



EUROPEAN COMMISSION

DG Competition

Case M.8766 - LKQ/Stahgruber

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 9(3)

Date: 3.5.2018

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EUROPEAN COMMISSION
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Brussels, 3.5.2018
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Public version

COMMISSION DECISION

of 3.5.2018

**relating to Article 9 of Regulation (EC) No 139/2004
referring to case M.8766 - LKQ/Stahgruber**

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referring to case M.8766 - LKQ/Stahlgruber**

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (the "TFEU")¹,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No. 139/2004 of 20.1.2004 on the control of concentrations between undertakings² (the "Merger Regulation"), and in particular Article 9(3) thereof,

Having regard to the notification made by LKQ Corporation on 9 March 2018, pursuant to Article 4 of the said Regulation,

Having regard to the request of the Czech Republic of 4 April 2018,

Whereas:

- (1) On 9 March 2018 the Commission received notification of a proposed concentration by which LKQ Corporation ("LKQ", USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Stahlgruber GmbH ("Stahlgruber", Germany) by way of purchase of shares. LKQ and Stahlgruber are collectively referred to as "Parties", and LKQ individually as "the Notifying Party".
- (2) The Office for Protection of Competition of the Czech Republic ("the Office") received a copy of the notification on 9 March 2018.
- (3) By letter dated 4 April 2018, the Czech Republic, via the Office, requested the referral to its competition authority of part of the proposed concentration with a view to assessing it under national competition law, pursuant to Article 9(2)(a) of the Merger Regulation ("the referral request").
- (4) The Notifying Party was informed of the referral request on 4 April 2018 and received a non-confidential version of the referral request on 19 April 2018. On 23 April 2018, the Parties' written submission to the non-confidential version of the referral request was received by the Commission.

¹ OJ C115, 9.8.2008, P.47.

² OJ L 24, 29.1.2004, p.1. 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.

1. THE PARTIES

- (5) LKQ is a distributor of automotive spare parts used in the repair and maintenance of passenger cars and light commercial vehicles and to a lesser extent of heavy commercial vehicles and specialty vehicle products and accessories. LKQ sells automotive spare parts in the EEA principally in Belgium, the Netherlands, Luxembourg, Bulgaria, the Czech Republic, France, Hungary, Ireland, Italy, Poland, Romania, Slovakia, and the United Kingdom.
- (6) Stahlgruber is a wholly-owned subsidiary of Stahlgruber Otto Gruber AG and a distributor of automotive spare parts used in the repair and maintenance of passenger cars and light commercial vehicles and to a very small extent of heavy commercial vehicles and specialty vehicle products and accessories. Stahlgruber's wholesale distribution activities are concentrated mostly in Germany, but also in Austria and the Czech Republic and to a lesser extent in Italy, Slovenia, Croatia, Belgium and the Netherlands.
- (7) In addition, both Parties have upstream activities in the area of manufacturing of automotive spare parts under private labels.

2. THE OPERATION AND THE CONCENTRATION

- (8) Under the terms of the Sale and Purchase Agreement dated 10 December 2017, LKQ will acquire 100% of the share capital in Stahlgruber from Stahlgruber Otto Gruber AG. LKQ will therefore acquire sole control over Stahlgruber ("the Transaction").
- (9) It follows that the proposed concentration constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (10) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million³ (LKQ EUR 8 385 million, Stahlgruber EUR [...]). Each of them has an EU-wide turnover in excess of EUR 250 million (LKQ EUR [...], Stahlgruber EUR [...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (11) The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

4. THE ARTICLE 9 REFERRAL REQUEST

- (12) By letter dated 4 April 2018 the Office, on behalf of the Czech Republic, requested the Transaction to be partially referred to the Office with a view to assessing the effects of the Transaction in the market for the wholesale distribution of automotive spare parts in the independent aftermarket for light vehicles in the Czech Republic under national law pursuant to Article 9(2)(a) of the Merger Regulation.
- (13) In a preliminary assessment, the Office has identified that the Transaction threatens to significantly affect competition in the Czech Republic in the following market: the wholesale distribution of automotive spare parts for the independent aftermarket for light vehicles in the Czech Republic.

