

EN

***Case No M.7703 -
PONTMEYER / DBS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 20/08/2015

***In electronic form on the EUR-Lex website under document
number 32015M7703***



EUROPEAN COMMISSION

Brussels, 20.8.2015
C(2015) 5947 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sirs,

Subject: Case M.7703 – PontMeyer / DBS

Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

- (1) On 15 July 2015, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking PontMeyer N.V. ('PontMeyer', the Netherlands), controlled by HAL Investments B.V. ('HAL'), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Deli Building Supplies B.V. ('DBS', the Netherlands) by way of purchase of shares³. (PontMeyer is designated hereinafter as the 'Notifying Party' while PontMeyer and DBS are designated 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 241, 23 July 2015, p. 5.

1. THE PARTIES

- (2) PontMeyer is active in distribution of timber and building materials in the Netherlands through its chain of 45 general builders' merchants trading under the brand PontMeyer. Furthermore, PontMeyer owns three wholesalers of wood and wood-based panels (Centrop, Trima and Van Dam) and one manufacturer of wooden products (Houtindustrie Opmeer) in the Netherlands. PontMeyer is ultimately controlled by HAL Investments B.V. ('HAL').
- (3) DBS is a holding company for several suppliers of timber and building materials in the Netherlands. Its subsidiary Jongeneel B.V. ('Jongeneel') operates 46 general builders' merchants throughout the Netherlands. Heuvelman Hout and RET Bouwproducten, part of Jongeneel, are active in the wholesale of wood and wood-based panels. Astrimex B.V., another Jongeneel company, is a wholesaler of ceiling and partitioning products.

2. THE OPERATION AND THE CONCENTRATION

- (4) According to the agreed share sale and purchase agreement ('SPA'), PontMeyer will acquire all the issued and outstanding shares in DBS and thus acquire sole control of DBS. The SPA will be signed after the completion of consultation procedures with the relevant works councils in accordance with the Dutch law as provided in the signing protocol entered into by PontMeyer and N.V. Deli Maatschappij, the current owner of DBS, on 22 June 2015.
- (5) The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ (HAL: 7 007 million; DBS: [...]). Each of them has a Union-wide turnover in excess of EUR 250 million (HAL: [...]; DBS: [...]), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

4. MARKET DEFINITIONS

4.1. Introduction

- (7) The Parties are active on several manufacturing, wholesale and retail markets concerning different building and wood products.

4.2. Relevant product markets

4.2.1. Distribution of building products

- (8) The Parties' activities overlap in the distribution of building products, both at wholesale and at retail level, particularly through builders' merchants.

⁴ Turnover calculated in accordance with Article 5 of the Merger Regulation.

- (9) The Commission has previously considered that the distribution of building products could be segmented according to the type of customers into (i) wholesale to retailers, (ii) retail sales to professional customers (primarily through builders' merchants) and (iii) retail sales to non-professional customers (primarily through do-it-yourself shops) but has ultimately left the exact market definition open.⁵ Concerning the market for the retail sale of building products to professional customers, the Commission has also considered a further segmentation between specialist and generalist retailers.⁶
- (10) The Notifying Party submits that there is one overall market for the distribution of building materials, irrespective of level of distribution channel and also without further distinction between specialists and generalists. The Notifying Party explains that professional customers increasingly source building materials not only from builders' merchants but also directly from wholesalers and manufacturers as well as from do-it-yourself shops, which have in turn introduced services specifically aimed at small professional end-users. The Notifying Party submits that customers can also source many types of products, such as wood products, both from specialists and generalists. That would further be evidenced by the Parties having themselves evolved from specialists in timber distribution into generalists. The Notifying Party, however, provided separate market information for the narrowest plausible markets on which the Parties are active: (i) wholesale of hardwood, (ii) wholesale of softwood, (iii) wholesale of wood-based panels and (iv) retail sale of building materials to professional customers by generalists.
- (11) Market participants who responded to the market investigation confirmed to some extent that they increasingly consider do-it-yourself stores and wholesalers to be at least partial alternatives to builders' merchants, with do-it-yourself stores also offering services targeted at professionals' needs.⁷ This view was not, however, shared by all respondents including customers⁸. Moreover, respondents considered that the distinction between retail sales to professional customers and retail sales to non-professional customers is still valid even if some considered that no distinction should be made between generalists and specialists.⁹
- (12) For the purposes of the present case, it is not necessary to conclude on the exact product market definition as regards the distribution of building products since the

