



EUROPEAN COMMISSION
DG Competition

Case M.11049 - TRITON / CAVERION

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

Article 4(4)
Date: 22/05/2023



EUROPEAN COMMISSION

Brussels, 22.5.2023
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Finnish Competition and Consumer
Authority
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Subject: **Case M.11049 – TRITON / CAVERION**
Commission decision following a reasoned submission pursuant to
Article 4(4) of Regulation No 139/2004⁽¹⁾ for referral of the case to
Finland and Article 57 of the Agreement on the European Economic
Area⁽²⁾

Date of filing: 11.04.2023

Legal deadline for response of Member States: 03.05.2023

Legal deadline for the Commission decision under Article 4(4): 22.05.2023

⁽¹⁾ OJ L 24, 29.1.2004, p. 1 . 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.

⁽²⁾ OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

Dear Sir or Madam,

1. INTRODUCTION

- (1) On 11 April 2023 the Commission received by means of a Reasoned Submission a referral request to the Finnish Competition and Consumer Authority (the ‘KKV’) pursuant to Article 4(4) of the Council Regulation (EC) No 139/2004 (the ‘Merger Regulation’) with respect to the case cited above. The parties request the operation to be examined, as regards the effects of the transaction on competition in Finland (‘Finnish Transaction’), by the KKV. The Commission would remain competent to review the effects of the transaction outside of Finland.
- (2) A copy of the Reasoned Submission was transmitted to all Member States on 11 April 2023.
- (3) By letter of 21 April 2023, the KKV, as the competent authority of Finland, informed the Commission that Finland agrees to the proposed referral.

2. THE PARTIES

- (4) **Triton Fund V**, which belongs to the Triton group of funds and whose general partners are **Triton Managers V Limited** and **TFF V Limited**, both of Jersey, is an investment fund managing and advising companies, primarily medium-sized businesses headquartered in Central and Northern Europe, in particular in Austria, Germany, Switzerland, the Benelux and the Nordic countries. Triton Fund V focuses especially on businesses in four core sectors: Business Services, Industrials, Consumer, and Health. Triton Fund V and the other Triton funds and their general partners and controlled portfolio companies are jointly referred to as ‘**Triton**’.
- (5) **Caverion Oyj** (‘**Caverion**’) is a public limited liability company headquartered in Vantaa, Finland, and operates in building technology and industrial processes installation and maintenance, notably in heating, electricity, energy, ventilation, cooling, building automation and building security technical disciplines. In addition, Caverion provides maintenance services for industrial manufacturing processes such as hydropower, pulp & paper manufacturing and chemical processes.
- (6) Triton and Caverion are together referred to as the ‘**Parties**’.

3. THE CONCENTRATION

- (7) The case relates to the indirect acquisition of sole control over Caverion by Triton (the ‘Transaction’) through Crayfish BidCo Oy, an acquisition vehicle controlled by Triton. The Transaction would be accomplished through a voluntary public tender offer for all the issued and outstanding shares of Caverion. Therefore, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

4. EU DIMENSION

- (8) In 2021,⁽³⁾ the Parties had a combined aggregate world-wide turnover of more than EUR 5 000 million (Triton: EUR [...]; Caverion: EUR [...]). Each of them

⁽³⁾ Triton provided Turnover figures for Triton and Caverion for the financial year 2021 (Form RS, paragraph 52).

had an EU-wide turnover of more than EUR 250 million (Triton: EUR [...]; Caverion: EUR [...]), but they Triton and Caverion did not achieve more than two-thirds of their respective aggregate EU-wide turnover within one and the same Member State.

- (9) Thus, the Transaction has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

5. ASSESSMENT

5.1. Introduction

- (10) Based on the information provided by the Parties, the Transaction gives rise to the following horizontally affected markets in Finland, which present all the characteristics of distinct markets: horizontally affected markets between Triton and Caverion in (i) Building engineering projects and maintenance for ventilation, ⁽⁴⁾ (ii) Building automation (projects and maintenance services); and (iii) Sale of building automation products and components. ⁽⁵⁾
- (11) For completeness, if the geographic scope of the building automation market were to be considered EEA-wide, as indicated in paragraph (26) below, the Transaction would not give rise to affected markets.

