



EUROPEAN COMMISSION

DG Competition

***Case M. 10473 - PRENATAL RETAIL  
GROUP / FIJACE / NEW MT***

Only the English text is available and authentic.

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

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Article 4(4)  
Date: 26/10/2021



EUROPEAN COMMISSION

Brussels, 26.10.2021  
C(2021) 7858 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Prenatal Retail Group S.p.A.  
Via delle Primule 5  
20815 Cogliate  
Italy

Fijace  
Zone industrielle des Blanchisseries  
38500 Voiron  
France

Autorité de la concurrence  
11 rue de l'Echelle  
75001 Paris  
France

**Subject: Case M.10473 - PRENATAL RETAIL GROUP / FIJACE / NEW MT Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004<sup>1</sup> for referral of the case to France and Article 57 of the Agreement on the European Economic Area<sup>2</sup>.**

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

**Date of filing: 30.09.2021**

**Legal deadline for response of Member States: 21.10.2021**

**Legal deadline for the Commission decision under Article 4(4): 08.11.2021**

Dear Sir or Madam,

## **1. INTRODUCTION**

- (1) On 30 September 2021, the Commission received by means of a reasoned submission (the 'Reasoned Submission') a referral request pursuant to Article 4(4) of the Merger Regulation with respect to a concentration that would result from a proposed transaction by which Prenatal Retail Group S.p.A. ('PRG', Italy) and Fijace ('Fijace', France), the parent companies of Distritoys SAS ('Distritoys', France), intend to acquire joint control over New MT of France (the 'Transaction'). In this Decision, PRG and Fijace are collectively referred to as 'the Parties'.
- (2) The Parties request that the concentration be examined in its entirety by France's competition authority ('the FCA').
- (3) According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to a proposed concentration may request that their transaction be referred in whole or in part from the Commission to the Member State(s) where the concentration may significantly affect competition and which present all the characteristics of a distinct market.
- (4) A copy of the Reasoned Submission was transmitted to all Member States on 30 September 2021.
- (5) By fax of 19 October 2021, the *Autorité de la concurrence* as the competent authority of France informed the Commission that France agrees with the proposed referral.

## **2. THE PARTIES**

- (6) **PRG** is active in the retail sale of baby care products and toys through specialised stores. PRG is a subsidiary of Artsana S.p.A. ('Artsana', Italy), which is a supplier of baby care, health and beauty products, as well as retail sale of baby care products and toys.
- (7) **Fijace** is a holding company active in the toys sector, be it on the retail market of the distribution of toys or games, or on an upstream, downstream or related market.
- (8) **Distritoys** is the holding company of the King Jouet Group ('King Jouet'). King Jouet is active in the retail sale of toys, mainly in France and Switzerland. Distritoys is jointly controlled by PRG and Fijace.
- (9) **New MT** is the vehicle through which Fijace acquired sole control over certain stores previously owned by the Maxi Toys Group, which are located in France, Belgium and Luxembourg.

### **3. THE OPERATION AND CONCENTRATION**

- (10) The Transaction is to be implemented through a share purchase agreement, concluded by the Parties on 16 August 2021.
- (11) The Transaction involves the change from sole control by Fijace to joint control by PRG and Fijace – through their joint venture Distroys – over New MT. Distroys will acquire a further 32%<sup>3</sup> stake in New MT, so that its shareholding will increase to 51.99%. As Distroys is jointly controlled by PRG and Fijace, New MT will also be ultimately jointly controlled by the Parties.

### **4. UNION DIMENSION**

- (12) The Transaction has a Union dimension within the meaning of Article 1(2) of the Merger Regulation.<sup>4</sup> First, the Parties' combined aggregate worldwide turnover in 2020 exceeded EUR 5 billion and the aggregate Union-wide turnover of each of PRG and Fijace in 2020 was more than EUR 250 million. Finally, neither of the Parties achieves more than two-thirds of their aggregate Union-wide turnovers in one and the same Member State.

