



EUROPEAN COMMISSION

DG Competition

Case M.8990 – PIAG / MTIB / ABATEC

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 7(3)

Date: 29.6.2018



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Brussels, 29.6.2018
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

Subject : **Case M.8990 – PIAG / MTIB / ABATEC**
 Commission decision pursuant to Article 7(3) of Council Regulation
 N° 139/2004¹ and Article 57 of the Agreement on the European
 Economic Area²
 Request for derogation

Dear Sir or Madam,

- (1) We refer to your application for a derogation ('Application') from the suspension obligation provided for in Article 7(1) of Council Regulation (EC) No 139/2004 ('the Merger Regulation') with regard to the proposed acquisition by Pierer Industrie AG ('PIAG') and Michael Tojner Industriebeteiligungs- und beratungs GmbH ('MTIB') of Abatec Group AG ('Abatec'), all of Austria, submitted

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').

pursuant to Article 7(3) of the Merger Regulation on the 7 June 2018. PIAG and MTIB are hereafter together referred to as the 'Parties'.

1. THE PARTIES AND THE TRANSACTION

- (2) PIAG is an industrial investment company controlled by Pierer Konzerngesellschaft mbH. PIAG exercises control amongst others over KTM Industries AG ('KTM') and SHW AG ('SHW'). KTM manufactures vehicles with a strategic focus on the global sports motorcycle segment and automotive high-tech components. SHW is an automotive supplier, developing and commercializing products reducing fuel consumption.
- (3) MTIB is a holding company. It exercises control amongst others over Montana Tech Components AG ('MTC') and Varta AG ('Varta'). MTC operates worldwide as a technology and innovation-oriented industrial group. Varta is a company operating in healthcare, entertainment, power & energy industries, producing micro batteries, Li-ion battery packs and stationary household and commercial energy storage devices.
- (4) Abatec is mainly engaged in the development and production of innovative electronic solutions on behalf of its clients. Through its subsidiaries, Abatec is active in the production and sale of surface-mounted technology (Abatec electronic solution GmbH, 'Abatec ES'), local position measurement systems (Inmotiotec GmbH, 'Inmotiotec') and high performance carbonators (Wallatec GmbH, 'Wallatec').
- (5) Abatec is currently under the sole control of Mr Friedrich Niederndorfer who holds 63,77 % of the shares in Abatec, while MTIB owns, directly or indirectly, the other 36,23 %.
- (6) According to a purchase agreement subscribed on the 15 May 2018, the current majority shareholder of Abatec, Mr Friedrich Niederndorfer, will transfer to PIAG 50 % of the shares in Abatec, while MTIB will acquire through MTC control also over the remaining 13,77 %. As a result, PIAG and MTIB will acquire joint control within the meaning of Article 3(1)(b) of the Merger Regulation of the whole of Abatec (the 'Transaction').

2. THE EU DIMENSION

- (7) The notified operation has a Union dimension pursuant to Article 1(3) of the Merger Regulation. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2 500 million [*PIAG: EUR [...] million and MTIB: EUR [...] million, Abatec: EUR [...] million, combined EUR [...] million*] and a combined aggregate turnover in excess of EUR 100 million in four Member States (Germany [*PIAG: EUR [...] million and MTIB: EUR [...] million, combined EUR [...] million*], France [*PIAG: EUR [...] million and MTIB: EUR [...] million, combined EUR [...] million*], Austria [*PIAG: EUR [...] million and MTIB: EUR [...] million, Abatec: EUR [...] million, combined EUR [...] million*] and the UK [*PIAG: EUR [...] million and MTIB: EUR [...] million, combined EUR [...] million*]). Two of the undertakings concerned, PIAG and MTIB, have a turnover in excess of EUR 25 million in those Member States and each does not

achieve more than two-thirds of its aggregate Union-wide turnover within one and the same Member State.

