

EN



EUROPEAN COMMISSION  
DG Competition

***Case M.7671 - KKR / FIBA / WMF***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

---

Article 6(1)(b) NON-OPPOSITION  
Date: 17/09/2015

***In electronic form on the EUR-Lex website under document  
number 32015M7671***



## EUROPEAN COMMISSION

Brussels, 17.9.2015  
C(2015) 6480 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)b DECISION

### To the notifying parties:

Dear Sir/Madam,

**Subject: Case M.7671 - KKR / FIBA / WMF  
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004<sup>1</sup> and Article 57 of the Agreement on the European Economic Area<sup>2</sup>**

- (1) On 13 August 2015, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004<sup>3</sup> by which the undertakings KKR & Co. L.P. ("KKR") and FIBA Beteiligungs- und Anlage GmbH ("FIBA", Austria) acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of the undertaking WMF Group GmbH ("WMF", Germany) by other means.

---

<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> OJ L 1, 3.1.1994, p.3 ('the EEA Agreement').

<sup>3</sup> OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation').

## 1. THE PARTIES

- (2) KKR is a US global investment firm investing in companies in a variety of sectors. Its controlled portfolio companies include the vending services company Selecta.<sup>4</sup>
- (3) FIBA is an Austrian holding company with a main holding in the Austrian water technology company BWT AG ("BWT"). BWT offers products, water treatment systems and services for: (i) drinking water, (ii) water for the pharmaceutical industry and process water, (iii) heating water, (iv) boiler and cooling water, (v) water in air-conditioning systems, and (vi) swimming pool water.
- (4) WMF of Germany manufactures and distributes (i) table- and kitchenware and small electrical appliances for private households as well as (ii) table- and kitchenware and fully automated coffee machines for professional use.

## 2. THE OPERATION

- (5) KKR currently indirectly holds [a majority] of the shares in WMF<sup>5</sup> while FIBA indirectly holds [a minority] of the shares in WMF. FIBA currently does not hold any veto rights that would amount to control rights over WMF. WMF is therefore currently solely controlled by KKR.
- (6) FIBA increased its shareholding to the current [minority] share pursuant to a participation agreement signed by KKR and FIBA on 18 June 2014. Under [...] side agreement signed on 23 March 2015, FIBA will acquire certain additional rights with respect to the management of WMF [...].
- (7) The rights to be acquired by FIBA relate, in particular, to:
- [...];<sup>6</sup>
  - [...];<sup>7</sup>
  - [...];<sup>8</sup>
  - [...].<sup>9</sup>
- (8) These rights taken together will grant FIBA the possibility of exercising decisive influence on WMF since it will have veto rights concerning essential decisions for WMF's strategic commercial behaviour.<sup>10</sup> Therefore, KKR and FIBA will acquire joint control over WMF pursuant to Article 3(1)(b) of the Merger Regulation.

---

<sup>4</sup> The Commission cleared KKR's acquisition of control over Selecta in 2014 in case M.7319 – KKR/Allianz/Selecta.

<sup>5</sup> The Commission cleared KKR's acquisition of control over WMF in 2012 in case M.6688 – KKR/Württembergische Metallwaren Fabrik.

<sup>6</sup> Section 10 paragraph 3 of the participation agreement; in case of a tie vote, [...].

<sup>7</sup> Section 10 paragraph 4 in conjunction with section 8 paragraph 2 of the participation agreement.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> See the Commission Consolidated Jurisdictional Notice, OJ C 95, 16.4.2008, p.1, paragraphs 65ff.

### **3. EU DIMENSION**

- (9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>11</sup> (KKR: EUR [...] million; FIBA : EUR [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (KKR: EUR [...] million; FIBA: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

### **4. ASSESSMENT**

- (10) The proposed transaction leads to affected markets due to a vertical link between the sale of:
- water filter cartridges (where FIBA's BWT is active) upstream, and
  - hot beverage machines (where WMF is active) and vending machines and services (where KKR's Selecta is active) downstream.
- (11) Since FIBA will acquire control of WMF but not of Selecta, the vertical link is much more direct between FIBA's BWT and WMF than the vertical link between FIBA's BWT and Selecta. Nevertheless, the Commission has assessed both vertical links and has come to the conclusion that no serious doubts arise in this case even if the wider vertical link between BWT and Selecta is taken into account.