5.2. Relevant Markets

5.2.1. Building Engineering

5.2.1.1. Product Market

- (12) In past decisions, the Commission considered that the market for building engineering includes the design, installation and maintenance of the electrical and mechanical infrastructure of buildings necessary for power supply, fire protection, security and access control as well as HVAC systems of buildings. ⁽⁶⁾
- (13) In addition, the Commission considered several narrower segmentations:
- a. Distinguishing between the provision of (i) electrical engineering, (ii) HVAC engineering and (iii) mechanical engineering services. ⁽⁷⁾ Within each of these three segments, the Commission also considered possible further segmentations based on (i) the type of work (installation versus maintenance) and (ii) the type of customers (residential versus non-residential, and within the non-residential segment, between infrastructure, industry, and tertiary); ⁽⁸⁾

⁽⁴⁾ Building engineering refers to the design, construction, installation, and maintenance of technical infrastructure of buildings. Such technical infrastructure includes, e.g., power supply, fire protection, security and access control as well as heating, air conditioning, ventilation and sanitation (HVAC) systems. Operators in the building engineering markets for example install technical infrastructure in different kinds of buildings (from residential buildings to industrial plants) and maintain the installed infrastructure (Form RS, paragraph 71).

⁽⁵⁾ Form RS, paragraph 64 and ff.

⁽⁶⁾ M.5210 - Siemens / Ortner / JV, dated 31 July 2008, paragraph 11.

⁽⁷⁾ M.10575 - Bouygues / Equans, dated 19 July 2022, paragraph 39; M.5701 - Vinci / Cegelec, dated 26 March 2010, paragraph 9 and ff; and M.6623 - Vinci / EVT Business, dated 31 August 2012, paragraph 7 and ff.

⁽⁸⁾ M.6623 - Vinci / EVT Business, dated 31 August 2012, footnotes 12-13; M.10575 - Bouygues / Equans, dated 19 July 2022, paragraph 40; M.10314 - Vinci / S.A. Energia, dated 25 October 2021, paragraph 9.

- b. Distinguishing between engineering for electrical, water and ventilation installations. ⁽⁹⁾ Concerning *electrical engineering services*, the Commission has considered a possible sub-segmentation between (i) high (V220 to V 380) and low (V0 to V48) voltage installations, service and maintenance, and (ii) between large and small installation projects. ⁽¹⁰⁾ Regarding *water services*, the Commission considered but left open whether large and small sanitary installations constituted separate product markets. ⁽¹¹⁾ Finally, regarding *ventilation services* the Commission considered but left open whether large and small ventilation projects constituted separate product markets. ⁽¹²⁾

- (14) Furthermore, in past cases the KKV considered segmenting the overall building engineering market into projects and maintenance services, leaving however the market definition open. ⁽¹³⁾
- (15) Triton submits that the relevant product market should comprise the overall building engineering market. ⁽¹⁴⁾ Moreover, Triton argues that, even if the building engineering market were to be further segmented per technical discipline (*i.e.*, between electrical, heating & sanitation, and ventilation engineering), it would not be relevant to sub-segment the installation or maintenance services of building technology per type of customer group. ⁽¹⁵⁾
- (16) However, for the purpose of the assessment of the proposed referral, whether installation and maintenance with respect to building engineering services (and their relevant discipline segments) belong to the same product market can be left open as the Transaction gives rise to affected markets even in the wider market that includes both installation and maintenance. Therefore, the outcome of the assessment would not be different under any of the plausible market definitions.

5.2.1.2. Geographic Market

- (17) In past decisions, the Commission considered the relevant geographic markets for the building engineering as well as possible sub-segments of electrical, heating and sanitation, ventilation engineering segments, and their possible sub-segments to be national ⁽¹⁶⁾ or narrower than national (*i.e.*, local) ⁽¹⁷⁾ in scope.

⁽⁹⁾ M.3004 - Bravida / Semco / Prenad / Totalinstallatören / Backlunds, dated 13 December 2002, paragraph 8 and ff; and M.6623 - Vinci / EVT Business, dated 31 August 2012, paragraph 8; M.7785 - Triton / Imrech Nordic, dated 29 October 2015, paragraph 13.

⁽¹⁰⁾ M.3004 - Bravida / Semco / Prenad / Totalinstallatören / Backlunds, dated 13 December 2002, paragraph 10; and, M. 2118 - Telenor / Procuritas / ISAB / Newco, dated 25 September 2000, paragraph 11.

⁽¹¹⁾ M.3004 - Bravida / Semco / Prenad / Totalinstallatören / Backlunds, dated 13 December 2002, paragraphs 13-15.

⁽¹²⁾ M.3004 - Bravida / Semco / Prenad / Totalinstallatören / Backlunds, dated 13 December 2002, paragraphs 13 and 16-18.

