



EUROPEAN COMMISSION  
DG Competition

*Case M.8385 -  
PILLARSTONE /  
FAMAR*

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 03/05/2017

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## EUROPEAN COMMISSION

Brussels, 3.5.2017  
C(2017) 3091 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**To the notifying party:**

**Subject: Case M.8385 - PILLARSTONE / FAMAR  
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>**

Dear Sir or Madam,

- (1) On 27 March 2017, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (1) by which Pillarstone Europe LLP ('Pillarstone', United Kingdom) indirectly controlled by KKR & Co L.P. ('KKR', United States) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of Famar SA ('Famar', Luxembourg) by way of a contract of management.

1. **THE PARTIES**

- (2) Pillarstone is a platform established in 2015 by KKR Credit to partner with European banks in the management of non-core and underperforming assets. The

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<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').

platform provides long-term capital and operational expertise to the businesses which underpin these non-performing loans and non-core exposures.

- (3) Famar is the holding company of an international group of companies active in the pharmaceutical contract manufacturing markets.

## 2. THE OPERATION

- (4) The transaction concerns the acquisition by Pillarstone of sole control over Famar. The operation will be carried out by virtue of an Equity Advisory Agreement ('EAA') entered into by Pillarstone with four banks holding loans on which Famar defaulted (the "Greek Banks": Alpha Bank, Eurobank, National Bank of Greece and Piraeus Bank).
- (5) On 27 January 2017, Pillarstone submitted a derogation request to the standstill obligation, pursuant to Article 7(3) of the Merger Regulation, submitting evidence that Famar was in severe financial distress.
- (6) On 27 February 2017, the Commission adopted a decision pursuant to Article 7(3) of the Merger regulation, granting Pillarstone a conditional derogation from the standstill obligation of Article 7(1) of the Merger Regulation until the Commission takes a final decision under the relevant provisions of the Merger Regulation.
- (7) The derogation Decision imposed two conditions. The first condition, imposed on Pillarstone, was the submission of a complete notification at the latest one month following the derogation Decision, which has been complied with. The second condition, imposed on Pillarstone and the Greek banks, was that Pillarstone would only take actions necessary to restore Famar's viability until the Commission has cleared the transaction under the Merger Regulation. To the best of the Commission's knowledge this condition has also been complied with.
- (8) On 7 March 2017, the Greek banks acquired Famar's shares (for a price of EUR [...]) in return for the provision of liquidity into this entity in the context of its restructuring. At the same date Famar's shares were distributed among the four banks in proportion to their respective contributions in the provision of liquidity.
- (9) Pillarstone does not hold a stake in Famar. However, Pillarstone will exercise – through the three directors (out of five) that it will indirectly appoint at Famar's Board of Directors – voting rights with a view to determine the strategic commercial behaviour of Famar. Pillarstone will identify its three nominees for the Board of Directors after a non-binding consultation with the Greek banks. The Board members selected by Pillarstone will then be formally appointed [Confidential: information on the governance of Farmar].<sup>3</sup>
- (10) Pillarstone, in particular, will have the power to decide alone *inter alia* on the company's and its subsidiaries' budget and on investments up to EUR [...] million. Indeed, the main strategic decisions (including the business plan and the budget) will be taken by simple majority of the Board of Directors. Likewise,

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<sup>3</sup> [Confidential: information on the governance of Farmar].

pursuant to Article 3.2 of the EAA, Pillarstone will be responsible for the selection and appointment of the company's new executive management. Pillarstone will assist/supervise it in the elaboration of the company's new business plan. Moreover the Greek banks would not have any decisive powers on strategic matters or the daily business of the target.

