EN

Case No M.7643 - CNRC / PIRELLI

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 01/07/2015

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EUROPEAN COMMISSION

Brussels, 1.7.2015
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party

Dear Sir/Madam,

Subject: Case M.7643 – CNRC / Pirelli
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

(1) On 27 May 2015, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the China National Tyre & Rubber Co. Ltd ('CNRC' or 'the Notifying Party', China), wholly owned by the China National Chemical Corporation ('ChemChina'), would acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, control of the whole of Pirelli & C S.p.A. ('Pirelli', Italy) by way of purchase of securities ('the Transaction').[3] CNRC and Pirelli are hereinafter jointly 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.

2 OJ L 1, 3.1.1994, p. 3 ("the EEA Agreement").

3 Publication in the Official Journal of the European Union No C 183, 4.6.2015, p. 11.

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I. THE PARTIES

(2) CNRC is active in the manufacture of new tyres to be fitted on new cars, commonly known as Original Equipment Manufacturer ('OEM') tyres, and new replacement tyres for heavy, commercial and passenger vehicles. CNRC also operates in the market for rubber and tyre production engineering services and in the production and distribution of equipment to produce tyres. CNRC is a wholly-owned subsidiary of ChemChina, a diversified company active in the production of a wide range of chemical products. ChemChina reports to the Central State-owned Assets Supervision and Administration Commission ("Central SASAC"), an agency of the central government of the People's Republic of China.

(3) Pirelli is active in the manufacture and distribution of OEM tyres and new replacement tyres for both heavy and passenger vehicles. Pirelli is listed on the Milan Stock Exchange and its biggest stakeholder is Camfin S.p.A. (CF), which holds 26.193% of its shares.

II. THE OPERATION AND THE CONCENTRATION

(4) By the Transaction, announced on 23 March 2015, CNRC will ultimately acquire, through a series of corporate vehicles, the 26.193% non-controlling stake in Pirelli, currently directly and indirectly[4] held by Camfin S.p.A. (Pirelli's largest shareholder), as well as shares held by other shareholders.[5] Once it acquires these shares, CNRC will launch a mandatory tender offer for the remaining ordinary share capital, and a voluntary tender offer for the saving share capital, with the objective of delisting Pirelli, subject to a sell-out procedure and exercise of squeeze-out rights.[6] Through this procedure, CNRC will ultimately acquire sole control over Pirelli.

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4 Camfin owns directly 96,779,841 ordinary shares of Pirelli, representing 20.3% of Pirelli's ordinary share capital. Indirectly, through CAM 2012 S.p.A., Camfin owns 27,831,232 ordinary shares of Pirelli. Therefore, in total, Camfin holds directly and indirectly 124,611,073 ordinary shares of Pirelli, representing 26.193% of the outstanding ordinary share Capital of Pirelli. See CNRC's/Pirelli's reply to the Commission's request for information, 10.06.2015, Annex 1.

5 The entire share capital of Pirelli will be acquired in the following way: CNRC will incorporate: two special corporate vehicles in Hong Kong (SPV HK1 and SPV HK2); one newly established company under the laws of Luxemburg (SPV Lux) to be held by SPV HK2; one newly established Italian joint stock company (Newco) whose share of capital will be owned by SPV Lux; and one newly established Italian joint stock company HoldCo to be fully owned by Newco. Bidco, a subsidiary of HoldCo, will acquire from CF its stakes. Simultaneously CF will reinvest in Newco part of the proceeds of the sale to Bidco. Under the terms of the share purchase agreement, CF is entitled to subscribe for a maximum stake up to 49.9% of the share capital of NewCo, with a minimum investment of at least 35%. Therefore, the stake held by CNRC in NewCo will be between 50.1% and 65%. Even if CF subscribes for a maximum stake of 49.9% of the share capital of Newco, this will not be sufficient to enable CF to exercise joint control over Pirelli. Bidco will then launch a mandatory tender offer for the remaining ordinary share capital of Pirelli as well as a voluntary tender offer for the entire saving share capital of Pirelli in order to delist Pirelli from the Milan stock exchange. After these steps and subject to the meeting of legal conditions, Bidco will carry out a mandatory sell out procedure for the acquisition of the remaining shares held by the minority shareholders of Pirelli and/or exercise its squeeze-out rights on the shares of such minority shareholders.

6 On 5 June 2015, a new investor, Silk Road Fund Co., Ltd. ('SRF') entered into an agreement with CNRC and ChemChina to acquire a 25% stake in CNRC International Holding ('HK') Limited ('SPV

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

III. EU DIMENSION

(6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (CNRC/ChemChina:[7] EUR [> 6 000 million]; Pirelli: EUR 5 940 million). Each of them has an EU-wide turnover in excess of EUR 250 million (CNRC/ChemChina: EUR […]; Pirelli: EUR […]), 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.