3. THE APPLICATION FOR DEROGATION

- (8) The Parties request a derogation from the suspension obligation provided for in Article 7(1) of the Merger Regulation to implement the purchase agreement of 15 May 2018 so that the shares of Abatec currently owned by Mr Niederndorfer will be transferred to PIAG and MBIT.
- (9) Further to the transfer of the shares, the Parties will amend the Articles of Association of Abatec, appoint a new Supervisory Board, see below at paragraph (23), and appoint new managing directors in order to be able to initiate restructuring measures including:
 - (a) set up and implementation of an appropriate debt repayment plan for the overdue liabilities;
 - (b) discussions with the international credit insurances covering supplies;
 - (c) [...];
 - (d) [...];
 - (e) [...];
 - (f) initiation of operational restructuring of the ordinary management (e.g. staff reduction, reassessment of the product and customer portfolio, communication with key customers).
- (10) The Commission notes that the Parties have supplemented the Application by an obligation to notify the planned transaction within one month of receipt of a decision of the Commission granting the Parties' request according to Art 7(3) Merger Regulation via email on 12 June 2018.

4. THE CONDITIONS FOR DEROGATION PURSUANT TO ARTICLE 7(3) OF THE MERGER REGULATION

- (11) Pursuant to Article 7(1) of the Merger Regulation, a concentration falling under that Regulation shall not be implemented either before its notification or until it has been declared compatible with the internal market. Pursuant to Article 7(3) of the Merger Regulation, the Commission may, on the basis of a reasoned request, grant derogation from the obligation imposed by Article 7(1).
- (12) Derogation from the obligation to suspend concentrations is granted only exceptionally, normally in circumstances where the suspension required under the Merger Regulation would cause serious damage to the undertakings concerned by a concentration, or to a third party.
- (13) In deciding upon the request, the Commission must take into account, *inter alia*, the effects of the suspension on one or more undertakings concerned by the concentration or on a third party and the threat to competition posed by the concentration.

A. The Transaction falls under the suspension obligation pursuant to Article 7 (1) of the merger regulation

- (14) Given that the proposed Transaction qualifies as a concentration with EU dimension within the meaning of the Merger Regulation, it falls under the suspension obligation laid down in Article 7(1) of the Merger Regulation. Accordingly, the Transaction cannot be implemented before its notification or until it has been declared compatible with the internal market according to the rules laid down in the Merger Regulation.
- (15) The measures described above at paragraphs (8) and (9) include the transfer of control to the acquiring entities. The Parties also submit that after the change of control they envisage the immediate adoption of restructuring measures, that include amongst others the [...] as well as significant organizational measures.
- (16) The Commission considers that these measures would change the structure of Abatec on a lasting basis, and would amount to an implementation of the Transaction before the notification of the Transaction or before it has been declared compatible with the internal market by the Commission pursuant to the Merger Regulation.

B. The effects of the suspension on the undertakings concerned and third parties

The Parties' arguments

- (17) In their application, the Parties submit that Abatec is in serious financial distress.
- (18) [...]
- (19) Insolvency was [...] avoided due to a credit line of [...].
- (20) The banks concluded an agreement (so called "Sanierungsvereinbarung") with Abatec [...].
- (21) [...]
- (22) The Parties contend that even if they would provide additional resources, any prolongation of the situation of uncertainty would put the target company at risk to lose their current customers on a permanent basis and so its current market presence. [...] Under these circumstances, neither the Parties nor any other company can be expected to invest in a company whose risk to become insolvent increases on a daily basis.
- (23) The Parties further submit that [...] members of the Supervisory Board, including the Chairman, resigned [...].
- (24) The Parties also note that insolvency of Abatec would harm Abatec's 223 employees, who would lose their occupation. Because of the failure of their still outstanding credits, [...] Abatec's suppliers would be harmed.
- (25) Further, Abatec's customers with pending orders (about [...] customers with a volume amounting to around [...]) would experience difficulties if the orders are

no longer respected. Certain customers are sourcing at present exclusively from Abatec ES and would even face the risk to be forced to hold their production.

The Commission's assessment

- (26) On the basis of information and supporting documents obtained from the Parties, the Commission considers it likely that, if no derogation from the suspension obligation is granted, in the present case the stand-still obligation leads to further deterioration of the already difficult financial situation of Abatec and increases the risk of imminent insolvency.
- (27) [...]
- (28) Second, the designated shareholders of Abatec, PIAG and MTIB, would not be willing to implement other rescue measures beyond those already implemented, without having control of Abatec and the power to initiate the restructuring measures described above at paragraph (9).
- (29) In addition, a decision not to grant the requested derogation for the implementation of the Transaction would also have harmful effects on third parties, in particular the employees, suppliers and customers.
- (30) As regards Abatec's employees, whereas an insolvency may not necessarily and immediately lead to termination of the labour contracts, the employees would most likely face significant reductions of their income (in the worst case a total loss) as well as a high level of uncertainty as regards their future employment at Abatec.
- (31) Abatec's suppliers and customers may not only be confronted with direct losses due to a potential loss of contract and hence loss of turnover, but also with losses of their contractual claims already due and with claims for damages from third parties (such as their customers), all of it virtually without a real opportunity to take recourse against Abatec.
- (32) Against this background, the Commission concludes that the suspension obligation imposed by Article 7(1) would lead to serious harm to Abatec and third parties.

