



EUROPEAN COMMISSION

DG Competition

***Case M.11032 - VEOLIA / HOFMANN  
GROUP***

Only the English text is available and authentic.

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

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Article 4(4)  
Date: 20/04/2023



EUROPEAN COMMISSION

Brussels, 20.4.2023  
C(2023) 2778 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Germany

**Subject:**        **Case M.11032 – VEOLIA / HOFMANN GROUP**  
**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 Germany and Article 57 of the Agreement on the European Economic Area<sup>2</sup>.**

**Date of filing: 13 March 2023**

**Legal deadline for response of Member States: 3 April 2023**

**Legal deadline for the Commission decision under Article 4(4): 20 April 2023**

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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’).

Dear Sir or Madam,

## **1. INTRODUCTION**

- (1) On 13 March 2023, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the transaction cited above. The parties request the operation to be examined in its entirety by the competent authorities of Germany.
- (2) According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which presents all the characteristics of a distinct market.
- (3) A copy of this Reasoned Submission was transmitted to all Member States on 13 March 2023.
- (4) By letter of 17 March 2023, the German competition authority, the Bundeskartellamt (“FCO”), as the competent authority of Germany informed the Commission that Germany agrees with the proposed referral.

## **2. THE PARTIES**

- (5) Veolia Umweltservice GmbH is a German subsidiary of Veolia Environnement S.A. (“Veolia”), a company headquartered in France and listed on the Euronext Stock Exchange in Paris. Veolia is globally active in optimized resource management and provides water, waste, and energy management solutions to both industrial and municipal clients.
- (6) Mr. Hans-Jürgen Sperber holds a 50 % stake in and jointly controls Johann Sperber GmbH & Co. KG, which provides waste management services in Bavaria. Mr. Sperber also controls two other companies active, respectively, in the real estate sector and in the automobile trade sector.
- (7) The Target is composed of a number of subsidiaries of Friedrich Hofmann GmbH, a company headquartered in Germany.<sup>3</sup> The Hofmann Group is active in the waste management and wastepaper trading.

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

- (8) The proposed transaction involves the acquisition by Veolia Umweltservice of sole control over the Target, with the exception of Johann Sperber and Johann Sperber Verwaltungs, over which Veolia Umweltservice will only acquire joint control by means of the 50% stake currently held by Friedrich Hofmann.

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<sup>3</sup> The Target comprises the following: (i) 100% of the shares in the following companies: ROWE GmbH, Friedrich Hofmann Betriebsgesellschaft mbH, Friedrich Hofmann GmbH Erlangen, Georg Roth Container-Express GmbH, Fritz Reusch Altpapier GmbH, GPA Gesellschaft für Personalplanung und Arbeitnehmerüberlassung mbH, ENTPORT GmbH, NGV – Nürnberger Gewerbemüllverwertung GmbH, K. Bonn Abfallwirtschafts GmbH & Co. KG and K. Bonn Abfallwirtschafts Verwaltungs GmbH, and (ii) 50% of the shares in the following companies: Johann Sperber GmbH & Co. KG and Johann Sperber Verwaltungs GmbH.

- (9) Even if it implies the acquisition of different degrees of control, the proposed transaction constitutes a single concentration within the meaning of paragraph 42 of the Commission’s Consolidated Jurisdictional Notice under the Merger Regulation.<sup>4</sup> First, the undertaking acquiring sole control is also the one acquiring joint control. Second, all the acquisitions comprising the Target are linked *de jure* and are subject to the same Share Purchase Agreement entered into by Veolia Umweltservice and Friedrich Hofmann. Third, these acquisitions serve the same common purpose of combining the Parties’ activities as regards waste management.
- (10) The proposed transaction also provides that Veolia Umweltservice acquires assets held by Friedrich Hofmann, Georg Roth GmbH and We make stars GmbH<sup>5</sup> and used by the Target.
- (11) The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

#### **4. UNION DIMENSION**

- (12) The undertakings concerned have a combined aggregated worldwide turnover of more than EUR 5 billion. Each of at least two of them has a Union-wide turnover in excess of EUR 250 million.<sup>6</sup> Veolia achieves less than two-thirds of its Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension within Article 1(2) of the Merger Regulation.