(7) For the purposes of establishing jurisdiction, there is no need to conclude on whether the turnover of other companies owned by the Chinese State and under the supervision of the Central SASAC should be taken into account, since the turnover thresholds are met on the basis of ChemChina's and Pirelli's turnovers alone.

IV. INDEPENDENCE OF CNRC / CHEMCHINA

(8) ChemChina is one of approximately 125 enterprises owned by the Chinese government[8]. In order to assess the impact on competition of the Transaction, it is relevant to assess whether ChemChina it is an independent economic unit, or whether it is part of a wider economic unit that includes all the Chinese State-owned enterprises ("SOEs").

(9) In the past, the Commission has assessed several concentrations involving SOEs.[9] When assessing the degree of economic independence of SOEs, factors previously taken into account included "*the degree of interlocking directorships or the existence of adequate safeguards ensuring that commercially sensitive information is not shared between such undertakings*".[10]

(10) When assessing the chain of control of SOEs, the first step consists of identifying whether or not the SOEs have independent decision-making power. In the present case, the decision-making power might belong either to ChemChina itself or to the Chinese government (through the Central SASAC).

HK2'). CNRC established this new entity, SPV HK2, in Hong Kong, as part of the corporate structure used to carry out the Transaction. SRF is a sovereign fund established by several Chinese government controlled entities whose only other portfolio investment is in the hydropower sector in Pakistan. This new investment does not change the fact that CNRC will be acquiring sole control of Pirelli, as SRF will not have rights besides those of a minority investor.

7 According to article 5(4) of Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, for the purpose of calculating the turnover, the turnover of the parent company should be taken into account. Therefore, even if the undertaking concerned is CNRC, the turnover of its parent company, ChemChina, is taken into consideration. (see Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95, 16.4.2008, p.1 ('the Jurisdictional Notice'), paragraph 135.

8 Form CO, para 44.

9 See for example M.5508 Soffin/Hypo Real Estate; M.5861 Republic of Austria / HYPO GROUP ALPE ADRIA; M.931 Nestle/IVO.

10 Case COMP/M.6082 China National Bluestar-Elkem, 31 March 2011.

(11) The Notifying Party submits that ChemChina exercises its own decision-making powers independent from the Central SASAC. Moreover, by law the Central SASAC is required not to interfere in the business activities of ChemChina. The Central SASAC is merely, according to the Notifying Party, an executor of ownership and acts exclusively as a non-managerial trustee[11].

(12) In relation to interlocking directorships, the Notifying Party submits that none of the board members of ChemChina or CNRC has any function or role in other SOEs. The Notifying Party also submits that any action that can undermine the independence of the top managers of SOEs is prohibited under the law of the People's Republic of China.[12] Moreover, the Central SASAC, while requiring the SOEs, including ChemChina, to submit information about their financial performance, does not require the SOEs to submit any commercially sensitive information. ChemChina would therefore, in the Notifying Party's view, be an independent economic unit with autonomous decision-making power and as such it should be considered the only relevant economic unit when assessing potential competition concerns arising from the Transaction.

(13) In its *China National Bluestar / Elkem*[13] decision, the Commission analysed the absence of interlocking directorships and the degree of economic independence between ChemChina and the Central SASAC. Several SOEs had activities horizontally overlapping with those of the parties to the Transaction that was under review. However, since the market position of the companies under Central SASAC was limited in the markets concerned, no final conclusion over the actual independence of the SOEs was drawn.

(14) As such, in the present case, the Commission has assessed whether the activities of the other SOEs under the control of the Central SASAC, were relevant for the purposes of the Commission's competitive assessment of the Transaction. In this regard, the Commission, first, found that there is no horizontal overlap between the activities of the SOEs and the activities of the Parties.

(15) Certain SOEs, however, do operate in markets that are vertically related to the Parties' activities. The Commission assessed the downstream position of three SOEs active in the manufacturing of various vehicles, and in particular the China South Industries Group Corporation, the FAW Group and the Dongfeng Motor Corporation.[14] Even if the supply of tyres to these manufacturers were to be considered vertical links, the presence of the Parties on the OEM tyres markets as described below is marginal, and would thus raise no competition concern.

(16) The Commission also assessed the position of four SOEs that are active in markets upstream of the Parties. In particular, the China National and Petroleum Corporation, the China Petroleum and Chemical Corporation, the China National Offshore Oil Corporation and Sinochem are active, among others, in the production

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11 Form CO, paras 43 to 52.

12 Law of the People's Republic of China (28 October 2008) on the State-Owned Assets of Enterprises.

13 Case COMP/M.6082 China National Bluestar-Elkem, 31 March 2011.

14 The activities of the China South Industries Group Corporation, the FAW Group and the Dongfeng Motor Corporation are further described in the Form CO at paras 37-38.

and sale of rubber, rubber chemicals and synthetic rubber. Both CNRC and Pirelli source rubber from SOEs under the control of the Central SASAC. CNRC purchases synthetic rubber from […] and synthetic and natural rubber from […]. Pirelli purchases natural rubber from […].