C. The threat to competition posed by the concentration

Activities of Abatec and of the Parties

- (33) Through its subsidiaries, Abatec is active in the production of printed circuit boards, local position measurement systems and high performance carbonators.
- (34) Printed circuit boards are boards that mechanically support and electrically connect electronic components or electrical components. Printed circuit boards are components that can be used in a wide variety of final products. The Parties explain that these products are already used or could be used in the future by their subsidiaries, namely by KTM in the production of racing cars for GT4 race series, by SHW in the production of oil pumps for passenger cars, by MTC in the production of barcode scanner systems, by Varta in the production of portable Li-Ion battery packs and stationary household storage solutions.

- (35) Local position measurement systems are navigation systems enabling the exact position and movement of objects using technologies such as radio frequency radio chips or camera tracking. They are used especially in the field of sport to capture and evaluate performances.
- (36) High performance carbonators are devices used in the gastronomy to convert filtered tap water into soda water and brings it cooled to the sampling site.

Market definition

- (37) In light of the products manufactured by Abatec's subsidiaries, the following product markets are relevant to the Transaction: (i) electronic manufacturing services, (ii) local position measurement systems, (iii) high performance carbonators. Further, in light of the vertical links indicated above at paragraph (34), the following markets are relevant to the Transaction: (iv) racing cars for GT4 race series, (v) oil pumps for passenger cars, (vi) barcode scanner systems (vii) portable Li-Ion battery packs and (viii) stationary household storage solutions.

i. Electronic manufacturing services

- (38) In its precedents³, the Commission has identified a product market for electronic manufacturing services ("EMS"). The Commission has also considered the possible existence of narrower markets for EMS based on different end user sectors, such as communications, IT, consumer electronics, automotive, medical, industrial and avionics, as well as on the basis of very narrow product segments, but left ultimately the market definition open.⁴ Further, the Commission has also considered that printed circuit board assembly could constitute a separate product market, but left ultimately the market definition open.⁵ The Commission also found that the relevant geographic market for EMS is at least EEA-wide, but has not deemed it necessary to further delineate the relevant geographic market.
- (39) The Parties submit that it would not be appropriate to segment the EMS market along the specific end product segments because Abatec does not offer final products to end users nor is specialised on specific end users. In their view, the market is at least EEA-wide. However, ultimately the Parties submit that the product and geographic market definition can be left open because the Transaction does not give rise to affected markets under any plausible alternative product or geographic market definition.
- (40) The Commission considers that for the purposes of the present decision, the product market definition can be left open as the Transaction does not raise *prima facie* competition concerns under any plausible market definition. In line with precedents in this sector, the geographic scope of the market is at least EEA-wide.

³ Commission Decision in Case M.3316 - Celestica / MSL (2003), paragraph 6.

⁴ Commission Decision in Case M.2479 – Flextronics / Alcatel (2001), paragraphs 7-10.

⁵ Commission Decision in Case M.1968 - Solectron / Nortel (2000), paragraph 8-11.

ii. Local position measurement systems

- (41) In a previous decision⁶, the Commission considered that there is a product market for navigation and telematics systems, and that its geographic scope was EEA-wide. The Commission did not address so far local position measurement systems specifically in its precedents.
- (42) The Parties submit that local position measurement systems constitute a separate market from other navigation and telematics systems such as GPS and other global navigation satellite systems. On the other hand, a narrower segmentation of the market for local position measurement systems would not be conceivable. The relevant geographic market would be at least EEA-wide. However, ultimately the Parties submit that the product market definition can be left open because the transaction does not give rise to affected markets under any plausible alternative product or geographic market definition.
- (43) The Commission concludes that for the purposes of the present decision, the product market definition can be left open as the Transaction does not raise *prima facie* competition concerns under any plausible market definition. The Commission's precedents in this sector support the view that the geographic scope of the market is at least EEA-wide.

