EN

Case No COMP/M.7319 - KKR / ALLIANZ / SELECTA

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties:

Dear Sir/Madam,

Subject: Case M.7319 - KKR / Allianz / Selecta
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

(1) On 13 October 2014, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings KKR & Co. L.P. ('KKR', USA) and Allianz SE ('Allianz', Germany) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of Selecta AG and affiliated companies ('Selecta').

(2) Selecta is currently solely controlled by ACP Vermögensverwaltung GmbH & Co. KG Nr.4 d ('ACP'), a subsidiary of Allianz. The acquisition will occur by means of an investment agreement conferring certain veto rights to KKR.

(3) Hereinafter, KKR and Allianz together will be referred to as the 'Notifying Parties', while KKR, Allianz and Selecta together will be referred to as 'the Parties'.

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.

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1. THE PARTIES

(4) **KKR** is a global investment firm that provides a broad range of alternative asset management services to public and private market investors and capital markets solutions for the firm, its portfolio companies and other clients.

(5) **Allianz** is a multinational financial services provider, active in the insurance and asset management business.

(6) **Selecta** is a private company currently solely controlled by Allianz that provides vending services in both public and private settings, such as the sale of consumables used to stock vending machines and other related supplies, as well as stocking and maintenance of vending machines, for both food and beverage vending.

2. THE CONCENTRATION

(7) The operation amounting to a concentration is based on a PIK[2] loan facility agreement dated 30 May 2014 by which KKR and other unaffiliated third parties provided Selecta with EUR 220 000 000 of debt financing in return for a warrant instrument and an investment agreement entered into on 20 June 2014.

(8) Allianz will remain the sole shareholder of Selecta and will also be able to nominate the majority of its decision-making bodies post-transaction. However, section 2 and schedule 2 of the investment agreement provides for certain veto rights in favour of KKR. In particular, KKR's consent is required for [detail of KKR’s veto rights].

(9) Pursuant to paragraph 67 of the Jurisdictional Notice,[3] veto rights which confer joint control typically include decisions on issues such as the budget, the business plan, major investments or the appointment of senior management. Accordingly, KKR and Allianz will have joint control of Selecta as a result of the investment agreement.

(10) The transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(11) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[4] (KKR: EUR […] million, Allianz: EUR 113 932 million, Selecta: EUR 740 million). The aggregate EU-wide turnover of two of the undertakings concerned is more than EUR 250 million (KKR: EUR […] million, Allianz: EUR 77 160 million, Selecta: EUR […] million) and none of the undertakings concerned achieves more than two-thirds of its aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

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2 Payment-in-kind.

3 Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C95, 16.4.2008, p. 1, ('Jurisdictional Notice').

4 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Jurisdictional Notice.

4. COMPETITIVE ASSESSMENT

(12) The proposed transaction gives rise to no horizontally affected markets. However, there is an affected vertical relationship insofar as KKR's portfolio company Württembergische Metallfabriken AG ('WMF', Germany), a manufacturer of table and kitchenware, supplies fully-automatic table-top hot beverage machines[5] used in the kind of vending services in which Selecta is also active.

4.1. Market Definition

4.1.1. Downstream market – vending services

(13) The Notifying Parties submit that the relevant downstream product market is either the overall vending services market or, if narrower, the vending of hot beverages that excludes cold drinks and food vending. The Notifying Parties note that Selecta and its competitors are typically active in all kinds of vending and that vending customers also require the full spectrum of vending services.

(14) The Commission has previously defined vending as the sale of products and services at an unattended point of sale using some form of payment system.[6] The vending services provider is typically paid from the cash proceeds from end-product sales via the vending machines but the Commission has also acknowledged that beverage machines used in hotels, restaurants, catering and offices may be subsidised by the employer or host and therefore may not be equipped with a payment system.[7]

(15) In its previous decisions, the Commission has left it open whether the vending market should be further segmented. In particular, the Commission has left open whether the vending services market should be defined by reference to the product sold, that is by hot/cold beverages and/or snacks/food.[8] Moreover, when considering whether the market should be delineated depending on the type and extent of vending services such as supply and installation of vending machines as compared to stocking and maintenance services, the Commission noted that such a distinction was not supported by the market investigation.[9]

(16) The present case only gives rise to an affected vertical relationship with respect to vending of hot beverages, a potential sub-segment of vending services. Within this category, the Notifying Parties have indentified a potential further narrower segment for office coffee services ('OCS') that results in affected markets.

(17) As regards the geographic scope of the markets, the Notifying Parties suggest that the relevant geographic market for vending services is national. This is in line with the Commission's previous decisions.[10]

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5 Under the brands WMF and Schaerer.

