



EUROPEAN COMMISSION
DG Competition

Case M.10687 - D'IETEREN / PHE

Only the English text is available and authentic.

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

Decision on the implementation of the commitments -
Purchaser approval
Date: 09.02.2023



EUROPEAN COMMISSION

Brussels, 9.2.2023
C(2023) 1071 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

D'Ieteren Group SA
Rue du Mail 50
1050 Ixelles
Belgium

Dear Sir or Madam,

Subject: Case M.10687 – D'IETEREN / PHE
Approval of MACIF as purchaser of Mondial Pare-Brise following your letter of 16 December 2022 and the Trustee's opinion of 23 January 2023

1. FACTS AND PROCEDURE

- (1) By decision of 2 August 2022 (the 'Decision') based on Article 6(1)(b) in connection with Article 6(2) of Council Regulation No 139/2004, the Commission declared the operation by which D'Ieteren Group ('DIG') acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Parts Holding Europe SAS ('PHE' or the 'Target'), together the 'Parties', through the acquisition of PHE's parent company, Dakar Holdings S.C.A., by way of purchase of shares compatible with the internal market, subject to conditions and obligations (the 'Commitments').
- (2) In particular, in order to maintain effective competition, DIG committed to divest, or procure the divestiture of the Mondial Pare-Brise business (the 'Divestment Business') and the Glass Auto Service Label (together, the 'Divestment Businesses'). Specifically, under Section B of the Commitments, the Notifying Party commits to divest:

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- (a) all tangible and intangible assets (including intellectual property rights);
 - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Businesses;
 - (c) all contracts, leases, commitments and customer orders of the Divestment Businesses; all customer, credit and other records of the Divestment Businesses; and
 - (d) the Personnel.
- (3) The present decision concerns only the approval of MACIF as the purchaser of Mondial Pare Brise. The approval of the proposed purchaser of the Glass Auto Service label will be addressed in a separate decision.
- (4) On 14 October 2022, the Commission received a letter from a third party expressing concerns as to whether MACIF would fulfil the purchaser requirement criteria set out in the Commitments attached to the Decision. The third party considers that MACIF will not have the incentive and ability to maintain and develop Mondial Pare-Brise as a viable and active competitive force in competition with the Parties and other competitors. According to the third party expressing concerns, MACIF will restrict access to Mondial Pare-Brise for its competitors and unfairly get access to competitors' sensitive data. In light of this, it takes the view that the approval of MACIF will result in higher glass repair prices and insurance premium increases to the detriment of consumers.
- (5) Due to the French employment law pursuant to which, the consultation of respective workers council has to precede a binding sale agreement, DIG (through Autodistribution) and MACIF signed an Exclusivity Letter on 21 October 2022. After obtaining the opinions of the workers councils of Mondial Pare-Brise and Autodistribution on 18 November 2022 and MACIF on 12 December 2022, DIG and MACIF signed the proposed Share Purchase Agreement (the 'Proposed Agreement') on the 16 December 2022.
- (6) By letter of 16 December 2022, DIG proposed MACIF SAM ('MACIF') for approval by the Commission as purchaser of Mondial Pare-Brise and submitted the Proposed Agreement.
- (7) DIG committed to find a purchaser and enter into a final binding sale and purchase agreement for the Divestment Businesses within 6 months from the date of adoption of the Clearance Decision ('the First Divestiture Period'). The Commission granted on 25 January 2023 an extension of the First Divestiture Period under clause 44 of the Commitments.¹ The First Divestiture Period is extended until 2 April 2023.
- (8) Following this, Advolis, the monitoring trustee (the 'Trustee'), submitted on 23 January 2023 its Reasoned Opinion of MACIF's suitability as a purchaser and, in particular, has indicated that it fulfils the criteria of the purchaser requirements in section D of the Commitments attached to the Decision. In this assessment, the Trustee also indicated that, on the basis of the Proposed Agreement, the

¹ The extension was granted due to a slight delay in the divestment of the Glass Auto Service label, caused by a mandatory consultation procedure under French labour law.

Divestment Businesses would be sold in a manner consistent with the Commitments.

