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***Case No COMP/M.7309 - BRIDGEPOINT / EdRCP***

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: 04/08/2014

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## EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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, 4.8.2014  
C(2014) 5692 final

MERGER PROCEDURE

PUBLIC VERSION

### **To the notifying party:**

Dear Sir/Madam,

**Subject: Case M.7309 – BRIDGEPOINT / EdRCP  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

- (1) On 27 June 2014, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Bridgepoint Advisers Group Limited ("Bridgepoint" UK), hereinafter the "Notifying Party", acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Edmond de Rothschild Capital Partners ("EdRCP" France) by way of purchase of shares<sup>2</sup>. Bridgepoint and EdRCP are collectively referred to as the "Parties".

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

- (2) Bridgepoint is a private equity fund controlling a number of entities active in a wide range of industry sectors across the EEA, among others financial services, media and healthcare (including the provision of ophthalmic and dental surgical services in hospitals).

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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 217, 10.7.2014, p. 35.

- (3) EdRCP is a private equity fund holding interests in a number of portfolio companies, active in a wide range of sectors across the EEA and in particular packaging and healthcare products (including the supply of ophthalmic surgical products, dental equipment, dental consumables, dental imaging products and medical devices). At present it is one of the Edmond de Rothschild Group's private equity arms.

## **2. THE OPERATION AND THE CONCENTRATION**

- (4) The transaction consists of the acquisition of sole control over EdRCP by Bridgepoint, by way of purchase of shares via a Share Purchase Agreement ("SPA") signed on 27 May 2014.
- (5) Therefore, the transaction constitutes a concentration within the meaning of Article 3(1)(b) 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<sup>3</sup> (Bridgepoint [...] million; EdRCP [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (Bridgepoint [...] million; EdRCP [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (7) Therefore, the notified operation has an EU dimension within the meaning of Article 1(2) of Merger Regulation.

## **4. ASSESSMENT**

- (8) EdRCP, through one of its portfolio companies, Moria, is active in the market for supply of ophthalmic surgical products such as hand-held instrumentation and equipment for refractive and corneal transplant surgeries in the EEA. In addition, through its portfolio company Acteon, EdRCP is active in the supply of dental equipment, dental consumables, dental imaging products and medical devices (endoscopes) in the EEA.
- (9) Bridgepoint, through its portfolio companies Medipole, C2S and Médi-Partenaires is active in the provision of ophthalmic and dental surgical hospital services in France.
- (10) While the notified transaction does not result in any horizontal overlaps, it gives rise to the two following vertical overlaps:
- (i) the market for the supply of ophthalmic surgical products on the upstream side and the market for the provision of ophthalmic surgical hospital services on the downstream side and
  - (ii) the market for the supply of dental equipment, dental consumables, dental imaging products and medical devices (capital equipment and endoscope) on the

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<sup>3</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

upstream side and the market for the provision of dental surgical hospital services on the downstream side.

#### **4.1. MARKET DEFINITION**

##### *4.1.1. Supply of ophthalmic surgical products*

###### 4.1.1.1. Relevant product market

- (11) The Commission has assessed the ophthalmic surgical products in a recent decision<sup>4</sup> where it left open the question whether all ophthalmic surgical devices, solutions and instruments constitute a single product market. If the Commission takes into account the narrower segments referred to in that case (i.e. ophthalmic medical devices, viscoelastic solutions, vitreo-retinal products, disposables and intraocular lenses), Moria is only active in one of the five segments identified, namely the ophthalmic medical devices sub-segment.
- (12) In any event, the Commission considers that the exact product market definition can be left open for the purpose of the case at hand, as competition concerns are unlikely to arise under any plausible market definition.

###### 4.1.1.2. Relevant geographic market

- (13) In a previous decision concerning surgical products, the Commission considered that the market for surgical products is EEA-wide<sup>5</sup>. The Commission noted that surgical products are regulated by European standards, that price levels are similar across the EEA and that there are no significant barriers to trade in surgical products within the EEA. However, in a more recent case<sup>6</sup> concerning ophthalmic surgical products, the Commission analysed the effects of the transaction both at EEA and national level.
- (14) In any event, the Commission considers that the exact geographic market definition can be left open for the purpose of the case at hand, as competition concerns are unlikely to arise under any plausible market definition.

##### *4.1.2. Supply of dental equipment, dental consumables, dental imaging products and medical devices (capital equipment and endoscope)*

###### 4.1.2.1. Relevant product market

- (15) The Commission has so far not assessed these markets and therefore the question whether the market should be segmented. The Notifying Party considers that each of these segments above may constitute a relevant market for the purpose of the competitive assessment, although most of the competitors are active in most if not all these segments.

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<sup>4</sup> Case COMP/M.6969, Valeant Pharmaceuticals International/Bausch & Lomb Holdings.

<sup>5</sup> Case COMP/M.4579, Investor/Morgan Stanley/Molnlicke.

<sup>6</sup> Case COMP/M.6969, Valeant Pharmaceuticals International/Bausch & Lomb Holdings.

