



EUROPEAN COMMISSION
DG Competition

Case M.7827 -
BERKSHIRE
HATHAWAY /
PRECISION
CASTPARTS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 05/01/2016

*In electronic form on the EUR-Lex website under document
number 32016M7827*



EUROPEAN COMMISSION

Brussels, 05.01.2016
C(2016) 29 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

**Subject: Case M.7827 - Berkshire Hathaway/Precision Castparts
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 27 November 2015, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Berkshire Hathaway Inc. ('Berkshire Hathaway', USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Precision Castparts Corp. (PCC) ('PCC', USA) by way of purchase of shares (the 'Proposed Transaction').³ Berkshire Hathaway is hereinafter also referred to as the 'Notifying Party', and together with the PCC 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 402, 4.12.2015, p. 18.

1. THE PARTIES

- (2) **Berkshire Hathaway** is a holding company owning subsidiaries that engage in a number of diverse business activities, including insurance and reinsurance, freight rail transportation, utilities and energy finance, manufacturing, services and retailing.
- (3) **PCC** is a manufacturer of complex metal components and products. It serves the aerospace, power, and general industrial markets. PCC manufactures complex structural investment castings and forged components for aerospace markets, machined airframe components, and highly engineered, critical fasteners for aerospace applications, and manufactures airfoil castings for the aerospace and industrial gas turbine markets. PCC is also a producer of titanium and nickel superalloy melted and mill products for the aerospace, chemical processing, oil and gas, and pollution control industries, and manufactures extruded seamless pipe, fittings, and forgings for power generation and oil and gas applications.

2. THE OPERATION

- (4) By an agreement dated 8 August 2015, Berkshire Hathaway has agreed to acquire all the issued and outstanding shares of PCC. On completion of the Proposed Transaction, PCC will merge with a wholly owned subsidiary of Berkshire Hathaway, NW Merger Sub Inc. in consideration for an amount of cash per share. After completion, the separate corporate existence of the Merger Subsidiary will cease, and PCC will continue as the surviving corporation. The Proposed Transaction will therefore result in Berkshire Hathaway indirectly acquiring 100% of the capital stock and therefore sole control of PCC.
- (5) The Proposed Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ [Berkshire Hathaway: EUR 141 006 million; PCC: EUR 7 876 million]. Each of them has an EU-wide turnover in excess of EUR 250 million [Berkshire Hathaway: EUR [...] million; PCC: EUR [...] million], but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (7) The notified operation therefore has an EU dimension.

4. COMPETITIVE ASSESSMENT

- (8) There is no horizontal overlap between Berkshire Hathaway and PCC since neither Berkshire Hathaway nor any of its subsidiaries are active as manufacturers of the type of complex metal components and products for the aerospace industry and other industries to which PCC supplies.
- (9) The Proposed Transaction gives rise to a vertical relationship between the activities of Berkshire Hathaway's subsidiary Future Metals, in the upstream market for the

⁴ Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

distribution of metals to the aerospace industry, and the downstream activities of one of PCC's subsidiaries, Permaswage, active in the manufacture of fitting products (a type of aerospace fastener) for airframe applications.

- (10) There are other minor links between the activities of Berkshire Hathaway and PCC, namely between (i) PCC's subsidiary TIMET activities in the manufacture of certain titanium mill products which it supplies to third-party distributors such as Berkshire Hathaway's subsidiary Future Metals active as a distributor of metal products to the aerospace industry, (ii) PCC metals manufacturers as suppliers to Berkshire Hathaway metals distributors or downstream manufacturers of products requiring metal as an input product in North America, and (iii) Berkshire Hathaway metals distributors as suppliers to PCC manufacturing companies. These vertical links do not give rise to affected markets.
- (11) The assessment therefore focuses on the two relevant product markets, namely (i) the distribution of metals to the aerospace industry, and (ii) the manufacture of aerospace fasteners.