⁽¹³⁾ Decision Assemblin AB / Fidelix Holding Oy, para 49 et seq. and Decision Iivo BidCo (Triton) Oy / Neloset Yhtiöt Oy.

⁽¹⁴⁾ Form RS, paragraph 75.

⁽¹⁵⁾ Form RS, paragraphs 75-76.

⁽¹⁶⁾ M.10719 - PGGM / DIF / Fudura, dated 3 August 2022, paragraphs 15-18; .10575 - Bouygues / Equans, dated 19 July 2022, paragraph 70; M.10314 - Vinci / S.A. Energia, dated 25 October 2021, paragraphs 16-19; M.9270 - Vinci Airports / Gatwick Airport, dated 15 March 2019, paragraphs 23-24; M.6623 - Vinci / EVT Business, dated 31 August 2012, paragraphs 13-16; and, M.3653 - Siemens / VA Tech, dated 13 July 2005, paragraph 441.

- (18) Moreover, the KKV has also previously considered the scope of the relevant geographic markets to be national or narrower than national, leaving the exact geographic scope of the markets open. ⁽¹⁸⁾
- (19) Triton considers that the markets for building engineering and its possible sub-segments are national in scope. ⁽¹⁹⁾
- (20) On the basis of the above, the markets for building engineering and its potential sub-segments are likely national or narrower than national in scope, although for the purpose of the assessment of the proposed referral, the exact geographic scope can be left open as the outcome of the assessment would not be different under any of the plausible market definitions.

5.2.2. *Building Automation*

5.2.2.1. Product Market

- (21) In past decisions, the Commission considered building automation as part of an overall market for building control that also includes the measuring, control, regulation and management of heat, ventilation, air-conditioning and other technical installations, in commercial and large residential buildings. ⁽²⁰⁾
- (22) The Commission has considered but left open whether the market for building control could be further segmented between: (i) equipment and components for building control systems, (ii) building control systems including installation, and (iii) systems' servicing. ⁽²¹⁾
- (23) Similarly, the KKV has previously identified a separate product market for building automation, and considered a distinction between (i) projects, (ii) maintenance services, and (iii) sale of building automation equipment and components. ⁽²²⁾ While using different terminology, the Commission and the KKV appear to have segmented the market in the same way, distinguishing between selling individual equipment and components, the installation of the building automation and its subsequent servicing.
- (24) Triton contests the KKV's past decisional practice, with respect to the distinction between projects and maintenance services. ⁽²³⁾ In this context, Triton explains that the definition of distinct markets for projects and maintenance services is not appropriate, because from a supply-side perspective, the skillset to perform both services is identical, and often, the industry does not distinguish its revenues between the two services. However, Triton submits that the Transaction would give

⁽¹⁷⁾ M.9270 - Vinci Airports / Gatwick Airport, dated 15 March 2019, paragraphs 11-13; and M.3004 - Bravida / Semco / Prenad / Totalinstallatören / Backlunds, dated 13 December 2002, paragraphs 19-23.

⁽¹⁸⁾ KKV/1509/14.00.10/2020, 21.12.2020, QMG Partners Oy / LVI-Trio Oy (Decision QMG Partners Oy / LVI-Trio Oy) pp. 2-3, Decision Iivo BidCo Oy (Triton) / ESP Suomi Oy, p.2, Decision Iivo BidCo Oy (Triton) / Neloset Yhtiöt Oy p. 2.

⁽¹⁹⁾ Form RS, paragraph 80.

⁽²⁰⁾ M.3653 - Siemens / VA Tech, dated 13 July 2005, paragraphs 426-437; and, M.3686 – Honeywell / Novar, dated 04 August 2000, paragraph 21.

⁽²¹⁾ M.3686 – Honeywell / Novar, dated 04 August 2000, paragraph 22.

⁽²²⁾ Decision Assemblin / Fidelix Holding, p. 13-24 and paragraphs 108-109; and, Decision Iivo BidCo (Triton) Oy / Neloset Yhtiöt Oy, p. 1-3.

⁽²³⁾ Form RS, paragraphs 88-89; and, Response of Triton at a Commission's Request Form Information ('QPI'), question 6.

rise to horizontally affected markets, even when considering the wider market definition, incorporating both projects and maintenance services. ⁽²⁴⁾

- (25) However, for the purpose of the assessment of the proposed referral, the exact product market definition with respect to whether projects and maintenance for building automation belong to the same product market can be left open, as the Transaction gives rise to affected markets even in the wider market that includes both installation and maintenance. Therefore, the outcome of the assessment would not be different under any of the plausible market definitions.