³ The turnover is calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

- (14) The Office further submits that it would be the best placed authority to review the competition effects of the Transaction in the Czech Republic, given that it would be better placed to investigate the Czech market(s) in question and dealt in the past with markets in the area of distribution of automotive spare parts in the Czech Republic.

5. RELEVANT MARKETS

5.1. PRODUCT MARKETS

Wholesale distribution of automotive spare parts

- (15) The Commission has previously defined the wholesale distribution of automotive spare parts as a separate product market.⁴ In its decisional practice, the Commission considered a further distinction between the market for (i) original equipment spare parts manufactured and or sold under the car manufacturer's brands (OES) and the independent automotive spare parts (IAM).⁵ The Commission further considered a distinction between spare parts for light vehicles and those for heavy vehicles.⁶ Finally, in the Commission's past practice the market for the wholesale distribution of replacement tyres was considered to be separate from that of automotive spare parts.⁷
- (16) The Notifying Party partially agrees with the above decisional practice and submits that there are additional competitive relations which are not yet sufficiently reflected. Particularly, the Notifying Party claims that:
- (1) there is an intensive competition between IAM and OES suppliers and at least the competitive pressure from the OES segment on the IAM segment should be taken into account. The relevant product market should include automotive spare parts for both the IAM and OES segment;
 - (2) wholesalers compete with their complete product portfolio including tyres and the relevant product market should include sales of automotive spare parts including replacement tyres; and,
 - (3) in some EU Member States, especially in Italy, there is an additional distribution level comprising local distributors/ricambisti. For the Czech Republic, the Parties submit that there is no such additional distribution level.
- (17) The Commission has in the past consistently assessed the market for the wholesale distribution of automotive spare parts on the basis of a segmentation between the IAM and OES segment.
- (18) The Commission thus considers that the product market for the wholesale distribution of automotive spare parts is likely to be segmented between the IAM and OEM segment.
- (19) For the purpose of this Decision, it is however not necessary to conclude on the exact product market definition for the wholesale distribution of automotive spare parts as the Transaction warrants closer analysis, leaving it for the Czech Republic's competition authority to analyse the exact competitive pressure from the OES segment on the IAM segment.

⁴ Case M.7401 – *Blackstone/Alliance BV/Alliance Automotive*; Case M.6718 – *Toyota Tshusho Corporation/CFAO*.

⁵ Case M.8198 – *Alliance Automotive Group/FPS Distribution*.

⁶ Case M.8198 – *Alliance Automotive Group/FPS Distribution*; Case M.6319 – *Triton/Europart*.

⁷ Case M.6063 – *Itochu/Speedy*.

- (20) For the purpose of this Decision, the question whether replacement tyres are part of the wholesale distribution of automotive spare parts can be left open, as irrespective of whether replacement tyres are included in the sales of automotive spare parts, the Transaction warrants closer analysis.

5.2. GEOGRAPHIC MARKETS

Wholesale distribution of automotive spare parts

- (21) In past decisions, the Commission considered the markets for the wholesale supply of automotive spare parts to be regional, national or even EEA-wide in scope. The ultimate market definition was left open, but the Commission focused its further competitive assessment mainly on national markets.⁸
- (22) The Notifying Party partially agrees with the Commission's past practice, but claims that for some Member States (like Italy) the geographic scope of the market may be different. The Parties also note that given the Commission practice a national geographic market for the wholesale distribution of automotive spare parts should apply to the Czech Republic.
- (23) The Commission notes that generally the responses to the market investigation pointed to an at most national market, and some of the respondents indicated that the geographic market could be narrower in scope.
- (24) For the purposes of this Decision, the Commission considers that the geographic market for the wholesale distribution of automotive spare parts is likely national or narrower. That geographic market presents, pursuant to Article 9(2)(a) of the Merger Regulation, all the characteristics of a distinct market.

