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*Case No COMP/M.4215  
– Glatfelter/ Crompton  
assets*

Only the English text is available and authentic.

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

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Article 22 (3)  
Date: 15/05/2006



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.05.2006

SG-Greffe(2006) D/202602

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 22(3) DECISION

To the Office of Fair Trading

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Dear Sir,

**Subject:** Case No COMP/M.4215 – Glatfelter/ Crompton assets  
**Request for referral of 4 April 2006 by the Bundeskartellamt of Germany to the Commission pursuant to Article 22(1) of the EC Merger Regulation**

Ref.: Letter of 2 May 2006 (received on that same day) by Mr. Vincent Smith, Director of Competition Enforcement of the Office of Fair Trading, the competent Competition Authority of the United Kingdom, to Ms Neelie Kroes, Commissioner for Competition.

**I. INTRODUCTION**

- (1) With the above-mentioned request of 4 April 2006 the German Competition Authority (“the Bundeskartellamt”) formally requested the Commission to examine, in application of Article 22(3) of Council Regulation (EC) No 139/2004 (“the EC Merger Regulation”), the concentration whereby the undertaking P. H. Glatfelter Company (“Glatfelter”, USA) acquires sole control of various assets of J R Crompton Ltd (“Crompton”, United Kingdom). In your letter of 2 May 2006 you have expressed your wish, pursuant to Article 22 (2) of the EC Merger regulation, to join the initial request by the German Competition Authority.
- (2) Pursuant to Article 22(1) of the EC Merger Regulation, one or more Member States may request the Commission to examine any concentration, as defined in Article 3 of the EC Merger Regulation, that does not have a Community dimension within the meaning of Article 1 of the EC Merger Regulation but affects trade between Member States and threatens to significantly affect competition within the territory of the Member State or States making the request. Such a request must be made within 15 working days of the date of the notification of the concentration. Pursuant to Article 22(2) of the EC Merger Regulation, any other Member State may join the initial request within a period of 15 working days of being informed by the Commission of the initial request.

- (3) On 14 March 2006 Glatfelter notified the above mentioned concentration to the Bundeskartellamt. On 4 April 2006, the Commission received a referral request pursuant to Article 22(1) of the EC Merger Regulation from the Bundeskartellamt. The Bundeskartellamt has thus made the referral request within 15 working days of the date of the notification as foreseen in Article 22(1) of the EC Merger Regulation.
- (4) The Commission informed, in accordance with Article 22(2) of the EC Merger Regulation, the competent authorities of the other Member States on 4 April 2006 and the undertakings concerned on 7 April 2006 of the request made by the Bundeskartellamt.
- (5) On 2 May 2006, thus within the time limit foreseen in Article 22 (2) of the EC Merger Regulation, the competent Authority of the United Kingdom, the Office of Fair Trading (“OFT”), has joined the referral request.
- (6) **II. THE PARTIES AND THE OPERATION**
- (7) Glatfelter is a stock market listed manufacturer of specialty papers and has production sites in the USA, the Philippines, France and Germany. Through its subsidiaries’ factories Glatfelter manufactures tea-bag paper, paper for coffee-filters and coffee-pods, as well as overlay papers for laminates which are used to produce flooring, furniture and work surfaces. In the Philippines the Glatfelter group produces abaca, a long fibre pulp that is an important raw material for the production of tea-bag and coffee-filter paper.
- (8) Crompton is a leading manufacturer of specialty papers for the tea-bag and coffee-filter industry with three modern paper mills consisting of altogether 5 paper machines in the UK. According to the referral request, two of these machines include the latest and most technologically advanced inclined wire paper machines in the world. In addition, Crompton's paper mills manufacture polypropylene fibres which are needed for the production of heat sealable tea bag papers, as well as overlay paper and fibre casing paper. Crompton has been in administration since 7 February 2006.
- (9) Glatfelter notified to the Bundeskartellamt a proposal to acquire control of various significant assets of Crompton, namely one paper mill (“Simpson Clough”), one paper machine in another paper mill (“PM5 in Devon Valley”), one business unit, [description of contracts]\*. These assets could in themselves constitute a business to which a market turnover can be clearly attributed, so that the assets are the “undertakings concerned” within the meaning of the EC Merger Regulation.<sup>1</sup>

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<sup>1</sup> Commission Notice on the concept of concentration under Council regulation (EEC), para. 11, OJ. C 66 of 02.03.1998, S. 5, and the Notice of the Commission on the concept of undertakings concerned, para. 14, OJ. 66 of 02.03.1998, S.14

- (10) In addition, the Bundeskartellamt was informed that Glatfelter had already acquired other assets from Crompton (“Lydney Paper mill”). Both the OFT and the Bundeskartellamt view these transactions as one single concentration.
- (11) The transactions would not constitute a concentration with a Community dimension within the meaning of Article 1 of the Council Regulation (EC) No. 139/2004, according to the information provided by the competent authorities.

