EUROPEAN COMMISSION
DG Competition

Case M.9408 – ASSA ABLOY / AGTA RECORD

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Decision on the implementation of the commitments -
Purchaser approval
Date: 14/08/2020

EUROPEAN COMMISSION

Brussels, 14.8.2020
C(2020) 5702 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.9408 – Assa Abloy/Agta Record
Approval of FAAC as purchaser of the Divestment Business following your letter of 24 June 2020 and the Trustee's opinion of 1 July 2020, as updated on 4 August 2020

1. FACTS AND PROCEDURE

(1) By decision of 27 February 2020 (the 'Decision') based on Article 6(1)(b) in connection with Article 6(2) of the Merger Regulation,[1] the Commission declared the operation by which Assa Abloy AB (publ) (Sweden, 'Assa Abloy' or the 'Notifying Party') acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of agta record ag (Switzerland, 'Agta Record'), compatible with the internal market subject to conditions and obligations (the 'Commitments').

(2) Under the Commitments, Assa Abloy and Agta Record commit to divest seven businesses and grant a number of licenses (jointly, the 'Divestment Business') to a

[1] Council Regulation No 139/2004, OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').

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suitable purchaser, as well as to implement behavioural commitments.[2] In particular, the Divestment Business comprises:

(a) The divestment of Agta Record's automatic pedestrian door business in the Netherlands, Austria, Hungary and Slovenia and of Assa Abloy's automatic pedestrian business in the United Kingdom and France;

(b) The divestment of Agta Record's industrial high-speed door business;

(c) A licence to market Agta Record's automatic pedestrian door products and/or use of Agta Record's brands in Czechia, Finland and Iceland;

(d) An overall license to access and use Agta Record's technology in connection with the manufacturing of automatic pedestrian doors.

(3) By letter of 24 June 2020, Assa Abloy proposed FAAC S.p.A. ('FAAC' or the 'Proposed Purchaser') for approval by the Commission as purchaser of the Divestment Business and submitted the proposed Master Sale and Purchase Agreement and related agreements (the 'Proposed Agreements').[3] Simultaneously, NOCON Nothhelfer Consulting Partnerschaft Diplom-Volkswirte (the 'Trustee') submitted an assessment of FAAC's suitability as a purchaser and, in particular, indicated that it fulfils the purchaser criteria set in section D of the Commitments attached to the Decision (the 'Reasoned Opinion'). Furthermore, the Trustee reviewed the Proposed Agreements, finding them largely consistent with the Commitments. The Trustee yet made a number of recommendations to improve alignment of some specific clauses. Subsequently, the Commission conveyed to the Trustee its observations on wording and scope of certain provisions, in particular with regard to dispute resolution.

(4) On 4 August 2020, the Trustee submitted an updated assessment (the 'Updated Reasoned Opinion'). The Updated Reasoned Opinion stated that the changes recommended in the Reasoned Opinion and requested by the Commission were implemented in the amended agreements (the 'Amended Agreements'), as communicated to the Commission on the same day. The Trustee indicated that, on the basis of the Amended Agreements, the Divestment Business would be sold in a manner consistent with the Commitments.

2. ASSESSMENT OF THE PROPOSAL

2.1. Introduction

2.1.1. Purchaser criteria

(5) Pursuant to the Remedies Notice and paragraph 22 of the Commitments, the purchaser must fulfil the following criteria to be approved by the Commission:

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2 Behavioural commitments pertain to the supply of spare parts and related technical information and servicing tools on fair and reasonable terms for a period of at least ten years in a range of EEA countries, including by means of an online marketplace.

3 This proposal was following the signing of a binding share purchase agreement between Assa Abloy and FAAC for the sale of the Divestment Business (the 'Divestiture Transaction') on 16 June 2020.

