



EUROPEAN COMMISSION

DG Competition

Case M.8832 - KNAUF / ARMSTRONG

Only the English text is available and authentic.

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

Article 22(3)

Date: 15/03/2018



EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case M.8832 – Knauf/Armstrong
Request for referral by the Austrian Bundeswettbewerbsbehörde to the Commission pursuant to Article 22(1) of Council Regulation (EC) No. 139/2004 and Article 57 of the Agreement on the European Economic Area¹**

Ref.: Letter of the Austrian Bundeswettbewerbsbehörde of 7 February 2018
Letter of the Comisión Nacional de los Mercados y la Competencia of the Kingdom of Spain of 12 February 2018

Dear Sir or Madam,

1. INTRODUCTION

- (1) With the above-mentioned letters the Republic of Austria formally requests the Commission to examine, in application of Article 22(3) of Council Regulation (EC) No 139/2004 ("the Merger Regulation"), the concentration whereby Knauf International GmbH (Germany, "Knauf") acquires sole control over parts of Armstrong World Industries Inc (United States, "Armstrong"), and the Kingdom of Spain formally joins the request. Knauf and the parts of Armstrong to be acquired are hereafter referred to as the "Parties".

¹ OJ L 1, 3.1.1994, p.3 ("the EEA Agreement").

- (2) Pursuant to Article 22(1) of the Merger Regulation, one or more Member States may request the Commission to examine any concentration as defined in Article 3 of the Merger Regulation that does not have a Union dimension within the meaning of Article 1 of the 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, or if notification is not required, otherwise made known to the Member State. Pursuant to Article 22(2) of the 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. Pursuant to Article 6(3) of Protocol 24 to the EEA Agreement, any EFTA State may join the request within a period of 15 working days from the day on which the Commission informed the EFTA Surveillance Authority of the initial request.
- (3) In the present case, the Parties notified the concentration in the Republic of Austria on 17 January 2018 and in the Federal Republic of Germany on 18 January 2018. Moreover, the transaction would be notifiable in the United Kingdom and the Kingdom of Spain, but no notification was filed in these Member States prior to the referral request.
- (4) The Commission received the referral request made by the Republic of Austria pursuant to Article 22(1) of the Merger Regulation on 7 February 2018.
- (5) In accordance with Article 22(2) of the Merger Regulation, the Commission informed the competent authorities of the other Member States on 8 February 2018 and the EFTA Surveillance Authority on 28 February 2018. The Commission also shared additional information with the Member States and the EFTA Surveillance Authority on 28 February 2018. The following Member States joined the request: United Kingdom (12 February 2018), Kingdom of Spain (22 February 2018), Federal Republic of Germany (1 March 2018), and the Republic of Lithuania (1 March 2018), that is within a period of 15 working days of being informed by the Commission of the Referral Request (on 8 February 2018), thus within the time limit of Article 22(2), second indent, of the Merger Regulation.

2. THE PARTIES AND THE OPERATION

- (6) Knauf, Germany, is a manufacturer of insulation materials, dry-lining systems, plasters and accessories, thermal insulation composite systems, paints, floor screed, floor systems, and construction equipment and tools. It operates 150 production facilities, has sales organisations in over 86 countries and employs 27,500 employees worldwide. Its sales amounted to EUR 6.5 billion worldwide and EUR [...] in the EU in 2016. Knauf is active on markets in Europe, the USA, South America, Russia, Asia, Africa, and Australia.
- (7) Armstrong, United States, designs and manufactures commercial and residential ceiling, wall and suspension system solutions. Armstrong employs over 3,800 employees and its revenues from ceiling operations were in excess of USD 1.2 billion in 2016. Its manufacturing network consists of 26 facilities, including nine plants dedicated to its WAVE joint venture which is a joint venture between

Armstrong and Worthington Industries. The target is the "ceiling business" of Armstrong outside of the Americas ("the Target Business") and its EU-wide turnover was EUR [...] in 2016.