4.1. Relevant markets

4.1.1. Distribution of metals to the aerospace industry

4.1.1.1. Relevant product market

- (12) The Notifying Party argues that the relevant product market is the independent distribution of metal products used in the aerospace industry. Distribution of metal products to the aerospace industry includes the supply of various different metals, such as titanium, steel, super-alloys and aluminium in different shapes and sizes. For example, Future Metals supplies titanium, stainless steel and nickel alloy products such as tubing, sheet and bar.
- (13) From a demand-side perspective, aerospace component manufacturers and maintenance, repair and operations providers require distributors to offer a wide range of metals. Their contracts with distributors generally cover various types of metal products. Customers typically source through distributors rather than directly from the manufacturer because distributors offer large and diverse, locally located inventories resulting in short delivery lead-times. Customers also turn to distributors because they can offer customers access to a range of metal products even though customers' requirements for any specific type of metal may be too small or irregular to source them direct from the mill.
- (14) From a supply-side perspective, distributors of metals for the aerospace industry commonly supply a range of different metals, of differing grades, shapes and sizes.
- (15) An alternative market definition would include both ex-mill sales and sales through independent distributors to the aerospace industry. The Notifying Party argues that customers that order directly from the mill producers are generally large aerospace OEMs and aerospace component manufacturers with large, steady and predictable volume requirements. For these customers, the added value of sourcing through distributors is very limited and will generally not outweigh the associated higher costs. In contrast, customers purchasing through distributors, mainly component manufacturers and maintenance, repair and operations providers, generally have smaller and more ad hoc volume requirements. These customers generally have a demand not only for the supply of products of one type of metal but for a wider range

of products of different metals, as well as for certain value-added services (e.g. cutting, shearing, sawing, coating and testing) and local production support. For such smaller customers, it is generally not feasible to purchase from mill producers directly as they do not meet the minimum requirements of a mill. In a previous decision,⁵ the Commission has similarly distinguished between ex-mill sales of steel products and sales of steel products through distributors, on the basis that both types of sales satisfy different needs.

- (16) The exact delineation of the relevant product market can be left open in the present case, as no serious doubts arise under any plausible product market definition.

4.1.1.2. Relevant geographic market

- (17) The Notifying Party's view is that the market for the distribution of metals to the aerospace industry is EEA-wide.
- (18) Customers require distributors to have regionally-located inventories to support local production requirements with short delivery lead-times. Customers also require regional sales support and knowledge of local culture, laws and customs. Although large multinational customers can have one single global contract with a distributor, they will require regional services. This is reflected in the sales organisation of distributors.
- (19) The exact scope of the relevant geographic market can be left open in the present case as no serious doubts arise under any plausible geographic market definition.

4.1.2. *Manufacture of aerospace fasteners*

4.1.2.1. Relevant product market

- (20) Fasteners are mechanical devices that join or clamp separate components together. In a previous decision, the Commission defined as a relevant market the segment for aerospace fasteners.⁶ According to that decision, aerospace fasteners are to be distinguished from the low-cost, commodity products used for mainstream industrial applications on the basis of the more demanding materials and finish requirements for aerospace applications. Fasteners for aerospace applications are manufactured to higher tolerances in terms of dimensions, fatigue and tensile strengths.
- (21) Permaswage is particularly active in fluid fitting products which belong to the product family of the aerospace fastener market. Fluid fittings are used in pressurised pipe and tube systems that convey fluids within an aircraft. Fluid fittings are used to connect pressure pipes and tubes together and therefore, as for other aerospace fastener products, the fittings produced are used to connect specific aerospace component parts together.
- (22) Fluid fittings must be able to securely fit onto various pipes and tubes and be both leak-resistant and able to withstand varying degrees of pressure. Manufactures may therefore adapt the qualities of the fluid fittings to suit the particular performance characteristics or installation methods required; for example, permanent fluid fittings

⁵ Case M.7155 SSAB / Rautaruukki.

⁶ Case M.2928 Alcoa / Fairchild.

have smooth swaged endings and are more robust and leak-proof, whereas separable fluid fittings have threaded ends and are less robust but can be replaced once incorporated into the tube systems. Fluid fittings are forged components and are typically made from aluminium, stainless steel or titanium.

- (23) The Notifying Party argues that fluid fittings do not constitute a separate market from the manufacturer of aerospace fasteners.
- (24) From a demand side, all fluid fittings serve the same purpose of leading and connecting pipes and tubes that convey fluids. Moreover, particularly during the design stage of an aircraft, the particular type of fluid fitting used is interchangeable.
- (25) From a supply side perspective, all fluid fittings are manufactured using a largely identical production process and manufacturers can switch to producing fluid fittings with different product characteristics both within a short time frame and at no significant additional cost
- (26) The exact delineation of the relevant product market can be left open, as no serious doubts arise under any plausible product market definition.