#### **5. ASSESSMENT**

##### **5.1. Relevant product markets**

- (13) On the basis of the information submitted in the Reasoned Submission, the proposed transaction mainly concerns the markets for the collection of non-hazardous waste in Germany, namely the collection of (i) lightweight packaging (“LWP”), (ii) hollow glass, and (iii) paper, paperboard and cardboard (“PPC”).<sup>7</sup> The proposed transaction further concerns the following markets that are located

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<sup>4</sup> OJ C 95, 16.4.2008, p. 1.

<sup>5</sup> The Parties explain that these three companies are controlled by the same shareholders, Jürgen Hofmann, Christoph Hofmann, Rainer Hofmann, and Markus Hofmann. The transferred assets account for a small share of the total assets of these three companies.

<sup>6</sup> In 2021, Veolia had a world-wide turnover of EUR [...] million and an EU-wide turnover of EUR [...] million, and the Target had a world-wide turnover of EUR [...] million and an EU-wide turnover of EUR [...] million.

<sup>7</sup> The proposed transaction also gives rise, in Germany, to a number of horizontal overlaps in other waste collection markets as well as to horizontal overlaps in the sorting and recycling markets. However, without prejudice to the FCO’s further investigation regarding this element, on the basis of the Commission’s preliminary assessment, this does not appear to give rise to affected markets and will not be discussed further in this decision. The proposed transaction also gives rise to vertical links regarding the collection of green waste, the collection of organic waste and the collection of non-hazardous commercial waste, including the possible segment for the collection of commercial paper (upstream markets) and the markets for the recycling of green waste, the recycling of organic waste, the sorting of non-hazardous commercial waste, the commercialization of recovered paper, the thermal recycling of non-hazardous commercial waste and the potential market for the sorting of recovered paper (downstream markets). The Parties submit that these vertical links do not give rise to affected markets. They will therefore not be discussed further in this decision.

upstream or downstream to the above-mentioned collection markets: the purchase of LWP and hollow glass collection services as a Dual System (upstream), the commercialization of recovered paper (downstream) and a potential market for the sorting of recovered paper (downstream).

- (14) The Commission has previously concluded that the supply of waste management services for hazardous waste is distinct from that for non-hazardous waste.<sup>8</sup> With regard to non-hazardous waste, the Commission has previously differentiated each stage of the waste management process and has defined separate product markets for the collection, sorting and treatment, commercialisation and disposal of non-hazardous waste.<sup>9</sup> Regarding the collection of non-hazardous waste, the Commission has in previous decisions differentiated between the collection of (i) household waste and (ii) commercial and industrial waste.<sup>10</sup> Within the collection of household waste, the Commission has found separate markets for (i) the collection of LWP, (ii) the collection of hollow glass and (iii) the collection of PPC.<sup>11</sup>
- (15) The Commission has in the past considered a market for exemption services for certain waste types. Exemption services providers – called Dual Systems in Germany for LWP and hollow glass – take over the responsibility for the collection and treatment of certain waste types on behalf of the producers. Dual Systems thus tender and contract collection services for LWP or hollow glass. The Commission left open whether the market for exemption services should be segmented depending on the waste type.<sup>12</sup>
- (16) The Commission has previously defined a separate market for the commercialization of recovered paper, distinct from the market for the purchase of recovered paper.<sup>13</sup> The Commission considered a possible segmentation for both the markets for the purchase and commercialization of recovered paper based on the different paper grades but left the exact market definition open.<sup>14</sup>

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<sup>8</sup> Cases M.9969 Veolia/Suez, paragraph 394; M.10047 Schwarz Group/Suez Waste Management Companies, paragraph 8; M.7137 – EDF/Dalkia en France, paragraph 164; M.5901, Montagu/GIP/Greenstar, paragraph 10.

