



EUROPEAN COMMISSION
DG Competition

PUBLIC VERSION

Case M.10235 – CVC / MEGA GRUNDBESITZ

Only the English text is available and authentic.

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

Article 9(3)
Date: 11/08/2021

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 Where possible the information omitted has been replaced by ranges of figures or a general description.



Brussels, 11.8.2021
C(2021) 6063 final

COMMISSION DECISION

of 11.8.2021

**relating to Article 9 of Regulation (EC) No 139/2004
referring to case M.10235 - CVC/MeGa Grundbesitz**

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (the ‘TFEU’)¹,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No. 139/2004 of 20.1.2004 on the control of concentrations between undertakings² (the ‘Merger Regulation’), and in particular Article 9(3) thereof,

Having regard to the notification made by CVC Capital Partners SICAV-FIS S.A. on 29 June 2021, pursuant to Article 4 of the said Regulation,

Having regard to the request of the Bundeskartellamt of 20 July 2021,

Whereas:

- (1) On 29 June 2021 the European Commission (‘the Commission’) received notification of a concentration pursuant to Article 4 of the Merger Regulation, which would result from a proposed transaction by which CVC Capital Partners SICAV-FIS SA (‘CVC’ or ‘the Notifying Party’) intends to acquire sole control, within the meaning of Article 3(1)(b) of the Merger Regulation, over GABLE Holding GmbH and MeGa Gundbesitz GmbH and indirectly over Melle Gallhöfer Dach GmbH (all three entities together ‘MeGa’ or the ‘Target’). In this Decision, CVC and MeGa are referred to as ‘the Parties’.
- (2) The Bundeskartellamt received a copy of the notification on 29 June 2021.
- (3) By letter dated 20 July 2021, Germany via the Bundeskartellamt requested the referral to its competition authority of the proposed concentration with a view to assessing it under national competition law, pursuant to Articles 9(2)(a) and 9(2)(b) of the Merger Regulation (‘Referral Request’).

1. THE PARTIES

- (4) The CVC Network consist of CVC and its subsidiaries, and CVC Capital Partners Advisory Group Holding Foundation and its subsidiaries, which are privately-owned

¹ OJ C 115, 9.8.2008, p.47.

² OJ L 24, 29.1.2004, p.1. 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.

entities whose activities include providing investment advice, to and/or managing investments on behalf of, certain investment funds and platforms. CVC recently acquired Stark Group A/S ('Stark') including Stark Deutschland GmbH ('Stark Deutschland'), the latter being a retailer and distributor of predominantly heavy building materials in Germany.

- (5) The Target is a retailer and distributor of predominantly heavy building materials including, in particular, roofing and façade materials. It operates through a network of branches across Germany.

2. THE OPERATION AND THE CONCENTRATION

- (6) The Transaction consists of CVC's acquisition, through Stark Deutschland, over the Target, from Mega Dach 2 S.à r.l (the 'Seller').
- (7) On 3 March 2021, the Seller and Stark Deutschland entered into a sale and purchase agreement under the terms of which Stark Deutschland shall purchase all of the shares in the Target.
- (8) It follows that the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (9) The undertakings concerned have a combined aggregate worldwide turnover of more than 5 000 million in 2019 (CVC EUR [...] million; Target EUR [...] million). The EU-wide turnover of each of the undertakings concerned is more than EUR 250 million (CVC EUR [...]; Target EUR [...] million). The undertakings concerned did not achieve more than two-thirds of their combined Union-wide turnover in one and the same Member State. The notified Transaction therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. THE ARTICLE 9 REFERRAL REQUEST

- (10) By letter dated 20 July 2021, the Bundeskartellamt requested the concentration to be fully referred to the Bundeskartellamt with a view to assessing it under their national competition law. The Bundeskartellamt submits that all the legal requirements for a referral under Articles 9(2)(a) and 9(2)(b) of the Merger Regulation are met.
- (11) First, the Bundeskartellamt argues that the concentration threatens to significantly affect competition in a number of local markets for sale of building materials, in particular roofing and façade materials. The Bundeskartellamt submits that the concentration could have a significant adverse impact on competition in a number of these local markets in Germany and possibly lead to price increases. This preliminary assessment of the Bundeskartellamt is based on the Parties' high combined market shares, their overlapping product portfolio and strong market position.
- (12) Second, according to the Bundeskartellamt, each of these affected local markets for the sale of building materials, in particular roofing and façade materials, is limited to Germany and presents all the characteristics of a distinct market.
- (13) Third, the Bundeskartellamt submits that the affected local markets are small in size and therefore do not constitute a substantial part of the internal market.
- (14) Finally, the Bundeskartellamt submits that it would be the best placed authority to review the effects of the concentration, given that (i) the potential significant impact

of the concentration on competition is limited to Germany, (ii) the Bundeskartellamt has knowledge of the German building materials sector and is familiar with the specifics of the German market, (iii) the competitors, customers and suppliers in the industry are known to the Bundeskartellamt from a number of previous proceedings; and (iv) the Bundeskartellamt would be well equipped to conduct a market investigation especially by approaching small and medium-sized companies active in the construction industry in German.