(17) Mergers regarding vertically related parties are capable of harming competition by increasing the cost at which competitors can operate on the downstream market (input foreclosure), or by lowering the expected revenues of the upstream competitors (customer foreclosure). The Commission observes that these SOEs' production of rubber accounts for less than 10% of the global supply of rubber.[15] Moreover, the Commission observes that in the relevant downstream tyre markets the combined market shares of the Parties are in all cases below 30%. In respect of volume market shares, the combined market shares of the Parties are slightly above 30% in only two occurrences,[16] with very marginal increments.

(18) Given that the SOEs only account for less than 10% of global rubber supplies and the Parties' global demand for rubber is limited (Pirelli [0-5]%, CNRC/ChemChina [0-5]%), even in those national markets where the Parties have a combined market share of approximately 30%, for the reasons set out below, the Commission finds that, even if the SOEs were to supply the Parties on an exclusive basis, and the Parties were to purchase their rubber requirements exclusively from the SOEs, the Transaction is unlikely to give rise to input or customer foreclosure effects and is not such as to give rise to serious doubts as to the Transaction's compatibility with the internal market.

(19) Input foreclosure concerns arise when there is no effective competition in the provision of the input that the merging company is supplying. As noted above, the SOEs' production of the relevant input, rubber, accounts for less than 10% of the global supply of rubber. Therefore the Transaction would not lead to input foreclosure as competitors will always be able to purchase the relevant input from SOEs' rivals.

(20) Customer foreclosure is likely to arise in industries where input/product demand is significantly concentrated. When there are sufficient economic alternatives in the downstream market for the upstream rivals to sell their output, customer foreclosure is highly unlikely. In the present case, the Commission observes that there are many customers that have natural rubber sourcing requirements (e.g. Michelin, Continental, Bridgestone, Hankook, and Goodyear). In addition, the Commission notes that Pirelli's demand for rubber only accounts for [0-5]% of the global market, and CNRC/ChemChina's demand only accounts for [0-5]%, therefore the Transaction would bring about no significant merger-specific change to the structure of global rubber demand.[17] Even if the Parties were to source all of

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15 The Commission in Case No. IV/M.146/91 Metallgesellschaft/Safic Alcan defined the relevant geographic market for rubber as global.

16 In the Netherlands in the market for new replacement tyres for trucks and buses the Parties have a combined market share by volume of [30-40]%. The Transaction in this case will lead to an incremental increase of [0-5]% in volume. In Ireland in the market for new replacement tyres for light trucks the combined market share of the Parties by volume is [30-40]%, and the Transaction will lead to an incremental increase of [0-5]% in volume.

17 See reply to the Commission's request for information, 10.06.2015, Question 4.

their rubber requirements from the SOEs, sufficient demand would remain to prevent foreclosure of other upstream suppliers. Therefore, the Transaction would not result in foreclosure of rival upstream rubber suppliers.

(21) In light of the foregoing, given that the possible vertical links between the Parties and the SOEs is unlikely to give rise to serious doubts as to the Transaction's compatibility with the internal market , it is not necessary for the Commission to reach a definitive conclusion on the ultimate control of ChemChina, and in particular on the question of its independence from the Central SASAC as such a relationship would not affect the outcome of the Commission's competition assessment in the present case.

V. MARKET DEFINITION

V.1. Relevant product market definition

(22) The Parties are both active in the manufacture and supply of OEM and new replacement tyres. The Notifying Party submits that these categories of tyres are to be distinguished, in line with the Commission's previous decisional practice. The Notifying Party submits that, still in line with the Commission's decisional practice, within each of these two categories, a further segmentation into six product markets is possible according to the type of consumer targeted by the manufacturer.

(23) The market investigation in this case supports the Commission’s view that a distinction should be made between OEM and new replacement tyres[18]. OEM tyres are typically sold directly by the tyre manufacturer to the vehicle manufacturer for installation on newly manufactured vehicles without passing through an intermediary. Although manufacturers can supply major accounts with replacements tyres directly, the vast majority of new replacement tyres are sold through a large number of specialised outlets or tyre dealers who obtain their supplies from the manufacturer through its wholesale operations.[19] The intermediaries in this market are usually specialised tyre dealers or dealers that, together with the retailing of tyres, perform a wide range of others services connected to the maintenance of vehicles.

(24) The Notifying Party also noted that previous Commission decisions had defined a third category of tyres: re-treaded tyres. When OEM tyres on a vehicle can no longer be used, they can be replaced by (i) a new replacement tyre or (ii) a re-treaded tyre. Re-treading is a process that applies a new tread to a worn tyre thus ensuring an extended life. While in previous decisions the Commission noted that re-treaded tyres may exert a degree of competitive pressure over new replacement tyres, significant quality and price differences (the cost per kilometre of use of a low-priced tyre is more expensive as that of a re-treaded tyre) have consistently led the Commission to define a separate market for re-treaded tyres.[20] In line with its

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18 See for instance agreed minutes of a call with a trade association, 21 May 2015, according to which: '*It is possible to segment the market also into two others macro categories: new replacement tyres and original equipment tyres. The OEM represents 23-25% of the market, while the rest is the replacement market*'.