<sup>9</sup> Cases M.10047 Schwarz Group/Suez Waste Management Companies, paragraph 11; M.9164, Remondis/DSD, paragraph 9; M.5901 Montagu/GIP/Greenstar, paragraph 14; M.5464 – Veolia Eau/Société des eaux d’Arles/Société Stéphanoise des eaux, paragraph 26; M.4576, AVR/Van Gansewinkel, paragraph 10.

<sup>10</sup> Cases M.9969 Veolia/Suez, paragraph 407; M.10047 Schwarz Group/Suez Waste Management Companies, paragraph 12; M.5901 Montagu/GIP/Greenstar, paragraph 15; M.4576 AVR/Van Gansewinkel, paragraph 10.

<sup>11</sup> Cases M.9969 Veolia/Suez, paragraph 420; M.10047 Schwarz Group/Suez Waste Management Companies, paragraph 13; M.9164 – Remondis/DSD, paragraphs 9 and 14; M.4576 – AVR/Van Gansewinkel, paragraphs 13-14.

<sup>12</sup> Cases M.9969 Veolia/Suez, paragraph 478; M.10047 Schwarz Group/Suez Waste Management Companies, paragraph 81.

<sup>13</sup> Cases M.9164 Remondis/DSD, paragraph 16; M.8915 DS Smith/Europac, paragraphs 8-23 ; M.6512 DS Smith/SCA Packaging, paragraphs 22-26; M.6101 UPM/Myllykoski and Rhein Paper, paragraphs 204-210; M.3935 Jefferson Smurfit/Kappa, paragraph 12.

<sup>14</sup> Cases M.9164 Remondis/DSD, paragraph 16; M.8915 DS Smith/Europac, paragraphs 10,18 ; M.6512 DS Smith/SCA Packaging, paragraphs 21,25; M.6101 UPM/Myllykoski and Rhein Paper, paragraphs 207; M.3935 Jefferson Smurfit/Kappa, paragraph 12.

- (17) The Commission has not yet addressed a possible market for the sorting of recovered paper.<sup>15</sup> However, the Commission has previously found that the market for the sorting of LWP in the Netherlands is a separate market from the sorting of other waste fractions.<sup>16</sup> The FCO has in the past left open whether the sorting of recovered paper constitutes a separate upstream market with respect to the market for the commercialization of recovered paper or is part of the same market. In past cases, the sorting of recovered paper on behalf of third parties was also investigated by the FCO as a separate market.<sup>17</sup>
- (18) For the purpose of its preliminary assessment under Article 4(4) of the Merger Regulation, the Commission considers that the relevant product markets likely consist of (i) the collection of LWP, (ii) the collection of hollow glass, (iii) the collection of PPC, (iv) the purchase of LWP and hollow glass collection services as a Dual System, (v) the commercialization of recovered paper, and (vi) a possible market for the sorting of recovered paper.

## 5.2. Relevant geographic market

- (19) In the past, the Commission considered the markets for the collection of LWP and hollow glass as being either national or regional in scope, encompassing a waste collection facility's district, its adjoining districts, and the adjoining districts to those.<sup>18</sup>
- (20) The Commission has in the past, in a case relating to the Netherlands, defined the market for the collection of PPC as being national in scope.<sup>19</sup> The FCO delineated the relevant geographic market by drawing a radius of 100 km around the relevant operating facility.<sup>20</sup> The FCO also considered narrower markets by limiting the geographic market to the waste collection facility's district, its adjoining districts, and the adjoining districts to those.<sup>21</sup>
- (21) The Commission defined in past cases the market for Dual Systems in Germany as being national.<sup>22</sup>
- (22) The Commission previously considered a national or EEA-wide market for the commercialization of recovered paper but left the exact geographic definition open.<sup>23</sup>
- (23) The Commission also considered both a national and EEA-wide market definition for the purchase of recovered paper.<sup>24</sup>

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<sup>15</sup> Cases M.9164 Remondis/DSD, paragraph 21.