5. RELEVANT MARKETS

- (15) The Parties are both active in the retail distribution of building materials. Stark operates stores both in Germany and the Nordic countries where it offers a wide range of building materials to professional and non-professional (DIY) customers³. MeGa's retail network is however limited to Germany and focuses on roofing and façade materials.⁴ Moreover, MeGa is not active in the DIY market. The Parties' activities therefore overlap in the markets for the retail distribution of building materials, in particular roofing and façade materials, to professional customers in Germany.

5.1. PRODUCT MARKETS

5.1.1. Introduction

- (16) In a previous decision, the Commission defined a separate market for the distribution of building materials and considered that this market can be further divided into: (i) wholesale to retailers, (ii) retail sale to professional customers, and (iii) retail sale to consumers (non-professional customers) primarily through do it yourself ('DIY') stores; however, this further segmentation was ultimately left open.⁵ The Commission also noted that a distinction may exist between generalist builders merchants ('GBMs') and specialist builders merchants ('SBMs').⁶
- (17) As regards distribution of building materials on the retail level, a segmentation by product category has generally been considered relevant by the Commission where the parties' activities overlapped in particular product groups, for example insulation materials.⁷ However, such potential segmentations have ultimately been left open.

5.1.2. The Notifying Parties' views

- (18) The Notifying Party agrees with a segmentation of the general building material distribution markets by customer type, but submits that those markets should not be segmented further by product category. According to the Parties, their customers typically purchase several products per transaction, and distributors of building

³ According to the Parties, sales to DIY customers generate [...] % of Stark's overall turnover.

⁴ The Parties have taken [...] % of MeGa's overall turnover as the basis for its sales of roofing and façade materials.

⁵ Case COMP/M.7703 – *PontMeyer/DBS*, paragraphs 11–12; Case COMP/M.3407 – *Saint Gobain/Dahl*, paragraphs 12 and 16; Case COMP/M.3142 – *CVC/Danske Traelast*, paragraphs 11–13; Case COMP/M.8733 – *Lone Star/Stark*, paragraph 25; and Case COMP/M.9406 – *Lone Star - Stark Group/Saint Gobain BDD*, paragraph 19.

⁶ Case COMP/M.3943 – *Saint-Gobain/BPB*, paragraph 15.

⁷ Case COMP/M.3407 – *Saint Gobain/Dahl*, paragraph 15; Case COMP/M.3943 – *Saint-Gobain/BPB*, paragraphs 17–19; Case COMP/M.4050 – *Goldman Sachs/Cinven/Ahlsell*, paragraphs 8–13; Case M.8733 – *Lone Star/Stark*, paragraphs 10–24; Case M.9406 – *Lone Star/Stark Group/Saint-Gobain BDD*, paragraph 54.

materials aim to increase their overall sales by offering a comprehensive range of products suited to customer needs.

- (19) Further, the Notifying Party submits that it is not necessary to distinguish between generalist builders' merchants and specialist builders' merchants. According to the Notifying Party, the market for the distribution of heavy building materials, including roofing and façade materials, is served by a variety of merchants who may be viewed as generalists or specialists in varying degrees.
- (20) The Notifying Party submits that the relevant market in this case should be defined as the retail distribution of general building materials to professional customers.

5.1.3. The Commission's assessment

- (21) The market investigation confirmed that building material retail markets should be segmented by type of customer: a majority of both customers and competitors confirm that those retail markets should be split between sales to professional and sales to non-professional customers.⁸
- (22) An overall majority of respondents also considered that building material retail markets should be segmented by category of product, in particular roofing and façade materials.⁹ A customer for example commented: "These are distinct trades that should also be separated in terms of sales".¹⁰

5.1.4. Conclusion

- (23) Based on the above, for the purpose of this decision and without prejudice to further investigation by the Bundeskartellamt, the Commission will consider the following markets and segmentations:
- Retail distribution of general building materials to professional customers
 - Retail distribution of roofing and façade materials to professional customers

5.2. GEOGRAPHIC MARKETS

5.2.1. Introduction

- (24) The Commission considered in past cases national or local geographic market dimensions for the retail distribution of building materials, although the question was ultimately left open. At local level, catchment areas with a 30-km radius around GBM stores and catchment areas with a 50-km radius around SBM stores were considered.¹¹

5.2.2. The Notifying Parties' views

- (25) The Notifying Party submits that the market for distribution of building materials is national in scope, based on a number of arguments. In particular, they contend that competition takes place on a national level because only a small proportion of their sales are made in-store at their branches, Stark's pricing for large projects often uses nationally set online stock prices, and most of Stark's supply agreements are negotiated at national level.