### **5. ASSESSMENT**

#### **5.1. Introduction**

- (13) The Parties are primarily active in the market for the retail sale of toys and games. Fijace is active in France, Belgium and Luxembourg through the New MT who owns the Maxi Toys stores. PRG is active in France and Belgium through Distroys who owns the King Jouet stores. PRG is not active in Luxembourg, but its parent company, Artsana, has a limited presence in Luxembourg and also Belgium (less than [0-5]% for both countries) in the manufacturing and wholesale supply of toys.<sup>5</sup>
- (14) The Transaction gives rise to horizontal overlaps for the retail sale of toys and games in multiple local areas in France.<sup>6</sup> The Transaction would lead to local horizontally affected markets only in France and would not lead to any other vertically or horizontally affected markets outside of France.<sup>7</sup>

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<sup>3</sup> Currently, New MT's share capital is currently held by Fijace (80.01%) and Distroys (19.99%). Distroys does not hold any specific right of such nature as to give it a decisive influence over New MT, so that the latter is under the sole control of Fijace.

<sup>4</sup> The turnover calculation was subject of a consultation (C.1860), where the case team, in line with article 188 of the Jurisdictional Notice, concluded that the Proposed Transaction is notifiable to the European Commission.

<sup>5</sup> Fijace is active in Belgium only through the New MT (the Maxi Toys stores). When Fijace acquired the Maxi Toys stores the transaction was only notifiable in France as it did not reach the thresholds for a notification in Belgium, Luxembourg or the European Commission - paragraphs 9 and 10 of the Form RS.

<sup>6</sup> Distroys will exit the Belgium market of retail sale of toys and games [...].

<sup>7</sup> Form RS, paragraph 128.

## 5.2. Relevant product markets

- (15) With regard to the retail sale of toys and games, the most recent Commission's decision dates back to 1997<sup>8</sup> when it considered the retail market for outlets which sell a broad assortment of toys to the final consumer throughout the year,
- (16) The FCA has repeatedly assessed the toys and games sector in the last years<sup>9</sup> and defined a product market covering all toys<sup>10</sup>. The FCA did not segment the market into online and offline distribution channels, but distinguished between the following types of physical stores: (i) large specialised stores with a total sales area of more than 200 m<sup>2</sup>; (ii) large food retail stores which have a total sales area exceeding 10 000 m<sup>2</sup>, of which at least 200 m<sup>2</sup> dedicated to toys; and (iii) stores specialised in cultural and leisure activities with a sales area of more than 200 m<sup>2</sup>.<sup>11</sup>
- (17) Nonetheless, it is not necessary for the purposes of the present Decision to conclude on the exact scope of the relevant product markets, as the outcome of the assessment of the referral request would not differ irrespective of any of the plausible product market definitions.

## 5.3. Relevant geographic market

- (18) In a previous decision dating from 1997 the Commission<sup>12</sup> considered the market for the retail sale of toys and games to be national, particularly for the retail chain stores that operate at national level and determine competition parameters such as pricing, marketing, product offering etc.
- (19) In its more recent decisional practice for retail markets for consumer products, however, the Commission has assessed retail sale of several goods within a local area, including when retail operations involve chains active at national level. This was for instance the case for retail of food in specialised stores,<sup>13</sup> retail of sports goods,<sup>14</sup> eyewear,<sup>15</sup> and other products.<sup>16</sup>
- (20) In a very recent precedent concerning specifically the scope of the markets in question in France, the FCA considered that the market for the retail sale of toys and games has a local dimension. In particular,<sup>17</sup> the FCA established the size of the catchment areas based on the location of the targeted shops, with a radius of 15-

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<sup>8</sup> M.890 - Blokker/Toys 'R' Us.

<sup>9</sup> FCA Decision No. 19-DCC-65 (Jellej/Luderix or Toys'R'Us/PicWic), FCA Decision No. 21-DCC 144 (New MT/Maxi Toys).