⁵ M.3407 – *Saint Gobain / Dahl*, paragraphs 12 and 16; and M.3142 – *CVC / Danske Traeplast*, paragraphs 11–3. See also M.7107 – *Cordes & Graefe / Pompac / Comafranc*, paragraph 15; and M.4050 – *Goldman Sachs / Cinven / Ahlsell*, paragraph 9, for installation products.

⁶ M.7107 – *Cordes & Graefe / Pompac / Comafranc*, paragraphs 17–8; M.3184 – *Wolseley / Pinault Bois & Materiaux*, paragraphs 12–7; M.1974 – *Compagnie de Saint-Gobain / Raab Karcher*, paragraph 8. See also *Goldman Sachs / Cinven / Ahlsell* where the Commission discussed installation products (as opposed to all building products), M.4050 – *Goldman Sachs / Cinven / Ahlsell*, paragraph 9.

⁷ See for instance minutes of a call with a competitor, 28 July 2015 '*Customers' behaviour has been changing. Clients prefer distributors who offer a number of services from the retail sale, through transport to installing. Therefore, builders' merchants like [competitor name] need to cooperate also with installers. It is to be noted that DIY stores offer these kinds of services*'.

⁸ Q1 – Questionnaire to competitors, question 7, and Q2 – Questionnaire to customers, question 7. See also confirmed minutes of a call with a competitor, 28 July 2015.

⁹ Q1 – Questionnaire to competitors, question 6, and Q2 – Questionnaire to customers, question 6.

proposed transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

4.2.2. *Production of decorative laminate*

- (13) Two of HAL's subsidiaries (other than PontMeyer) produce decorative high-pressure laminate ('HPL'). The activities of these companies vertically relate to the activities of DBS in the downstream distribution of building products.
- (14) The Commission has in previous decisions found indications that the relevant product market likely consists of all types of decorative laminates without a subsegmentation between, for instance HPL and continuous pressure laminate ('CPL'), but has left the question ultimately open¹⁰.
- (15) The Notifying Party submits that the relevant market consist of all decorative laminates, including both HPL and CPL. In particular, the Notifying Party submits that suppliers are normally able to produce or switch production between different types of decorative laminates without incurring significant obstacles (supply-side substitutability).
- (16) For the purposes of the present case, it is not necessary to conclude on the exact product market definition as regards decorative laminates since the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market even under the narrowest product market definition.

4.3. **Relevant geographic markets**

4.3.1. *Distribution of building products*

- (17) The Commission has previously considered that the relevant geographic market for the wholesale of building products is at least national and possibly even wider but has left the question ultimately open.¹¹
- (18) For the retail sale of building materials to professional customers by generalists, the Commission has previously considered that the relevant markets can be national, regional (smaller than national) or local but has left the question ultimately open.¹²
- (19) The Notifying Party submits that the distribution (regardless of whether wholesale or retail) of building products to professional customers is national (the Netherlands). According to the Notifying Party, market participants – including the Parties – have a national presence in the Netherlands and they offer deliveries for free or against a modest fee throughout the country. Moreover, many deliveries would come directly from the manufacturers even if sold by a builders' merchant. Moreover, there would be a chain substitution effect as the local catchment areas overlap continuously over the Netherlands.