19 Case COMP/ 36.041/PO-Michelin, 20 June 2001.

20 Case COMP/M.4516, Continental/Matador, 8 June 2007; Case COMP/M.4564, Bridgestone/Bandag, 29 May 2007.

previous decision, the Commission considers that re-treaded tyres constitute a distinct product market from that of new replacement tyres. Given that the Parties are not active on the market for re-treaded tyres, the market for re-treaded tyres will not be analysed further in the present decision.

(25) As noted by the Notifying Party, within each of the two categories where the Parties are active in the EEA (OEM and new replacement tyres) it is possible to distinguish six product markets according to the specific characteristics and dimensions of the vehicles on which tyres have to be fitted. In its previous decisional practice the Commission[21] sub-divided each of the OEM and new replacement tyres categories into the following six different product markets:

a. tyres for cars and vans;

b. tyres for trucks and buses;

c. tyres for earth moving vehicles;

d. tyres for agricultural use;

e. tyres for two wheels motorized vehicles; and

f. tyres for two wheels non-motorized vehicles.

(26) The results of the market investigation indicate that the distinction between the above six separate product markets remains valid.[22]

(27) In particular, from a demand side perspective, respondents to the market investigation consistently reported that end consumers would not be able to switch between tyres belonging to these distinct product markets even in the event of a small but non-transitory increase in prices.[23] The inability to switch between tyres belonging to distinct product markets is related to the different product characteristics (notably dimensions) and the different usage and applications of these tyres. For instance, a tyre manufactured to be fitted on an earth moving vehicle will not fit on a light truck given the different dimensions of these vehicles and the different needs they have when operating. Retailers also reported that they have different needs, and degrees of knowledge about the product depending on the product market in which they buy, and thus purchase tyres from one or few product markets that are related to each other.[24]

(28) On the supply side, the wide majority of tyre manufacturers are normally active on some but not all of these product markets (on average three).[25] Moreover, tyre manufacturers are not able to switch their production from one product market to

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21 Case COMP/M.3081, Michelin/Viborg, 7 March 2003.

22 See replies to question 4 – Q2 Questionnaire to Customers.

23 See replies to question 7 – Q2 Questionnaire to Customers and replies to question 8 – Q1 Questionnaire to Competitors.

24 See replies to question 7 – Q2 Questionnaire to Customers

25 See replies to questions 6 and 7 – Q1 Questionnaire to Competitors.

another in the short-term, without incurring significant additional costs or risks. Specific production facilities and moulds are needed to manufacture tyres belonging to different product markets and high investments are necessary to become an effective competitor[26] on a specific tyre product market, thus making supply substitution unlikely between tyres destined for different categories of vehicles.

(29) In view of the results of the market investigation, the Commission finds that, within the categories for OEM and new replacement tyres, six distinct product markets can be defined, in line with previous decisions: tyres for cars and vans; tyres for trucks and buses; tyres for earth moving vehicles; tyres for agricultural use; tyres for two wheels motorized vehicles; and tyres for two wheels non-motorized vehicles. The results of the market investigation do not challenge the existence of a separate market for re-treaded tyres.

(30) For the purposes of the competitive assessment in the market for new replacement tyres for cars and vans, the Notifying Party provided available market share data at a further sub-segmentation level: passenger cars, SUVs and light trucks. The Notifying Party did not submit that these sub-segments constitute separate product markets. The results of the market investigation also do not suggest the existence of product markets at this level of sub-segmentation. Adopting a conservative approach, for the purposes of the present decision, the Commission has analysed these narrower sub-segments for the purposes of the competitive assessment. However, the question of whether the market for new replacement tyres for cars and vans should be further subdivided into three separate product markets for passenger cars, SUVs and light trucks can be left open since the Transaction would not raise competition concerns even under any of these alternative potential markets.

V.2. Relevant geographic market definition

V.2.1. Relevant geographic market for OEM tyres

(31) As regards the OEM tyres category, across all six product markets (tyres for cars and vans; tyres for trucks and buses; tyres for earth moving vehicles; tyres for agricultural use; tyres for two wheels motorized vehicles; and tyres for two wheels non-motorized vehicles), the Notifying Party submits that the relevant geographic markets are at least EEA-wide since vehicle manufacturers purchase tyres directly from producers on an EEA-wide basis, there are no impediments to trade between countries, and transportation costs are not relevant for these products.