- (8) The transaction notified to the Austrian Bundeswettbewerbsbehörde consists in the acquisition of sole control by Knauf over the Target Business. Therefore, the transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. ASSESSMENT OF THE REFERRAL REQUEST

- (9) In order for a referral to be made by a Member State, one procedural and two substantive conditions must be fulfilled pursuant to Article 22(1) and Article 22(2) of the Merger Regulation. As to the procedural precondition *the referral shall be made at most within 15 working days of the date on which the concentration was notified, or if no notification is required, otherwise made known to the Member State concerned and any other member state shall have the right to join the request within a period of 15 working days of being informed by the Commission of the initial request.* As to the substantial conditions the concentration must: i) *affect trade between Member States;* and (ii) *threaten to significantly affect competition* within the territory of the Member State(s) making the request². If these requirements are met, the Commission may decide to examine the concentration.

Procedural criteria

- (10) As to the procedural condition, the Austrian Bundeswettbewerbsbehörde received a notification letter by Knauf relating to the acquisition of control of the ceiling business outside of the Americas of Armstrong on 17 January 2018. On 7 February 2018, the Austrian Bundeswettbewerbsbehörde made a request pursuant to Article 22(1) of the Merger Regulation that the case be examined by the Commission. Having been informed by the Commission of that request on 8 February 2018, the Comisión Nacional de los Mercados y la Competencia (the 'CNMC') informed the Commission of its intention to join the request on 22 February 2018.
- (11) Therefore, the referral request was made within the deadline of Article 22(1) second indent of the Merger Regulation and the request to join the referral was made within the deadline of Article 22(2) second indent of the Merger Regulation.

Substantive criteria

Effect on trade between Member States

² See also Commission Notice on Case Referral in respect of Concentrations, paragraphs 42-44.

- (12) Regarding the first substantive criterion, a concentration fulfils this requirement to the extent that it is liable to have some discernible influence on the pattern of trade between Member States.
- (13) The Republic of Austria argues that the acquisition of Armstrong's ceiling business by Knauf affects trade between Member States since the relevant geographic market should be defined as regional (including at least the Federal Republic of Germany and the Republic of Austria) and since large part of demand is met through cross-border trade. Furthermore, the Austrian Bundeswettbewerbsbehörde stresses that the Parties are active in several Member States, first and foremost the Federal Republic of Germany, Republic of Austria, the Kingdom of Spain and the United Kingdom. The CNMC of the Kingdom of Spain supports the arguments raised by the Republic of Austria. Trade between Member States is affected since the relevant geographic market is likely broader than national. The Parties have manufacturing facilities in some Member States from which they supply other Member States such as the Kingdom of Spain, where the Parties have high market shares on the basis of those imported goods.
- (14) The Commission considers that the first substantive legal requirement for an Article 22 referral request is met.
- (15) The transaction affects trade between Member States. In the first place, it is possible that the geographic markets will be transnational in geographic scope (while national markets are also a possibility however). In the second place, Knauf and the Target Business operate eight and seven manufacturing facilities for modular suspended ceilings in the EEA respectively. The turnover split by EEA Member State provided by the Parties shows that the manufacturing facilities, even though serving predominantly the respective Member State in which they are located, also export a large share of their production to other Member States as set out in Table 1, leading to significant intra-EEA trade.

Table 1 Revenue split of the manufacturing facilities (2016)

Facility	Turnover split (for the largest three sales destinations)
Knauf Austria	[...]
Knauf Denmark	[...]
Knauf France	[...]
Knauf Germany I	[...]
Knauf Germany II	[...]
Knauf Greece	[...]
Knauf Spain	[...]
Knauf UK	[...]
Armstrong Austria	[...]
Armstrong France I	[...]
Armstrong France II	[...]
Armstrong Germany	[...]
Armstrong UK I	[...]
Armstrong UK II	[...]
Armstrong UK III	[...]