### 3. **EU DIMENSION**

- (11) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (KKR [...]million EUR and Famar [...]million EUR).<sup>4</sup> Each of them has an EU-wide turnover in excess of EUR 250 million (KKR [...]million EUR and Famar [...]million EUR), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The proposed Transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

### 4. **COMPETITIVE ASSESSMENT**

#### **4.1. Introduction**

- (12) Famar is active in the provision of contract manufacturing services in the pharmaceutical sector. Famar is a sub-contractor providing its manufacturing services for medicines and molecules, in relation to which it does not own the IP rights. As contract manufacturer, Famar has no access to the downstream market for the supply of medicines to the market.
- (13) Two of KKR's portfolio companies, Gland Pharma and Capsugel, are also active in the pharmaceutical sector. Both companies are in the process of being divested. The Transaction involving Gland Pharma has been cleared by the competition authorities in China and India and the Parties indicate that no other clearances are required; closing is expected to take place in the second quarter of 2017. The Transaction involving Capsugel has not yet received all necessary antitrust clearances<sup>5</sup>.
- (14) Famar, Gland Pharma and Capsugel are active in the following areas.
- (15) Famar provides contract manufacturing of finished dose pharmaceuticals (FDPs) for third parties, in particular it manufactures the following groups of pharmaceutical forms and conditions: solids, sterile liquids and semi-solids, non-sterile liquids and semi-solids, and injectables. To that end Famar explains it only uses standard technologies that are widely available. As regards the manufacturing of capsules, the only type of capsules Famar purchases are hard gelatine capsules. Famar is focussed in the EEA market (which accounted for [80-90]% of sales in 2015).

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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).

5 It was approved by the European Commission on 21 April 2017 (See Case M.8362 Lonza Group/Capsugel); authorisation by the Chinese Competition Authority (MOFCOM) is pending.

- (16) Gland Pharma is active in the development and manufacturing of generic medicines injectables, mainly for customers in India and in the USA. Gland Pharma also purchases and sells contract manufacturing of injectables for or from third parties.
- (17) Capsugel is notably active in the supply of Solid oral dosage delivery mechanisms (SODDMs) which are hard gelatine or soft gelatine capsules<sup>6</sup>, liquid capsules, alternative polymer capsules and tablets. Capsules are used as an input for manufacturing FDPs. Also Capsugel provides contract manufacturing of FDPs to third parties.
- (18) Accordingly, the Transaction creates horizontal overlaps and vertical links between the parties.

## **4.2. Product and geographic market definition**

### *Pharmaceutical contract manufacturing market*

#### The Notifying Party's views

- (19) According to the Notifying Party the contract manufacturing market should not be segmented according to the technology or the type of pharmaceutical form used. The Notifying Party submits that the relevant geographic market is at least EEA-wide and more likely worldwide.

#### The Commission's assessment

- (20) In previous decisions, the Commission has considered that within the pharmaceutical contract manufacturing market a number of sub-markets may be defined, corresponding in each case to the type of pharmaceutical form (e.g. solids, semi-solids, injectables) which is manufactured and in some cases also to the manufacturing processes (types of active ingredients involved, toxicity, sterile environment, etc.).
- (21) As regard the geographic scope of these markets, the Commission has considered that they could be worldwide or at least EEA-wide.<sup>7</sup>
- (22) In view of the fact that the Transaction does not lead to affected markets under any plausible market definition, the exact scope of the product and geographic market can be left open for the purposes of the competitive assessment of the Transaction.

### *Solid oral dosage delivery mechanisms market ('SODDM')<sup>8</sup>*

#### The Notifying Party's views

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<sup>6</sup> Capsules are one form of oral dosage in which a drug can be delivered.

<sup>7</sup> See Case M.7480 - Actavis/ Allergan, para. 75; M.7379 - Mylan/ Abbott EPD-DM, para. 463; M.6613 – Watson/ Actavis, paras 122-124.

<sup>8</sup> SODDM includes empty hard gelatine capsule shells, empty alternative polymer capsule shells, soft gelatine capsules, tablets, liquid-filled capsules, etc.

- (23) The Notifying Party submits there is an overall market for the production of SODDMs. The Notifying Party argues the market is at least EEA-wide but more likely worldwide.

#### The Commission's assessment

- (24) In previous decisions,<sup>9</sup> the Commission has considered segmenting the production and procurement SODDM markets according to the dosage delivery mechanisms (i.e. capsules or tablets) and the types of capsules (hard gelatine, soft gelatine, liquid and alternative polymer capsules).
- (25) As regard the geographic scope of these markets, the Commission has considered that the procurement of SODDM is at least EEA-wide.<sup>10</sup>
- (26) In view of the fact that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the SODDM market under any plausible market definition, the exact scope of the product and geographic market can be left open for the purposes of the competitive assessment of the Transaction.