(32) This is in line with previous Commission decisions.[27] However, this Transaction does not give rise to affected markets in any of the product markets of the OEM tyres category, regardless of whether their geographical scope is defined as national or EEA-wide. Therefore the Commission finds that the exact geographic definition of the market for OEM tyres can be left open as the Transaction would not raise

26 See replies to question 9 – Q1 Questionnaire to Competitors.

27 E.g., Case COMP/M.4561, Continental/Matador, 8 June 2007, COMP IV/M.1470, Goodyear/Sumitomo, 23 July 1999 and COMP/M.3081, Michelin/Viborg, 7 March 2003.

concerns as to its compatibility with the internal market even under the narrowest geographic market definition.

V.2.2. Relevant geographic market for new replacement tyres

(33) As regards the new replacement tyres category, for all six product markets (tyres for cars and vans; tyres for trucks and buses; tyres for earth moving vehicles; tyres for agricultural use; tyres for two wheels motorized vehicles; and tyres for two wheels non-motorized vehicles), the Notifying Party submits that there is a trend under which the markets are increasingly expanding in geographical scope, and may be moving to become EEA-wide.

(34) In past decisions, the Commission found the relevant geographic markets for all six product markets of the new replacement tyres category to be national in scope.[28] However, the more recent Commission decisions acknowledged the trend towards EEA-wide geographical markets reported by the Notifying Party, for instance by underscoring an EEA-wide price convergence.[29]

(35) The market investigation provided some indications that would support such a trend across all six product markets of the new replacement tyres category. In particular, competitors' replies indicated that price-setting is mainly done on customers' characteristics (for example volume purchased and terms of the business relationship). Certain retailers also indicated that there are low barriers to trade, that it is possible to compare prices across countries and that this makes prices converge in EEA regions wider than single countries.[30]

(36) Yet, while broadly speaking, as a competitor observed, *'there are no major barriers to operate in the different European countries'*,[31] the market investigation also indicated that certain conditions of competition, including prices, are still reported to vary across countries. Several customers reported that prices are determined according to country-specific supply and demand factors[32] as well as endogenous conditions created by companies' specific investments[33]. It has also been reported that while sell-in prices (i.e. prices to distributors and retailers) on certain markets

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28 Case COMP/M.4564, Bridgestone/Bandag, 29 May 2007.

29 Case COMP/M.4516, Continental/Matador, 8 June 2006 par. 24.

30 See agreed minutes of a call with a competitor, 27 May 2015, according to which *'as far as retail distribution is concerned, the market has been considered mainly national in the past but has been increasingly evolving towards a wider geographical scope, in particular due to the use of internet for the distribution, which allows greater price transparency at European level'*. See also agreed minutes of a call with a retailer, 18 May 2015, according to which *'the main determinant of cross-country differences in price is transportation costs.'*

31 Agreed minutes of a call with a competitor, 21 May 2015.

32 See for instance agreed minutes of a call with a customer, 18 May 2015, according to which the "*maturity of the market and number of competitors that are active on a specific market"* have an impact on prices.

33 E.g. For example '*Brand awareness*', see agreed minutes of a call with a customer, 20 May 2015.

tend to be more similar, sell-out prices (i.e. prices to end customers) may be more sensitive to local features of the market.[34]

(37) The Commission finds that the exact geographic market definition of the six product markets for new replacement tyres can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market even under the narrowest possible geographic market definition (at national level).

VI. COMPETITIVE ASSESSMENT

(38) The Transaction would not result in any affected markets in relation to OEM tyres. As such, these markets will not be analysed further in the present decision.

(39) As regards new replacement tyres, the Transaction does not result in an affected market at EEA level on any market. However, the Transaction does result in six affected national markets for new replacement tyres for trucks and buses, and two affected national markets the market for new replacement tyres for cars and vans.

VI.1. National markets for new replacement tyres for trucks and buses

(40) The Transaction would result in affected markets on the markets for new replacement tyres for trucks and buses in Cyprus, Estonia, Greece, Malta, Netherlands and Slovakia.

(41) For the reasons set out below at paragraphs (42) to (55), the Commission finds that the Transaction is unlikely to give rise to serious doubts as to its compatibility with the internal market in respect of the national markets for new replacement tyres for bus and trucks.

(42) First, the Transaction would not materially affect the market structure, as combined market shares on most of the affected markets do not significantly exceed 20%, increments are limited or marginal and a number of competitors are already active on all affected markets.

(43) The Parties' volume and value market shares on these markets, as well as an estimate of the market share (by volume) of the main competitors of the Parties for all the affected markets where such estimates are available are provided in the below tables.

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34 See replies to question 11.3 – Questionnaire Q1 Competitors. For instance, one competitor reported that it '*publishes a uniform sell-in price list for commercial tyres valid for the EEA (…)*' but '*the sell-out price of tyres is set independently by the relevant distributors and retailers*'.

Table I – Parties' volume and value market shares on the affected markets for new replacement tyres for trucks and buses.

