



EUROPEAN COMMISSION
DG Competition

Case M. 7737 – Honeywell / Elster

Only the English text is available and authentic.

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

Decision under remedy review clause
Art. 6(1)(b) in conjunction with Art 6(2)

Date: 22/04/2016



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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 22.4.2016
C(2016) 2591 final

PUBLIC VERSION

MERGER PROCEDURE
COMMITMENTS

To the notifying party:

Dear Sir/Madam,

Subject: Case M.7737 – Honeywell / Elster
Your request of 21 March 2016 for a modification of the (Key) Personnel Lists (Schedule, Annex Personnel, of the Commitments) under clause 7(c) of the Commitments annexed to the Commission decision of 21 December 2015.

I. FACTS AND PROCEDURE

1. By decision of 21 December 2015 (“the Decision”) adopted in application of Article 6(1)(b) in connection with Article 6(2) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings¹ (“the Merger Regulation”), the Commission declared the operation, by which Honeywell International Inc. (“HON”, USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Teaford GmbH, the holding company of the Elster division of Melrose PLC (“Elster”, Germany), compatible with the common market and with the EEA Agreement, subject to the full compliance with the commitments submitted by HON annexed to the Decision (the “Commitments”).
2. In the Commitments, HON committed to divest RMG Meßtechnik GmbH, a fully owned subsidiary which carried out its business concerning the design, development, manufacturing and sale in the EEA of turbine and ultrasonic meters,

¹ OJ L 24, 29.1.2004, p. 1.

gas chromatographs, and flow computers, and electronic volume correctors (the "Divestment Business" as defined in Section B of the Commitments). For this purpose, the Commitments include an "Annex Personnel", which mentions [...], as Human Resources (HR) Key Personnel of the Divestment Business.

3. Under clause 7(c) of the Commitments, the Commission may, in response to a request from HON, replace individual members of the Key Personnel, where they exceptionally leave the Divestment Business. HON in its request shall demonstrate that the replacement is well suited to carry out the functions carried out by the replaced member of the Key Personnel.
4. By letter of 21 March 2016, HON proposed to modify the list of Key Personnel as set out in "Annex Personnel" of the Schedule of the Commitments by replacing [...] with [...] as Key Personnel in charge of HR functions.
5. By the same letter of 21 March 2016, HON explained that [...] is absent from work due to [...] and that it is now clear that there are no indications that she will be able to return to work in the near future.
6. HON also submitted that [...] has been recruited by the Hold Separate Manager following the standard recruitment procedure in place at HON. Particularly, HON submitted the usual hiring process consists of a pre-screening of the applications, a round of interviews and a final interview. The decision to hire [...] was ultimately taken by the Hold Separate Manager and was based on her resume, her references and the interviews.
7. HON further submitted that [...] is fully qualified for the position having a significant experience in the field of HR in large multinational companies. To prove this, HON has submitted the *Curriculum Vitae* of [...].

II. ASSESSMENT OF THE PROPOSAL

8. The Commission takes note of the reasons put forward by HON giving rise to the necessity to modify the list of Key Personnel in the Commitments.
9. According to the Commitments, HON committed to include in the Divestment Business the Personnel, including the "*Key Personnel, defined as that personnel necessary to ensure the viability and competitiveness of the Divestment Business (...)*". In the list of Key Personnel, HON proposed to include one employee, [...], entrusted exclusively for the Divestment Business' HR functions. No other Key Personnel entrusted with HR function was proposed by HON.
10. The Commission recognises that, in light of the [...] of [...], and the fact that it was ultimately ascertained that it cannot be expected that she will return to work in the foreseeable future, [...] has *de facto* left the Divestment Business.
11. The Commissions considers this *de facto* departure of [...] as an exceptional situation. In fact, before the request of 21 March 2016, it was not known that she would not return to work due to [...].
12. It is therefore necessary to replace [...] as Key Personnel to be transferred with the Divestment Business. This is even more so as [...] is the only Key Personnel entrusted with HR functions. From an operational perspective it is of primary

importance for the Divestment Business to include such a function in order to guarantee a seamless transition to the Buyer and to manage the day-to-day HR issues.

13. In that regard, the Commission considers that [...] has the necessary qualifications to act as HR manager, because she has been working in that specific function in a number of other companies, including multinational companies in the past.
14. Also, the Commission is of the opinion that in light of such experience acquired in the past [...] is at least equally qualified for the function as [...]. The requested change in key personnel therefore does not have a detrimental effect on the Divestment Business.
15. The Commission recognizes that the requested modification of the Key Personnel List results from HON's intent to improve the Commitments to achieve the intended purpose of removing the grounds for the serious doubts brought about by the transaction as to its compatibility with the internal market.
16. By email of 29 February 2016 the Monitoring Trustee has given a reasoned opinion supporting the requested modification of the list of Key Personnel, i.e. to replace [...] with [...].

III. CONCLUSION

17. It follows from the above that HON has shown good cause for the requested modification, and that granting such modification is appropriate. The Commission has therefore decided, in accordance with clause 7(c) of the Commitments, to modify the Key Personnel List by replacing [...] with [...].

For the Commission
(Signed)
Johannes LAITENBERGER
Director-General