companies), which is

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<sup>3</sup> CVC holds [CONFIDENTIAL] shares of Univar, while the remaining [CONFIDENTIAL] is held by Clayton, Dubilier & Rice, LLC. These two private equity investment groups jointly control Univar (see Case M.6012 - *CD&R/CVC/Univar*).

<sup>4</sup> For the sake of completeness, with respect to one of the companies constituting the Target [CONFIDENTIAL] it will after the Transaction be held (indirectly) [CONFIDENTIAL]% by CVC and [CONFIDENTIAL]% by a Thai individual. This structure results from the provisions of Thai law that prohibit foreign entities from holding a majority shareholding in Thai companies. However CVC will exercise de facto sole control over [CONFIDENTIAL] as [CONFIDENTIAL] day-to-day management, as well as the approval of its business plan, budget, and the appointment and removal of its senior managers requires the approval of a simple majority of [CONFIDENTIAL] board of directors. This board is composed of four members, three of which are appointed by representatives of the holding company belonging to the Target (and thus CVC will control these appointments).

active in the distribution of commodity and specialty chemicals, including chemicals used as input in the production of mortars.

### **3.1. Product and geographic market definitions (upstream)**

#### *3.1.1. Relevant product market*

- (8) The Commission<sup>5</sup> has in the past distinguished between three categories within the distribution of chemicals, excluding direct sales by the manufacturers: (i) the distribution of commodity chemicals; (ii) the distribution of specialty chemicals and (iii) the chemical bulk business.
- (9) The Notifying Party submits in view of the minor vertical overlap between the activities of the Target and Univar, which does not give rise to any competition concerns, that the product market definitions for Univar's activity can ultimately be left open.
- (10) All of the respondents to the Commission's requests for information confirmed that the above-mentioned segmentation of the chemicals distribution market remains valid<sup>6</sup>. However, the results of the market investigation are inconclusive as to whether only specialty or only commodity or both categories of chemicals are used as input in the production of mortars.<sup>7</sup>
- (11) In any case the exact market delineation of the relevant product market(s) can be left open as the notified Transaction does not raise doubts as to its compatibility with the internal market under any plausible market definition.

#### *3.1.2. Relevant geographic market*

- (12) In previous Commission decisions, the markets for the distribution of commodity chemicals and specialty chemicals were held to be at least national in scope.<sup>8</sup>
- (13) The Notifying Party submits that due to the minor vertical overlap between the activities of the Target and Univar, which does not give rise to any competition concerns, the geographic scope of the market for Univar's activity can ultimately be left open.
- (14) The competitors of Univar which responded to the Commission's requests for information stated that they supply chemicals at least on a national basis.<sup>9</sup>

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<sup>5</sup> M.2244 -*Royal Vopak/Ellis& Everard*

<sup>6</sup> Responses to question 4 of the Questionnaire Q3 – Competitors commodity and specialty chemicals for pre-mix dry façade mortars.

<sup>7</sup> Responses to question 5 of the Questionnaire Q3 – Competitors commodity and specialty chemicals for pre-mix dry façade mortars.

<sup>8</sup> M.2244 -*Royal Vopak/Ellis& Everard*

<sup>9</sup> Responses to question 6 of the Questionnaire Q3 – Competitors commodity and specialty chemicals for pre-mix dry façade mortars.

- (15) However, the exact market geographic scope of the relevant market(s) can be left open as the notified Transaction does not raise doubts as to its compatibility with the internal market under any plausible market definition.

### **Product and geographic market definitions (downstream)**

#### *3.1.3. Relevant product market*

- (16) Mortar is a building material obtained from the mixture of a binding material (cement and/or lime), sand and water. It is used, among other things, for bonding bricks and stones, rendering and plastering. The Notifying Party submits that mortars have various levels of sophistication depending on the number of ingredients involved (in the Target's case, this generally ranges from around 4 to 20 ingredients, although the most basic mortar is simply cement and sand).<sup>10</sup>
- (17) The Commission has in the past<sup>11</sup> identified three broad ranges of mortar applications (i) construction, (ii) façade and (iii) tile-fixing mortars. On the basis of the production technique a distinction was drawn between (i) on-site mortars and (ii) pre-mix mortars. Finally, within the pre-mix mortars a further distinction was made between (i) dry mortars, (ii) wet mortars and (iii) ready-to-use paste.
- (18) The market investigation did not contradict the Commission's previous findings. A respondent in the market investigation confirmed that while the components of the various types of mortars are indeed similar (such as cement, sand and additives) the proportions in which these components are added as well as the particular types of additives impact the characteristics of the mortar and influence its final use.<sup>12</sup> This could confirm the segmentation of the relevant product market based on the final use as mentioned in the Commission's precedents.
- (19) However, the exact definition market of the relevant market(s) can be left open as the notified Transaction does not raise doubts as to its compatibility with the internal market under any plausible market definition.

#### *3.1.3.1. Relevant geographic market*

- (20) In previous decisions, the Commission has considered the relevant geographic market for mortar to be regional based on a radius of 120 km around the relevant production plant.<sup>13</sup> The Commission has also envisaged a wider scope for higher value products such as ready-to-use paste mortars for tile-fixing or façade renderers.<sup>14</sup>

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<sup>10</sup> Form CO, par. 39.

<sup>11</sup> M.4719 – *Heidelberg Cement/Hanson*, M.1779 – *Anglo American/Tarmac* and M.4898 – *Saint Gobain/Maxit*.