Country	Trucks and Buses					
	Pirelli		CNRC		Combined	
	MS % Vol.	MS % Val.	MS % Vol.	MS % Val.	MS % Vol.	MS % Val.
Cyprus	[0-5]	[0-5]	[10-20]	[5-10]	[20-30]	[5-10]
Greece	[0-5]	[0-5]	[10-20]	[10-20]	[20-30]	[10-20]
Estonia	[0-5]	[5-10]	[20-30]	[10-20]	[20-30]	[20-30]
Malta	[0-5]	[0-5]	[10-20]	[10-20]	[20-30]	[10-20]
Netherlands	[0-5]	[0-5]	[20-30]	[10-20]	[30-40]	[20-30]
Slovakia	[0-5]	[0-5]	[10-20]	[10-20]	[20-30]	[10-20]

Source: Form CO

Table II – Parties' and competitors' volume market shares on the affected markets for new replacement tyres for trucks and buses.

	Trucks and Buses					
Manufacturer	Estonia	Greece	Netherlands	Slovakia	Cyprus	Malta
Pirelli	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
CNRC	[20-30]%	[10-20]%	[20-30]%	[10-20]%	[20-30]%	[10-20]%
Combined	[20-30]%	[20-30]%	[30-40]%	[20-30]%	[20-30]%	[20-30]%
Michelin	[10-20]%	[10-20]%	[20-30]%	[10-20]%	NA	NA
Continental	[0-5]%	[20-30]%	[10-20]%	[40-50]%	NA	NA
Goodyear	[5-10]%	[20-30]%	[10-20]%	[5-10]%	NA	NA
Bridgestone	[10-20]%	[10-20]%	[10-20]%	[5-10]%	NA	NA
Hankook	[0-5]%	[5-10]%	[0-5]%	[0-5]%	NA	NA
Others	[30-40]%	[0-5]%	[0-5]%	[0-5]%	NA	NA
Total	100%	100%	100%	100%	100%	100%

Source: Form CO

(44) In Cyprus, after the Transaction, the merged entity would have a combined volume market share only slightly above 20% ([20-30]%, with a marginal increment of [0-5]%), but only [5-10]% in combined value market shares.

(45) In Greece, the merged entity would have a combined market share of [20-30]% in volumes and [10-20]% in value with increments of [0-5]% and [0-5]% respectively, with four main competitors with a comparable market share on the national market.

(46) In Estonia, the merged entity would have a combined market share of [20-30]% in volume and [20-30]% in value with increments of [0-5]% and [5-10]% respectively, on a market which is fragmented and where numerous alternative suppliers are active.

(47) In Malta, after the Transaction, the merged entity would have a combined market share of slightly above 20%, i.e. [20-30]% in volume shares with a limited increment of [0-5]%, corresponding to [10-20]% in value shares with an increment of [0-5]%.

(48) In the Netherlands, after the Transaction, the merged entity would have a combined market share of [30-40]% in volumes and [20-30]% in value with increments of [0-5]% and [0-5]% respectively. However, at least four alternative competitors will still be active on the national market, with an actual market share between 10% and 20%.

(49) In Slovakia, the merged entity would have a combined market share of [20-30]% in volumes and [10-20]% in value with increments of [0-5]% and [0-5]% respectively. Several other competitors will be active on the market, including a market leader with a market share estimated above 40%.

(50) Moreover, the markets for new replacement tyres are fragmented and dynamic. Data provided in the Form CO and confirmed by a trade association suggest there is high volatility in market shares. Producers may have a significant part of the customers one year and loose almost all of them the year after. In this respect, aside from the specific market share achieved by the merged entity, the availability of numerous active players that would exert a competitive constraint on the merged entity is a decisive factor. As shown in the table above, in all the affected markets a significant number of competitors will still be able to supply customers in the event that the merged entity were to effect a small but significant, non-transitory increase in prices.

(51) Second, respondents to the market investigation unanimously[35] indicated that CNRC and Pirelli are not close competitors.[36]

(52) While Pirelli and CNRC supply the same products in the affected markets, these products, while competing with each other, often target different customer segments. In the markets for new replacement tyres, manufacturer brands are often classified, according to the quality they command, into A to D-type brands and manufacturers, or Tier I to Tier IV-type brands and manufacturers. Respondents to

35 See replies to question 17 - Q1 questionnaire to Competitors and replies to question 18 - Q2 questionnaire to Customers.

36 Mergers between close competitors are more likely to raise competition concerns. See also Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 372, 5.2.2004, paragraphs 28 to 30.

the market investigations consistently rank Pirelli among the top tier / quality categories, as it is considered a high quality and luxury brand for tyres.[37] Among the most important parameters of competition for Pirelli and other upper-category manufacturers are quality, reliability and high performance. CNRC, like other south-east Asian importers, ranks among respondents to the market investigation in the lower categories, where manufacturers mostly compete on price.