¹⁰ M.4525 – *Kronospan / Constantia*, paragraph 19; and M.4165 – *Sanae Industria / Hornitex*, paragraph 11.

¹¹ M.3142 – *CVC / Danske Traeplast*, paragraphs 14–16.

¹² M.3184 – *Wolseley / Pinault Bois & Materiaux*, paragraphs 19–22; M.3142 – *CVC / Danske Traeplast*, paragraphs 14–6; and M.1974 – *Compagnie de Saint-Gobain / Raab Karcher*, paragraphs 12. See also M.3407 – *Saint Gobain / Dahl*, paragraphs 19–20.

- (20) Without prejudice to its position on the geographic market definition, the Notifying Party has nonetheless provided market information both on the national and local level for the retail sale of building products to professional customers in the Netherlands.
- (21) While the results of the market investigation include indications that even the retail level could be national in the Netherlands, some market participants nonetheless submitted that the markets are rather local because, for instance customers are not willing to travel long distances for the products and because each outlet can price the products individually at least within some boundaries.¹³ For the purposes of the assessment, the Commission will consider, in accordance with its previous decisional practice¹⁴, local markets as corresponding to the catchment area with a radius of 30 km from a store's location, as this distance is broadly in line with the findings of the market investigation.¹⁵
- (22) For the purposes of the present case, it is not necessary to conclude on the exact geographic market definition as regards the distribution of building products since the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

4.3.2. *Production of decorative laminate*

- (23) The Commission has previously considered the relevant geographic market for decorative laminates to be EEA-wide in scope¹⁶.
- (24) The Notifying Party submits that the relevant geographic market is EEA-wide.
- (25) For the purposes of the present case, it is not necessary to conclude on the exact geographic market definition as regards decorative laminates since the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

5. **COMPETITIVE ASSESSMENT**

5.1. **Horizontally affected markets**

- (26) The proposed transaction does not give rise to horizontally affected markets in the distribution of building materials if no distinction is made according to the sales channel. However, when considering narrower plausible markets, the transaction would result in an affected market for the retail sale of building products to

¹³ Q1 – Questionnaire to competitors, questions 8–10, and Q2 – Questionnaire to customers, questions 8–12.

¹⁴ M.3184 – *Wolseley / Pinault Bois & Matériaux*, paragraphs 19–22.

¹⁵ The radius indicated by the respondents to the market investigation ranges between 10 and 50 km. See replies to Q1 – Questionnaire to competitors, questions 8–9; Q2 – Questionnaire to customers, question 8. See also minutes of a conference call with a competitor, 28 July 2015; minutes of a conference call with a customer, 29 July 2015.

¹⁶ M.4525 – *Kronospan / Constantia*, paragraph 37. See also *Sonea Industria / Hornitex* where the market was considered to be at least cross-border regional but the question was ultimately left open, M.4165 – *Sonea Industria / Hornitex*, paragraph 14.

professional customers by generalist retailers in the Netherlands at national level, as well as in a number of potential local markets.

5.1.1. *Retail sale of building materials via builders' merchants to professional customers*

- (27) The combined market shares of the Parties at national level would amount to 20%. The Parties' and their competitors' market shares at national level are provided in **Table 1**.

Table 1 - National market shares in the Netherlands, generalist builders' merchants¹⁷

Builders' merchant	Number of outlets	Market share
PontMeyer	[...]	[5–10]%
DBS	[...]	[10–20]%
Combined	[...]	[20–30]%
Bouwcenter	[...]	[10–20]%
CRH	[...]	[10–20]%
Bouwmaat	[...]	[10–20]%
Raab Karcher	[...]	[5–10]%
BPG	[...]	[5–10]%
Stiho	[...]	[0–5]%
Other	[...]	[10–20]%
Total	[...]	100%

Source. The Notifying Party

- (28) In the potential local markets around DBS' outlets, as outlined above at paragraph (21), the Parties' combined market shares reach 20% in a number of locations as shown in **Table 2**.