### **4.3. Competitive assessment**

#### **4.3.1. Horizontal overlaps in contract manufacturing**

- (27) The horizontal overlaps between Famar, Capsugel and Gland Pharma do not lead to affected markets under any plausible market definition. In view of this and the information provided by the Notifying Party, the Commission concludes that the operation does not raise any competition concern as regards horizontal overlaps.

#### **4.3.2. Vertical relationships**

##### *Gland Pharma and Famar*

- (28) The parties state that Gland Pharma does not purchase contract manufacturing services from companies established in the EEA, hence from Famar. Gland Pharma purchases contract manufacturing services that represent [0-5]% of the worldwide contract manufacturing market. Therefore, no meaningful vertical relation would take place between Famar and Gland Pharma as a consequence of the Transaction.

##### *Capsugel and Famar*

- (29) Famar only purchases hard gelatine capsules for its activities as an input for the manufacturing of FDPs.
- (30) The Transaction does not lead to a vertically affected market when considering the relevant market as covering all SODDMs .

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<sup>9</sup> See Cases M.8362 Lonza Group / Capsugel and M.6231 - KKR/ Capsugel, paras 16-29.

<sup>10</sup> See Case M.6231 - KKR/ Capsugel, para 14.

- (31) However, in previous decisions, the Commission has considered a narrower market definition, segmenting the SODDM market according to the dosage delivery mechanisms and the types of capsules. Capsugel's market share in 2015 for hard gelatine capsules is [50-60]% at the worldwide level and [70-80]% at EEA level.
- (32) As regards the contract manufacturing of solids, Famar had a market share in 2015 of [0-5]% at worldwide level and [5-10]% at EEA level.
- (33) Therefore, considering hard gelatines capsules as a separate relevant market, one vertically affected market upstream arises at the worldwide and EEA levels.
- (34) In 2016 Famar's purchases of hard gelatine capsules amounted to EUR [...] million which is [0-5]% of the total sales of hard gelatine capsules at the worldwide level. Capsugel makes up an important part of Famar's purchases of hard gelatine capsules; in 2015 it represented [...]% of its purchases and [...]% in 2016.
- (35) For the reasons set out below, it is unlikely that the vertical relationship between Famar and Capsugel would raise any competition concerns.
- (36) First, input foreclosure (*i.e.* Capsugel restricting its supply of capsules to Famar's competitors post-merger) is unlikely as:
- (a) the foreclosure of Famar's competitors would not be profitable. Capsugel would have to reduce its production by more than [...]%, given that the potential additional demand by Famar is a small fraction of what Capsugel supplies to other clients. Additionally, given that Famar is a small player in the market, it would not be able to raise prices to downstream customers.
  - (b) there are several alternative capsule suppliers in the market including ACG, Qualicaps, Suheung and Farmacapsulas, that would be in a position to supply the customers that Capsugel would refuse to supply. Additionally, according to the Parties, with respect to Europe, switching empty capsule suppliers involves minimal switching costs, and no significant regulatory barriers exist.
  - (c) most of Capsugel's customers (pharmaceutical companies) are also Famar's customers for contract manufacturing services. In this context, a strategy of denying access to capsules would also be detrimental to Famar's interests.
- (37) Second, customer foreclosure (*i.e.* Famar only supplying itself at Capsugel, in order to deprive other capsule manufacturers of a sufficient customer base) would also be unlikely to cause any competitive harm because Famar's demand of hard gelatine capsules is very limited compared to the demand of third parties. The volumes Famar buys from other parties than Capsugel are very small (less than [...]% for the EEA and less than [...]% worldwide in 2015). Were Famar to divert this demand towards Capsugel, there would be no impact to other capsules suppliers.
- (38) In conclusion, in view of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal

market for pharmaceutical contract manufacturing market and solid oral dosage delivery mechanisms market.

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*