⁸ Questionnaire Q1 to competitors, question 5; Questionnaire Q2 to customers, question 7.

⁹ Questionnaire Q1 to competitors, question 7; Questionnaire Q2 to customers, question 9.

¹⁰ Questionnaire Q2 to customers, question 9.1.

¹¹ Case M.10164 – CVC/Stark Group, paragraph 27; Case COMP/M.7703 - *Pontmeyer/DBS*, paragraph 21; COMP/M.3184 - *Wolseley / Pinault Bois & Matériaux*, paragraphs 19–22.

5.2.3. *The Commission's assessment*

- (26) The market investigation supports the view that the geographic scope of building material retail markets in Germany is local, based on local catchment areas around each point of sale. An overall majority of respondents confirmed that the assessment should be based on a 30-km radius around general builders merchant stores and based on a 50-km radius around specialist builders merchant stores.¹²
- (27) Moreover, contrary to what the Notifying Party claims, a majority of competitors having replied to the market investigation have indicated that at least 50% or more of their sales are concluded and collected at their stores.¹³ This was confirmed by customers, a majority of which have indicated that sales concluded at builders merchant's stores – whether specialized or generalist ones – account for at least 50% of their purchases.¹⁴
- (28) From a supply-side perspective, competitors point out that these are voluminous materials that are difficult to transport. A competitor for instance explained: “We see the scope as more local, since everything else would not be economic due to the margins being much too low and the complexity of the products.”¹⁵ From a demand-side perspective, respondents point out that customers prefer to buy building materials, in particular roofing and façade materials, locally as this guarantees shorter delivery times.

5.2.4. *Conclusion*

- (29) Based on the above, for the purpose of this decision and without prejudice to further investigation by the Bundeskartellamt, the Commission will consider the following geographic market definitions:
- For the retail distribution of general building materials to professional customers: catchment areas with a 30-km radius around Stark's stores (which sell general building materials) and a 50-km radius around MeGa's stores (which are more specialised and focus on roofing and façade materials).
 - For the retail distribution of roofing and façade materials to professional customers: a 30-km radius around Stark's stores (which sell general building materials) and a 50-km radius around MeGa's stores (which are more specialised and focus on roofing and façade materials).

6. COMPETITIVE ASSESSMENT

- (30) The concentration gives rise to horizontal overlaps between the Parties' activities in a number of local markets for the retail distribution of general building materials, in particular roofing and façade materials, to professional customers in Germany.

6.1. Retail distribution of general building materials to professional customers

- (31) Based on data provided by the Parties considering 50-km catchment areas from MeGa stores and 30-km catchment areas from Stark stores, the Transaction gives rise to four locally affected markets (Zittau, Brandenburg, Halle and Bitterfeld).

¹² Questionnaire Q1 to competitors, questions 9 and 10; Questionnaire Q2 to customers, questions 12 and 13.

¹³ Questionnaire Q1 to competitors, question 2.

¹⁴ Questionnaire Q2 to customers, question 4.

¹⁵ Questionnaire Q1 to competitors, question 10.1

However, at this stage, based on its preliminary analysis and without prejudice to further investigation by the Bundeskartellamt, the Commission considers, for the reasons set out below, that it appears unlikely that Transaction would give rise to horizontal competition concerns with respect to the market for retail distribution of general building materials to professional customers.

- (32) While some customers and competitors expressed certain concerns regarding the effects of the Transaction on local markets for the retail distribution of general building materials to professional customers, there are a number of factors which could offset these concerns according to the Commission's preliminary analysis. First, according to the data provided by the Parties¹⁶ considering 50-km catchment areas from MeGa stores and 30-km catchment areas from Stark stores, their combined market shares do not exceed [20-30]% in any of the four locally affected markets. Second, the increment in market shares as a result of the Transaction is moderate, exceeding [5-10]% only in Halle ([5-10]% increment of [20-30]% combined) and Zittau ([5-10]% increment of [20-30]% combined). Third, the Commission's market investigation suggests that Stark's and MeGa's stores are not always perceived as close competitors for general building materials, in particular in light of MeGa's specialisation on roofing and façade materials. A competitor even considers that MeGa is currently not active in general building materials.¹⁷ Fourth, there appear to be a sufficient number of alternative retailers for general building materials in the each of the affected local markets.