(a) The Purchaser shall be an original equipment manufacturer ('OEM') of automatic pedestrian doors and components to such doors, owning proprietary designs and operating adequate manufacturing facilities;

(b) The Purchaser shall have a significant presence in the EEA complementary to that of the Divestment Business;

(c) The Purchaser shall be independent of and unconnected to the Notifying Party and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);

(d) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors; and

(e) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

2.1.2. Brief description of the Proposed Purchaser

(6) FAAC is a limited liability company headquartered in Zola Predosa, Bologna (Italy). FAAC is the operating holding company of FAAC Group that operates worldwide in three main areas: Access Automation, Access Control and Parking technology. FAAC Group consists of 36 commercial companies located in 25 countries, with multiple manufacturing facilities and more than 80 distributors worldwide.

2.2. Original equipment manufacturer of automatic pedestrian doors and components of such doors, owning proprietary designs and operating adequate manufacturing facilities

(7) Assa Abloy submits that FAAC is an OEM of automatic pedestrian doors and components of such doors, and that it owns proprietary designs and operates adequate manufacturing facilities.

(8) In particular, Assa Abloy submits that FAAC internally designs and manufactures its own operators and complete door systems. Assa Abloy considers that FAAC is a company with a particular strength in research and development regarding access automation. Further, Assa Abloy submits that FAAC has eight manufacturing facilities in Italy, Ireland, Bulgaria, Brazil, the United States and South Africa, as well as 12 customisation workshops that assemble semi-finished products or kits.[4]

(9) The Trustee agrees with Assa Abloy's submission in that FAAC is an OEM of automatic pedestrian doors and components of such doors, owning proprietary

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[4] These workshops are located in Australia, Brazil, China, France, India, Malaysia, the Netherlands, Spain, Sweden, United Kingdom and the United States. Out of these workshops, some deal with automatic pedestrian doors, notably the workshops in France, Australia, the Netherlands, Spain, Sweden, the United Kingdom and Belgium.

designs and operating adequate manufacturing facilities. The Trustee notes that one of FAAC's divisions (Access Automation) offers automatic pedestrian doors, among other products. Further, FAAC has seven large manufacturing plants across the world, and 13 workshops for product customisation.

(10) On the basis of the information provided by Assa Abloy and taking into account the Reasoned Opinion submitted by the Trustee, the Commission considers that the Proposed Purchaser is an OEM of automatic pedestrian doors and components of such doors, owning proprietary designs and operating adequate manufacturing facilities.

2.3. Significant presence in the EEA complementary to that of the Divestment Business

(11) Assa Abloy submits that FAAC has a significant presence in the EEA, complementary to that of the Divestment Business. Specifically, Assa Abloy argues that:

(a) FAAC is active across the EEA, particularly in Italy, France, the United Kingdom, Sweden, the Netherlands, Spain, Germany, Belgium, Ireland, Bulgaria and Poland. Hence, Assa Abloy considers that FAAC's activities are not restricted to one part of the EEA market, but that FAAC has an EEA-wide footprint;

(b) Most of FAAC's business activities are located in the EEA. More than 50% of FAAC's employees are dedicated to the EEA;

(c) FAAC has doubled its size in the last 10 years, successfully acquiring and integrating 10 businesses in the EEA;[5] and

(d) FAAC's presence in the EEA is mainly complementary to that of the Divestment Business. Assa Abloy argues that FAAC does not currently have significant presence and only has a limited market share in the jurisdictions relevant for the Divestiture Transaction. According to Assa Abloy, the Divestiture Transaction will allow FAAC to use its existing European operation (including its manufacturing capabilities) to enter or expand in markets where it historically has had a more limited presence.

(12) The Trustee agrees with Assa Abloy's submission regarding FAAC holding a significant presence in the EEA, complementary to that of the Divestment Business. The Trustee submits that the Divestment Business will build on FAAC's already strong presence in Europe. The Trustee points at the number of FAAC employees employed in Europe (approximately half out of 2 700 employees). The Trustee also notes FAAC's manufacturing capabilities (seven plants across the world, of which three are in Europe,[6] apart from FAAC's workshops, of which some are located in France, the Netherlands, Spain, Sweden and the United Kingdom).

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5 Two in Italy, Spain, the United Kingdom and Netherlands, and one in Ireland and Germany. According to Assa Abloy, these businesses have continued to grow in terms of profitability and revenue.