#### **4.1. Water filter cartridges (upstream)**

##### *4.1.1. Market definitions*

- (12) Water filter cartridges serve the same purpose as table water filters in that they decalcify tap water and improve its taste and quality. Water filter cartridges are sold to commercial customers and are built into coffee machines, ovens or vending machines. WMF and Selecta purchase water filter cartridges for use in their table-top coffee machines and vending machines respectively.
- (13) The Commission has not yet assessed the markets for water filter cartridges. While arguing that the product market definition can ultimately be left open, the Parties submit that the relevant product market includes at least<sup>12</sup> all water filter cartridges, irrespective of their use in coffee machines, ovens or vending machines, due to supply-side substitutability. They argue that the market is at least EEA-wide in geographic scope since industrial users purchase the products across borders, the major producers offer their products EEA-wide and there are no technical differences between the filter cartridges sold in different countries.
- (14) The replies received during the market investigation indicated that the main suppliers of water filter cartridges are able to supply different kinds of water filter cartridges and do not appear to specialize to a large extent in the production of certain kinds of cartridges (for use in coffee machines, ovens or vending machines). Furthermore, the main suppliers appear to be able to provide water filter cartridges

---

<sup>11</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

<sup>12</sup> The Parties argue that chemical solution for water filtering, such as tablets, powder or liquid, could also belong to the same market.

throughout Europe. Nevertheless, the exact market definition can be left open in this case as no serious doubts arise under the alternative market definitions.

#### 4.1.2. *BWT's competitive position in water filter cartridges*

- (15) The Parties submit that BWT's market share would be [5-10]% on an EEA-wide market for all water filter cartridges. They estimate that BWT's market share at the national level would not exceed [20-30]% in any of the EEA member states.
- (16) If separate markets were to be defined for water filter cartridges for use in each of coffee machines, ovens and vending machines, the Parties submit that BWT's market share would be slightly higher in the sale of water filter cartridges for coffee machines and slightly lower in the sale of water filter cartridges for ovens. While the Parties are not able to calculate BWT's exact market share broken down at that level, they submit that it would in any event remain below [10-20]% at the EEA-wide level for any of those potential sub-markets.
- (17) In line with the Parties' submissions, the Commission's market investigation has not provided evidence for the Commission to conclude that BWT would hold a significant degree of market power on the upstream market.

## 4.2. **Hot beverage machines and vending machines and services (downstream)**

### 4.2.1. *Market definitions*

- (18) WMF manufactures and sells professional fully-automated coffee machines.<sup>13</sup> KKR's portfolio company Selecta provides vending services through automated food and drinks machines equipped with a payment system.
- (19) As regards WMF's activities, the Parties submit that the likely relevant market is the manufacture and sale of professional fully-automatic table-top hot beverage machines at the EEA-level. As regards Selecta's activities, they argue that the relevant market is the vending services market (or alternatively a sub-segment comprising only the vending of hot beverages) at the national or wider level. They argue, however, that the market definitions can ultimately be left open.
- (20) The Commission has previously considered, but ultimately left open a sub-segmentation of the market for food and drink distribution machines into (i) vending machines, (ii) beverage machines used in the hotel, restaurant and café ("HoReCa") sector and (iii) office coffee machines.<sup>14</sup> Within the market for vending machines, the Commission has considered, but ultimately left open, a further sub-segmentation into machines for (i) hot and cold beverages, (ii) snacks and food and (iii) cans and bottles.<sup>15</sup> Moreover, the Commission has assessed a market for vending services and

---

<sup>13</sup> While WMF also targets consumers to a certain extent, only machines belonging to WMF's professional coffee machines segment use water filters of BWT.

<sup>14</sup> Cases M.5338 – Barclays/Investcorp/N & V Global Vending, recital 12; M.6857 – Crane Co/MEI Group, recital 91; M.7319 – KKR/Allianz/ Selecta, recital 20.

<sup>15</sup> Case M.5338 – Barclays/Investcorp/N & V Global Vending, recital 13; case M.5973 – CVC/Charden International, recital 13; M.6857 – Crane Co/MEI Group, recital 93; M.7319 – KKR/Allianz/ Selecta, recital 20.

has considered as unlikely that a vending services market should be further sub-segmented by the type and extent of vending services provided.<sup>16</sup>

- (21) The Commission has found that the markets for food and drink distribution machines are likely to be national in geographic scope but ultimately left open in some decisions whether the scope could be wider. Among other things, customers and suppliers tend to operate at the national level and suppliers need to be able to offer national service networks.<sup>17</sup> With respect to vending services, the Commission has found that the market is national in scope for similar reasons.<sup>18</sup>
- (22) The precise market definitions can be left open in this case as no serious doubts arise under the alternative market definitions.

4.2.2. *WMF's competitive position in the supply of professional coffee machines*

- (23) According to the Parties' estimates, WMF's share in a market for professional fully-automated table-top hot beverage machines would exceed 30% in Belgium, the Czech Republic and Germany. While the Parties have not been able to submit market shares for all EEA countries, they argue that the market shares in those countries will not be higher, and are likely to be significantly lower, than WMF's market share in Germany where WMF is based and that is its core market.