2. ASSESSMENT OF THE PROPOSAL

- (9) MACIF is a French mutual insurance company structured around three main business lines: non-life insurance (including motor vehicle insurance), health insurance, and finance/savings. It has over 9,000 employees and 5,7 million policyholders and an annual turnover of c. EUR 6 billion. MACIF is one of the major car insurers in France, with a portfolio of c.6.2 million contracts, for a value of c. EUR 2.2 billion. In addition, MACIF is part of the French Aéma Groupe ('AEMA'), the 5th French insurance group, which is present in various areas of insurance (property, health, savings, etc.) with more than 18,000 employees and 11 million policyholders and a turnover of c. EUR 11 billion.
- (10) According to the Commitments attached to the Decision, in order to be approved by the Commission, the Purchaser must fulfil the following criteria²:
- (a) The Purchaser shall be independent of and unconnected to the Parties and their affiliated undertakings³ (this being assessed having regard to the situation following the divestiture);
 - (b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as viable and active competitive forces in competition with the Parties and other competitors;
 - (c) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser(s) must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Businesses.

2.1. Independence from the Parties

- (11) According to the information provided by the Notifying Party and the Trustee, there are no capitalistic links between the Parties and MACIF/AEMA. In particular, MACIF/AEMA do not have any shareholding in DIG, PHE, Mondial Pare-Brise or in any joint venture. There are however pre-existing commercial relationships in place between the Parties and MACIF/AEMA. [...]. According to the Notifying Party, those agreements do not impede MACIF/AEMA's independence from the Parties and are in line with the industry and the Commission's decisional practice.
- (12) In its Reasoned Opinion, the Trustee notes that besides the commercial relations mentioned by the Notifying Party there will be enduring links [...]. The Trustee

² Paragraph 17 of the Commitments.

³ Undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice

indicates that those links are however customary and necessary to ensure the viability of the Divestment Business in the short-term.

- (13) The Trustee therefore concludes that MACIF/AEMA can be deemed independent of and unconnected to the Parties and its Affiliated Undertakings.
- (14) In light of the absence of any structural links between MACIF/AEMA and the Parties and the existence of only limited contractual relations, the Commission takes the view that MACIF/AEMA is independent of and unconnected to the Parties and its Affiliated Undertakings.

2.2. Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

Financial resources

- (15) The Notifying Party submits that MACIF has sufficient financial resources to acquire, maintain and develop the Divestment Business in an efficient and competitive manner. MACIF's annual turnover in 2021 was c. EUR 6 billion, with a net result (Group share) of c. EUR 149 million. According to the Notifying Party, MACIF's solvency funds exceed more [...] times its solvency capital requirement. The Notifying Party further submits that AEMA, having a similar level of solvency ratio as MACIF, achieved a turnover of c. EUR 11 billion and a net result exceeding EUR 100 million in 2021. In addition, the Notifying Party states that the acquisition purchase price of EUR 102 million is fully equity financed by MACIF.
- (16) According to the Trustee, MACIF reported a high level of solvency ratio throughout in the last two years (ranging from [...]% to [...]%) and has been reasonably profitable since [...], with a profit of EUR [...] in 2021 (and [...] in 2020). The Trustee further indicates that the purchase of the Divestment Business is fully equity financed by MACIF. The Trustee therefore concludes that it is a profitable company with a sound financial and solvency position and that MACIF's financial resources are sufficient to support and develop the Divestment Business going forward.
- (17) In view of (i) MACIF's resources and (ii) the favourable opinion of the Trustee, the Commission concludes that MACIF will have the financial resources to maintain and develop the Divestment Business.

Proven expertise

- (18) The Notifying Party submits that MACIF as an insurer has demonstrated expertise in working with third-party providers or suppliers of complementary services that are either controlled by or serve competing insurers. In particular, the Notifying Party considers that MACIF is particularly experienced in the support of these providers in their national and foreign growth ambitions. By citing several examples of acquisitions, the Notifying Party also shows MACIF's history of successfully purchasing and integrating providers or suppliers of such complementary services. Moreover, the Notifying Party submits that MACIF, having a portfolio of nearly 6.2 million contracts with insured motorists, has developed a deep understanding of the motor vehicle industry due to its partnerships with car repair networks.