6 In Italy and Bulgaria (component production, customisation and assembly) and in Ireland (electronics manufacturing).

(13) On the basis of the information provided by Assa Abloy and taking into account the Reasoned Opinion submitted by the Trustee, the Commission considers that the Proposed Purchaser has a significant EEA presence complementary to that of the Divestment Business.

2.4. Independence from the Parties

(14) Assa Abloy submits that FAAC is independent from the Parties since neither of the Parties own any share or otherwise exercise any influence over FAAC. FAAC is ultimately owned by a trust that is, in turn, owned by the Archdiocese of Bologna.

(15) According to the Form CO paragraph 111, prior to the Divestiture Transaction, Agta Record functioned as a wholesaler of FAAC's traffic gates and barriers, as well as some entrance control products in the Netherlands. Assa Abloy states that there are no other links between FAAC and the Parties.

(16) The Trustee agrees with Assa Abloy's statement on FAAC's independence from the Parties. The Trustee reports that FAAC confirmed that neither FAAC itself nor any subsidiaries or affiliated companies have any equity stake, or interest in any debt or any other significant structural or financial link with Agta Record or Assa Abloy.

(17) On the basis of the information provided by Assa Abloy and taking into account the Reasoned Opinion submitted by the Trustee, the Commission considers that FAAC is independent from the Parties.

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

(18) Assa Abloy submits that FAAC has the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors in the automatic pedestrian door markets.

(19) In terms of financial resources, Assa Abloy submits that FAAC had a consolidated turnover of EUR 461.1 million in 2019, reported an EBITDA of EUR 98.2 million and total Net Cash available was at EUR 174.1 million. Considering the expected cash flows for the current year, even including the impact of the Covid-19 pandemic, FAAC deems its own resources largely sufficient to finance the purchase of the Divestment Business and its development going forward.

(20) In terms of proven expertise, Assa Abloy submits that FAAC has been operating for over 50 years on the EEA market during which it consistently has expanded both its geographical scope and its product offering. FAAC has developed from a local Italian gate manufacturer into a global supplier of a vast range of automation products. Due to the quality and reliability of FAAC's products, FAAC has a loyal customer base across the EEA. With over 2 700 employees on five continents, 17 production facilities, 34 sales companies and a sales network that spans over 80 countries, FAAC Group is a global player with the knowledge and resources to compete in the automatic pedestrian door markets.

(21) In terms of incentive, Assa Abloy submits that FAAC sees the acquisition of the Divestment Business as a key step in order to further expand its presence in the EEA market with the aim of becoming a top OEM of automatic pedestrian doors in Europe. [Business rationale and strategy of the purchaser].

(22) The Trustee considers the acquisition of the Divestment Business to be an attractive opportunity for FAAC, from a financial point of view. The Trustee finds FAAC to have financial capability to undertake this transaction.

(23) The Trustee reports that FAAC submitted that the entire acquisition would be financed from internal financial resources and no external funding would be applied to this acquisition. FAAC's 2019 annual report includes available cash resources of approximately EUR 176 million (as at 31 December 2019). Furthermore, the Trustee notes that FAAC's net financial position (cash less debt) is also positive at approximately EUR 140 million.

(24) FAAC's accounts show total equity of EUR 499 million or an equity ratio of 76%. Financial liabilities amount to around EUR 8 million and are approximately 1.6% of total equity.

(25) Additionally, the Trustee considers FAAC's business to be robust, with consistent organic growth, in addition to acquisitions, that have increased consolidated sales from EUR 214 million in 2013 to EUR 461 million in 2019. In parallel over the same period, operating profit increased from EUR 40 million to EUR 78 million.

(26) [Confidential financial information].

(27) On the basis of the information provided by Assa Abloy and taking into account the Reasoned Opinion submitted by the Trustee, the Commission considers that FAAC has financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitor.

2.6. Absence of *prima facie* competition problems

(28) The Notifying Party submits that the acquisition of the Divestment Business by FAAC will not create any competition concerns or delays in the implementation of the Commitments.