**Table 1 WMF's market shares in the affected markets**

Country	WMF market share (by value)	WMF market share (by volume)
Belgium	N/A	[30-40]%
Czech Republic	N/A	[30-40]%
Germany	[30-40]%	[10-20]%

- (24) According to the Parties' estimates, WMF's market share would not be materially different if the market was further sub-divided into hot beverage machines sold to the HoReCa sector and machines for office coffee supply.
- (25) While the Parties have not been able to provide market share estimates for their competitors, they submit that competitors Franke and Thermoplan compete with WMF in all of the affected markets while, in addition, Melitta, Carimali and Cimbali compete with WMF in Belgium, the Czech Republic and Germany respectively.

---

<sup>16</sup> Cases M.2373 – Compass/Selecta, recitals 14–17, M.4202 – Charterhouse/Elior, recitals 15-16; M.5973 – CVC/Charden International, recitals 12-13, M.7319 – KKR/Allianz/Selecta, recital 15.

<sup>17</sup> Cases M.5338 – Barclays/Investcorp/N & V Global Vending, recital 13, recitals 21-22; M.7319 – KKR/Allianz/Selecta, recital 17; the market for vending machines was found to be EEA-wide, however, see case M.6857 – Crane Co/MEI Group – recitals 98-100.

<sup>18</sup> Cases M.2373 – Compass/Selecta, recitals 26-27, M.5973 – CVC/Charden International, recital 16; the definition was left open, however, in case M.4202 – Charterhouse/Elior, recital 23.

#### 4.2.3. *Selecta's competitive position in vending machines and services*

- (26) The Parties estimate that Selecta's market share in vending machines and services only exceeds 30% in the national market<sup>19</sup> in Sweden.

**Table 2 Selecta's market shares in the affected market**

Country	Selecta market share (by value) in all vending	Selecta market share (by value) in hot beverage vending
Sweden	[30-40]%	[30-40]%

- (27) According to the Parties, Jobmeal Sverige ([10-20]% market share<sup>20</sup>), Autobar Sverige ([10-20]%) and Nestlé Sverige ([10-20]%) are Selecta's most important competitors in Sweden.

#### 4.3. **Assessment of the vertical link**

- (28) Input foreclosure concerns are highly unlikely to occur in this case since BWT has a limited market position in the sale of water filter cartridges regardless of the device in which the filter cartridges are installed and therefore does not have a significant degree of market power in the upstream market.
- (29) As regards customer foreclosure, two competitors of BWT have expressed concerns as regards access to WMF coffee machines or to Selecta vending machines to sell their filter cartridges. One of these suppliers explained that access to WMF will be rendered more difficult after the merger due to a deepened relationship between BWT and WMF. One of the suppliers also explained that it expects selling to Selecta to become more difficult after the transaction.
- (30) However, the Commission found that BWT has been WMF's almost exclusive supplier of filter cartridges for many years and that there were no changes regarding WMF's suppliers between 2013 and 2015. As purchases from third parties have been immaterial in the last two years, the transaction is not likely to have any effect on WMF's purchasing policy. Likewise, Selecta's purchasing policy has not changed in the last two years as Selecta has been buying stable volumes of filter cartridges from the same supplier, with whom Selecta has signed a [...] contract in 2014. No changes are therefore expected in that regard as a result of the merger.
- (31) One competitor also claimed that FIBA already holds a stake in different coffee machine companies and therefore has an advantage in selling its cartridges over its competitors which could be strengthened further through the transaction. The Commission has been able to confirm, however, that FIBA does not have any shareholdings or any other structural links with the coffee machine companies listed by the competitor.
- (32) Moreover, WMF's and Selecta's position in the downstream markets appear to be limited, as outlined in paragraphs 21 to 25 above. In addition, neither WMF nor

---

<sup>19</sup> The Parties have only presented the market shares for vending machines and services for national markets where BWT sells water filter cartridges and where Selecta offers vending machines and services.

<sup>20</sup> The market shares in this paragraph refer to all vending as well as to vending of hot beverages.

Selecta represent a significant volume of purchases of filter cartridges for coffee machines or vending machines according to the Parties' estimates (respectively [0-5]% of the total EEA purchases of filter cartridges for coffee machines and [0-5]% of the total EEA purchases of filter cartridges for vending machines). Therefore, there will in all likelihood remain an alternative customer base for BWT's competitors in the sale of water filter cartridges. Furthermore, the value of the water filter cartridges represents only between [0-5]% of the value of the coffee machines, ovens and vending machines, making it unlikely that a customer foreclosure strategy would be profitable in this case.

## **5. CONCLUSION**

- (33) 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*