<sup>16</sup> M.10047 Schwarz Group/Suez Waste Management Companies, paragraphs 11, 12.

<sup>17</sup> FCO case B4-31/16, paragraph 231.

<sup>18</sup> Cases M.9969 Veolia/Suez, paragraph 487; M.10047 Schwarz Group/Suez Waste Management Companies, paragraphs 89-90.

<sup>19</sup> Case M.4576 AVR/Van Gansewinkel, paragraph 16.

<sup>20</sup> FCO case B4-37/14, paragraphs 56, 67.

<sup>21</sup> FCO case B4-31/16, paragraphs 145 f.

<sup>22</sup> Case M.9969 Veolia/Suez, paragraph 527; M.9164 Remondis/DSD, paragraph 17.

<sup>23</sup> Cases M.9164 Remondis/DSD, paragraph 24; M.8915 DS Smith/Europac, paragraph 23; M.6512 DS Smith/SCA Packaging, paragraphs 30-33; M.6101 UPM/Myllykoski and Rhein Paper, paragraphs 213-214; M.3935 Jefferson Smurfit/Kappa, paragraph 13.

- (24) The Commission has not yet addressed a possible market for the sorting of recovered paper.<sup>25</sup> The FCO considered local markets for the sorting of recovered paper with a radius of 100 km around the relevant operating sorting facility.<sup>26</sup>

### 5.3. Affected markets

- (25) The proposed transaction would lead to horizontally affected markets with regard to the collection of various types of non-hazardous waste in Germany. Depending on the exact geographic and product market delineation, the combined market share of the Parties would exceed 20% in Germany, in particular in local markets in the area of Nuremberg, for the collection of (i) LWP where the Parties' combined market shares are between [20-30]% and [40-50]%, (ii) hollow glass where the Parties' combined market shares are between [20-30]% and [30-40]% and (iii) PPC where the Parties' combined market shares are between [30-40]% and [40-50]%.<sup>27</sup>
- (26) The proposed transaction would also lead to three vertically affected markets in Germany. First, between (i) the downstream markets for the collection of LWP and hollow glass where the Parties hold in local markets in Germany market shares between [20-30]% and [40-50]% (for LWP) and [20-30]% and [30-40]% (for hollow glass) and (ii) the corresponding upstream markets for the purchase of collection services as a Dual System where Veolia holds market shares of respectively [20-30]% and [30-40]% in Germany. Second, between (i) the upstream markets for the collection of PPC where the Parties' market shares are between [30-40]% and [40-50]% in local German markets and (ii) the downstream markets for the commercialization of recovered paper, where the Parties' market shares are [5-10]% at EEA-level and at national level, [10-20]% in France, [5-10]% in Germany, [0-5]% in Italy and [0-5]% in Austria. And third, between (i) the upstream markets for the collection of PPC where the Parties' market shares are between [30-40]% and [40-50]% in local German markets (ii) the potential downstream market for the sorting of paper where the Parties' market shares are below 30% in regional German markets.
- (27) Besides these affected markets, the proposed transaction further gives rise to horizontal overlaps in the markets for the purchase and commercialization of recovered paper at EEA-level and in Austria, France, Germany and Italy. However, these overlaps do not lead to affected markets, neither in Germany (subject to the FCO's further investigation), nor outside of Germany. The Commission notes that the Parties have very limited combined market shares, or a very limited increment, in the markets outside of Germany and therefore considers that the proposed transaction is unlikely to affect competition in those markets. For the commercialization of recovered paper, the Parties' combined market shares are as follows: [0-10]% at EEA-level and at national level, [10-20]% in France

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<sup>24</sup> Cases M.8915 DS Smith/Europac, paragraph 17; M.6512 DS Smith/SCA Packaging, paragraph 27; M.6101 – UPM/Mylykoski and Rhein Paper, paragraphs 213-214; M.3935 Jefferson Smurfit/Kappa, paragraph 13.