6 M.2373 – *Compass/Selecta*, paragraphs 13–17.

7 M.5338 – *Barclays/Investcorp/N&V Global Vending*, paragraph 10.

8 M.5973 – *CVC/Charden International*, paragraphs 12–13.

9 M.2373 – *Compass/Selecta*, paragraphs 16–17, M.4202 – *Charterhouse/Elior*, paragraph 16; M.5973 – *CVC/Charden International*, paragraph 12.

10 M.2373 – *Compass/Selecta*, paragraphs 26–27; M.5973 – *CVC/Charden International*, paragraph 16.

(18) Nonetheless, it is not necessary to conclude on the precise scope of the relevant product or geographic market as the proposed transaction does not give rise to competition concerns even under the narrowest possible market definition.

4.1.2. Upstream market –fully-automatic table-top hot beverage machines

(19) The Notifying Parties submit that the relevant upstream market is the manufacture and sale of fully-automatic table-top hot beverage machines.

(20) The Commission has previously distinguished, while leaving the exact market definition open, three types of food and drink distribution machines: (i) vending machines, (ii) beverage machines used in hotels, restaurants and cafeterias ('HoReCa') and (iii) office coffee machines. The Commission has also previously considered that the product market for vending machines could potentially be subdivided according to the products they dispense into (a) hot and cold beverages, (b) snacks and food and (c) cans and bottles vending machines. However, the Commission has left the market definition previously open in this respect as well.[11]

(21) According to the Notifying Parties, the narrowest potential upstream product market that results in an affected vertical relationship between the activities of WMF and Selecta, is that of fully-automatic table-top hot beverage machines, a sub-segment of hot beverage vending machines that can be used both in HoReCa and office coffee situations.

(22) As regards the geographic scope of the markets, the Notifying Parties submit that for fully-automatic table-top hot beverage machines the relevant geographic market should be EEA-wide, noting that WMF sells the same fully-automatic table-top hot beverage machines throughout the EEA with only minor adjustments.[12]

(23) The Commission has previously left open the question whether the relevant geographic market for food and drinks distribution machines was EEA-wide or national.[13]

(24) Nonetheless, it is not necessary to conclude on the precise scope of the relevant product or geographic markets as the proposed transaction does not give rise to competition concerns even under the narrowest possible market definition.

4.2. Competitive Assessment

(25) The proposed transaction gives rise to no horizontally affected markets.

(26) As to vertical relationships, the proposed transaction gives rise to affected vertical relationships between WMF's upstream activities in the production and sale of fully-automatic table-top coffee machines and Selecta's downstream activities in hot beverages vending and in particular OCS in nine EEA countries: Belgium, the Czech Republic, Estonia, Finland, Latvia, Lithuania, Germany, Sweden and Norway.

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11 M.5338 – *Barclays/Investcorp/N & V Global Vending*, paragraphs 10–12; M.6857 – *Crane Co / MEI Group*, paragraph 95.

12 This is in line with the argumentation of the Parties to M.5338 – *Barclays/Investcorp/N & V Global Vending*, paragraph 20. See also M.6857 – *Crane Co / MEI Group*, paragraph 97.

13 M.5338 – *Barclayes / Investcorp / N&W Global Vending*, paragraph 22; M.6857 – *Crane Co / MEI Group*, paragraph 100.

(27) The Notifying Parties have not been able to submit exact market share figures for WMF for all of the EEA countries where Selecta is active downstream. In particular, they have not been able to submit market shares concerning Estonia, Finland, Latvia, Lithuania and Norway where WMF's sales are minimal.[14] The Notifying Parties have nonetheless noted that the market shares in those countries will not be higher, and are likely to be singificantly lower, than the market share in Germany ([30-40]%) where WMF is based and that is its core market. This is supported by the fact that the market shares remain below the German market share in the other affected markets where market shares were available: Belgium ([30-40]%), the Czech Republic ([30-40]%) and Sweden ([5-10]%). For the purposes of this decision, on a very conservative basis, all of the mentioned markets will be considered as affected markets.

(28) In the EEA countries where both WMF and Selecta are active, Selecta's market shares on the downstream markets for hot beverages vending and OCS ranges from [0-5]% to [30-40]%. It reaches [30-40]% in Lithuania ([20-30]% in hot beverages vending and [30-40]% in OCS) and [30-40]% in Sweden ([30-40]% in each of hot beverages vending and OCS). In the rest of the affected countries, Selecta's market shares remain lower. In fact, it is worth noting that in those countries where WMF has its highest market shares, Selecta's market shares are relatively low and vice versa. For example, in Germany, where the Parties' market share is the highest in the upstream market ([30-40]%), their market shares in the downstream markets are very low ([0-5]%), and in Sweden, where the Parties' market shares are the highest downstream ([30-40]%), their market share upstream is low ([5-10]%).