(29) In this regard, the Notifying Party notes at the outset that the acquisition of the Divestment Business is not subject to any merger control notification requirements.[7]

(30) Moreover, the Notifying Party submits that the acquisition of the Divestment Business would not create any competition concerns due to the complementary nature of FAAC's and the Divestment Business' footprints.[8] In this regard, the Notifying Party argues that FAAC has on most markets no or a very limited presence pre-transaction and that, following the acquisition of the Divestment Business, its market share will still be limited in the relevant markets. However, the Notifying

[7] Reasoned Proposal, paragraph 37. In this regard, an assessment letter of 21 May 2020 provided by the Purchaser's external legal counsel concludes that the acquisition of the Divestment Business *'is not subject to notification to the European Commission nor to any merger control authority in any national jurisdictions'*.

[8] Reasoned Proposal, paragraph 38.

Party argues that in the market for sliding doors in Netherlands and Hungary there is a pre-transaction overlap and the market shares post-transaction will exceed 20%.

(31) In the Netherlands, the Notifying Party submits that FAAC will face strong competition from Assa Abloy, as well as from Dormakaba, Gilgen, Kone, Tormax, Geze, Boon Edam, Label and GU. According to the Notifying Party, all of these players are pan-European OEMs with well-known brands, broad product portfolios, ability to serve all types of customers and capacity to expand production.

(32) In Hungary, the Notifying Party submits that FAAC's pre-transaction market share is very limited (less than 5%) and that the high market share post-transaction is a result of Agta Record's pre-transaction market share. For this reason, the Notifying Party argues that the acquisition of the Divestment Business would only lead to a *de minimis* overlap between FAAC and the Divestment Business in Hungary.

(33) For its part, the Trustee notes that the acquisition of the Divestment Business will lead to higher concentration in the markets for sliding doors in the Netherlands and Hungary.[9] The Trustee ultimately considers unlikely that the acquisition of the Divestment Business by FAAC would give rise to competition concerns in these two markets.

(34) On an overall market for sliding doors in the Netherlands, the combination of FAAC and Agta Record's Dutch businesses would lead to a combined market share of 30-40% (FAAC: 10-20%; Agta Record: 10-20%). Assa Abloy would remain the main competitor, with a market share of 20-30%. The Commission notes that FAAC and Agta Record are active through different sales channels: [confidential information regarding sales channels]. Hence, FAAC's acquisition of the Divestment Business will not result in a loss of direct competition. This is consistent with the results of the market investigation carried out by the Commission, which did not point to FAAC being a close competitor to Assa Abloy and/or Agta Record in the Netherlands.

(35) On an overall market for sliding doors in Hungary, the combination of FAAC and Agta Record's Hungarian businesses would lead to a combined market share of 40-50% (FAAC: 0-5%; Agta Record: 40-50%). Assa Abloy would remain the main competitor, with a market share of 20-30%, followed by Tormax (10-20%) and Geze (10-20%). The Commission notes that the combined market share results from Agta Record's pre-transaction position, to which FAAC will only contribute with a *de minimis* increment. [Confidential information regarding sales channels].

(36) On the basis of the information provided by the Parties, the Reasoned Opinion submitted by the Trustee and the results of the Commission's market reconstruction, the Commission concludes that the acquisition of the Divestment Business by FAAC does not create *prima facie* competition concerns or give rise to a risk that the implementation of the Commitments will be delayed.

(37) This *prima facie* assessment is based on the information available for the purpose of this buyer approval and does not prejudge the competition assessment of the acquisition of the Divestment Business by FAAC by a competent competition authority under applicable merger control rules.

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9 Reasoned Opinion, Section 7.

2.7. Conclusion on purchaser criteria

(38) In light of the above considerations, taking into account the Reasoned Opinion submitted by the Trustee, and taking into account the information available to it, the Commission concludes that FAAC meets the purchaser criteria set out in paragraph 22 of the Commitments

3. ASSESSMENT OF THE PROPOSED AGREEMENTS

(39) According to paragraph 23 of the Commitments, the Divestment Business must be sold in a manner consistent with the Commitments.