(53) The market investigation indicated on the one hand that CNRC, through its Aeolus brand, is widely regarded as the best quality among lower-tier / lower-cost importers, with improvements in performance.[38] Because of this, and because of cost-constraints due to the recent economic crisis, it would appear that an increasing number of customers are willing to switch from upper to lower tier manufacturers.[39] However, the market investigation still suggests that switching substantially happens within brands of similar quality features,[40] thus making Pirelli more closely compete with brands such as Michelin, Continental, Bridgestone, while CNRC/Aeolus is said to closely compete with brands such as BKT.[41] In a horizontal merger, the merging firms' incentive to raise prices is more likely to be constrained when rival firms produce close substitutes to the product of the merging firms than when they offer less close substitutes.[42] The fact that the Parties are not close competitors of one another and that a high degree of substitutability exists between the Parties' products and those supplied by rival new replacement tyre manufacturers, indicates that the Transaction is unlikely to give rise to serous doubts as to its compatibility with the internal market.

(54) Third, in light of the results of the market investigation, the Commission considers that barriers to enter the markets for new replacement tyres are limited, even for

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37 See replies to question 13 – Q1 questionnaire to competitors and replies to question 12 – Q2 questionnaire to customers.

38 See agreed minutes of a call with a large Aeolus customer, 18 May 2015, according to which '[u]*nlike many Chinese brands, Aeolus is perceived as a good brand. The company has a good reputation and many customers already appreciate the characteristics of the product and its competitive price* ' This was also confirmed by a competitor, see agreed minutes of a call, 21 May 2015, *'Aeolus is one the Chinese brands that is distinguishing itself for high quality together with other two or three brands belonging to different Chinese producers*'.

39 See agreed minutes of a call with a competitor, 27 May 2015, according to which '*the demand for T[ier]2 and T[ier]3 brands has been increasing due to the importance of costs for customers lately. […]. In this context, T1 brands are facing increasing competition from T2 and T3 brands'*. See also agreed minutes of the call with a customer, 18 May 2015, *'[Aeolus tyres] are generally considered as the top quality among tyres imported from China. While they are still perceived to be of less quality than tyres manufactured by more established producers (like B brands), they are coming very close and customers do switch between established brands and Aeolus tyres*'.

40 See replies to question 14 of Q1 – Questionnaire to Competitors. For instance, one competitor indicated that '*[Customer] more tend to switch between brands within the same category* '. See also agreed minutes of a call with a large Aeolus customer, 18 May 2015, according to which '*some customers might ask for tyres produced in the EEA that satisfy particular quality requirements*.'

41 See replies to question 17 – Q1 questionnaire to competitors, replies to question 18 – Q2 questionnaire to customers.

42 See Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 372, 5.2.2004, paragraphs 28 to 30.

manufacturers established and active outside of the EEA.[43] In order to be an effective competitor in the markets for new replacement tyres there is no need to have an established distribution network in Europe. A relevant feature of the market for new replacement tyres is the pivotal role played by independent tyre dealers, which are the main intermediary between producers and customers. The presence of these intermediaries lowers barriers to entry and allows potential competitors to be able to operate without being vertically integrated downstream.

(55) The market investigation indicated that a number of companies established outside of the EEA import tyres without an own sales force and an own distribution network.[44] Data provided by a trade association also confirmed this, and showed that foreign competitors importing tyres into the EEA in the past years have quickly penetrated most EEA markets and built a sizeable market share.[45] Some importers have over the last years gained market shares also in the top-quality segments of the markets.[46]

(56) In conclusion, on all affected national markets for new replacement tyres for buses and trucks the Transaction would not substantially affect the market structure. Several competitors are already active on all these markets, barriers to entry are low, and the Parties are not close competitors of one another. Therefore, the Commission finds that the Transaction is unlikely to give rise to serous doubts as to its compatibility with the internal market in respect of the national markets for new replacement tyres for buses and trucks.

VI.2. National markets for new replacement tyres for cars and vans

(57) As regards the national markets for new replacement tyres for cars and vans, as set out at paragraph (30) above, the Parties provided data on national sales distinguished by segments (passenger cars, SUVs, light trucks). The Commission has assessed these markets under the more conservative approach allowed by the availability of data by segment.

(58) The Transaction would result in affected markets in two segments of the relevant market for tyres for cars and vans, and in particular on the market for new replacement tyres for passenger cars in Ireland; and the market for new replacement tyres for light trucks in Estonia.

(59) No affected markets would arise with regard to new replacement tyres for SUVs. As such, new replacement tyres for SUVs will not be analysed further in the present decision.

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43 See for instance agreed minutes of a call with a competitor, 21 May 2015, according to which '[i]*n the truck tyres market the role of importers based outside the EU is still small, but constantly growing. However, these importers have been expanding their scope the last three years*'. This was also noted by a customer, see agreed minutes of a call, 19 May 2015, '[t]*he tyre market had become very competitive lately. The entry of several Chinese producers in the market intensified competition even more*'.