(29) Therefore, the Commission notes that there is no EEA country where the Parties' market shares would be particularly high both in the upstream and the downstream markets.

4.2.1. Input Foreclosure

(30) Input foreclosure arises where, post-transaction, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied, thereby raising its downstream rivals' costs by making it harder for them to optain supplies of the input under similar prices and conditions as absent the merger. For an input foreclosure to be a concern, the merged entity would need to have the ability and the incentive to engage in such behaviour.[15]

(31) In the course of the market investigation, a limited number of Selecta's competitors have expressed concerns that WMF might supply Selecta in the future on more favourable terms not available to other downstream operators, thereby providing Selecta a cost advantage, or it might even attempt to make Selecta the exclusive distributor of WMF machines.[16] Those concerns were mentioned particularly with respect to Germany and Finland.

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14 Including Estonia (EUR […] / […] units), Finland (EUR […] / […] units), Latvia (EUR […] / […] units), Lithuania (EUR […] / […] units) and Norway (EUR […] / […] units).

15 See, e.g. Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C265, 18.10.2008, p. 7 ('Non-horizontal guidelines'), paragraphs 31–57.

16 See replies to the market investigation, Questionnaire sent to downstream competitors.

(32) However, the Commission notes first that the majority of Selecta's competitors in the downstream market did not raise concerns with regard to input foreclosure.

(33) Second, the market investigation has also confirmed that downstream operators in all of the countries concerned could still purchase from several other suppliers, such as Thermoplan, Carimali, Melitta or Franke.[17] Selecta's competitors in both Finland and Germany, including some of those who raised concerns, were also generally already sourcing from WMF's competitors as well. Several WMF competitors also confirmed that they are active in those markets.[18]

(34) Third, the Commission considers that the fact that rivals may be harmed because a merger creates efficiencies (for example, the fact that Selecta might potentially be able to source WMF machines at a cost advantage to other vending operators) cannot in itself give rise to competition concerns.[19]

(35) Fourth, WMF's upstream market share of [30-40]% or less is not a clear indicator of significant market power.

(36) Fifth, Selecta's market share downstream is less than [30-40]% in all of the markets concerned, with the exception of Sweden. Particularly in Germany, where the upstream market share is likely to be the highest, Selecta's downstream market share is notably low. Therefore, it is unlikely that the Parties could significantly benefit from input foreclosure.

(37) In light of the above, the Commission concludes that the proposed transaction does not give rise to competition concerns related to input foreclosure.

4.2.2. Customer Foreclosure

(38) Customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. Because of this downstream presence, the merged entity may foreclose access to sufficient customer base to its actual or potential rivals in the upstream market and reduce their ability or incentive to compete. For customer foreclosure to be a concern, the merged entity would need to have the ability and the incentive to engage in such behaviour.[20]

(39) In this regard, only one WMF competitor expressed some limited concerns in relation to the Lithuanian market, where Selecta has a market share of [20-30]%. Nonetheless, WMF's competitors would still have access to a notable customer base of [70-80]%, and other competitors of WMF active in Lithuania did not express customer foreclosure concerns.[21]

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[17] In addition, other numerous suppliers for the German fully-automatic table-top hot beverage machines were named: Coffema, Sielaff, Rhea Vendors, Servomat-Steigler, Saeco, Jura, Krups, Miele, Philips, DeLonghi. As to Finland, the following alternative suppliers were mentioned: La Cimbali, Crem International, Bravilor, Necta and Rhea Vendors. See replies to the market investigation, Questionnaire sent to downstream competitors.

[18] See replies to the market investigation, Questionnaire sent to upstream competitors.

[19] Non-horizontal guidelines, paragraph 16.

[20] Non-horizontal guidelines, paragraph 58–77.

[21] See replies to the market investigation, Questionnaire sent to upstream competitors, question 4.

(40) The highest market share Selecta achieves is in Sweden ([30-40]%). Even on this market, WMF's competitors would continue to have access to a notable customer base of [60-70]% of the market. In addition, no customer foreclosure concerns were raised during the market investigation with respect to Sweden.

(41) In light of the above, the Commission concludes that the proposed transaction does not give rise to competition concerns related to customer foreclosure.

5. CONCLUSION

(42) 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 and Article 57 of the EEA Agreement.

For the Commission

(signed)

Margrethe VESTAGER

Member of the Commission