¹⁷ Market shares are the Parties' best estimates calculated on the number of outlets, which is also the basis the Parties use for internal competitive analyses.

Table 2 – Affected potential local markets in the Netherlands, generalist builders' merchants

Location	Total outlets	Outlets Pont Meyer	Outlets DBS	Outlets Parties combined ¹⁸	Joint market share
Alkmaar	[...]	[...]	[...]	[...]	[20–30]%
Amsterdam	[...]	[...]	[...]	[...]	[20–30]%
Apeldoorn	[...]	[...]	[...]	[...]	[20–30]%
Arnhem	[...]	[...]	[...]	[...]	[20–30]%
Bergen op Zoom	[...]	[...]	[...]	[...]	[20–30]%
Breda	[...]	[...]	[...]	[...]	[20–30]%
Den Haag (Binckhorst)	[...]	[...]	[...]	[...]	[20–30]%
Den Haag (De Werf)	[...]	[...]	[...]	[...]	[20–30]%
Den Helder	[...]	[...]	[...]	[...]	[20–30]%
Deventer	[...]	[...]	[...]	[...]	[20–30]%
Dordrecht	[...]	[...]	[...]	[...]	[30–40]%
Groningen	[...]	[...]	[...]	[...]	[20–30]%
Haarlem	[...]	[...]	[...]	[...]	[20–30]%
Moerdijk	[...]	[...]	[...]	[...]	[30–40]%
Nijmegen	[...]	[...]	[...]	[...]	[30–40]%
Oss	[...]	[...]	[...]	[...]	[20–30]%
Poeldijk	[...]	[...]	[...]	[...]	[20–30]%
Rotterdam (Waalhaven)	[...]	[...]	[...]	[...]	[20–30]%
Rotterdam (Noord West)	[...]	[...]	[...]	[...]	[20–30]%
Schiedam	[...]	[...]	[...]	[...]	[30–40]%
Den Bosch	[...]	[...]	[...]	[...]	[20–30]%
Sittard	[...]	[...]	[...]	[...]	[20–30]%

18

Since the catchment areas around the DBS' builders' merchants show overlap, some outlets of the Parties appear more than once. The number of outlets shown is therefore larger than the total number of outlets of the Parties in the Netherlands.

Location	Total outlets	Outlets Pont Meyer	Outlets DBS	Outlets Parties combined ¹⁸	Joint market share
Sneek	[...]	[...]	[...]	[...]	[30–40]%
Spankeren	[...]	[...]	[...]	[...]	[20–30]%
Terneuzen	[...]	[...]	[...]	[...]	[40–50]%
Tilburg	[...]	[...]	[...]	[...]	[20–30]%
Utrecht (Het Houten Hart)	[...]	[...]	[...]	[...]	[20–30]%
Utrecht (Lage Weide)	[...]	[...]	[...]	[...]	[20–30]%
Woerden	[...]	[...]	[...]	[...]	[20–30]%
Zaandam	[...]	[...]	[...]	[...]	[20–30]%
Zoetermeer	[...]	[...]	[...]	[...]	[20–30]%
Zwaagdijk	[...]	[...]	[...]	[...]	[20–30]%
Zwolle	[...]	[...]	[...]	[...]	[20–30]%