Threat to significantly affect competition within the territory of the Member State making the request

- (16) Regarding the second criterion, paragraph 44 of the Commission's Notice on Case Referral in respect of concentrations ("the Referral Notice")³ provides that a referring Member State should demonstrate that, based on a preliminary analysis, there is a real risk that the transaction may have a significant adverse effect on competition and thus deserves close scrutiny, without prejudice to the outcome of a full investigation.
- (17) The Parties' activities overlap in the production and supply of suspended ceilings, which can be divided in "modular suspended ceilings" and "open suspended ceilings".
- (18) The CNMC submits that the conditions of Article 22 of the Merger Regulation are fulfilled.⁴ In particular, the CNMC argues that the transaction will have a significant adverse effect on competition in the Kingdom of Spain since (i) the merged entity will have a market share of more than one third of the market of modular suspended ceilings; (ii) following the transaction, the two companies with the highest market shares will have a combined market share of more than

³ OJ C 56, 05.03.2005, p. 2.

⁴ All figures in this decision relating to market shares are for the year 2016.

50%, and (iii) each of the remaining competitors will have market shares below [5-10]%. Moreover, there are substantial commercial links between the merged entity and the second largest competitor, Saint Gobain.

- (19) The Commission considers that also the second substantive legal requirement for an Article 22 referral request is met.
- (20) The transaction threatens to significantly affect competition within the territory of the Republic of the Kingdom of Spain. In the first place, the volume and value based market shares for suspended ceilings (including modular and open suspended ceilings) as estimated by the Parties are elevated. The combined market shares for the Kingdom of Spain are [20-30]% in volumes and [30-40]% in value⁵, without prejudice to the outcome of the Commission's investigation in particular as regards the relevant product and geographic market(s). In the second place, the Commission notes that other referring or joining Member States submit that the Parties are particularly close competitors and question the Parties' proposed market definitions and market share calculations so that the concentration levels could actually be higher.
- (21) On the basis of the *prima facie* analysis submitted by the Kingdom of Spain and other Members States that referred the case or joined the referral request, the Commission considers, without prejudice to the outcome of its investigation that the concentration threatens to significantly affect competition within the territory of the Kingdom of Spain.

Appropriateness of the referral

- (22) Pursuant to paragraph 45 of the Referral Notice, 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 level⁶. The CNMC argues that (i) the Commission is better placed to assess this transaction and (ii) an assessment by the Commission will avoid legal uncertainty and it will be more efficient for the Parties.
- (23) At this stage of the procedure, the Commission cannot conclude if the relevant markets are national or regional (comprising more than one member state) in scope. Even if the relevant markets are national in geographic scope, the

⁵ Annex 2 – Market data to responses by the Parties to RFI 1 dated 12 February 2018.

⁶ The categories of cases normally most appropriate for referral to the Commission pursuant to Article 22 are the following: (i) Cases which give rise to serious competition concerns in one or more markets which are wider than national in geographic scope, or where some of the potentially affected markets are wider than national, and where the main economic impact of the concentration is connected to such markets, (ii) Cases which give rise to serious competition concerns in a series of national or narrower than national markets located in a number of Member States, in circumstances where coherent treatment of the case (regarding possible remedies, but also, in appropriate cases, the investigative efforts as such) is considered desirable, and where the main economic impact of the concentration is connected to such markets.

transaction threatens to significantly affect competition in a series of national markets in member states which have requested a referral to the European Commission, namely in the Republic of Austria, the Federal Republic of Germany, the United Kingdom, the Kingdom of Spain and the Republic of Lithuania.

- (24) Without prejudice to the outcome of a full investigation the combined market shares in the Member States which have requested a referral to the European Commission are as follows:

Table 2 Market shares for the supply of suspended ceilings in the Member States which have requested a referral to the European Commission

Member State	Combined share volume based	Combined share value based
Austria	[60-70]%	[60-70]%
Germany	[20-30]%	[20-30]%
Spain	[20-30]%	[30-40]%
United Kingdom	[40-50]%	[30-40]%
Lithuania	up to [70-80]%	up to [60-70]%

- (25) Furthermore, coherent treatment of the case in terms of potential remedies is desirable, taking into account that the Parties' manufacturing facilities are located in few locations in the EEA, serving different EEA countries.
- (26) Therefore, it is appropriate to refer the Transaction to the Commission pursuant to Article 22 of the Merger Regulation.

4. CONCLUSION

- (27) For the above mentioned reasons, the Commission has decided to examine the concentration by which Knauf acquires sole control over parts of Armstrong. This decision is based on Article 22(3) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(signed)
Margrethe VESTAGER
Member of the Commission