



EUROPEAN COMMISSION
DG Competition

***Case M.9894 – MOBILUX /
CONFORAMA FRANCE***

Only the English text is available and authentic.

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

Article 4(4)
Date: 26.06.2020



EUROPEAN COMMISSION

Brussels, 26.06.2020
C(2020) 4449 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**To the French Competition
Authority**

**Subject: Case M.9894 – MOBILUX/CONFORAMA FRANCE
Commission decision following a reasoned submission pursuant to
Article 4(4) of Regulation No 139/2004¹ for referral of the case to
France and Article 57 of the Agreement on the European Economic Area²**

Date of filing: 22.06.2020

Legal deadline for response of the Member States (France): 13.07.2020

Legal deadline for the Commission decision under Article 4(4): 28.07.2020

Dear Sir or Madam,

1. INTRODUCTION

- (1) On **22.06.2020**, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the transaction cited above. The parties request the operation to be examined in its entirety by the competent authorities of France.

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').

- (2) According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which presents all the characteristics of a distinct market.
- (3) A copy of this Reasoned Submission was transmitted to all Member States on **22.06.2020**.
- (4) On 23.06.2020, the *Autorité de la concurrence*, as the competent authority of France, informed the Commission that France agrees with the proposed referral.

2. THE PARTIES

- (5) MOBILUX SARL (“MOBILUX”), a Luxembourg limited liability company, is an investment firm jointly controlled by the Clayton, Dubilier & Rice Group (the “CD&R Group”) and by WM Holding GmbH (“WM”). CD&R Group is a private equity investment firm headquartered in the United States. WM is an Austrian holding company, indirectly owned and solely controlled by [name of the ultimate shareholder of WM]. [Name of the ultimate shareholder of WM] controls the Poco group of companies (“Poco”), which is active in the retailing of furniture, home decoration and household goods in Germany. In addition, [name of the ultimate shareholder of WM] indirectly holds 50% of the XXXLutz group of companies (“XXXLutz”), which is active in the retailing of furniture, home decoration and household goods in Austria, Bulgaria, Croatia, the Czech Republic, Germany, Hungary, Poland, Romania, Serbia, Slovakia, Slovenia, Sweden and Switzerland. Neither Poco nor XXXLutz operate retail stores in France.
- (6) MOBILUX is the parent company of BUT SAS, a French company, active in the retailing of home equipment including primarily furniture, decoration and household domestic electrical appliances and consumer electronics. It is active in France through a network of 300 retail stores, as well as an online shop.
- (7) CONFORAMA FRANCE is a retailer of (i) furniture, household goods and home decoration, as well as of (ii) electrical appliances and consumer electronics, active exclusively in France. The activities of the CONFORAMA group outside of France are not part of the Transaction. CONFORAMA FRANCE also operates assets in France owned by its parent company CONFORAMA HOLDING SA, which is a subsidiary of the Group Steinhoff International Holdings N.V (South Africa).

3. THE OPERATION AND CONCENTRATION

- (8) MOBILUX intends to acquire, within the meaning of Article 3(1)b of the Merger Regulation, sole control of CONFORAMA FRANCE. The Proposed Concentration consists in the purchase of the entire share capital of CONFORAMA FRANCE SA and of certain French real estate and other assets operated by CONFORAMA FRANCE and owned by CONFORAMA HOLDING, including:
 - a) the entire business of CONFORAMA FRANCE, consisting in approximately 173 stores, including 11 franchise stores in mainland France and the French overseas territories, as well as an online shop on its website www.conforama.fr;

- b) full ownership of all real estate assets operated by CONFORAMA FRANCE and owned indirectly by CONFORAMA HOLDING, excluding stores which are in the process of being closed;
 - c) the Conforama brand (including trademarks and domain names) and all other brands operated by CONFORAMA FRANCE for France and owned by CONFORAMA HOLDING.
- (9) The Proposed Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the EU Merger Regulation.

4. EU DIMENSION

- (10) The proposed Transaction has an EU dimension within the meaning of Article 1(2) of the Merger Regulation. The Parties' combined aggregate world-wide turnover exceeds EUR 5 000 million (MOBILUX's parent companies: CD&R Group EUR [...] and WM approximately EUR [...]; Target: approximately EUR [...]). Each of the Parties achieved EU-wide turnover in excess of EUR 250 million (MOBILUX's parent companies: CD&R Group EUR [...] and WM approximately EUR [...]; Target: approximately EUR [...]). Only CONFORAMA FRANCE achieved more than two-thirds of its aggregate EU-wide turnover within one Member State, i.e., France.
- (11) The notified operation therefore has an EU dimension within Article 1(2) of the Merger Regulation.

5. ASSESSMENT

- (12) MOBILUX (through BUT) and CONFORAMA FRANCE are active in the retail supply of (i) furniture/furnishings, (ii) decoration, and (iii) electronic appliances in France. The Parties are also active in the procurement of these products in France.

5.1. Relevant product markets

- (13) In the non-food retail sector, the Commission has distinguished markets by product categories and by sales channels (brick-and-mortar shops, home-shopping by internet, by catalogue and by other means).³ Among the relevant product categories, the Commission has considered that the retail supply of furniture and furnishings, on the one hand,⁴ and of decoration products, on the other hand,⁵ constitute two separate product markets. As regards the retail supply of electronics and appliances, the Commission has considered a further segmentation of this market according to the use of the products into white, brown or grey products.⁶
- (14) With respect to procurement activities, the Commission has also defined relevant markets according to product categories, including furniture, decoration and

³ See, e.g., M.5721 – Otto/ Primondo Assets, paras. 18-20.

⁴ See, e.g., M.5721 – Otto/ Primondo Assets, paras. 18-20.

⁵ M.2898 – Leroy Merlin/ Brico, para. 9.

⁶ White products refer to kitchen and laundry related products, brown products refer to audio and video related products (e.g. tv, hi-fi) and grey products refer to computer related products - see M. 6847 – Triton / Suomen Lahikauppa, para. 17

electronics and appliances.⁷ In the absence of decisional practice of the Commission regarding the procurement of furniture/furnishings, the Parties refer to the decisional practice of the French Competition Authority according to which this activity constitutes a distinct product market.⁸ As regards the procurement of electronics and appliances, the Parties refer to precedents whereby the Commission considered a possible market encompassing all types of such goods, as well as possible narrower segments, while leaving the exact market definition open.⁹ They also refer to the practice of the French Competition Authority segmenting this product category according to the size and function/use of electronic appliances.¹⁰

- (15) For the purposes of this Decision, the Commission has considered the following relevant product markets: (i) retail supply of furniture and furnishings, (ii) retail supply of decoration products, (iii) retail supply of electronics and appliances, including a possible segmentation into white, brown and grey products; (iv) procurement of furniture and furnishings, (v) procurement of decoration products; and (vi) procurement of electronics and appliances. However, the exact product market definition of these retail supply and procurement markets may be left open since the Proposed Concentration fulfils the conditions for a referral to France independently of the exact product market definition, as explained in more detail in Section 5.3 of this Decision.

5.2. Relevant geographic market

- (16) With respect to the definition of the relevant geographic market for the retail supply segments, the Commission has considered them as being at most national in scope. For the brick-and-mortar channel, the Commission has considered regional or even local areas to be relevant, typically in the form of catchment areas corresponding to the specific driving time required for reaching a store.¹¹
- (17) With respect to the definition of the relevant geographic procurement markets, dimension of the procurement markets, the Commission has considered them to be at least national in scope while leaving the precise market definition open.¹²
- (18) For the purposes of this Decision, the Commission has considered that the retail supply markets have a local dimension while the procurement markets have a national dimension. Nonetheless, the exact geographic market definition of these markets may be left open since the Proposed Concentration fulfils the conditions for a referral to France independently of the exact geographic market definition, as explained in more detail in Section 5.3 of this Decision.

⁷ M.2898 – Leroy Merlin/ Brico, paras. 15-16.

⁸ See, e.g., French competition Authority Decisions n°16-DCC-39, 29 August 2016 (BUT / BUT INTERNATIONAL)

⁹ M.8469 – Sonepar Italia/Sacchi, para. 14; M.7259 – Carphone Warehouse/Dixons, paras. 26-28; M.4392 – DSGI/FR-Invest/F-Group JV, paras. 14-15.

¹⁰ Form RS paras. 101 and 103; Decisions n° 17-DCC-216, 18 December 2017, paras. 9-11; 16-DCC-139, 29 August 2016, paras. 8-11; 15-DCC-28, 17 March 2015, paras. 8-11; 14-DCC-39, 24 March 2014, paras. 17-21; Recommendation n°07-A-06, 16 July 2007, paras. 24-26.

¹¹ M.5721 – Otto/ Primondo Assets, paras. 31-33; M.7933, Carrefour/Billa Romania and Billa Invest Construct, para. 18.

¹² M.1333 – Kingfisher/Castorama; M.2898 – Leroy Merlin/ Brico, paras 22-25; M.7259 – Carphone Warehouse/Dixons, para. 37.

5.3. Assessment of the referral request

5.3.1. Legal requirements

- (19) According to the Commission Notice on case referral, in order for a referral to be made by the Commission to one or more Member States pursuant to Article 4(4), the following two legal requirements must be fulfilled:
- a) there must be indications that the concentration may significantly affect competition in a market or markets,¹³ and
 - b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.¹⁴
- (20) Based on the information submitted in the Reasoned Submission, all potentially affected markets relate to retail supply markets and are located in France. In the retail supply of furniture, the Parties estimate that the Proposed Concentration may give rise to [...] affected local markets, including [...] local markets where the merged entity may have a market share between 40% - 50% and [...] local markets where the merged entity may have a market share above 50%.¹⁵ With respect to electronics and appliances, and in particular the retail supply of white products, the Parties estimate that the Proposed Concentration may give rise to [...] affected local markets, including [...] local markets where the merged entity may have a market share between 40% - 50%. As regards brown products, the Parties estimate that the Proposed Concentration may give rise to [...] affected local markets.¹⁶ In contrast, the proposed Concentration would not give rise to affected local markets with respect to the retail supply of decoration products.¹⁷
- (21) As regards procurement markets, the Parties submit that their positioning on the three relevant national markets is “*broadly equivalent to their respective position on the downstream retail markets*”.¹⁸ Hence, the procurement of furniture and furnishings would be affected. Moreover, according to data submitted by the Parties, the majority of the products sourced by BUT and CONFORAMA FRANCE, for each relevant product categories, originates from France.¹⁹ The Parties further underline that the Target has “*a purchasing policy favouring the assortment from the French industry*” and that together they do not account for a significant share of the procurement of the relevant products globally or in the EU.²⁰ In particular, the Parties consider that they “*have very low procurement shares at the upstream level when considered at the EEA-level*”.²¹ For these reasons, the Proposed Concentration may affect competition in the procurement of furniture in France, which presents the characteristics of a distinct market.

¹³ Further developed in point 17 of the Commission Notice on Case Referrals.

¹⁴ Further developed in point 18 of the Commission Notice on Case Referrals.

¹⁵ In relation to the retail supply of furniture, the Parties also estimate that the Transaction may give rise to an affected market at national level.

¹⁶ Parties’ response to RFI no.1, questions 1 and 2.

¹⁷ Form RS, paras. 116, 119 and 122.

¹⁸ Parties’ response to RFI No.1, question 3.

¹⁹ Parties’ response to RFI No.1, question 4.

²⁰ Form RS, paras. 56 and 128.

²¹ Form RS, para. 139.

- (22) In light of the evidence presented by the Parties, the Commission considers that the Proposed Concentration may affect competition in markets located exclusively in France, which present the characteristics of distinct markets.
- (23) The Proposed Concentration therefore meets the legal requirements for referral set forth in Article 4(4) of the Merger Regulation.

5.3.2. *Additional factors*

- (24) In addition to the verification of the legal requirements, paragraph 19 of the Notice provides that it should also be considered whether referral of the case is appropriate, and in particular “*whether the competition authority or authorities to which they [i.e. the merging parties] are contemplating requesting the referral of the case is the most appropriate authority for dealing with the case*”.²²
- (25) In addition, paragraph 23 of the Notice states that “*Consideration should also, to the extent possible, be given to whether the NCA(s) to which referral of the case is contemplated may possess specific expertise concerning local markets, or be examining, or about to examine, another transaction in the sector concerned*”.²³
- (26) The effects of the Proposed Transaction are likely to be confined to France and to have their main economic impact in France. Each of the potentially affected markets is not wider than national in scope and all of them are located in France. Therefore, the *Autorité de la concurrence* is well placed to examine the case.
- (27) The requested referral will also preserve the “one-stop shop” principle as this case will be referred in its entirety to a single competition authority.
- (28) In addition the *Autorité de la concurrence* frequently examines concentrations in the retail supply and procurement of furniture/furnishing, decoration and electronic appliances and has therefore developed significant experience and expertise in the relevant industries.²⁴ As a result, the *Autorité de la concurrence* is well equipped to assess the impact of the Proposed Transaction on competition in the markets in question.
- (29) In fact, the Commission has already referred in the past to the *Autorité de la concurrence* a similar case involving a concentration in the retail distribution and procurement of decoration, do-it-yourself and home improvement and gardening products.²⁵

5.3.3. *Conclusion on referral*

- (30) On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger

²² OJ 2005, No. C 56/02.

²³ OJ 2005, No. C 56/02.

²⁴ See for example Decisions n° 17-DCC-216, 18 December 2017; n°16-DCC-39, 29 August 2016 (BUT / BUT INTERNATIONAL); n°16-DCC-111, 27 July 2016 (FNAC / DARTY); n°15-DCC-28, 17 March 2015 (ATLAS / FLY / BUT INTERNATIONAL), n°14-DCC-39, 24 March 2014 (ATLAS / FLY / CONFORAMA DEVELOPPEMENT); n°11-DCC-136, 14 September 2011 (HABITAT/CAFOM).

²⁵ See Case M.7283 – Kingfisher/Mr Bricolage (11 August 2014).

Regulation in that the concentration may significantly affect competition in a market(s) within a Member State which presents all the characteristics of a distinct market.

- (31) Moreover, the *Autorité de la concurrence* is the most appropriate authority for dealing with the case.

6. CONCLUSION

- (32) For the above reasons, and given that France has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the France. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Olivier GUERSENT
Director-General