EUROPEAN COMMISSION
DG Competition

Case M.9202 - BAIN CAPITAL / OSCAR HOLDING

Only the English text is available and authentic.

REGULATION (EC) No 139/2004 MERGER PROCEDURE

Article 7(3)
Date: 9.11.2018

EUROPEAN COMMISSION

Brussels, 9.11.2018
C(2018) 7563 final

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Subject: **Case M.9202 – Bain Capital / Oscaro**
Commission decision pursuant to Article 7 (3) of Council Regulation No. 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]
Request of derogation

Dear Sir or Madam,

(1) We refer to your application for a derogation 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 Autodis Group SAS ("Autodis", France), ultimately controlled by Bain Capital Investors, L.L.C ("Bain Capital", USA) of Oscar Holding SAS ("Oscaro", France) (the "Transaction") submitted pursuant to Article 7(3) of the Merger Regulation on 6 November 2018. Hereafter Autodis and Oscaro are referred to 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").

1. THE PARTIES AND THE OPERATION

(2) Autodis is a distributor of aftermarket spare parts for light vehicles and trucks to the independent aftermarket ("IAM") segment in France, Benelux and Italy. Autodis is ultimately controlled by Bain Capital, a private equity investment firm that invests in several industries.

(3) Oscaro is an online retail distributor of spare parts for light vehicles, mainly active in France and more marginally in Spain, Belgium, Portugal and the USA.

(4) The Transaction concerns the acquisition by Autodis of sole control over Oscaro within the meaning of Article 3(1)(b) of the Merger Regulation. Pursuant to the Term Sheet signed on 28 October 2018, Autodis will acquire approximately […]% of the issued shares and voting rights in Oscaro. Autodis will subscribe to a share capital increase in cash and purchase Oscaro shares from Indenoï SAS. The new money will then be injected into Oscaro's main subsidiary in equity and debt.

2. EU DIMENSION

(5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Bain Capital: EUR […] million, and Oscaro: EUR […] million). Each of them has an EU-wide turnover in excess of EUR 250 million (Bain Capital: EUR […] million, and Oscaro: EUR […] million), and 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.

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

(6) 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 common market. Pursuant to Article 7(3) of the Merger Regulation, the Commission may, on reasoned request, grant a derogation from the obligation imposed in Article 7(1).

(7) Article 7(3) of the Merger Regulation provides that, in deciding on 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.

(8) Derogation from the obligation to suspend concentrations is granted only exceptionally, normally in circumstances where the suspension obligation provided for in the Merger Regulation would cause serious damage to the undertakings concerned by a concentration, or to a third party.[3]

[3] See *inter alia* cases COMP/M.5518-Fiat/Chrysler, COMP/M.6812 -SFPI/Dexia, M.8553 – Banco Santander S.A./Banco Popular Group S.A.

A. The operation falls under the suspension obligation pursuant to Article 7(1) of the Merger Regulation

(9) The proposed Transaction constitutes a concentration within the meaning of Article 3 of the Merger Regulation and has an EU dimension according to Article 1 thereof. Hence the operation falls under the suspension obligation laid down in Article 7(1) of the Merger Regulation.

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

(10) Autodis submits that Oscaro is in major financial distress. Oscaro's financial difficulties started in 2017 but have quickly and significantly accelerated in the last few months due to a continuous and increasingly larger drop in sales caused by, among other reasons, the lack of resources to invest in marketing activities and the decrease in the range of products available for sale as a consequence of an inventory shortage following the overdue with several suppliers.[4]

(11) Oscaro has financial debts (with suppliers, customers and the French State) amounting to several millions of EUR and the current cash flow is insufficient to meet its payment obligations. Given these financial difficulties, Oscaro was unable to secure long term financing from banks, or to find any other form of funding in recent months.

(12) […], some of the creditors (including some key suppliers) have agreed to extend their payment due deadlines until [early] November 2018. The Parties submit that if Oscaro were not to meet this deadline, an insolvency proceeding would be likely opened and this would make it impossible for Oscaro to survive as its business is entirely dependent on the reputation of its online platform and the customers' trust.