#### 4.1.2.1.1. Market for the supply of small dental equipment

- (16) Based on Acteon's product range, this market would cover the supply of ultrasound used for orthodontics, implants, tartar removal, mini leds used for orthodontics, esthetic dental care, dentures, polishers and preventive tartar removal, sterilizers, bistouries, micromotors and accessories. To the exception of bistouries, which are universally used, all products are aimed for common day-to-day dental care and are sold directly to dentists who are not in clinics or hospitals.

#### 4.1.2.1.2. Market for the supply of dental consumables

- (17) Based on Acteon's product range, this market would cover the supply of anesthetics, antiseptics, sedatives, hemostatic, dental prints, aesthetic reconstruction (adhesives), whitening products and hygiene products. To the exception of anesthetics which are generally purchased by clinics and hospitals from large market players, all products are aimed for common day-to-day dental care and are sold directly to dentists who are not in clinics or hospitals.

#### 4.1.2.1.3. Market for the supply of dental imagery devices

- (18) Based on Acteon's product range, this market would cover the supply of intra-oral cameras, notably through "SoproLife" and radiology products (sensors "Sopix", panoramic scanners "PsPix"). These products are aimed for common day-to-day dental care and are sold directly to dentists who are not in clinics or hospitals.

#### 4.1.2.1.4. Market for medical devices (endoscopes and capital equipment)

- (19) Endoscopes are universally used notably for dental care and dental surgical acts. The Parties consider that a distinction should be made between flexible endoscopes, which are not commercialized by Acteon, and rigid endoscopes, which are commercialized by Acteon.
- (20) The Commission considers that exact product market definitions of the above products can be left open for the purpose of the case at hand, as competition concerns are unlikely to arise under any plausible market definition.

#### 4.1.2.2. Relevant geographic market

- (21) While there are no past decisions assessing these markets, the Notifying Party considers that the markets for dental equipment, dental consumables and dental imaging products are at least EEA-wide.
- (22) For the purpose of the present case, the assessment of the Transaction will be carried out on the markets of dental equipment, dental consumables, dental imaging products, medical devices (endoscope) in the EEA and France (the only country where vertically affected markets arise).
- (23) In any event, the Commission considers that the exact geographic market dimension can be left open for the purpose of the case at hand, as competition concerns are unlikely to arise under any plausible market definition.

#### 4.1.3. *Provision of ophthalmic and dental surgical hospital services*

##### 4.1.3.1. Relevant product market

- (24) The Commission has assessed the market for hospital services on a number of occasions<sup>7</sup>. In its previous decisions, the Commission has indicated a possible distinction between private hospital services and publicly funded hospitals<sup>8</sup> but found such distinction may not be warranted where the reimbursement of health care is provided irrespective of that consideration. Moreover, the Commission has not concluded on the need to further segment the market according to the "group of specialties", namely medicine, surgery, obstetrics, gynaecology etc.<sup>9</sup>
- (25) In any event, the Commission considers that the exact product market definition can be left open for the purpose of the case at hand, as competition concerns are unlikely to arise under any plausible market definition considered.

##### 4.1.3.2. Relevant geographic market

- (26) In previous decisions, the Commission considered that the market for hospital services was not broader than national in scope, but left the precise geographic scope of this market open<sup>10</sup>. In other cases,<sup>11</sup> the Commission noted that the relevant market could be narrower than national, but did not conclude on the exact geographic scope of the hospital services market<sup>12</sup>.
- (27) For the purpose of the present case, the assessment of the Transaction will be carried out on the hospital services market in France (the only country where vertically affected markets arise, at the level of the group of specialties and at the level of major categories of diagnostics, at a national level and a subnational level (department and region)).

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<sup>7</sup> Case COMP/M.5805, 3i/Vedici Groupe; Case COMP/M.5548, Barclays/RBS/Hillary; Case COMP/M. 4367, APW/APSA/Nordic Capital/Capio.

<sup>8</sup> Case COMP/M.4229, APhL/L&R/Netcare General Healthcare Group; Case COMP/M.4788 Rozier/BHS.

<sup>9</sup> The French Competition Authority proposed in a recent case, two segmentations of the market for the provision of hospital services. The first segmentation is based on the "group of specialties" defined by the Public Health Code (medicine, surgery, obstetrics, gynaecology etc.). The second segmentation is narrower and based on the "major categories of diagnostics" defined by the Regional Health Agencies. Both segmentations can be used for the competitive assessment of an operation on the market for the provision of hospital services. Nonetheless, the French Competition Authority left the exact product market definition open.

<sup>10</sup> Case COMP/M.4229, APhL/L&R/Netcare General Healthcare Group; Case COMP/M.4788 Rozier/BHS.

<sup>11</sup> Case COMP/M.5805, 3i/Vedici Groupe; Case COMP/M.5548, Barclays/RBS/Hillary.