- (19) In its Reasoned Opinion, the Trustee considers that MACIF is a well-established insurer in France that has been working with several car repair networks. According to the Trustee, MACIF has been working on developing complementary services to its policy holders through various partnerships based on an open model, i.e. open to other insurers. Moreover, the Trustee notes that [...], a subsidiary of MACIF that provides [...] and also serves competing insurers, confirmed that it does not share personal information regarding its clients to its shareholder MACIF.
- (20) The Trustee concludes therefore that MACIF has the proven expertise to maintain and develop the Divestment Business.
- (21) In view of (i) MACIF's expertise in the car repair sector, (ii) MACIF's acquisitions to develop complementary services to its policy holders, (iii) [...] and (iv) the favourable opinion of the Trustee, the Commission concludes that MACIF has the necessary expertise to maintain and develop the Divestment Business.

Incentive

- (22) The Notifying Party submits that Mondial Pare-Brise's business structure and investments will be continued. MACIF will maintain the stability of existing partnership and support the development of new partnerships with business providers in order to increase the value of the Divestment Business [...].
- (23) The Notifying Party further submits that MACIF will not interfere within Mondial Pare-Brise's autonomous structure. The Divested Business' management team will be retained and provided access to central functions of MACIF if needed (e.g. [...]). According to the Notifying Party, there will be no risk of sensitive information exchange between MACIF and Mondial Pare-Brise due to the implementation of appropriate ring-fencing measures that MACIF has committed to undertake in the Proposed Agreement. In addition, the Notifying Party notes that MACIF will fully support Mondial Pare-Brise's management business plan by contributing to its volume growth ambition and developing its business in high value-added technology segments. According to the Notifying Party, the Divested Business' internal and external growth will be supported through [...] financial know-how and external growth experience. Mondial Pare-Brise's owned branch network will be strengthened [...] and the network of franchisees will be further developed.
- (24) The Trustee notes that MACIF's incentive is to monitor and control costs of the value chain and to ensure that the Divestment Business remains a player which enters into framework agreements with insurers, charging moderate prices. According to the Trustee, MACIF aims at [...] and consequently reducing its overall glass breakage costs by improving its customer experience. The Trustee further notes that [...] demonstrates MACIF's strong interest in Mondial Pare-Brise and incentive to maintain and develop the business. Moreover, the Trustee indicates that MACIF's pursued strategy for the Divestment Business i.e. reinforcing Mondial Pare-Brise's relationships with insurers and keeping glass repair prices in check, gives a strong incentive to third insurers to continue working with a MACIF-owned Mondial Pare-Brise. Any concerns regarding data can be addressed through contractual means and the Trustee notes in that respect that MACIF has already confirmed that it intends to ring-fence third party information within the Divestment Business.

- (25) The Trustee therefore concludes that MACIF has the incentive to maintain and develop the Divestment Business.
- (26) The Commission contacted MACIF's competitors in order to investigate the concerns expressed regarding the MACIF's vertical integration into vehicle glass repair. The majority replied that concerns raised about sensitive data sharing could be addressed via contractual arrangements.⁴ Even though some competing insurers take the view that Mondial Pare-Brise could impose higher prices on their policy holders, the majority of them noted that they do not expect an impact on the market after MACIF's acquisition and that MACIF, despite being a vertically integrated purchaser, would be suitable. The Commission therefore considers that the acquisition of the Divestment Business by MACIF would not reduce their incentive to compete downstream.
- (27) In view of (i) the profitability of the operations of the Divestment Business, (ii) the complementarity with MACIF's operations in the value chain, (iii) MACIF's growth plans for the Divestment Business, (iv) its intention to ring-fence third party information and (v) the favourable opinion of the Trustee, the Commission concludes that MACIF has the incentives to maintain and develop the Divestment Business.

Conclusion on financial resources, proven expertise and incentive

- (28) On the basis of the above, the Commission considers that MACIF has sufficient financial resources, proven expertise, and incentives to maintain and develop the Divestment Business as a viable and active competitor in competition with Carglass and other players in the market.