<sup>10</sup> Excluding game consoles, console accessories, games for consoles and PC considered as part sub-category of the non-food products category.

<sup>11</sup> FCA Decision No 19-DCC-65, para. 18, 28 and 31.

<sup>12</sup> M.890 - Blokker/Toys 'R' Us.

<sup>13</sup> M.10201 - AHOLD DELHAIZE / DEEN ASSETS, paragraph 16 where the Commission considered 10 to 30 minutes' drive isochrones for the local markets.

<sup>14</sup> M.8710 JD / SONAE MC / BALAIKO / JDSH / SPORT ZONE, paragraph 41 where the Commission assessed the concentration based on 30 minutes' drive isochrones.

<sup>15</sup> M.9569 EssilorLuxottica / GrandVision.

<sup>16</sup> Commission decision of 30 November 2006 in Case M.4392 - DSGI/FR-Invest/F-Group JV, paragraph 16; or Commission decision of 25 June 2014 in Case M.7259 - Carphone Warehouse/Dixons, paragraph 30.

<sup>17</sup> FCA Decisions No. 19-DCC-65, para. 77, and No. 19-DCC-132 of July, 16 2019 concerning the acquisition of exclusive control of Nature & Découvertes by Fnac Darty.

minute walking or driving time for stores located in Paris and a radius of 15- or 25-minute driving time for store located elsewhere.

- (21) Based on the above, it appears *prima facie* that it is appropriate to assess whether the proposed transaction may affect competition within local retail markets.

#### 5.4. Assessment of the referral request

##### 5.4.1. Legal requirements

- (22) According to the Commission Notice on case referral (the ‘Notice on Referrals’), in order for a referral to be made by the Commission to one or more Member States pursuant to Article 4(4), the following two legal requirements must be fulfilled:

- a) there must be indications that the concentration may significantly affect competition in a market or markets,<sup>18</sup> and
- b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.<sup>19</sup>

- (23) Based on the information submitted in the Reasoned Submission, the Parties estimate that their combined market share with regard to the horizontally affected markets will be the following for the year 2020 in the following local markets in France:<sup>20</sup>

Local area	The Parties’ combined market share
1. STRASBOURG	[20-30]%
2. VAULX EN VELIN	[20-30]%
3. BEYNOST	[20-30]%
4. BOURG EN BRESSE	[20-30]%
5. ISTRES	[30-40]%
6. ECOLE VALENTIN	[20-30]%
7. EXINCOURT	[30-40]%
8. VALENCE	[30-40]%
9. VERNOUILLET	[20-30]%
10. PACE	[20-30]%
11. L’ISLE D’ABEAU	[30-40]%
12. TIGNIEU JAMEYZIEU	[30-40]%
13. COSNES ET ROMAIN	[30-40]%
14. LANESTER	[20-30]%
15. DECHY	[20-30]%
16. PROVILLE	[20-30]%
17. CHALON SUR SAONE	[30-40]%
18. MACON	[40-50]%
19. THYEZ	[30-40]%
20. CHAURAY	[30-40]%
21. MONTAUBAN	[30-40]%

<sup>18</sup> Further developed in point 17 of the Commission Notice on Case Referrals.

<sup>19</sup> Further developed in point 18 of the Commission Notice on Case Referrals.

<sup>20</sup> Annex 3.3.1.1.2.1 and Annex 3.3.1.1.2.2.