6.2. Retail distribution of roofing and façade materials to professional customers

6.2.1. The Notifying Parties' views

- (33) According to the Notifying Party, the Transaction will not give rise to any significant competition concerns for the following main reasons:

- The Parties are not close competitors in any region.
- The combined entity will continue to face intense competition from a range of competitors in the fragmented German market.
- Individual market shares do not indicate any strong combined market position as a result of the Transaction.
- The post-Transaction increment is very low and mostly de minimis due to the Target's shares across all markets.

6.2.2. The Commission's assessment

- (34) The Commission, based on its preliminary analysis, identified a number of factors indicating that the Transaction would threaten to significantly affect competition in a number of local markets for the retail distribution of roofing and façade materials to professional customers in Germany.

¹⁶ Annex 36 to the Form CO and Annex 55 provided as part of the Response to the Commission's Request for Information #4 dated 13 July 2021.

¹⁷ Questionnaire Q1 to competitors, question 20

6.2.2.1. Market shares

- (35) In Germany overall, internal documents indicate that Stark’s acquisition of MeGa would enable the merged entity to become the No 1 or 2 roofing retailer. A Stark document for instance states that the transaction would create a “[extract from a non-public internal document from the Parties]”.¹⁸
- (36) At local level, based on market share data provided by the Parties¹⁹ considering 50-km catchment areas from MeGa stores and 30-km catchment areas from Stark stores, the transaction gives rise to at least 40 affected catchment areas for the retail sale of roofing and façade materials in Germany. In seven of those areas the Parties have combined market shares from [40-50]% up to [50-60]%, five of which have increments of at least [0-5]%, up to [0-5]%. In a further 13 catchment areas, the Parties’ combined market share is between [30-40] and [40-50]%, with increments up to [10-20]%.

Table 1: Catchment areas in the retail distribution of roofing and façade materials to professional customers in Germany with a combined market share above 40% and increment above 1.5%

Location	Stark	MeGa	Combined
Zittau	[0-5]%	[50-60]%	[50-60]%
Dingelstädt	[0-5]%	[40-50]%	[40-50]%
Nordhausen	[0-5]%	[30-40]%	[40-50]%
Erfurt	[0-5]%	[40-50]%	[40-50]%
Gotha	[0-5]%	[40-50]%	[40-50]%

Source: Parties’ estimates

6.2.2.2. Closeness of competition

- (37) The Commission, based on its preliminary analysis, considers that the Parties could be considered as close competitors for the retail distribution of roofing and façade materials to professional customers. Indeed, although MeGa is a builders merchant with a focus on roofing and façade products while Stark has a broader portfolio including roofing and façade products without a specific focus, the preliminary results of the Commission’s investigation indicate that they are close competitors when looking at that specific category of roofing and façade materials products they both offer.
- (38) First, Stark has the strongest position among general builders merchants in roofing and façade materials. This has been ascertained by the market share data at national level submitted by the Parties, which shows that Stark has the highest market share among general builders merchants before BayWa and Bauking.²⁰
- (39) Second, MeGa is the only player among builders merchants focusing on roofing with nationwide coverage, like Stark. This was unequivocally shown in an internal

¹⁸ Annex 11 to the Form CO, page 5.

¹⁹ Annex 58 to the Form CO.

²⁰ Annex 34 to the Form CO.

document provided by the Parties themselves, which states that “[extract from a non-public internal document from the Parties]”.²¹

- (40) Although the geographic scope of the market is local, as further substantiated in Section 5.2 above, such features nonetheless illustrate the closeness of the Parties’ offering – i.e. their greater ability compared to other competitors to service clients’ roofing and façade materials needs for their different projects in different geographic markets in Germany.
- (41) Third, MeGa and Stark have the same offer of roofing and façade materials. According to the Parties themselves, “as can be noted from Annex 33, the product subcategories in the roofing and façade segment of the Parties overlap to a significant extent (almost 90% of the Target’s product types are also supplied by Stark).”²² This has been largely confirmed by market participants. A majority of both competitors and customers who have expressed an opinion have indicated that they view MeGa and Stark as having similar product portfolios in roofing and façade materials.²³
- (42) Fourth, the Commission’s market investigation has confirmed that both customers and competitors see the Parties as close competitors in roofing and façade materials. A clear majority of both customers and competitors view MeGa as a close or very close competitor to Stark and a clear majority of competitors view Stark as a close competitor to MeGa.²⁴ Pre-notification market contacts have also indicated that there is direct competition in roofing and façade materials between Stark and MeGa, including on prices.²⁵
- (43) Fifth, both customers and competitors confirmed that in terms of customer groups, the Parties are viewed as overlapping in the category of mid-size customers. One competitor stated that “at least in the roof and façade product group, identical customer groups are addressed”.²⁶ A customer replied that the Parties “do indeed compete in the roofing and façade product group”.²⁷