iii. High performance carbonators

- (44) In a previous decision⁷, the Commission considered that high performance carbonators could constitute a separate product market from over counter dispensers. However, the exact product market definition was ultimately left open. Further, the Commission considered that the geographic scope of these markets is at least EEA-wide.
- (45) The Parties considers that the relevant product market on the basis of Commission's precedents includes high performance carbonators and is at least EEA-wide. However, the Parties submit that the product market definition can ultimately be left open as the transaction does not give rise to affected markets under any plausible alternative product or geographic market definition.
- (46) The Commission concludes that for the purposes of the present decision, the precise product market definition can be left open as the Transaction does not raise competition *prima facie* concerns under any plausible market definition. The precedents in this sector support the view that the geographic scope of the market is at least EEA-wide.

iv. Racing cars for GT4 race series

- (47) The Commission did not consider racing cars for GT4 race series in any previous decision. In previous decisions on the car sector⁸, the Commission considered the

⁶ Commission Decision in Case M.1053 – Mannesmann / Philips (2011), paragraphs 9-14.

⁷ Commission Decision in Case M.5180 – Manitowoc/ Enodis (2008), paragraphs 30-33, 56.

⁸ E.g. Commission Decision in Case M.8449 – Peugeot / Opel (2017), paragraph 26.

product markets in this sector are national in geographic scope, but left ultimately the geographic market definition ultimately open.

- (48) The Parties submit that racing cars participating in GT4 race series constitute a separate product market, and its geographical scope is worldwide.
- (49) The Commission concludes that for the purposes of the present decision, the product and geographic market definition can be left open as the Transaction does not raise *prima facie* competition concerns under any plausible market definition.

v. Oil pumps for passengers' cars

- (50) In its precedents⁹, the Commission identified a market for original equipment manufacturers (covering products supplied to original equipment manufacturers and original equipment spare parts suppliers) in the automotive sector and an independent aftermarket. Further, it was considered that each individual component may form a separate product market. The Commission previously considered transmission oil pumps, which are used in hydraulically actuated automated transmission systems to regulate the oil flow for the switching operation, as a separate market.¹⁰ In its precedent, the Commission left ultimately open whether the market for transmission oil pumps is EEA- or worldwide.¹¹
- (51) The Parties consider that the relevant product market is the market for oil pumps in the EEA as it follows from the market shares provided.
- (52) The Commission concludes that for the purposes of the present decision, the product and geographic market definition can be left open as the Transaction does not raise *prima facie* competition concerns under any plausible market definition.

vi. Barcode scanner systems

- (53) In its precedents¹², the Commission identified a market for data capture and scanning devices and considered further segmentations between laser, linear imager and 2D imager scanners. It also considered an additional segmentation between fixed and handheld scanners. Markets and hypothetical market segment were generally considered at least EEA wide in their geographic scope.
- (54) The Parties acknowledge the Commissions' precedents and submit that, for the purpose of the proposed Transaction, the exact product and geographic market definition can be left open, because it does not give raise to competition concerns under any of the market definitions previously considered.
- (55) The Commission concludes that for the purposes of the present decision, the precise product and geographic market definition can be left open as the Transaction does not raise *prima facie* competition concerns under any plausible market definition.

⁹ Commission Decisions in Case M.1959 – Meritor / Arvin (2000), paragraph 7; Case M.7400 – Federal-Mogul Corporation / TRW Engine Components (2014), paragraph 11.

¹⁰ Commission Decision in Case M.6748 – Magna / Ixetic (2012), paragraphs 17 and 22.

¹¹ Commission Decisions in Case M.6748 – Magna / Ixetic (2012), paragraph 29.

¹² Commission Decisions in Case M.4415 – Motorola / Symbol (2007), paragraphs 15-19; Case M.6827 – Honeywell / Intermec (2013), paragraphs 38-41.

vii. Portable Li-Ion battery packs

- (56) In a previous decision¹³, the Commission identified portable Li-Ion batteries as a separate product market. It was ultimately left open whether the geographic scope of the market is EEA- or worldwide.
- (57) The Parties submit that Portable Li-Ion batteries constitute a relevant market and that its geographic scope would be EEA-wide.
- (58) On the basis of its precedent, the Commission maintains for the purposes of the present decision that the relevant product market is the market for Portable Li-Ion batteries. The Commission concludes that for the purposes of the present decision, the precise geographic market definition can be left open as the Transaction does not give rise *prima facie* to competition concerns under any plausible market definition.

viii. Stationary household storage solutions

- (59) The Commission did not define the relevant product and geographic market for stationary household storage solutions in previous decisions.
- (60) The Party submit that stationary household storage solutions constitute a separate product market and that the geographic scope is at least EEA-wide.
- (61) The Commission concludes that for the purposes of the present decision, the precise product and geographic market definition can be left open as the Transaction does not raise *prima facie* competition concerns under any plausible market definition.