4.1.2.2. Relevant geographic market

- (27) In previous decisions the Commission left open whether the geographic market for aerospace fasteners is EEA-wide or worldwide.⁷
- (28) The Notifying Party submits that the relevant geographic scope of the market is global. Both suppliers and customers of fluid fittings operate globally. In particular, larger customers of fluid fittings (e.g. large aircraft manufacturers) typically enter into master agreements with global manufacturers pursuant to which fluid fittings are delivered to any aerospace production site (in any country) as required. Fluid fittings are low weight and often purchased in small volumes and can therefore be delivered by airfreight to any global location within a short period of time.
- (29) The exact scope of the relevant geographic market can be left open as no serious doubts arise under any plausible geographic market definition.

4.2. Assessment of potential vertical effects

- (30) Future Metals is active in the market for the distribution of metal products used in the aerospace industry. Among several products, Future Metal distributes bar stocks which are used in the production of fitting products, like the ones produced by Permaswage.⁸ There is no actual purchasing relationship between these two

⁷ Cases M.2928 Alcoa / Fairchild and M.4757 Nordic Capital / Thule.

⁸ There is also a *de minimis* purchasing relationship between Future Metals and Permaswage as regards the supply of tubing products, mainly in the US. However:

- (i) the tubing products are not an input into the manufacture of Permaswage's downstream products. Instead, the tubing products supplied to Permaswage by Future Metals (and other suppliers) are used by Permaswage in its research and development and testing facilities. In particular, these tubing products are used to test Permaswage's fluid fittings (i.e., in tests of whether the fittings achieve their intended function of adequately connecting metal tubes); and
- (ii) in any event, given the minimal purchases made by Permaswage of metal tubing products globally in 2014 (approximately EUR [...]), these products are not an important input to the undertakings active in the downstream market. Thus, according to footnote 10 of the "Commission Notice on a

companies, however a potential vertical link could be created by the Proposed Transaction.

- (31) Future Metals' market share on any plausible market definition for the distribution of metal products used in the aerospace industry is below [0-5]%.
- (32) PCC's market share on the worldwide market for the manufacture of aerospace fasteners for 2014 is approximately [20-30]%, with the majority of sales taking place in North America. In the narrower market for fluid fittings PCC's market share would be approximately [50-60]%, with the majority of sales taking place in North America. At an EEA level, PCC market share is estimated to be equal to [10-20]% and [40-50]% in the market for the manufacture of aerospace fasteners and in the narrower market for fluid fittings, respectively.

4.2.1. *Input foreclosure*

- (33) Future Metals would not have the ability to adopt an input foreclosure strategy given its insignificant market share (below [0-5]%) and the presence of sufficient alternative sources of aerospace metals from which rival aerospace fastener (and specifically fluid fitting) manufacturers can obtain their input products. Alternatives include Reliance Steel and Aluminium Companies, O'Neal Industries, ThyssenKrupp, Castle Metals Aerospace and Rolled Alloys.
- (34) As regards the incentives to adopt an input foreclosure strategy, Future Metals would simply lose sales as a result of refusing to supply other downstream aerospace fastener (and fluid fitting) manufacturers as Permaswage's rivals would simply switch to other suppliers of aerospace metals. Moreover, Permaswage's is currently not purchasing any quantities from Future Metals and their needs of aerospace metal products only represent a tiny proportion of Future Metals' total sales to downstream aerospace fastener (and fluid fitting) manufacturers. Therefore, if Future Metals were to supply exclusively to Permaswage, it would lose a significant number of sales to alternative purchasers.
- (35) Finally, any input foreclosure strategy would also not likely have a significant impact on competition given that the standard bar stock product that Future Metals sells typically represents less than [10-20]% of the sales price for fluid fittings.

4.2.2. *Customer foreclosure*

- (36) PCC would not have the ability to adopt a customer foreclosure strategy given that the customer base for product metals for the aerospace industry is large and varied as it includes a wide range of aerospace component manufacturers as well as aerospace OEMs such as Rolls-Royce, Boeing and Airbus.
- (37) Permaswage's purchases represent less than [0-5]% of the sales of the market for the distribution of metal products for the aerospace industry. Even considering the total purchases by fluid fittings manufacturers, this would represent only a small part (i.e. less than [0-5]%) of the market for the distribution of metals to the aerospace

simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004" this does not qualify as an affected vertical relationship.

industry and a small proportion of the total purchases of these types of bar products (i.e. less than [0-5]%).

4.2.3. *Conclusion*

- (38) In view of the above and of all the evidence available to the Commission, the Commission considers that the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the vertical relationship between the market for the distribution of metals to the aerospace industry and the market for the manufacture of aerospace fasteners.

5. **CONCLUSION**

- (39) 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