<sup>12</sup> In a recent case (Decision n°13-DCC-164 of the French Competition Authority, relative à la prise de contrôle conjoint de la société Almaviva Santé par la société UI Gestion et la société Gimv), the French Competition Authority has also noted that the exact geographic market definition can vary depending of specific local elements such as the clinic, the specialties proposed to the patients and the area at stake (namely its population and the number of clinics). In this decision, the French Competition Authority left the exact geographic market definition open.

- (28) In any event, the Commission considers that the exact geographic market definition can be left open for the purpose of the case at hand, as competition concerns are unlikely to arise under any plausible market definition considered.

#### 4.2. COMPETITIVE ASSESSMENT

- (29) On the downstream markets for provision of hospital services, Bridgepoint's market shares exceed [30-40]% in a number of French departments.
- (30) More precisely, Bridgepoint's market shares<sup>13</sup> in the downstream markets, on the basis of the narrowest possible geographic definition (i.e. French *département*) are the following:
- a. On the overall market for the provision of surgical hospital services, Bridgepoint has [40-50]% market share in Deux-Sevres, [60-70]% in Aude and [50-60]% in Pyrenees Orientales;
  - b. On the market for the provision of ophthalmic surgical hospital services, Bridgepoint has [40-50]% market share in Loire, [30-40]% in Moselle, [30-40]% in Var, [90-100]% in Aude, [50-60]% in Pyrenees Orientales, [30-40]% in Dordogne;
  - c. On the market for the provision of dental surgical hospital services, Bridgepoint has [30-40]% market share in Loire, [30-40]% in Tarn, [30-40]% in Var, [40-50]% in Deux-Sevres, [80-90]% in Aude, [50-60]% in Pyrenees Orientales.
- (31) However, in the upstream markets namely the supply of ophthalmic medical devices and supply of dental equipment, dental consumables, dental imaging products and medical devices at French and EEA level, EdRCP's market shares are below [0-5]% and [0-5]% respectively.
- (32) The Notifying Party puts forward a number of arguments to substantiate the lack of any vertical effects stemming from the proposed transaction:
- a. In both of the upstream markets, EdRCP is clearly a *de minimis* player and other strong competitors such as Novartis (Alcon), Valeant (Bauch & Lomb Storz) and Abbott (AMO) – in the supply of ophthalmic medical devices – and 3M, Densply, Danaher, Planmeca, Sirona, Storz, Olympus and Wolf – in markets of supply of dental equipment, dental consumables, dental imaging products and medical devices – are present at national and EEA levels. All these competitors have larger market shares than EdRCP, varying between 10% and 50%, both in France and in the EEA;

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<sup>13</sup> In line with the previous decisions of the Commission and the French Competition Authority, the Notifying Party submits the market shares of Bridgepoint on the market for the supply of hospital services at three levels: (a) at the level of the "group of specialties" defined by the Public Health Code, in this case the relevant group of specialties is surgery; (b) at the level of the "major categories of diagnostics" defined by Regional Health Authorities, in this case the major category of diagnostic is the category n° 2 "ophthalmic conditions"; (c) at the level of the "major category of diagnostics" defined by Regional Health Authorities, in this case this major category of diagnostic is the category n° 3 "ear, nose, throat, mouth and teeth conditions".

- b. The high market shares on the downstream market may be due to the fact that there is a limited number of hospitals in the departments where the market shares are high (Aude);
  - c. At a wider regional and national level, Bridgepoint's market shares never exceed [20-30]%;
  - d. The ophthalmic technology developed by Moria, [...];
  - e. The prescribers (purchasing advisors) are the practitioners in consideration of their needs, their technical requirements and not the clinics themselves; and
  - f. Bridgepoint's clinics are members of a central procurement entity for public and private hospitals (CAHPP) which manages the purchase of surgical products and referencing of suppliers at national level in consideration of the needs expressed by the practitioners.
- (33) Taking into account all the above, the Notifying Party considers any foreclosure theory implausible.

*Commission's assessment*

- (34) Indeed, the very low market shares of the Parties on the upstream markets and the fact that competitors on these markets are companies active at least at the EEA-wide level would make that any attempt to foreclose input would be largely defeated, the Parties' customers would have ample opportunities to turn to the Parties' competitors.
- (35) Similarly, any attempt of customer foreclosure would fail, since despite the high market shares appearing at departmental level, the actual footprint of the Parties at regional, or national level is limited. Moreover, the fact that Bridgepoint's clinics have delegated the procurement and their purchasing decisions to a central procurement entity (CAHPP) indicates that their bargaining power vis-à-vis their suppliers may be limited. Last, the Parties' competitors are active at the national/EEA-wide level and therefore even if they were to be foreclosed from a customer base in a specific department, they would continue to have sufficient customer base at both national and EEA-wide level.
- (36) Moreover, the Commission notes that the replies to its market investigation did not reveal any vertical foreclosure concerns, neither from Parties' competitors in the upstream markets, nor from their customers.
- (37) Based on the foregoing and on all the available evidence, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market and with the EEA Agreement.



**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*

*Martine REICHERTS*

*Member of the Commission*