5.2.2.2. Geographic Market

- (26) In past decisions, the Commission considered, but left open whether building control systems and its possible sub-segments are national or EEA-wide in scope. ⁽²⁵⁾
- (27) More recently, the KKV has considered the relevant geographic markets for building automation projects to be narrower than national in scope, ⁽²⁶⁾ and the one for selling building automation equipment and components, as national in scope. ⁽²⁷⁾
- (28) Triton considers that the markets for building automation are likely to be national in scope. This is because in Finland, market participants often have nationwide (or local) presence through a network of branches in different areas in Finland. ⁽²⁸⁾ In addition, the Transaction does not give rise to affected markets at EEA level in the market for building automation.
- (29) On the basis of the above, the markets for building engineering are likely national or narrower than national, although for the purpose of the assessment of the proposed referral, the exact geographic scope can be left open as the outcome of the assessment would not be different, under any of the plausible market definitions. ⁽²⁹⁾

5.3. Assessment of the referral request

5.3.1. Legal requirements

- (30) According to Article 4(4) of the Merger Regulation in order for a referral to be made by the Commission to one or more Member States, 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, ⁽³⁰⁾ and
 - b. the market(s) in question must be within a Member State and present all the characteristics of a distinct market. ⁽³¹⁾

⁽²⁴⁾ Response of Triton at a Commission's Request Form Information ('QP1'), question 6.

⁽²⁵⁾ M.3686 – Honeywell / Novar, dated 04 August 2000, paragraph 31.

⁽²⁶⁾ Decision Assemblin / Fidelix, paras. 96 and 107.

⁽²⁷⁾ Decision Assemblin / Fidelix, para. 109.

⁽²⁸⁾ Form RS, paragraph 92.

⁽²⁹⁾ For completeness, while the Commission left the exact scope of the geographic market definition open between national and EEA-wide in the past, this does not change the outcome of the assessment in this proposed referral as no affected markets arise under a potential EEA-wide geographic market definition.

⁽³⁰⁾ Further developed in point 17 of the Commission Notice on case referral (OJ C 56, 5.3.2005, p. 2).

⁽³¹⁾ Further developed in point 18 of the Commission Notice on case referral.

- (31) Pursuant to point 17 of the Commission Notice on case referral, for there to be indications that the concentration may significantly affect competition in a market or markets, the Parties are in essence required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market in a Member State, which may prove to be significant, thus deserving closer scrutiny. While the Parties are not required to demonstrate that the effect on competition is likely to be an adverse one, they should point to indicators that are generally suggestive of the existence of some competitive effects stemming from the transaction. In this context, the existence of ‘affected markets’ within the meaning of the Reasoned Submission is generally considered sufficient to meet the requirements of Article 4(4) of the Merger Regulation.
- (32) Furthermore, pursuant to point 20 of the Commission Notice on case referral, concentrations 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.
- (33) On the basis of the information provided by the Parties in the Reasoned Submission, it is appropriate to refer the Transaction partially from the Commission to the KKV in accordance with Article 4(4) of the Merger Regulation.
- (34) *First*, on the basis of the information provided by the Parties, there are indications that the concentration may significantly affect competition in markets in Finland as the Transaction leads to horizontally and vertically affected markets in Finland, and certain regions of Finland.
- (35) As regards building engineering, the Transaction does not give rise to affected markets at the national level in Finland. However, the Parties’ combined shares are [20-30]% or above in the Finnish regions of Uusimaa ([20-30]%), Pohjanmaa ([20-30]%) and Kymenlaakso ([20-30]%) if a market segment for HVAC building engineering services is considered.
- (36) In building automation, the Transaction gives rise to an affected market at the national level in Finland as well as several affected markets at the local level with shares as high as [60-70]% in one Finnish region.

Table 1: Building automation - market shares – Finland 2021

Geographic scope	Regions	Shares (%)
National	-	[20-30] %
Local	Uusimaa	[30-40] %
Local	Varsinais-Suomi	[60-70] %
Local	Keski-Suomi	[20-30] %
Local	Pohjois-Pohjanmaa	[40-50] %
Local	Pohjanmaa	[20-30] %
Local	Pohjois-Karjala	[60-70] %

Source: Form RS, Tables 1-2; and Response of Triton at a Commission’s Request Form Information (‘QPI’), question 7 and Annex 6, Market Shares.