(40) The Proposed Agreements submitted by Assa Abloy consist of a Master Sale and Purchase Agreement ('SPA'), two asset transfer agreements and a transfer agreement of the 'Speedcord' trademark. Moreover, the Proposed Agreements contain a number of commercial agreements relating to the Assa Abloy and Agta Record businesses.

(41) As regards Assa Abloy's commercial agreements, the Proposed Agreements contain:

(a) a trademark assignment agreement of three automatic pedestrian door brands;

(b) a trademark assignment agreement of three high-speed door brands;

(c) an exclusive license agreement relating to certain automatic pedestrian door products in France and the United Kingdom; and

(d) a transitional services agreement.

(42) As regards Agta Record's commercial agreements, the Proposed Agreements contain:

(a) a technology transfer agreement;

(b) a trademark assignment agreement of the 'Vercor' trademark;

(c) an exclusive license agreement relating to certain automatic pedestrian door products in the Czech Republic, Finland and Iceland;

(d) a non-exclusive license agreement relating to certain automatic pedestrian door products in Aruba, Albania, Bosnia and Croatia;

(e) an exclusive license agreement relating to certain automatic pedestrian door products in the Netherlands, Belgium, Austria, Hungary and Slovenia;

(f) a supply agreement relating to certain high-speed door components and overhead sectional door products in France; and

(g) a transitional services agreement.

(43) The Notifying Party submits that the Proposed Agreements will ensure the transfer of the Divestment Business in a manner consistent with the Commitments.

(44) In the Reasoned Opinion, the Trustee carried out a detailed review of the Proposed Agreements and submitted that the terms of the Proposed Agreements generally reflected Assa Abloy's obligations set out in the Commitments but that several points of deviation were observable. In particular, the Trustee suggested a number of amendments to the Proposed Agreements, as follows:

(a) SPA: an inclusion of all individuals in the Schedule referring to key personnel intended to transfer as part of the Divestment Business and the substitution of a name in the list;

(b) Exclusive license agreement relating to certain of Assa Abloy's automatic pedestrian door products in France and the United Kingdom: a clarification that the agreement is royalty free;

(c) Agta Record's technology license agreement: a clarification that the list of products and patents is complete, as well as the scope of the agreement;

(d) Exclusive license agreements relating to Assa Abloy's pedestrian door products in France and the United Kingdom and Agta Record's automatic pedestrian door products in the Czech Republic, Finland, Iceland, Netherlands, Austria, Slovenia and Hungary: a clarification that, following the termination of the agreement, prices for spare parts will be adjusted annually in accordance to a price formula contained in the agreement;

(e) Assa Abloy's and Agta Record's transitional services agreements: the correction of a number of incorrect details of products used or respective ownership of products; and

(f) The correct definition of the Trustee's identity in several of the Proposed Agreements.

(45) In addition, the Commission conveyed to the Trustee a number of additional observations. In particular, the Commission suggested an amendment to the dispute resolution clauses to clarify that FAAC remains entitled to bring any claim based on the Commitments by applying the legal remedies provided for in paragraphs 53 to 62 of the Commitments.

(46) In the Updated Reasoned Opinion, the Trustee expressed its satisfaction with the way the proposed amendments and comments were implemented by Assa Abloy in the Amended Agreements. Accordingly, the Trustee indicated that the Amended Agreements comply with the requirements of the Commitments and that the Divestment Business is being sold in a manner that is consistent with the Commitments.

(47) On the basis of the above and taking into account Assa Abloy's submissions as well as the Updated Reasoned Opinion submitted by the Trustee, the Commission concludes that the Divestment Business is being sold in a manner consistent with the Commitments.

4. CONCLUSION

(48) On the basis of the above assessment, the Commission approves FAAC as a suitable purchaser for the above-mentioned reasons.

(49) On the basis of the Amended Agreements, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.

(50) This decision only constitutes approval of the Proposed Purchaser identified herein and of the Amended Agreements. This decision does not constitute a confirmation that Assa Abloy has complied with its Commitments.

(51) This decision is based on paragraph 22 of the Commitments attached to the Commission Decision of 27 February 2020.

For the Commission

(Signed)
Olivier GUERSENT
Director-General