6.2.2.3. Impact of the Transaction on competition

- (44) The Commission, based on its preliminary analysis and the results of its market investigation, considers that the Transaction could lead in particular to price increases. A clear majority of customers and competitors who expressed an opinion in the Commission’s market investigation state that the Transaction could lead to price increases in catchment areas affected by the Transaction (e.g., Zittau, Rathenow, Nordhausen, Frankfurt/Oder, Erfurt, Gotha, Genthin, Kirchheiligen).²⁸ One competitor stated that “this could mean that there is practically no competition in some geographic areas in Germany a few years after the transaction.”²⁹ In addition, a majority of customers who expressed an opinion in the Commission’s market investigation indicated that price competition between Stark and MeGa helps

²¹ Annex 17 to the Form CO, page 33.

²² Form CO, paragraph 101.

²³ Questionnaire Q1 to competitors, question 15; Questionnaire Q2 to customers, question 18.

²⁴ Questionnaire Q1 to competitors, question 23.1.2; Questionnaire Q2 to customers, question 20.1.2.

²⁵ Minutes of a call with a competitor on 22 June 2021, paragraph 20.

²⁶ Questionnaire Q1 to competitors, question 17.1 [translation of the German original “*Zumindest in der Warengruppe Dach- und Fassade werden identische Kundengruppen angesprochen*”].

²⁷ Questionnaire Q2 to customers, question 15.1 [translation of the German original “*Im Bereich Dach und Fassade konkurrieren sie durchaus*”].

²⁸ Questionnaire Q2 to customers, question 31

²⁹ Minutes of a call with a competitor on 18 June 2021, paragraph 21.

bring prices down for roofing and façade materials in the area where they are active.³⁰ Eliminating or dampening such price competition between Stark and MeGa would likely lead to negative effects for customers, in particular price increases.

6.2.2.4. Conclusion

- (45) In light of the above considerations, based on its preliminary analysis and without prejudice to further investigation by the Bundeskartellamt, the Commission considers that the Transaction would threaten to significantly affect competition in a number of local markets for the retail sale of roofing and façade materials to professional customers in Germany.

7. ASSESSEMENT UNDER ARTICLE 9(3) OF THE MERGER REGULATION

7.1. The criteria of Article 9(2)(a) of the Merger Regulation

- (46) According to Article 9(3) of the Merger Regulation, the Commission may refer the whole or part of the case to the competent authorities of the Member State concerned with a view to applying the Member State's national competition law if, following a request for referral by that Member State pursuant to Article 9(2) of the Merger Regulation, the Commission considers that the Transaction threatens to significantly affect competition in a market within that Member State, which presents all the characteristics of a distinct market.
- (47) In order for a referral request to be made to a Member State, one procedural and two substantive conditions must be fulfilled pursuant to Article 9(2)(a) of the Merger Regulation.
- (48) Regarding the procedural condition, the referral request must be made within 15 working days from the date on which a copy of the notification of a concentration to the Commission is received by that Member State. Germany, via the Bundeskartellamt, received a copy of the notification of the Transaction on 29 June 2021. The referral request was made by letter received by the Commission on 20 July 2021. Therefore, the Referral Request was made within 15 working days following the receipt of the notification of the Transaction, and, consequently, within the deadline set out in Article 9(2) of the Merger Regulation.
- (49) As to the substantive conditions, first, the requesting Member State is required to demonstrate that, based on a preliminary analysis, there is a real risk that the transaction may have a significant adverse impact on competition, and thus that it deserves scrutiny. Such preliminary indications may be in the nature of prima facie evidence of such a possible significant adverse impact, but would be without prejudice to the outcome of a full investigation.³¹ Second, the requesting Member State is required to show that the geographic market(s) in which competition is affected by the transaction is (are) national or narrower than national in scope and present(s) all the characteristics of (a) distinct market(s).³²

³⁰ Questionnaire Q2 to customers, question 35.