Source: *The Notifying Party*

- (29) First, the combined market shares in the affected markets are generally modest both at national and local level. Even considering individual catchment areas, a number of competitors will remain active in all of them. It is therefore unlikely that the merged entity would be able to increase prices or otherwise exercise market power.
- (30) Second, the Commission has further assessed the physical locations of the Parties' and their competitors' outlets in those local areas where the merged entity would achieve a combined market share of [30–40]% or more (Dordrecht, Moerdijk, Nijmegen, Schiedam, Sneek and Terneuzen) based on the information provided by the Notifying Party. The assessment shows that even within the local areas, the merged entity's outlets would continue to be challenged by competitors' outlets nearby. Particularly concerning the area of Terneuzen, in which the merged entity would achieve its highest local market share, [40–50]%, the assessment shows that competitors' outlets are closer to the Parties' outlets than the Parties' outlets are to each other: the closest outlet to DBS' outlet in Terneuzen is Bouwcenter's while the closest outlet to PontMeyer's outlet is that of BPG's.
- (31) Third, the results of the market investigation support the absence of competition concerns related to horizontal effects. In particular, market participants did not consider the parties to generally be each others' closest competitors in the Netherlands but they most frequently named competitors such as Stiho and Bouwmaat as the Parties' closest competitors.¹⁹ Market participants, including customers, also did not

¹⁹ See replies to Q1 – Questionnaire to competitors, questions 14.1 and 14.2; and replies to Q2 – Questionnaire to customers, questions 16 and 17; see also minutes of a call with a customer, 29 July 2015 'Stiho is the closest competitor to Jongenheel, i.e. [customer name] would seek a quote from it to compare prices from Jongenheel'.

expect the proposed transaction to give rise to negative effects such as price increases as adequate competition would remain.²⁰

- (32) Therefore, the Commission finds that the proposed transaction is unlikely to give rise to serious doubts as to its compatibility with the internal market in respect to national and local markets for the retail sale of building materials to professional customers through builders' merchants in the Netherlands.

5.2. Vertically affected markets

- (33) There are a number of vertical links between the Parties' activities in (i) the retail sale of building products to professional customers and (ii) their activities in the wholesale of various building products (softwood, hardwood and wood-based panels) as well as between those activities and (iii) HAL's production and sale of certain laminates.
- (34) The Parties' combined market shares on all of the potential upstream markets of wholesale and production of building products range from [5–10]% in the wholesale of hardwood in the Netherlands to [20–30]% in the wholesale of ceiling and partitioning products in the Netherlands²¹.
- (35) Therefore, the proposed transaction does not give rise to vertically affected markets in as much as the retail markets are also considered national.
- (36) Even if those potential local markets where the Parties reach 30% in the retail sale of building products to professional customers were considered (see **Table 2**), the the proposed transaction would not give rise to anti-competitive vertical effects.

Input foreclosure

- (37) As set out in paragraph (34), the Parties' market shares on all of the potential upstream markets of wholesale and production of building products remain modest. Therefore, the Commission considers that the merged entity would lack the ability to engage into input foreclosure due to its modest market position in the upstream markets. In its assessment, the Commission has also taken into account the fact that the Parties have some exclusive distribution agreements with regard to certain wooden products. However, in light of the results of the market investigation, the Commission considers that customers could likely switch to alternative products if the merged entity tried to foreclose access to those products for which they hold exclusive rights.²²

Customer foreclosure

- (38) As to customer foreclosure, the demand for building materials in any of the local markets within the Netherlands is only a fraction of the total demand in the country

²⁰ Q1 – Questionnaire to competitors, questions 11–20 ; Q2 – Questionnaire to customers, questions 14–21. See also confirmed minutes of a call with a competitor, 28 July 2015, and confirmed minutes of a call with a customer, 29 July 2015.

²¹ The potential market for the wholesale of ceiling and partitioning products in the Netherlands is not horizontally affected as only DBS is active there.

²² Confirmed minutes of a call with a competitor, 28 July 2015.

and it is not feasible that the merged entity would have the ability to meaningfully foreclose its upstream competitors or customers. Moreover, end-customers would continue to have access to a number of alternative retailers in all of the local markets within the Netherlands and they would therefore not be significantly deprived of choice should the merged entity stop distributing the products of its upstream competitors.

- (39) Therefore, the Commission concludes that the proposed transaction is unlikely to give rise to non-horizontal competition concerns.

6. CONCLUSION

- (40) 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)
Miguel ARIAS CAÑETE
Member of the Commission