(13) In light of the above, the Commission considers that the suspension obligation imposed by Article 7(1) could lead to serious harm to Oscaro. The Commission also considers that the derogation from the suspension obligation would not have adverse effects on any third party. Oscaro has contacted a number of other potential buyers but none of them was in a position to grant Oscaro the necessary financial resources in the very tight timeframe necessary to avoid insolvency proceedings.

C. The threat to competition posed by the concentration

(14) There are no horizontal overlaps between the Parties' activities. Oscaro is only active in the retail supply of light vehicle spare parts in France, Spain, Belgium and Portugal, but neither Autodis nor any of the portfolio companies controlled by Bain Capital operates in this market.

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4 Moreover, negative rumours about its financial situation were released online in June 2018 and this caused a further considerable reduction in sales.

(15) There is a vertical link between Oscaro's presence in the retail market and Autodis' activity as a wholesaler of motor vehicle spare parts in France and Belgium.[5] However, this link will not give rise to vertically affected markets.

Vertical link

(16) In previous decisions the Commission defined the wholesale distribution of automotive spare parts as a separate product market.[6] The Commission also considered a further distinction between the market for original equipment spare parts manufactured and sold under the car manufacturer's brands, and the IAM for automotive spare parts.[7] [8] Regarding the relevant geographic market, in the past the Commission considered that the wholesale markets can be regional, national or even EEA-wide in scope but it ultimately left the market definition open. The Commission considers that the market definition can be left open in this case as Autodis' market share does not exceed 20% under any plausible (product or geographic) market segmentation.

(17) The Commission has never defined a specific market for retail supply of motor vehicle spare parts and accessories separate from the market of repair and maintenance of automotive vehicles. However, the Parties submit that even assuming a narrow market only comprising the retail supply of motor vehicle spare parts, Oscaro's market share would be well below 10%, both on a national and on a regional level, in all countries where it is active.[9]

(18) In light of the above, the Transaction does not appear to give rise to any vertically affected markets and therefore the likelihood that the Transaction may result in any foreclosure effects appears to be unlikely.

Conclusion

(19) 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.

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5 Oscaro sells minor volumes to garages usually by supplying products returned by customers which cannot be resold to original suppliers at an acceptable price. However, these sales are based on sporadic orders and the total volume sold to garages are negligible (it would account for significantly less than 1% of the French wholesale market).

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

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

8 The Commission also considered a possible distinction between spare parts for light vehicles and those for heavy vehicles. Case M.8198 – *Alliance Automotive Group/FPS Distribution*; Case M.6319 − *Triton/Europart*.

9 Even if a separate market including only 'online' sales of automotive spare parts were to be defined, the Parties submitted that Oscaro's share would remain below 10%.

D. Balance of interests

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

4. TERMS AND CONDITIONS

(21) According to Article 7(3), 4th sentence, of the Merger Regulation, a derogation from the suspension obligation laid down by Article 7(1) thereof may be made subject to conditions and obligations in order to ensure effective competition.

(22) On 6 November 2018 Autodis committed itself to submit a complete notification of the Transaction to the Commission without delay and, in any case within one month from the adoption of this Article 7(3) decision.

(23) Based on the preceding considerations, the Commission has decided to grant a derogation from the suspension obligation with regard to the proposed concentration subject to the condition that Autodis shall submit a complete notification of the Transaction to the Commission without delay and in any case no later than one month from the adoption of this Article 7(3) decision.

5. CONCLUSION

(24) The Commission considers that the reasons given by the Parties for a derogation from the suspension obligation meet the requirements set out in Article 7(3) of the Merger Regulation.

(25) Based on the above considerations and in accordance with Article 7(3) of the Merger Regulation and Article 57 of the EEA Agreement, Autodis is granted a derogation from the obligations imposed by Article 7(1) of the Merger Regulation in accordance with the foregoing terms and conditions until the acquisition has been declared compatible with the common market and the EEA Agreement by means of a decision pursuant to Articles 6(1)(b),(2) or 8(1),(2) or a presumption pursuant to Article 10(6) of the Merger Regulation.

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission