



EUROPEAN COMMISSION
DG Competition

*Case M.8832 –
KNAUF/ARMSTRONG*

Only the English text is available and authentic.

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

Decision on the implementation of the commitments -
Purchaser approval
Date: 23.09.2019



EUROPEAN COMMISSION

Brussels, 23.09.2019
C(2019) 6921 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

Subject: Case M.8832 – KNAUF/ARMSTRONG
Approval of Aurelius as purchaser of Armstrong’s mineral fibre and grids business in Austria, Estonia, Germany, Ireland, Italy, Latvia, Lithuania, Portugal, Spain, Turkey and the UK following your letter of 15 August 2019 and the Trustee’s opinion of 22 August 2019

1. FACTS AND PROCEDURE

- (1) By decision of 07.12.2018 (“the Decision”) based on Article 6(1)(b) in connection with Article 6(2), the Commission declared the operation by which Knauf International GmbH (“Knauf”) would acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of Armstrong World Industries (“AWI”)’s ceiling business outside the Americas (“Armstrong”) by way of purchase of shares (the “Transaction”) compatible with the internal market following modification by Knauf and Armstrong (together the “Parties”), subject to conditions and obligations (the “Commitments”).

- (2) In particular, the Commitments provide that Knauf must divest Armstrong’s mineral fibre and grids business in Austria, Estonia, Germany, Ireland, Italy, Latvia, Lithuania, Portugal, Spain, Turkey and the UK (the “Divestment Business”), in particular:
- (a) Armstrong’s sales operations, including Armstrong’s Sales Teams together with their entire relevant customer base;
 - (b) the Team Valley Grid Facility (“TVI”), an upgrade of which Knauf has committed to fund up to the amount of EUR [...]; and
 - (c) the Team Valley Mineral Fibre Facility (“TVII”), an upgrade of which Knauf has also committed to fund up to the amount of EUR [...] (the upgrades of TVI and TVII, which Knauf has committed to fund under the Commitments are referred to as “shift CAPEX programme” or CAPEX programme).
- (3) By letter of 15 August 2019, Knauf proposed Aurelius Development Eleven GmbH (“Aurelius” or the “Proposed Purchaser”) for approval by the Commission as purchaser of the Divestment Business and submitted the proposed Sale and Purchase Agreement (the “SPA”) and the related schedules, including related agreements. On 22 August 2019, the monitoring trustee Alcis Advisers (the “Trustee”) has submitted an assessment of Aurelius’ suitability as a purchaser, the final version of the Trustee’s Reasoned Opinion having been submitted on 10 September 2019. In its assessment, the Trustee indicated in particular that the Proposed Purchaser fulfils the criteria of the purchaser requirements in paragraph 19 of the Commitments attached to the Decision and that, on the basis of the SPA, the Divestment Business would be sold in a manner consistent with the Commitments, subject to a number of amendments being made to the SPA and a related schedule, as described in paragraphs (4) and (45) below.
- (4) Upon the Commission’s request after its review of the Trustee’s Reasoned Opinion, on 17 September 2019, Knauf and Aurelius made the following changes to their transaction agreements of 8 August 2019:
- (a) the duration of the non-solicitation clause in the Share Purchase Agreement (“SPA”) was brought [details on duration of non-solicitation clause], in line with the Commitments;
 - (b) the long-stop date for closing of Aurelius’ acquisition of the Divestment Business was set at a later date than initially provided, [duration of long-stop date];
 - (c) the duration of the Master Supply Agreement (“MSA”) to be concluded between Knauf and the Divestment Business was [details on duration of supply agreement].

2. ASSESSMENT OF THE PROPOSAL

2.1. Legal framework

- (5) According to paragraphs 19 and 20 of the Commitments, in its assessment of the Proposed Agreement the Commission has to ensure that:
- the Proposed Purchaser is independent of and unconnected to Knauf;
 - the Proposed Purchaser has the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competition force in competition with the Parties and other competitors;
 - the acquisition of the Divestment Business by the Proposed Purchaser does not create *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed; and
 - the Divestment Business is sold in a manner consistent with the Decision and with the Commitments.

2.2. Description of the Proposed Purchaser

- (6) The Proposed Purchaser, wholly owned by Aurelius Equity Opportunities SE & Co. KGaA (“Aurelius SE”), is a financial investor who developed into an industrial holding company. Founded in 2006 and headquartered in Grünwald near Munich, Germany, Aurelius manages its holding functions from offices in Munich, London, Stockholm and Madrid. Through its currently 21 portfolio companies, Aurelius operates throughout Europe as well as outside Europe.
- (7) The Proposed Purchaser employs around 15,000 staff and relies on more than 80 operational experts based around Europe, who support the management teams of its portfolio companies by covering areas such as IT, logistics, finance, organization, M&A, production, purchasing, contract law, marketing and distribution. In 2018, Aurelius’ portfolio companies generated combined revenues of EUR 3.4 billion.
- (8) Aurelius’ investment strategy focuses specifically on acquiring companies in special situations, often carve-out situations from large corporations.

2.3. Independence from the Parties

- (9) Knauf submits that the Proposed Purchaser: i) has no ownership links or common interests in joint ventures with Knauf; and ii) does not have any commercial relationships with Knauf. Knauf notes that the Proposed Purchaser is in the process of [details on another transaction of the Proposed Purchaser]. However, according to Knauf, given the size of Aurelius’ and Knauf’s operations and the fact that there is no commercial relationship with the Divestment Business itself, these supply relationships will have no appreciable effect on the Proposed Purchaser’s independence from Knauf. Finally, Knauf stresses that none of Knauf’s senior group management have any involvement with the Proposed Purchaser, its investment funds or portfolio companies.

- (10) In its Reasoned Opinion, the Trustee concurs with the reasons submitted by Knauf and finds that the Proposed Purchaser is fully independent of and unconnected to Knauf, within the meaning of paragraph 19 of the Commitments.
- (11) Based on the information made available by Knauf and the Trustee's Reasoned Opinion, the Commission considers that the Proposed Purchaser meets the requirement of being independent of and unconnected to Knauf.

2.4. Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

2.4.1. Financial resources to maintain and develop the Divested Business

- (12) Knauf submits that the Proposed Purchaser will be financially able to ensure that the Divestment Business remains a viable competitor. Knauf stresses that the 21 portfolio companies of Aurelius, a publicly listed company with a market capitalisation of ca. EUR 1.4 billion, generate combined annual revenues of more than EUR 3.8 billion. It is stressed that the Proposed Purchaser held a cash position of EUR 290.8 million according to its 2018 annual report, and that as a listed company it is also able to raise funds via the capital markets if required. In terms of the funding of the acquisition of the Divestment Business, Knauf submits that the Proposed Purchaser's funding of the acquisition and of the future development of the Divestment Business [details of funding of the transaction].
- (13) The Trustee's Reasoned Opinion assesses the fluctuating profitability of the Proposed Purchaser over the past three years. It concludes that the Proposed Purchaser operates a profitable business model and that significant fluctuations in profitability are largely due to the Proposed Purchaser's M&A-driven business model, which at certain times brings along substantial one-off effects distorting the view on underlying long-term trends of its portfolio companies. For instance, whereas the Proposed Purchaser made a number of acquisitions in 2017 and 2018, in 2019 [details on transactions].
- (14) The Trustee's Reasoned Opinion also considers that the Proposed Purchaser has been able to maintain a sound balance sheet over the past three years, with its total consolidated equity remaining constantly at or above 25% of total assets, relatively constant gearing, moderate financial leverage and a cash position in excess of EUR 200 million throughout 2016 to 2018 and around EUR 180 million at the end of June 2019. The Trustee expects the Proposed Purchaser's balance sheet to be further strengthened in the future and considers that it is robust and certainly sufficient to support the acquisition and future development of the Divestment Business.
- (15) In terms of funding of the acquisition of the Divestment Business, the Trustee states in its Reasoned Opinion that it has no doubts as to the Proposed Purchaser's ability to fund the acquisition. The necessary funding will come from [details of funding of the transaction]. Finally, the Trustee has carried out a sensitivity assessment regarding the possible impact on the Divestment Business of the Proposed Purchaser's intention [details of funding of the transaction].
- (16) As to the funding of the Divestment Business's operations and development following its acquisition by the Proposed Purchaser, the Trustee's view is that the latter will remain a cash-generating and profitable business under the Proposed

Purchaser's ownership. Furthermore, the Trustee considers that the planned shift CAPEX programme will not be burdensome to the Divestment Business's funding position, as Knauf will ultimately fund the programme in accordance with the Commitments and [details on funding mechanism for shift CAPEX programme].

- (17) The Commission, on the basis of the information it has received from Knauf and from the Trustee, considers that the Proposed Purchaser meets the requirement of having the financial resources to maintain and develop the Divestment Business.

2.4.2. *Proven expertise*

- (18) Knauf submits that Aurelius has a proven record of successful carve-outs and growing companies. Knauf cites as examples illustrating that the Proposed Purchaser holds the relevant and necessary expertise and that it is well placed to further develop the Divestment Business, its experience with investments in Solidus Solutions (2015), Secop (2011), Getronics (2012) and B+P Gerüstbau (2014).
- (19) The Trustee's assessment takes into account the Proposed Purchaser's financial performance and earnings. It also cites the Proposed Purchaser's recent sale of Solidus to Centerbridge Partners for EUR 330 million as an illustration of the Proposed Purchaser's ability to create profitable and sizable entities out of restructuring candidates.
- (20) Regarding the Proposed Purchaser's investment philosophy, the Trustee notes that the Proposed Purchaser's focus is precisely on corporate carve-outs, special situations and small-to mid-cap companies with operational improvement potential. In terms of the Proposed Purchaser's investment approach, the Trustee emphasizes that the Proposed Purchaser has a long-term investment horizon without any fixed exit timetable, and that its integrated approach is designed to create value by enhancing the operational performance of its portfolio companies, rather than through financial engineering.
- (21) Concerning the Proposed Purchaser's investment history, the Trustee observes that the Proposed Purchaser has performed over 100 transactions since its creation in 2005 and that in terms of the Proposed Purchaser's exits since 2014, the revenues and EBITDA of most of the operating companies it disposed of had grown under the Proposed Purchaser's ownership.
- (22) Specifically regarding the Proposed Purchaser's expertise in the Divestment Business's industry, the Trustee observes that the Proposed Purchaser owns three businesses in industries adjacent to building materials: Reuss-Seifert & Hammerl (manufacturing of spacers for the concrete construction industry); B+P Gerüstbau (scaffolding for large projects and service-providing in construction site logistics); and Silvan (building products retail in Denmark).
- (23) Furthermore, the Trustee takes into account the Proposed Purchaser's substantial experience in carve-out transactions, which it has in the Trustee's view carried out successfully *inter alia* in the cases of Getronics, Office Depot Europe, and SECOP.
- (24) Finally, the Trustee points out the combination of the dedicated support which the Proposed Purchaser offers its portfolio companies with the continued leadership of the Divestment Business's management team, which the Trustee considers to be very

capable and which the Proposed Purchaser aims to incentivize [details on incentives for the management team].

- (25) On the basis of these considerations, the Trustee concludes that the Proposed Purchaser has the proven experience and relevant expertise to successfully carry out the acquisition and further development of the Divestment Business going forward.
- (26) The Commission, on the basis of the information it has received from Knauf and from the Trustee, considers that the Proposed Purchaser meets the requirement of having the proven expertise to maintain and develop the Divestment Business.

2.4.3. *Incentive to maintain and develop the Divestment Business*

- (27) Knauf submits that the Proposed Purchaser has the incentive to maintain and develop the Divestment Business. Knauf stresses that in addition to seeing the Divestment Business as a compelling investment opportunity, the Proposed Purchaser will also benefit from the shift CAPEX programme, which Knauf has committed to fund, as well as from the management team in place, [details on incentives for the management team]. Knauf emphasizes that the Proposed Purchaser's detailed business plan [details of the business plan].
- (28) In this regard, the Trustee's assessment takes into account that the Proposed Purchaser indeed sees the Divestment Business as an attractive investment opportunity. In the Trustee's view, the Proposed Purchaser's compelling strategic rationale is based in particular on the Divestment Business's benefiting from a strong market share, favourable market dynamics, a stable revenue stream from its large installed base, operational improvement opportunities, the presence of a very experienced management team and interesting new growth opportunities.
- (29) The Trustee has also carried out an in-depth assessment of the Proposed Purchaser's business plan for the Divestment Business, which is [details of the business plan]. On the basis of its review, the Trustee has come to the conclusion that the business plan presented by the Proposed Purchaser supports the view that the Divestment Business will be a viable competitors in its segment for the foreseeable future.
- (30) Specifically in terms of implementing the shift CAPEX programme, which Knauf has committed to fund for an amount up to EUR [...] regarding TVI and EUR [...] regarding TVII, the Trustee observes that over the past several months, the shift CAPEX programme has been extensively planned and prepared for. Complex preparatory and planning work was carried out under the leadership of the hold separate manager and under the supervision of the Trustee, involving production and engineering experts of the Divestment Business itself and AWI, as well as an independent engineering specialist and an independent engineering firm. At a later stage, Knauf's engineering experts were given the opportunity to make their views heard and in the weeks before signing of the SPA, the Proposed Purchaser was able to assess the programme as well and confirmed its agreement with the cornerstones of the proposed programme. The Trustee notes that the Divestment Business and the Proposed Purchaser assume to be able to implement the shift CAPEX programme [details on duration of shift CAPEX programme]. Finally, the Trustee notes that [details on the implementation of the shift CAPEX programme], the Proposed Purchaser has a strong incentive to carry it out within the shortest possible timeframe.

- (31) The Trustee further observes that in addition to the Knauf-funded shift CAPEX programme, the Proposed Purchaser also intends to take a number of additional measures in view of growing the Divestment Business.
- (32) The Trustee also points out that under the close monitoring of the Trustee, the management team of the Divestment Business has engaged significant risk analyses and risk mitigation exercises, in particular with respect to potential risks to the Divestment Business's viability.
- (33) Finally, the Trustee has assessed in detail the functioning and implications of the Armstrong pension scheme that is currently in place at the Divestment Business. In this regard, Knauf, the Proposed Purchaser, the Divestment Business and the pension scheme's trustees have agreed in a Memorandum of Understanding (the "Pension MoU") that [details on self-sufficiency of pensions scheme]. In the Trustee's view, this will minimize the likelihood of the Divestment business having to make additional contributions to the pension scheme in the foreseeable future. Hence, the Trustee considers that this agreed solution is an important element of preserving the Divestment business's future viability and competitiveness.
- (34) The Trustee concludes that the Proposed Purchaser has the capabilities and the proper incentives to maintain and develop the Divestment Business.
- (35) The Commission, on the basis of the information it has received from Knauf and from the Trustee, considers that the Proposed Purchaser meets the requirement of having the incentive to maintain and develop the Divestment Business.

2.5. Absence of *prima facie* competition problems and of risks that the implementation of the Commitments will be delayed

- (36) Knauf submits that there are no horizontal overlaps or vertical links between the Proposed Purchaser and the Divestment Business. Therefore, Knauf submits that no competition concerns arise in relation to the sale of the Divestment Business to the Proposed Purchaser and that this transaction, which will require the approval of competition authorities in Germany and Austria, should obtain the relevant clearances swiftly.
- (37) The Trustee's assessment is that none of the Proposed Purchaser's portfolio companies i) is active in suspended ceilings; or ii) is an actual or potential customer to the Divestment Business.
- (38) The Commission, on the basis of the information it has received from Knauf and from the Trustee, considers that the Proposed Purchaser meets the requirement that *no prima facie* competition problems arise from the Proposed Purchaser's acquisition of the Divestment Business. This *prima facie* assessment is based on the information available for the purpose of this buyer approval and does not prejudice the competition assessment of the acquisition of the Divestment Business by Aurelius by a competent competition authority under applicable merger control rules.
- (39) Finally, the Trustee has also assessed whether i) the complexity of the necessary reorganization and carve-out of the Divestment Business or ii) the need to obtain the abovementioned approval of competition authorities in Germany and Austria may delay the implementation of the Commitments. The Trustee has concluded in this

regard that the acquisition of the Divestment Business by the Proposed Purchaser does not give rise to a risk that the implementation of the Commitments will be delayed.