- (37) Finally, in the market for the sale of building automation products and components, the Transaction gives rise to an affected market at the national level in Finland where the combined market shares of the Parties are [20-30]%.
- (38) Therefore, in light of the high combined market share of the Parties in Finland and certain of its regions, the Commission considers that the Transaction may significantly affect competition due to horizontal effects in building engineering

ventilation services, building automation projects and maintenance and sale of building automation equipment and components.

- (39) The Transaction would also give rise to horizontally affected markets in Norway and Sweden at the local level. However, Triton has not requested a referral for these aspects of the Transaction. Accordingly, the Commission will retain jurisdiction over the assessment of the Norwegian and Swedish aspects of the case.
- (40) *Second*, the relevant markets in Finland present all the characteristics of distinct markets. As outlined above, the Parties are active in relevant geographic markets that have been assessed as national or local in the Commission's precedents.
- (41) In the case of the geographic scope of the market for building automation, where the Commission previously considered the market to be national or EEA-wide in scope, the KKV considered these markets to be national or narrower than national in scope. The Parties also argue that market participants in Finland often have nationwide (or local) presence through a network of branches in different areas in Finland. In any event, the Transaction does not give rise to affected markets at EEA level. As a result, any appreciable competitive effects of the Transaction appear to be restricted to this single Member State. ⁽³²⁾
- (42) Therefore, the Transaction may significantly affect competition in these markets within the territory of Finland.

5.4. Conclusion

- (43) In view of the foregoing, the Commission's assessment indicates that the Transaction may significantly affect competition in the markets for building automation and building engineering in Finland or in certain regions of Finland, which present all the characteristics of distinct markets.

5.5. Additional factors

- (44) In addition to the verification of the legal requirements in Section 5.3.1, in accordance with paragraph 19 of the Commission Notice on case referral, a referral request should also consider whether the competition authority or authorities to which the case would be addressed is the most appropriate authority for dealing with the case. To this end, consideration should be given both to the likely locus of the competitive effects of the transaction and to how appropriate the national competition authority would be for scrutinising the operation.
- (45) *First*, considering the information submitted by Triton in the Reasoned Submission, most of the potential effects of the Transaction are likely to be confined to Finland, where the Parties' combined market share in certain regions is estimated to be [60-70]%, compared to the other affected markets (*i.e.*, in regions of Sweden and Norway) where the combined market share of the Parties is [20-30]%.
Second, the KKV has considerable experience in assessing competition in the building engineering and building automation sectors in Finland, from investigating very recent transactions, including some involving Triton. ⁽³³⁾

⁽³²⁾ The Commission considers that any finding of a market that is wider than Finland would not fulfill the condition set out in paragraph (30)(30)a above.

⁽³³⁾ For instance, cases KKV/94/14.00.10/2021, 30.7.2021, Assemblin AB / Fidelix Holding Oy (Decision Assemblin / Fidelix Holding); KKV/822/14.00.10/2022, 17.8.2022, Iivo BidCo Oy (Triton) / ESP Suomi Oy (Decision Iivo BidCo Oy (Triton) / ESP Suomi Oy) and KKV/919/14.00.10/2022,

- (47) *Third*, the Commission's assessment in Section 5.3 above is consistent with the KKV's previous practice.
- (48) Therefore, the KKV is well equipped to assess the impact of the Transaction on competition in Finland.

6. REFERRAL

- (49) Based on the information provided by Triton in the Reasoned Submission, referring the Finnish Transaction meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in markets within a Member State which present all the characteristics of distinct markets.
- (50) The Commission considers, based on of the information submitted in the Reasoned Submission, that (i) the principal impact of the Transaction will likely be on the markets for the building automation projects and maintenance, sale of building automation equipment and components and building engineering ventilation services including both projects and maintenance in Finland; (ii) these markets present all characteristics of distinct and national (or local) markets and/or (in the markets for building automation) the Transaction does not give rise to affected markets at EEA level; (iii) the Transaction gives rise to horizontally affected markets in Finland and therefore a potential risk that competition would be significantly affected in Finland; and (iv) due to the possibly limited effects of the Transaction in Sweden and Norway, the requirements of paragraph 22 of the Commission Notice on case referral in respect of concentrations are met. Therefore, the Commission considers that a partial referral is appropriate in this case.

7. CONCLUSION

- (51) For the above reasons and given that Finland expressed its agreement with respect to referring the Finnish Transaction, the Commission has decided to refer the Finnish Transaction to be examined by Finland. This decision is adopted pursuant to Article 4(4) of the Merger Regulation, Article 6(1) of Protocol 24 to the EEA Agreement and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Olivier GUERSENT
Director-General