<sup>25</sup> Cases M.9164 Remondis/DSD, paragraph 21.

<sup>26</sup> FCO case B4-31/16, paragraph 231.

<sup>27</sup> The Parties submit that in the event the market for bulky waste was to be considered as a separate market from the market for the collection of residual and organic waste, the Parties' combined market shares would be between [10-20] and [20-30]%. Their combined market share would exceed 20% ([20-30]%) only if the geographic market would be defined as to include the waste collection facility's district and two layers of adjacent districts.

(increment of [0-5]%), [5-10]% in Germany, [0-5]% in Italy and [0-5]% in Austria. For the purchase of recovered paper, the combined market shares are the following: <10% at EEA-level and at national level, [5-10]% in Germany and [5-10]% in France.

#### **5.4. Assessment of the referral request**

##### *5.4.1. Legal requirements*

- (28) According to the Commission Notice on case referral, 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>28</sup> and
  - (b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.<sup>29</sup>
- (29) With regard to the first requirement, as set out above, the proposed transaction gives rise to affected markets exclusively in Germany, more specifically the markets for the collection of LWP, hollow glass and PPC as well as the markets for the purchase of LWP and hollow glass collection services as a Dual System, the commercialization of recovered paper, and a possible market for the sorting of recovered paper. In these markets, the Parties' combined market shares are in the ranges of 30-40% for horizontal overlaps, and in the ranges of 30-40% at least on the upstream or downstream markets regarding vertical links. Therefore, the first legal requirement set forth in Article 4(4) of the Merger Regulation is met.
- (30) With regard to the second requirement, as set out above, the principal effects of the proposed operation would be restricted to Germany. The overlaps in other Member States do not lead to affected markets, the proposed transaction therefore only leads to affected markets in Germany which present all the characteristics of a distinct market. Therefore, the second legal requirement set forth by Article 4(4) of the Merger Regulation also is met.

##### *5.4.2. Additional factors*

- (31) 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”.
- (32) In addition, point 23 of the Notice states that “[c]onsideration 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, or be examining, or about to examine, another transaction in the sector concerned”.<sup>30</sup>

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<sup>28</sup> Further developed in point 17 of the Commission Notice on Case Referrals.

<sup>29</sup> Further developed in point 18 of the Commission Notice on Case Referrals.

<sup>30</sup> NCA refers to National Competition Authority.



- (33) In this case, the Commission considers that given that the focus of any competitive effects of the proposed transaction is confined to Germany, the FCO appears to be the most appropriate authority to examine the proposed transaction. The FCO has also investigated recent mergers<sup>31</sup> in the sector and carried out a sector enquiry.<sup>32</sup> As a result, it has substantial experience and expertise in examining the markets in question. On 17 March 2023, the FCO informed the Commission that Germany agrees with the proposed referral.
- (34) Finally, the requested referral would preserve the principle of "one-stop-shop" to the extent that the case will be referred to a single competition authority, which is an important factor of administrative efficiency.<sup>33</sup>

#### 5.4.3. *Conclusion on referral*

- (35) On the basis of the information provided by the parties in the Reasoned Submission, the case 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.
- (36) Moreover, the requested referral would be consistent with points 19-23 of the Notice, in particular because the FCO appears to be the most appropriate authority to consider the proposed transaction.

## 6. CONCLUSION

- (37) For the above reasons, and given that Germany has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by Germany. 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*

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<sup>31</sup> See e.g. FCO cases B5-88/22 – Kaatsch/Prometall, B5-31/21 – Rethmann/TSR/Rhein Main Rohstoffe, B5-168/20 – Rethmann/TSR/Willi Hennies, B5-39/21 – OSR/Max Aicher/Hohenloher, B4-21/19 – Remondis/DSD, B4-77/18 – Remondis/Müntefering-Gockeln.

<sup>32</sup> See FCO sector enquiry in the collection and transport of domestic waste of December 2021.

<sup>33</sup> Point 11 of the Commission Notice on Case Referrals.