Competitive assessment

- (62) According to the information submitted by the Parties, Abatec has limited actual or foreseen activities within the EEA. The turnover of Abatec amounted in 2017 to [...], and it is not foreseen that it will exceed EUR 100 million in the following three years.
- (63) Neither horizontal overlaps nor vertical relationships can be identified between Abatac's activities and the activities of the Parties and the undertakings in the Parties' portfolio, respectively, as regards local position measurement systems and high performance carbonators.
- (64) No horizontal overlaps can be observed in relation to Abatec's activities and the activities of the Parties, as regards electronic manufacturing services.
- (65) However as mentioned above at paragraph (34), the Transaction gives rise to vertical links between Abatec's activities in the sector of electronic manufacturing services and the activities of PIAG's subsidiaries KTM and SHW, as well as MTIB's subsidiaries AMTech and Varta that currently use or in the future could use Abatec's products as an input element for their final products.

¹³ Commission Decision in Case M.5421 – Panasonic/ Sanyo (2009), paragraphs 36-39.

- (66) At present, KTM sources from Abatec [...]. Alpine Metal Tech sources from Abatec [...].
- (67) Looking forward, [...].
- (68) The Parties submit that the Transaction does not give rise to vertically affected markets under any plausible product market definition. As concerns the production of electronic components, the estimated market share of Abatec is below [...], under any plausible product market definition.
- (69) The Parties also estimate for all the undertaking sourcing from Abatec electronic components for their final products, market shares that would not exceed a % under any plausible product market definition: [...] ([0-5]% [...]), [...] ([0-5]% [...]), [...] ([5-10]% [...]) and [...] ([0-10]% [...], [0-20]% [...]).
- (70) Moreover, the Parties submit that the components manufactured by Abatec are not an important input for the concerned activities
- (71) The Commission notes that the limited value of the components sourced from Abatec, see above paragraph (66) and (67), and the characteristics of the products concerned support *prima facie* the conclusion that these components would not represent a significant cost factor relative to the price relative to the price of the final products nor may be a critical component without which the final products could not be manufactured or effectively sold on the market.
- (72) Under these circumstances, it can be concluded that the vertical relationships do not raise, *prima facie*, any competitive issues.

Conclusion

- (73) Therefore, on the basis of the information provided by the parties, it appears *prima facie* that the Transaction is not likely to pose a threat to competition within the EEA.

D. Balance of interests

- (74) Based on the above, it appears that whilst the suspension obligation could seriously affect the financial situation of Abatec, no threat to competition caused by the operation can currently be identified *prima facie*, and derogation does not appear to have adverse effects on one or more of the parties or on any third party. Therefore the Commission concludes that a derogation can be granted in accordance with the application and to the extent specified below.

5. CONDITIONS

- (75) According to Article 7(3), fourth sentence, of the Merger Regulation, derogation from the suspension obligation laid down by Article 7(1) of the Merger Regulation may be made subject to conditions and obligations in order to ensure effective competition.
- (76) On 12 June 2018 PIAG and MBIT committed to submit a complete Form CO (or Short Form CO as the case may be) no later than one month of notification of a Commission decision granting a derogation.

(77) Based on the preceding considerations, the Commission has decided to grant a derogation from the suspension obligation with regard to the Transaction subject to the following condition:

- PIAG and MBIT shall: submit a complete notification no later than one month after the notification of the present decision.

6. CONCLUSION

(78) The Commission considers that the reasons given by the notifying parties for derogation from the suspension obligations meet the requirements set out in Article 7(3) of the Merger Regulation.

(79) On the basis of the above considerations, and in accordance with Article 7(3) of the Merger Regulation and Article 57 of the EEA Agreement, PIAG and MBIT are granted a derogation from the obligations imposed by Article 7 (1) of the Merger Regulation in respect of the Transaction subject to the condition referred to in paragraph (77).

For the Commission

(Signed)

*Margrethe VESTAGER
Member of the Commission*