44 See replies to question 22 – Questionnaire Q1 to Competitors.

45 Agreed minutes of a call with a trade association, 21 May 2015.

46 See for instance agreed minutes of a call with a competitor, 21 May 2015 '*other new brands have positioned themselves in the same segment where [competitor name] operates (e.g. Hankook).*'

(60) For the reasons set out below at paragraphs (61) to (66) the Commission finds that the Transaction is unlikely to give rise to serous doubts as to its compatibility with the internal market in respect of the national markets for new replacement tyres for cars and vans or potential segments thereof.

(61) The Parties' volume and value market shares on these markets, as well as an estimate of the market share (by volume) of the main competitors of the Parties for all the affected markets where such estimates are available are provided in the below tables.

Table III – Parties' volume and value market shares on the affected markets for new replacement tyres for cars and vans.

Country	Cars and Vans					
	Pirelli		CNRC		Combined	
	MS % Vol.	MS % Val.	MS % Vol.	MS % Val.	MS % Vol.	MS % Val.
Estonia	[0-5]	[0-5]	[20-30]	[0-5]	[20-30]	[0-5]
Ireland	[0-5]	[0-5]	[30-40]	[20-30]	[30-40]	[20-30]

Source: Form CO

Table IV – Parties' and competitors' volume market shares on the affected markets for new replacement tyres for cars and vans

	Passenger Cars	Light Trucks
Manufacturer	**Estonia**	**Ireland**
Pirelli	[0-5]%	[0-5]%
CNRC	[20-30]%	[30-40]%
Combined	[20-30]%	[30-40]%
Michelin	[0-5]%	[5-10]%
Continental	[0-5]%	[10-20]%
Goodyear	[5-10]%	[10-20]%
Bridgestone	[0-5]%	[10-20]%
Hankook	[5-10]%	[10-20]%
Others	[50-60]%	[0-5]%
Total	100%	100%

Source: Form CO

(62) In Estonia, after the Transaction, the merged entity would have a combined market share slightly above 20% in volume shares but of only [0-5]% in value, with

marginal increments ([0-5]% in volume and [0-5] in value), on a market which is fragmented and where numerous alternative suppliers are active.

(63) In Ireland, after the Transaction, the merged entity would have a combined market share of [30-40]% in volume shares and [20-30]% in value with increments of [0 5]% and [0-5] respectively. Moreover, at least five alternative competitors would still be active on the national market, with an actual share between 10% and 20%.

(64) More specifically concerning the availability of alternative competitors on these markets, the same findings as for trucks and bus tyres are applicable. The market is dynamic and fragmented. Information provided by the Notifying Party shows that market shares are highly volatile. A producer may have a high market share one year and loose almost all of it the year after. In this respect, also in the market for cars and vans tyres, numerous competitors will still be able to supply customers post-merger in all affected markets, and act as a competitive constraint on the parties.

(65) Second, the Commission's findings concerning closeness of competition on the markets for tyres for trucks and buses are equally applicable to the markets for tyres for cars and vans. On this market, Pirelli is said to compete more closely with other widely known premium brands,[47] while CNRC sells new replacement tyres for cars and vans under the Aeolus brand, which respondents to the market investigation consider competes most closely with budget brand new replacement tyres for cars and vans.[48]

(66) Third, as regards barriers to entry, the same findings as for trucks and bus tyres are applicable. In particular, competitors and customers reported that also on the market for cars and vans a number of manufacturers established outside of the EEA and which do not possess a local distribution network have entered the market over the past years.[49] The pressure of potential entrants will pose a competitive constraint on the Parties' ability to increase prices without incurring in additional competition.

(67) In conclusion, irrespective of the segment considered on national markets for new replacement tyres for cars and vans, the Transaction would not substantially affect the market structure. Several competitors are already active on all the markets and segments, barriers to entry are low, and the Parties are not each other's close competitor. Therefore, the Commission finds that the Transaction is unlikely to give rise to serous doubts as to its compatibility with the internal market in respect of the national markets for new replacement tyres for cars and vans or potential segments thereof.

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47 See replies to question 17 – Q1 questionnaire to competitors, and replies to question 18 – Q2 questionnaire to customers. Respondents report Pirelli's closest competitors to be premium brands such as Continental, Michelin, Goodyear.

48 See replies to question 17 – Q1 questionnaire to competitors, and replies to question 18 – Q2 questionnaire to customers. Respondents report CNRC's closest competitors to be other budget brands such as Sava and Hifly.

49 See replies to question 18.1 – Q1 Questionnaire to competitors. For instance, as regards the segments specifically assessed in this section, one competitor observed that '*[Passenger – Light Truck]: new Asian brands are continuously entering and leaving the EEA markets.*'

VII. CONCLUSION

(68) 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