2.3. Absence of prima facie competition problems

- (29) The Notifying Party submits that MACIF and the Divestment Business do not overlap horizontally since MACIF is not active in the market for vehicle glass repair and replacement services where the Divestment Business operates. The Notifying Party further submits that there is a vertical relationship between MACIF, as a provider of motor vehicle insurance, and Mondial Pare-Brise, as a provider of vehicle glass repair and replacement services. According to the Notifying Party, vertical links are a common feature in the automotive repair sector that will not prevent competing insurers to work with Mondial Pare-Brise as evidenced by other examples of vertical integration in this sector. Moreover, the Notifying Party states that the market shares are limited on the respective markets, MACIF's estimated market share being [10-20]% and Mondial Pare-Brise's approximately [10-20]%. As a result of these low market shares on the respective markets, the Notifying Party submits that there cannot be any input foreclosure for insurers, nor customer foreclosure for repairers.
- (30) The Notifying Party states that the Proposed Agreement is subject to the approval by the French Competition Authority ('FCA') and to the approval by the European Commission of MACIF as the purchaser. The Notifying Party subsequently confirmed that the FCA cleared the proposed acquisition of Mondial Pare-Brise by

⁴ Replies to questions A.A.5, B.A.4 and D.2 from competitors to the Commission's eRFI of 18 November 2022.

MACIF on 23 January 2023.⁵ According to the Notifying Party, there is no risk that the implementation of the Commitments will be delayed as the Divestment Business as a standalone legal entity does not require any carve out and DIG/PHE and MACIF are willing to advance the transaction as quickly as possible.

- (31) Despite the existing vertical link between MACIF and the Divestment Business, the Trustee indicates that MACIF's market shares of below [10-20]% in value [...] and Mondial Pare-Brise's market shares of [10-20]% in volume and [5-10]% in value do not suggest the existence of prima facie competition concerns. The Trustee therefore concludes that the acquisition of the Divestment Business by MACIF does not create any prima facie competition concerns.
- (32) Moreover, the Trustee confirms that the closing of the transaction is subject to the aforementioned two conditions and notes that the transaction has been notified by MACIF to the FCA on the 22 December 2022. The Trustee concludes that it does not anticipate any delay to the planned acquisition of the Divestment Business.
- (33) As a consequence, in light of (i) the absence of any horizontal overlap between MACIF and Mondial Pare-Brise, (ii) the vertical relationship which is unlikely to give rise to any foreclosure concerns, (iii) the clearance by the FCA, (iv) the Reasoned Opinion of the Trustee, the Commission takes the view that the acquisition of the Divestment Business by MACIF is not likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed.

3. ASSESSMENT OF THE PROPOSED AGREEMENT

- (34) The Notifying Party submits that the Divestment Business is transferred in a manner consistent with the Commitments and provides a comparison of the provisions of the Commitments and the corresponding provisions in the Proposed Agreement. The Proposed Agreement was signed on 16 December 2022.
- (35) The Trustee takes the view that the terms and conditions of the Proposed Agreement, including the draft 'TSA'⁶ appended to it, comply with the Commitments.
- (36) Based on the information provided by the Notifying Party and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that the Divestment Business is being sold in a manner consistent with the Commitments.

4. CONCLUSION

- (37) On the basis of the above assessment, the Commission approves MACIF as a suitable purchaser for the above-mentioned reasons.

⁵ Email from [...] to the case team, dated 23 January 2023.

⁶ The Trustee notes that even if named "draft", the TSA is in final form and just minor adjustments will be made at Closing related to the signature process.

- (38) On the basis of the Proposed Agreement, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
- (39) This decision only constitutes approval of the proposed purchaser identified herein and of the Proposed Agreement. This decision does not constitute a confirmation that DIG has complied with its Commitments.
- (40) This decision is based on paragraphs 18 and 19 of the Commitments attached to the Commission Decision of 2 August 2022.

For the Commission

(Signed)
Olivier GUERSENT
Director-General