- (40) The Commission, on the basis of the information it has received from Knauf and from the Trustee, considers that the Proposed Purchaser meets the requirement that no risk of delaying the implementation of the Commitments arises from the Proposed Purchaser's acquisition of the Divestment Business.

2.6. Assessment of the transaction agreements

- (41) Knauf has submitted copies of the SPA it has entered into with the Proposed Purchaser on 8 August 2018 and the agreed Schedules thereto, including drafts of related agreements, as well as of an amendment to the SPA that was executed by Knauf and the Proposed Purchaser on 17 September 2019 and of a revised draft MSA agreed on between Knauf and the Proposed Purchaser on 4 September 2019 (together the "Transaction Documents"), in order to reflect specific amendments requested by the Commission (see below at paragraph (45)). The Transaction Documents consist of the SPA, which was executed on 8 August 2019 and amended on 17 September 2019, as well as several operational and cost coverage agreements which will constitute Schedules to the SPA, in particular the following:

- (a) [Details of Transaction Documents];
- (b) [Details of Transaction Documents];
- (c) [Details of Transaction Documents];
- (d) [Details of Transaction Documents];
- (e) [Details of Transaction Documents];
- (f) [Details of Transaction Documents];
- (g) [Details of Transaction Documents];
- (h) [Details of Transaction Documents];
- (i) [Details of Transaction Documents];
- (j) [Details of Transaction Documents].

- (42) In addition, as mentioned above in paragraph (33), Knauf and the Proposed Purchaser, the management of the Divestment Business and the trustees of the pension fund that is currently in place at the Divestment Business have entered into the Pension MoU.

- (43) In particular regarding the shift CAPEX programme, the Trustee observes that UCCA TVMF and UCCA TVGF, which govern Knauf's funding of the shift CAPEX programme, shall, according to the SPA, have been executed by the time of closing. In addition, the Proposed Purchaser has expressly confirmed its intention to execute the upgrade of TVI and TVII following the closing of its acquisition of the Divestment Business.

- (44) [Information on transfer of Pension Scheme].
- (45) Finally, the Trustee and the Commission identified three points of deviation from the Commitments, which the Commission requested that Knauf and the Proposed Purchaser address in their Transaction Documents. More specifically, the following changes were requested:
- (a) that in the SPA, the duration of Knauf's non-solicitation obligation with regard to Key Personnel of the Divestment Business be [details on duration of non-solicitation obligation];
 - (b) in order to mitigate the risk that a delay in fulfilling the conditions for closing provided in the SPA may put at risk the successful implementation of the Commitments, that the long-stop date in the SPA not coincide with the deadline for Closing set in the Commitments,¹ but rather be set at a date [details on long-stop date];
 - (c) in order to avoid that the MSA, inasmuch as it is to the benefit of Knauf, would establish an unnecessarily long-lasting link between the Divestment Business and Knauf, that the Divestment Business's supply obligation [details on duration of supply agreement].
- (46) Knauf and the Divestment Business have made the requested changes to the Transaction Documents and Knauf has submitted on 17 September 2019 a copy of the relevant amendment to the SPA, which was executed on 17 September 2019, and on 18 September 2019 a copy of the revised MSA. The latter constitutes a Schedule to the SPA and will, pursuant to the signing mechanism foreseen in the SPA, be executed upon closing.
- (47) Taking into account the modifications agreed to between Knauf and the Proposed Purchaser, the Trustee confirmed that the final Transaction Documents are in compliance with the Commitments.
- (48) The Commission, on the basis of the information it has received from Knauf and from the Trustee, considers that the Transaction Documents, as amended, are in line with the Commitments.

3. CONCLUSION

- (49) On the basis of the above assessment, the Commission approves Aurelius as a suitable purchaser for the above-mentioned reasons.
- (50) On the basis of the Proposed Agreement, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
- (51) This decision only constitutes approval of the Proposed Purchaser identified herein and of the Proposed Agreement. This decision does not constitute a confirmation that Knauf has complied with its Commitments.

¹ Pursuant to the Commitments, the Closing Period is [...] as of the approval of the Purchaser and the terms of sale by the Commission.

- (52) This decision is based on paragraphs 19 and 20 of the Commitments attached to the Commission Decision of 07.12.2018.

For the Commission

(Signed)
Cecilio MADERO VILLAREJO
Acting Director-General