### **III. ASSESSMENT OF THE REFERRAL REQUEST**

- (12) Pursuant to Article 22(3) of the EC Merger Regulation, the Commission may decide to examine the concentration if it considers that (i) it affects trade between Member States and (ii) it threatens to significantly affect competition within the territory of the Member State or States making the request. It follows that if these two legal requirements are met, the Commission may exercise discretion with regard to whether or not it is appropriate that the concentration is examined by the Commission. The Commission has, in its relevant Notice on Case Referral in respect of concentrations (“the Referral Notice”)<sup>2</sup>, set out in a general manner its understanding regarding the appropriateness of particular cases or categories of cases for referral.

#### *Effect on trade between Member States*

- (13) Regarding the first criterion, the OFT argues that it can be concluded that the transaction affects trade between Member States since the markets appear to be cross-border and at least EEA-wide.
- (14) According to paragraph 43 of the Referral Notice, a concentration fulfils the criterion of effect on trade between Member States laid down in Article 22 ECMR if it is liable to have some discernible influence on the pattern of trade between Member States; the Notice also refers by analogy to the Commission Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty.<sup>3</sup>
- (15) The suppliers and customers of both Glatfelter and Crompton are based in a number of European countries. In view of the current exports of paper for tea-bags, coffee-filters and coffee-pads as well as for overlay papers from Crompton to other EU countries, as well as the fact that each of the parties may be regarded as a potential competitor of the other party, the markets for paper for tea-bags, coffee-filters and coffee-pads as well as for overlay papers are likely to be EEA-wide. Therefore, trade between Member States, in particular to and from the United Kingdom and Germany, would be affected.

#### *Concentration threatens to significantly affect competition*

- (16) The letter by the OFT provides on the basis of preliminary enquiries a reasoning on the grounds for application of Article 22 (3) of the EC Merger Regulation. In

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2 OJ C 56, 5.3.2005, p. 2.

3 OJ C 101, 27.4.2004, p. 81.

particular it is indicated that the concentration threatens to significantly affect competition in the market for manufacturing tea-bag paper and coffee-pod paper, at least within the UK.

- (17) According to the information held by the OFT the combined share of supply on a world-wide basis of Crompton and Glatfelter are estimated to be around 60 – 75 % and in the EEA around 65 – 70 %.
- (18) The OFT has indications that the reduction in choice from three to two suppliers that results from the concentration could lead to customer detriment through higher prices or a reduction in capacity. One customer declared to the OFT that tea-bag paper is a major cost item and any increase in cost would in the UK be passed on to consumers. Another customer stated that the merger would result in near monopoly for it as a customer.
- (19) The OFT has indications that there is little choice in suppliers of tea-bag paper products and coffee pod paper products, because of suppliers' production is bound up in long term contracts. Customers expressed to the OFT their concerns on loss of overall capacity in the market as a result of the concentration.
- (20) On the basis of the above and without prejudice to the outcome of the investigations by the Commission, the request to join the referral indicates that the concentration in question threatens to significantly affect competition at least within the territory of the United Kingdom and Germany
- (21) *On the appropriateness of a referral of the present case to the Commission*
- (22) Pursuant to paragraph 45 of the Referral Notice, due account should be given to the fact that as post-notification referrals may entail additional cost and time delay for the merging parties, referrals of concentrations already notified should normally be limited to those cases which appear to present a real risk of negative effects on competition and trade between Member States and where it appears that these would be best addressed at the Community level.
- (23) In the present case, the competitive impact of the operation appears to be at least European-wide. Without prejudice to the outcome of the investigations by the Commission, the case is likely to give rise to serious competition concerns in markets wider than national. Not only has the OFT competition concerns at least for the UK market, but also has the Bundeskartellamt competition concerns at least for the German market. Moreover Glatfelter as well as the administrators of Crompton have indicated to the Commission to be in favour of a referral to the Commission.
- (24) Therefore the Commission has concluded that it is, in the present circumstances, be the best placed authority to assess this concentration.

#### **IV. CONCLUSION**

- (25) After examination of the above-mentioned, the Commission has concluded that the transactions the OFT refers to in its request for are a concentration within the meaning of Article 3 of the Merger Regulation. The Commission considers that the request by the Competition Authority of the United Kingdom to join the initial referral request made by the German Competition Authority for the application of

Article 22(3) is admissible as it meets the requirements laid down in Article 22(2) and 22(3) of the EC Merger Regulation and paragraphs 42-45 of the Commission Notice on Case Referral in respect of concentrations<sup>4</sup>. The Commission therefore has decided to examine the proposed concentration under the Merger Regulation.

- (26) In the light of the above, I would like to inform your Authority that the Commission will initiate proceedings pursuant to Article 10(1) of the Merger Regulation when it has the necessary information for its investigation. In the context of Article 22(3), it is considered that this information should also include the information at the disposal of the national competition authority (initial notification and/or any additional information obtained through preliminary investigation). May I therefore invite you to communicate this information to the Commission as far as such was not yet joined to your letter of 2 May 2006.

For the Commission  
(signed)  
Neelie KROES  
Member of the Commission

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<sup>4</sup> OJ, C56, 5.3.2005, p.2.