³¹ Commission Notice on Case Referral in respect of concentrations ('Referral Notice'), OJ C 56, 05.03.2005, p. 2, paragraph 35.

³² Referral Notice, paragraph 36.

7.1.1. *Markets within Germany which present all the characteristics of distinct markets*

- (50) The Bundeskartellamt considers the markets for retail distribution of building materials as well as roofing and façade materials to professional customers to be regional or at least not wider than national in scope with strong local elements. In the retail sector the Bundeskartellamt regularly bases the geographic market definition on local catchment areas in line with the actual customer behaviour and demand pattern. For the retail distribution of building materials to consumers, the Bundeskartellamt considered catchment areas of 30km or 30-minute driving time around the respective stores.³³ In its Referral Request, the Bundeskartellamt indicates that it could be inclined to assume a similar radius of at least 30km and bases its preliminary assessment on a 30-km radius around Stark's GBM stores and a 50-km radius around MeGa's SBM stores.³⁴ The Bundeskartellamt also preliminarily concludes that the local markets for retail distribution of building materials as well as roofing and façade materials to professional customers present all the characteristics of distinct markets.³⁵
- (51) The Notifying Party does not contest the Bundeskartellamt's conclusion that the Transaction solely affects markets within Germany which present all the characteristics of distinct markets.
- (52) The Bundeskartellamt's findings with regard to the geographic scope of the markets for retail distribution of building materials as well as roofing and façade materials to professional customers are consistent with the results of the Commission's market investigation (see Section 5.2). Therefore, as well as for the reasons mentioned in Section 5.2 above, it can be concluded that that the markets for the retail distribution building materials as well as roofing and façade materials to professional customers in Germany are distinct from other geographical areas.

7.1.2. *Markets within Germany in which the Transaction threatens to significantly affect competition*

- (53) The Bundeskartellamt considers that the Transaction threatens to have a significant impact on competition in a number of regional markets in Germany for the retail of building materials, in particular roofing and façade materials. The Bundeskartellamt bases its preliminary analysis, inter alia, on the Parties' high combined market shares for the retail sale of roofing and façade materials in a number of local markets defined as 30km around Stark's stores and 50km around MeGa's stores. In particular but not exhaustively, the Bundeskartellamt points to local markets around [...], where the Parties' combined market shares reach up to [50-60]% with increments of up to [5-10]%.³⁶ In addition, the Referral Request makes reference to the strong position of both Parties from a customer perspective, the Parties' overlapping product portfolio for roofing and façade materials and concern over price increases post-Transaction raised by customers and competitors in the Commission's market investigation.³⁷

³³ Bundeskartellamt, case B9-125/07 – *Globus/G.V.M.*, paragraph 53.

³⁴ Referral Request, Annex 1, paragraph 18.

³⁵ Referral Request, Annex 1, paragraph 19.

³⁶ Referral Request, Annex 1, paragraph 22.

³⁷ Referral Request, Annex 1, paragraph 25.

- (54) According to the Notifying Party³⁸, the Transaction does not give rise to competition concerns under any plausible market definition as (i) the Parties' combined market shares and increments resulting from the Transaction are modest, (ii) the Transaction is complementary and the Parties are not close competitors due to their different regional foci, and (iii) the Parties are operating in a highly fragmented sector with a lot of players and choice. The Notifying Party questions the validity of the preliminary results of the Commission's market investigation in light of the low response rates and lack of merger-specificity of customer's concerns. The Notifying Party further submits that a number of affected markets should be excluded as the areas concerned are mapped from Stark's branches that do not sell any quantities of roofing and façade materials and that the remaining number of affected catchment areas can be grouped into a smaller number of clusters with larger radiuses. Finally, the Notifying Party submits that in the areas where the Parties have higher combined market shares, there is always another competitor that is nearer than the other Party's outlet.
- (55) The Commission notes that the prima facie competition concerns of the Bundeskartellamt are, without prejudice to the Bundeskartellamt's further investigation, consistent with the results of the Commission's market investigation and preliminary assessment with respect to a number of local markets for the retail distribution of roofing and façade materials to professional customers as set out in Section 6.2.2 above.
- (56) In reply to the Notifying Party's observations outlined in paragraph (52) and with reference to Section 6.2.2 above, it is reiterated that the Transaction results in 45 affected catchment areas for the retail sale of roofing and façade materials in Germany, including eight with combined market shares between [40-50]% and [50-60]%, with increments of up to [0-5]%, and possibly further catchment areas on which competition could be significantly affected by the Transaction. In addition, the Parties' product portfolios and customer groups for roofing and façade materials overlap to a large extent and both Parties are among the very few players with a Germany-wide presence, as further detailed in paragraphs (38) to (40) above.
- (57) On the probative value of the market investigation, the Commission received several replies from customers and competitors who, to a significant majority, expressed concerns over the Transaction. Both, the questions of the Commission's market investigation and replies of customers and competitors were also specific to the Transaction. Customers and competitors were asked about the effects on prices and quality specifically as a result of the Transaction and specifically for each of the catchment areas where the Parties' combined market shares exceed [40-50]% (the names of these areas were provided in the questionnaire). In addition and as explained in Section 6.2.2.3, customers were asked whether price competition between Stark and MeGa helps bring prices down for roofing and façade materials in the area where they are active.³⁹ Among others, this question specifically addresses the competitive dynamics between the Parties and aims at excluding the risk of customers using the market investigation as an opportunity to express concerns about industry-wide price increases as alleged by the Notifying Party.⁴⁰ It contradicts the Parties' argument that price increases concerns expressed by market participants

³⁸ Notifying Party's submission of 23 July 2021 in response to the Referral Request.

³⁹ Questionnaire Q2 to customers, question 35.

⁴⁰ Notifying Party's submission of 23 July 2021, Section 4.4.4.

would merely be related to general price increases in the sector in Germany. Lastly, the replies received from market participants are not assessed in isolation and are not the sole pillar of the Commission's assessment. Instead, feedback from market participants is evaluated in conjunction with the overall body of evidence including the significant presence of the Parties in several catchment areas.

- (58) On the claim that a number of affected markets should be excluded, as the areas are mapped from Stark's branches that do not sell any roofing and façade materials, the Commission notes that the data submitted by the Notifying Party shows an increment in market shares for the sale of roofing and façade materials for all of the affected catchment areas outlined in Section 6.2.2.1 above. This indicates that both Parties sell roofing and façade materials in these areas. In any event, even the Notifying Party's argumentation would result in 37 affected catchment areas, seven of which with combined shares above [40-50]%.
- (59) As regards the claim that the remaining affected catchment areas can be grouped into seven clusters with a larger radius, the Commission points out that its assessment based on a 50-km radius from MeGa stores and a 30-km radius from Stark stores is in line with its decisional practice, which was also confirmed by the market investigation (see Section 5.2.3).
- (60) With regard to the claim that in the areas where the Parties have higher combined market shares, there is always another competitor that is nearer than the other Party's outlet, the Commission notes that the market investigation showed that the Parties are considered to be close or very close competitors in each of the catchment areas where they have high market shares, for which 30 and 50 kilometre radiuses were considered to be the right basis. Therefore, it does not appear that the closer proximity of other competitors would materially alter the competitive constraint currently exerted between the Parties.
- (61) Overall, the Commission follows the Bundeskartellamt's Referral Request in preliminary concluding that the Transaction threatens to significantly affect competition in a number of local markets for the retail distribution of roofing and façade materials to professional customers in Germany.

7.1.3. *Conclusion*

- (62) In light of the above, the Commission considers that the legal requirements laid down in Article 9(2)(a) of the Merger Regulation are fulfilled, as the Transaction threatens to significantly affect competition in a number of local markets for the retail of roofing and façade materials to professional customers in Germany, which present all the characteristics of distinct markets. Because the requirements under Article 9(2)(a) of the Merger Regulation are met, a further assessment of the conditions of Article 9(2)(b) of the Merger Regulation is not required.

7.2. **The Commission's discretion whether to refer**

- (63) Pursuant to Article 9(3) of the Merger Regulation, in the event that the criteria provided for in Article 9(2)(a) are fulfilled with regard to a proposed concentration, the Commission retains a margin of discretion in deciding whether to refer a given case to a national competition authority.⁴¹

⁴¹ Referral Notice, paragraph 7.

- (64) The Bundeskartellamt submits that it is the best placed authority to review the Transaction, given that (i) the potential significant impact of the proposed concentration on competition is limited to Germany, (ii) the Bundeskartellamt has knowledge of the German building materials sector and is familiar with the specifics of the German market, (iii) the competitors, customers and suppliers in the industry are known to the Bundeskartellamt from a number of previous proceedings; and (iv) the Bundeskartellamt would be well equipped to conduct a market investigation especially by approaching small and medium-sized companies active in the construction industry in German.
- (65) The Notifying Party considers that the Commission is better placed to review the Transaction because it has engaged intensively with the Parties and received extensive data and information prior and after notification of the Transaction, while a referral to Germany would be inefficient and delay the Transaction.⁴²
- (66) In the following recitals, the Commission assesses the appropriateness of a referral in the present case in light of the principles set out in the Referral Notice.
- (67) According to paragraph 9 of the Referral Notice, “[i]n principle, jurisdiction should only be reattributed to another competition authority in circumstances where the latter is more appropriate for dealing with the merger, having regard to the specific characteristics of the case as well as the tools and expertise available to the authority”. The Referral Notice also states that “particular regard should be had to the likely locus of any impact on competition resulting from the merger” and that “[r]egard may also be had to the implications, in terms of administrative effort, of any contemplated referral”.
- (68) Moreover, paragraph 13 of the Referral Notice states that “referral should normally only be made when there is a compelling reason for departing from ‘original jurisdiction’ over the case in question, particularly at the post-notification stage”.
- (69) Contrary to the Notifying Parties’ view, the Commission considers that there are compelling reasons for departing from the original jurisdiction over the present case, by referring the Transaction to Germany.
- (70) First, considering that the geographic scope of the relevant markets is limited to Germany and likely to be local, and that the Transaction is likely to significantly threaten competition in those markets, the Bundeskartellamt is better placed to evaluate any submissions of the Parties in relation to these markets. In particular, the Target is active in Germany and the majority of respondents to the market investigation have indicated that, in their view, the Transaction would have a negative impact on these markets in Germany.
- (71) Second, the Bundeskartellamt has knowledge of the German building materials sector and is familiar with the specifics of the German market. Competitors, customers and suppliers in the industry are known to the Bundeskartellamt from several other proceedings. For example, the Bundeskartellamt conducted an in-depth investigation of a concentration involving two retail distributors of building materials to consumers.⁴³

⁴² Notifying Party’s submission of 23 July 2021, Section 5.

⁴³ Bundeskartellamt, Case B9-125/07 – *Globus/G.V.M.*

- (72) Third, the Bundeskartellamt has extensive experience in conducting in-depth market investigations of transactions involving local markets and outreach to small or medium-sized customers. Recently, the Bundeskartellamt has, for example, conducted a number of in-depth investigations of concentrations in the supermarket and hospital sector.⁴⁴ Similar to the Transaction, these cases involved the definition of local catchment areas and an analysis of local competitive dynamics based on demand and consumer patterns. In its investigations in the hospital sector, the Bundeskartellamt regularly sends questionnaires to a large number of local doctors, whose office size and willingness to respond to questionnaires could be compared to those of roofers, i.e. one of the customers groups most relevant to the Transaction.
- (73) Fourth, the requested referral will preserve the one-stop-shop principle, as the whole case will be referred to a single competition authority, which contributes to administrative efficiency.
- (74) Lastly, it appears unlikely that any additional administrative effort for the Parties due to a referral will be disproportionate. The Bundeskartellamt has already formed a broad picture of the main characteristics of the case and potential competition concerns prior to the filing of its Referral Request. Given its knowledge of the markets, its previous experience in similar market investigations and its language capabilities, the Bundeskartellamt will be in a position to carry out the market investigation in an efficient and effective way.

8. CONCLUSION

- (75) From the above it follows that the conditions to request a referral under Article 9(2)(a) of the Merger Regulation are met with regard to a number of local markets for the retail distribution of roofing and façade materials to professional customers in Germany.
- (76) The Commission also considers that, given the local scope of the markets affected by the transaction, the competent authorities of Germany are better placed to carry out a thorough investigation of the whole case.
- (77) The Commission thus decides to refer the concentration in its entirety.

HAS ADOPTED THIS DECISION:

Article 1

The notified concentration is referred in its entirety to the competition authority of Germany, pursuant to Article 9(3)(b) of Council Regulation (EC) No 139/2004.

⁴⁴ For example, Bundeskartellamt, Case B2-85-20 – *Edeka/Real/SCP*; Case B2-83/29 – *Kaufland/Real*, Case B2-113-19; *Edeka/Real/redos*, Case B3-33-20 – *Evangelisch-Lutherische Diakonissenanstalt zu Flensburg/Malteser Norddeutschland*; Case B3-157-18 – *Ameos/Sana*; Case B3-122-18 – *Cellitinnen Nord/Cellitinnen Süd*.

Article 2

This Decision is addressed to Germany and CVC Capital Partners SICAV-FIS S.A.,
20 Avenue Monterey, L-2163 Luxembourg.

Done at Brussels, 11.8.2021

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President