<b>Local area</b>	<b>The Parties' combined market share</b>
22. SAINT BENOIT	[20-30]%
23. BOURG EN BRESSE	[20-30]%
LE COTEAU	[30-40]%
25. SAINT MITRE LES REMPARTS	[20-30]%
26. AUDINCOURT	[30-40]%
27. CHALEZEULE	[20-30]%
28. ROMANS SUR ISERE	[30-40]%
29. SAINT MARCEL LES VALENCE	[30-40]%
30. DREUX	[20-30]%
31. RENNES	[30-40]%
32. SAINT GREGOIRE	[20-30]%
33. ARANDON PASSINS	[40-50]%
34. L'ISLE D'ABEAU	[30-40]%
35. MABLY	[30-40]%
36. LE COTEAU	[30-40]%
37. MONT SAINT MARTIN	[30-40]%
38. LORIENT	[20-30]%
39. PROVILLE	[20-30]%
40. GIVORS	[20-30]%
41. VAULX EN VELIN	[20-30]%
42. HERICOURT	[40-50]%
43. CHALON SUR SAONE	[30-40]%
44. CRECHES SUR SAONE	[30-40]%
45. MACON	[40-50]%
46. SCIONZIER	[30-40]%
47. NIORT	[30-40]%
48. MONTAUBAN	[30-40]%
49. CHASSENEUIL DU POITOU	[20-30]%
50. POITIERS	[20-30]%
51. ANDELNANS	[30-40]%
52. SAINT MAXIMIN LA SAINTE BAUME	[50-60]%
53. BRIGNOLES	[50-60]%

- (24) With regard to the first requirement, the Transaction gives rise to affected markets, more specifically a number of local markets for the retail sale of toys and games through the activities of Distritoys (King Jouet stores), jointly controlled by PRG and Fijace, and the New MT (Maxi Toys stores), controlled by Fijace, in France.
- (25) With regard to the second requirement, the affected markets are all located in France and present all the characteristics of distinct markets
- (26) Based on the information available to it, the Commission considers that the concentration meets the legal requirements for referral set forth in Article 4(4) of the Merger Regulation.

#### 5.4.2. *Additional factors*

- (27) In addition to the verification of the legal requirements, point 19 of the Notice provides that it should also be considered whether referral of the case is appropriate, and in particular “*whether the competition authority or authorities to which they are contemplating requesting the referral of the case is the most appropriate authority for dealing with the case*”.
- (28) Moreover, according to point 20 of the Notice on Referrals, concentrations which are likely to affect competition in markets that have a national or narrower than national scope, and the effects of which are likely to be confined to, or have their main economic impact in a single Member State, are the most appropriate candidate cases for referral to that Member State. This applies in particular to cases where the impact occurs on a distinct market which does not constitute a substantial part of the common market,
- (29) Also, according to point 20 of the Notice on Referrals, the benefit of a ‘one-stop-shop’ is preserved where the referral is made to one Member State only.
- (30) Finally, according to point 23 of the Notice on Referrals ‘*consideration should also, to the extent possible, be given to whether the NCA(s) to which referral of the case is contemplated may possess specific expertise concerning local markets*’.
- (31) In this case, in light of the information submitted in the Reasoned Submission, the Commission considers, first, that the effects of the Transaction are confined to a number of local markets in France and will have their main economic impact in France. Each of the materially affected markets is not wider than national in scope, and all of them are located in France. Therefore, the FCA is well placed to examine the case.
- (32) Second, the FCA has considerable experience assessing competition in the sector affected by the Transaction. Over the last three years, the FCA assessed several transactions for the retail of toys and games in France. The latest case from August 2021 concerned the acquisition of sole control by Fijace over 95 Maxi Toys stores which the FCA examined at national and local level and cleared the transaction subject to remedies. As a result, the FCA is well equipped to assess the impact of the Transaction on competition in the markets in question.
- (33) Third, the requested referral will also preserve the ‘one-stop shop’ principle, as this case will be referred in its entirety to a single competition authority.

#### 5.4.3. *Conclusion on referral*

- (34) On the basis of the information provided by the Parties in the Reasoned Submission, the Transaction meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a market(s) within a Member State which presents all the characteristics of a distinct market.
- (35) Moreover, the requested referral would be consistent with points 19 to 23 of the Notice on Referrals, in particular because the FCA appears to be is the most appropriate authority to review the Transaction.



**6. CONCLUSION**

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

*For the Commission*

*(Signed)*  
*Olivier GUERSENT*  
*Director-General*