<sup>12</sup> Response to question 5.2 of the Questionnaire Q1 – Competitors pre-mix dry façade mortars.

<sup>13</sup> M.1779 – *Anglo American/Tarmac*, M.4719 – *Heidelberg Cement/Hanson* and M.4898 – *Saint Gobain/Maxit*.

<sup>14</sup> M.4898 – *Saint Gobain/Maxit*.

- (21) The Notifying Party submits that the relevant geographic scope should be far wider than 120 km around each production facility and has provided market shares at a national level.
- (22) In the course of the market investigation one of the Target's competitors noted that they in fact deliver products throughout entire France,<sup>15</sup> while the customers stated that they purchase mortars from within at least 300 km and at most nationally or even cross border.<sup>16</sup>
- (23) However, the exact market geographic scope of the relevant market(s) can be left open as the notified Transaction does not raise doubts as to its compatibility with the internal market under any plausible market definition.

### **3.2. Competitive assessment**

- (24) According to the Notifying Party the proposed Transaction does not give rise to competition concerns because (i) there are no horizontal overlaps between the Parties and (ii) the vertical link between the activities of the Target and Univar is only potential, as the Target is not a current customer of Univar in France and in the countries where it does purchase commodity and specialty chemicals from distributors, is a minor, not significant purchaser. In the EEA, the Target is active in (i) pre-mix dry façade mortars, (ii) pre-mix dry construction mortars and (iii) pre-mix dry tile fixing mortars in Belgium, Spain, the United Kingdom and France. It is also active in France only in ready-to-use paste mortars used for façades, construction and tile fixing. In all of these markets Target's shares of supply are below 30%,<sup>17</sup> with the exception of the market for pre-mix dry façade mortars in France, where it amounts to [30-40]%<sup>18</sup>
- (25) Univar is active in commodity and specialty chemicals, which are used as input into the production of pre-mix dry façade mortars. Its market share in France for commodity chemicals amounts to [5-10]% and in specialty chemicals [5-10]%.<sup>19</sup> Due to the fact that Target's market share in the downstream market for pre-mix dry façade mortars in France is above 30% there are vertically affected markets - upstream for the distribution of commodity and specialty chemicals and downstream for pre-mix dry façade mortars in France. However this vertical relation does not give rise to foreclosure concerns.

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<sup>15</sup> Response to question 11.1 of the Questionnaire Q1 – Competitors pre-mix dry façade mortars.

<sup>16</sup> Response to question 9 of the Questionnaire Q2 – Customers pre-mix dry façade mortars.

<sup>17</sup> And at most reach [20-30]% in the market for pre-mix dry construction mortars in France.

<sup>18</sup> According to the Notifying Party Target's market shares at regional/local level would not differ significantly from those at national level.

<sup>19</sup> The Notifying Party confirmed that, even under a narrower market definition, Univar would not have a market share in any particular region in France exceeding 10%.

### 3.2.1. *Input foreclosure*

- (26) It is unlikely that the Merged Entity would be able to foreclose the Target's competitors in France given that alternative suppliers exist. Univar's market share for the distribution of commodity chemicals is limited (below [5-10]%) and other competitors in France include Brenntag [10-20]%, Helm [0-5%], Quaron [0-5]% and PC Loos [0-5]%. In the market for the distribution of specialty chemicals, Univar's share is only [5-10]% and other competitors are present such as Azelis [5-10]%, IMCD [5-10]%, Unipex [5-10]% and Safic Alcan [0-5]%. It is therefore unlikely that the Merged Entity would be in a position to foreclose its downstream competitors from access to chemicals since it would be unlikely to benefit from such behaviour. Furthermore, there appear to be various sources of supply of chemicals used in the production of pre-mix dry façade mortars in France, namely not only distributors but also manufacturers. The Target itself purchases specialty chemicals directly from the manufacturers such as Dow, BASF and Elotex (typically from Germany) and not through independent chemical distributors such as Univar. Finally, the Targets' competitors did not raise any specific concerns in the course of the market investigation.<sup>20</sup>

### 3.2.2. *Customer foreclosure*

- (27) Given the fact that a number of alternative customers exist for Univar's competitors in France, it seems unlikely that the Merged Entity would be able to engage in customer foreclosure. The Target's main competitors in the supply of pre-mix dry façade mortars in France are Weber [30-40]%, PRB [20-30]%, VPI [5-10]%, Cantillana [5-10]%, and CESA [5-10]%.  
(28) In the course of the market investigation none of Univar's competitors claimed that following the Transaction they would not have a sufficient number of customers for the chemicals used in the production of pre-mix dry façade mortars.<sup>21</sup>

### 3.2.3. *Conclusion*

- (29) In the light of the above and of the available evidence, the Commission considers that the proposed Transaction does not give rise to serious doubts as to its compatibility with the internal market since it is unlikely to result in the Merged Entity being able or having the incentive to engage in input and/or customer foreclosure. Therefore, it is unlikely that the Transaction would lead to a significant impediment to effective competition.

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<sup>20</sup> Response to question 12 of the Questionnaire Q1 – Competitors pre-mix dry façade mortars.

<sup>21</sup> Responses to questions 8 and 9 of the Questionnaire Q3 – Competitors commodity and specialty chemicals for pre-mix dry façade mortars.

#### **4. CONCLUSION**

- (30) 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)*

*Maroš ŠEFČOVIČ*  
*Vice-President*