6. COMPETITION ASSESSMENT

Wholesale distribution of automotive spare parts for the IAM for light vehicles in the Czech Republic

- (25) With regard to the Czech Republic, the Transaction only leads to a horizontally affected market as regards the distribution of automotive spare parts for the independent aftermarket for light vehicles in the Czech Republic.
- (26) The Notifying Party submitted different sets of market share calculations reflecting their market position in the market for wholesale distribution of automotive spare parts for the IAM for light vehicles in the Czech Republic, as follows:

Wholesale + arbitrage (without including the Parties' arbitrage sales in the market size)				
Czech Republic	incl. tyres incl. garage equipment	incl. tyres excl. garage equipment	excl. tyres incl. garage equipment	excl. tyres excl. garage equipment
Combined market share	[20-30]%	[20-30]%	[20-30]%	[20-30]%
Market size	1,097	1,031	949	889
Wholesale + arbitrage (including the Parties' arbitrage sales in the market size)				
Czech Republic	incl. tyres incl. garage equipment	incl. tyres excl. garage equipment	excl. tyres incl. garage equipment	excl. tyres excl. garage equipment
Combined market share	[20-30]%	[20-30]%	[20-30]%	[20-30]%
Market size	1,140	1,072	990	930

Source: the Parties' estimate

⁸ Case M.7401 - Blackstone/Alliance BV/Alliance Automotive Group.

- (27) The "Arbitrage Sales" are sales made by wholesalers to other distributors (wholesalers) in the same or other EEA Member. As a special service for the garages, the Parties sell a full portfolio of tools and equipment for garages, if the garages wish so. Such "add-on" equipment sales can be large "one-off" pieces of equipment such as hydraulic lifts (used for vehicle inspection), rollingroads (used for brake testing) and air compressors (used for powering air tools) or smaller pieces of equipment, which may also include hand tools such as single screwdrivers or wrenches, worth a few EUR a piece.
- (28) The Parties estimated the market size on the basis of data provided by *Datamonitor*. However, the sales of workshop tools and equipment are not included in *Datamonitor's* data. The Parties also submitted market share calculations with the aim to correct for the sales of workshop tools and equipment in the total market size, resulting in a combined market share of still at least [20-30]%.
- (29) While all competitors have lower market shares (below 5%), the Parties further submitted that it faces competitive constraints from many smaller distributors and wholesalers. According to the Parties, its relative size does not give rise to competitive concerns as local competitors can offer similar product portfolio's, quality and service and prices across the Czech Republic. Furthermore, the Parties stress that the wholesale market comprises larger distributors, local and regional distributors, and distributors from neighbouring countries.
- (30) The Commission carried out a market investigation. The respondents to the market investigation indicated that the combined market share of the Parties could in their view reach [60 – 70]%-[80 – 90]% as smaller competitors would not be able to offer the full range of products and a comparable level of service as the Parties with a nationwide network. Furthermore, at least a subset of respondents indicated a potential narrower markets as customers require deliveries within a short period of time.
- (31) Therefore, the Commission at this stage considers that the arguments of the Parties that smaller distributors and wholesalers form a competitive constraint would require further investigation at national or local level. Based on its preliminary analysis, the Commission considers that the Transaction would threaten to significantly affect competition in the market for the wholesale distribution of automotive spare parts for the IAM for light vehicles in the Czech Republic, which presents all the characteristics of a distinct market.

7. ASSESSMENT UNDER ARTICLE 9(3) OF THE MERGER REGULATION

- (32) According to Article 9(3) of the Merger Regulation, the Commission may refer the whole or part of the case to the competent authorities of the Member State concerned with a view to applying the Member State's national competition law if, following a request for referral by that Member State pursuant to Article 9(2) of the Merger Regulation, the Commission considers that the Transaction threatens to significantly affect competition in a market within that Member State, which presents all the characteristics of a distinct market.
- (33) In this regard, the requesting Member State is required to demonstrate that, based on a preliminary analysis, there is a real risk that the Transaction may have a significant adverse impact on competition. Such preliminary indications may be in the nature of prima facie evidence of such a possible significant adverse impact. Furthermore, the Member State is required to show that the geographic markets in which competition

is affected by the Transaction, in the manner described, are national or narrower than national.⁹

- (34) In the present case, based on the information provided in the referral request and on the results of its own market investigation (see paragraph (30)), the Commission considers that there is a distinct market for the wholesale distribution of automotive spare parts for the IAM for light vehicles in the Czech Republic, potentially with local elements of competition, and that the Transaction threatens to significantly affect competition in that market in the Czech Republic.
- (35) Moreover, in deciding whether to refer a case fulfilling the legal requirements for referral, the Commission considers which authority is more appropriate for dealing with the transaction, having regard to the specific characteristics of the case as well as the tools and expertise available to the authority.¹⁰ In this respect, particular regard is given to the likely locus of any impact on competition resulting from the concentration. Other factors taken into account include legal certainty and the benefits of the 'one-stop-shop' principle. Fragmentation of cases is to be avoided where possible, and it is normally appropriate that, in case of Article 9 referrals, the whole case or at least all connected parts thereof are dealt with by a single authority.
- (36) The responses to the market investigation have preliminarily confirmed that the transaction's effects on competition appear to be confined to the Czech Republic, potentially even with some local aspects or narrower markets within the territory of the Czech Republic. The Parties have further indicated that they face competition from many small and local competitors and they serve a fragmented customer base within the Czech Republic.
- (37) Furthermore, the only significantly affected market by the Transaction appears the wholesale distribution of automotive spare parts for the IAM for light vehicles in the Czech Republic. By a decision on the basis of Article 6(1)(b) of the Merger Regulation adopted at the same time, the Commission did not find competition concerns for the markets other than the national market subject to the referral request. Therefore, there is no risk of fragmentation of the case and no apparent need of coordination between multiple national competition authorities given that the only significant competition effects from the Transaction appear limited to the Czech Republic.
- (38) Finally, the Office has dealt with markets in the area of distribution of automotive spare parts in the Czech Republic in its past decision making practice.¹¹
- (39) According to the Parties' written submission on the referral request, although they are of the view that the conditions for a referral are not met given that the Transaction does not threaten to significantly affect competition in the Czech Republic, the Parties do not object that the Office might in fact be better placed to assess the effects of the Transaction in the Czech Republic.
- (40) In light of the above, the Commission considers that the competent authorities of the Czech Republic are the most appropriate and best placed to carry out a thorough investigation of the Transaction. It is therefore appropriate for the Commission to

⁹ Commission Notice on Case Referral ("Referral Notice") in respect of concentrations, 2005/C 56/02, paragraphs 35 and 36.

¹⁰ Referral Notice, paragraphs 9 and 37.

¹¹ S231/2010/KS LANCHESTER/Auto Kelly; S978/2014/KS Stahlgruber/Ernst Markmiller/CZ Automobile Independent Aftermarket Holding JV.

exercise its discretion under Article 9(3) of the Merger Regulation and partially refer the case to the Czech Republic insofar as it concerns the wholesale distribution of automotive spare parts for the IAM for light vehicles in the Czech Republic.

8. CONCLUSION

- (41) From the above it follows that the legal requirements to request a referral under Article 9(2)(a) of the Merger Regulation are met. The Commission also considers that, given the potential local scope of the market(s) affected by the Transaction, the competent authorities of the Czech Republic are in the best position to deal with this part of the case. It is therefore appropriate for the Commission to exercise its discretion under Article 9(3)(b) of the Merger Regulation and to partially refer the the transaction to the Czech Republic as regards the market identified in the referral request.
- (42) On the same date as this decision, the Commission has also adopted a decision on the basis of Article 6(1)(b) of the Merger Regulation with regard to the markets other than the national market subject to the referral request.

HAS ADOPTED THIS DECISION:

Article 1

The notified concentration is referred partially – in regard to the market related to the Czech Republic – to the competition authority of the Czech Republic, pursuant to Article 9(3)(b) of Council Regulation (EC) No 139/2004.

Article 2

This Decision is addressed to the Czech Republic.

Done at Brussels, 3.5.2018

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission