



EUROPEAN COMMISSION
DG Competition

***Case M.10792 - PHILIP MORRIS
INTERNATIONAL / SWEDISH
MATCH***

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: 08/06/2023



EUROPEAN COMMISSION

Brussels, 8.6.2023
C(2023) 3858 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Philip Morris International Inc.
Avenue de Rhodanie 50,
1007 Lausanne,
Switzerland

Dear Sir or Madam,

Subject: Case M.10792 – PHILIP MORRIS INTERNATIONAL / SWEDISH MATCH
Approval of R12 Kapital as purchaser of SMD Logistics AB following your letter of 2 May 2023 and the Trustee’s opinion of 10 May 2023

1. FACTS AND PROCEDURE

- (1) By decision of 25 October 2022 (the ‘Decision’) based on Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area (‘EEA’),¹ the Commission declared the operation by which Philip Morris International Inc. (‘PMI’ or the ‘Notifying Party’, United States) acquires sole control over Swedish Match AB (‘SM’ or the ‘Target’, Sweden) compatible with the internal market, subject to conditions and obligations provided in the Annex of the Decision (the ‘Commitments’). PMI and SM are together referred to as the ‘Parties’.

¹ 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.

- (2) In particular, the Commitments provide that PMI divest SMD Logistics AB ('SMD Logistics' or the 'Divestment Business'). Within that scope, the Divestment Business would include:^{2 3}
- (a) the following main tangible assets:
 - SMD Logistics' warehouse in Brunna (at Mätarvägen 41, 1936 37 Kungsängen, Sweden) [...];
 - The whole inventory owned by SMD Logistics in its warehouse and in its distribution network (including [...]); and
 - SMD Logistics' [...].
 - (b) the following intangible assets, including, but not limited to:
 - [...];
 - [...];
 - [...]; and
 - [...]
 - (c) the following main licences, permits and authorisations:
 - SMD Logistics' permit for the wholesale of tobacco in Sweden; and
 - SMD Logistics' authorisations as a warehouse keeper and stockist.
 - (d) the following main contracts, agreements, leases, commitments, and understandings:
 - SMD Logistics' [...];
 - Agreements for the distribution of [...];
 - SMD Logistics' [...];
 - SMD Logistics' [...]; and
 - SMD Logistics' [...].
 - (e) the following customer, credit, and other records:
 - SMD Logistics' current customer register and records; and
 - SMD Logistics' current customer contracts.
 - (f) the following Personnel:
 - All personnel currently employed by SMD Logistics; and
 - At the option of the Purchaser, [...]in each of legal, pay roll, and procurement functions who currently spend [...] of their time supporting SMD Logistics.⁴
 - (g) the following Key Personnel:
 - the Hold Separate Manager –[...], Managing Director; and

² As described in Schedule 1 of the Commitments.

³ All capitalised terms used in this decision shall have the meaning sets out in the Decision or in the Commitments, as the case May be, unless otherwise specified.

⁴ [...] (see PMI's response to the Commission's RFI of 12 May 2023, question 4).

- other members of SMD Logistics’ management team, namely:
 - [...], Manager IT & Business Development;
 - [...], Business Control Manager;
 - [...], Warehouse Operations Manager; and
 - [...], Key Account Manager
- (h) at the option of the Purchaser, the arrangements for the supply of the following products or services by PMI or Affiliated Undertakings⁵ for a transitional period of [...] after Closing with the option to extend for up to an additional [...] if requested by the Purchaser on a timely basis and approved by the Monitoring Trustee and Commission, depending on the specific service:⁶
- IT infrastructure services, including [...];
 - IT workstation equipment and end-user support services, such as [...];
 - Application services, such as [...];
 - Supply of certain packing materials;⁷ and
 - Legal, pay roll, and procurement functions in a materially similar manner as provided to date.⁸
- (3) By letter of 2 May 2023, PMI proposed R12 Kapital AB (‘R12 Kapital’) for approval by the Commission as purchaser of the Divestment Business (the ‘Reasoned Proposal’) and submitted the proposed Share Purchase Agreement entered into between PMI and R12 Kapital on 25 April 2023 and related agreements (the ‘Proposed Agreements’).
- (4) On 10 May 2023, Alcis Advisers (the ‘Trustee’) submitted an assessment of R12 Kapital’s suitability as a purchaser (the ‘Reasoned Opinion’) 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 Agreements, the Divestment Business would be sold in a manner consistent with the Commitments.

2. ASSESSMENT OF THE PROPOSAL

2.1. Legal framework

- (5) According to paragraph 16 of the Commitments, the Commission has to verify that the purchaser fulfils the purchaser criteria and that the Divestment Business is being sold in a manner consistent with the Commitments.

⁵ As defined in the Commitments.

⁶ Schedule 2.1 of the Transitional Service Agreement entered into between SM and the Divestment Business (see Schedule 1.73 of the Share Purchase Agreement) covers: [...].

⁷ [...] (see PMI’s response to the Commission’s RFI of 12 May 2023, question 5).

⁸ [...]. See the Trustee’s Reasoned Opinion, para. 19.

- (6) According to paragraph 15 of the Commitments, in its assessment of the proposed purchaser, the Commission should ensure in particular that:
- (a) the purchaser shall be independent of and unconnected to PMI and its Affiliated Undertakings (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 a viable and active competitive force 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 must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business and [...].

2.2. Description of the proposed purchaser

- (7) R12 Kapital is a Swedish investment company owned by members of the af Jochnick family and its two managing partners, Per Heselmark and Hans Ramel. R12 Kapital is [...].
- (8) The companies in R12 Kapital's portfolio of investments are active in a wide range of sectors, including the construction and distribution of printed circuit boards, boats, roll formed profiles, platform lifts, etc.

2.3. Purchaser criteria

2.3.1. Independence from the Parties

- (9) According to paragraph 15(a) of the Commitments, the purchaser shall be independent from and unconnected to PMI and its Affiliated Undertakings.
- (10) According to the information provided by PMI and by the Trustee, there are no common board directors or management, cross-shareholdings or other structural or governance links between R12 Kapital (including its portfolio companies), PMI and its Affiliated Undertakings, nor any commercial or other relationships.⁹
- (11) The acquisition of the Divestment Business will be made through a newly established special purpose vehicle which will take the form of a limited liability company incorporated in Sweden and called Kommstart 3620 AB.¹⁰ This company is majority owned and solely controlled by R12 Kapital which will hold [...] % of the voting rights. The other non-controlling minority shareholders will include:
- (a) [...], which is a limited liability company incorporated in Cyprus;
 - (b) [...];
 - (c) [...], who is a board member of the [...].

⁹ PMI's Reasoned Proposal, paras. 2.9 – 2.11.

¹⁰ PMI's Reasoned Proposal, para. 2.10.

- (12) These non-controlling minority shareholders do not hold any structural or commercial link with PMI or any of PMI's Affiliated Undertakings, except through [...] headquartered in Sweden and [...] and whose [...].¹¹ In 2022, [...] provided services to PMI in [...] for a total value of [...] which represents [0-5]% of [...] total revenues in 2022 ([...]) and [0-5]% of PMI's total operating expenses in 2022 ([...]). In this context, the Commission takes the view that the commercial relationship between [...] and PMI will have no impact on R12 Kapital's independence and ability to run the Divestment Business competitively in the future.
- (13) The Reasoned Opinion of the Trustee confirms that (i) R12 Kapital is entirely independent of and unconnected to PMI and (ii) R12 Kapital does not have any structural or commercial link with any of them.¹²
- (14) On the basis of the information provided by PMI and taking into account the Reasoned Opinion submitted by the Trustee, the Commission therefore concludes that R12 Kapital is independent from, and unconnected to, PMI and its Affiliated Undertakings.

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

- (15) According to paragraph 15(b) of the Commitments, the purchaser shall have the financial resources, proven expertise, and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.

2.3.2.1. Financial resources

- (16) The acquisition will be financed with a combination of third-party debt and equity provided by the shareholders of Kommstart 3620 AB. R12 Kapital has secured committed debt financing ([...] term loan and a [...] overdraft facility from Nordea) and has also secured equity financing amounting to [...] in a combination of preferred and common stock in Kommstart 3620 AB. R12 Kapital envisages a debt to equity split of approximately [...] debt to [...] equity.¹³ The Trustee confirmed that under most metrics, this debt structure is a very low leverage one, and well below the industry average.¹⁴
- (17) In addition, the Divestment Business has a very healthy EBIT margin of around [...] % which is expected to be [...] in the coming years in the business plan submitted by R12 Kapital¹⁵ and allows the Divestment Business to fund its development through the profits generated by its activities.
- (18) In view of the main financial indicators of the Divestment Business,¹⁶ the Commission considers that capital injections are unlikely to be required in order to

¹¹ See PMI's response to the Commission's RFI of 12 May 2023, question 1.

¹² Trustee's Reasoned Opinion, para. 5.

¹³ PMI's Reasoned Proposal, para. 2.14.

¹⁴ Trustee's Reasoned Opinion, para. 125.

¹⁵ Request for information - 12 May 2023 – Annex 14

¹⁶ Annex VII to the Trustee's Reasoned Opinion.

fund current operations or future growth in the near term. This is consistent with [...] ¹⁷ and the Trustee's Reasoned Opinion.

- (19) It is to be noted that, the repayment of the [...] term loan is expected to be financed by [...], as explained in the Trustee's Reasoned Opinion ¹⁸ and [...] submitted by R12 Kapital ¹⁹.
- (20) This repayment by [...]. However, several elements confirm that it should not affect the ability to maintain and develop the Divestment Business.
- (21) First, the Divestment Business has generated positive cash flow in the past and will continue to do so in the coming years. As explained in the Trustee's Reasoned Opinion, the Divestment Business has over the last four years generated a free cash flow of [...]. ²⁰ As per the management's business plan, which the Trustee deems reasonable, SMD Logistics will in the sum of all next 3 years [...].
- (22) Second, the cash balance has been [...] during the last 3 years, ²¹ showing that this [...] was not used to cover for specific seasonal or cyclical needs. The Trustee further confirmed that at no time has the cash balance of SMD Logistics been lower than [...]. Therefore, [...] should not affect the ability of the Divestment Business to operate and develop in the coming years.
- (23) Third, the Divestment Business will be able to continue funding investments. The Divestment Business has historically [...] its capital needs [...]. As per the business plan, [...]. ²² In addition, [...]. ²³
- (24) Moreover, should such investments be necessary and the Divestment Business' cash prove insufficient, R12 Kapital currently holds a portfolio of companies that would provide it with sufficient and easy to liquidate capital to satisfy future investment requirements if required. ²⁴ In particular, the Commission notes that R12 Kapital holds more than [...] in liquid assets such as shares and convertibles in two listed businesses (NCAB and Nimbus). ²⁵
- (25) This is consistent with the Trustee's Reasoned Opinion which confirms that R12 Kapital's financial resources are sufficient to implement the intended acquisition of the Divestment Business and support the operations of the Divestment Business going forward. ²⁶

2.3.2.2. Proven expertise

- (26) The Commission notes that the Divestment Business has been run on a standalone basis by SM and all of the personnel involved in the management of the Divestment Business will be transferred to the purchaser. Furthermore, R12 Kapital

¹⁷ Annex VI to the Trustee's Reasoned Opinion.

¹⁸ Trustee's Reasoned Opinion, para. 127.

¹⁹ Request for information - 12 May 2023 – Annex 14

²⁰ Trustee's Reasoned Opinion, para. 129.

²¹ Request for information - 17 May 2023 – Reply to question 4

²² Request for information - 17 May 2023 – Annex 2.1

²³ Request for information - 17 May 2023 – Annex 2.1

²⁴ Trustee's Reasoned Opinion, paras. 9-10.

²⁵ PMI's Reasoned Proposal, para. 2.17.

²⁶ Trustee's Reasoned Opinion, para. 10.

confirmed that it intends to rely significantly on the capabilities of the existing management of SMD Logistics.²⁷

- (27) In addition, the Commission notes that R12 Kapital invests in companies across various sectors with a strong geographic focus on Scandinavia. As a predominantly Swedish business, the Divestment Business would stand to benefit from R12 Kapital's in-depth knowledge of Scandinavian markets.²⁸
- (28) Despite the absence of prior experience of R12 Kapital in the distribution of tobacco, smoke-free and related products in Sweden, the Commission notes that R12 Kapital has prior experience in other industries for which distribution and logistics operations are complex and play a critical role, for instance for the manufacture of electronic equipment, boats and lift platforms.²⁹
- (29) It can also be noted that the managing partners of R12 Kapital also have experience in logistics derived from their ongoing involvement with Oriflame, i.e. a multinational company distributing beauty and personal care products which sent [...] products in 2022 to over [...] customers in 60 different countries.³⁰
- (30) Finally, R12 Kapital has built a track record of successful acquisitions and subsequent development of acquired companies. By way of illustration, R12 Kapital acquired Nimbus when the company was in a situation of bankruptcy and the company is now valued around SEK 800 million on the stock market.³¹ NCAB Group AB and Cibes Lift Group AB can also be regarded as successful acquisitions in which R12 Kapital managed to develop the activities of the acquired companies.³²
- (31) This is consistent with the Reasoned Opinion of the Trustee who confirmed that R12 Kapital has demonstrated sufficient level of expertise and capabilities to maintain and develop the Divestment Business.³³

2.3.2.3. Incentive to maintain and develop the Divestment Business

- (32) In light of the main financial indicators of SMD Logistics, the Commission considers that the Divestment Business represents an attractive investment opportunity for R12 Kapital. This is confirmed by R12 Kapital's business plan and the commercial due diligence carried out at the request of R12 Kapital.
- (33) According to its business plan, R12 Kapital expects SMD Logistics' net revenue to grow by [...] % in 2023 and by approximately [...] % each year until 2030.³⁴ In the meantime, the Commission notes that the EBITDA margin of the Divestment Business is [...] and according to R12 Kapital's business plan, this EBITDA margin will [...] in 2030.³⁵

²⁷ See the Parties' Reasoned Proposal of 2 May 2023, paras. 2.24.

²⁸ PMI's Reasoned Proposal, paras. 2.4 and 2.22.

²⁹ Trustee's Reasoned Opinion, para. 6.

³⁰ Trustee's Reasoned Opinion, para. 6.

³¹ Trustee's Reasoned Opinion, para. 116.

³² Trustee's Reasoned Opinion, para. 116.

³³ Trustee's Reasoned Opinion, para. 6.

³⁴ Annex VIII to the Trustee's Reasoned Opinion.

³⁵ Annex VIII to the Trustee's Reasoned Opinion.

- (34) This is consistent with SMD Logistics' own business plan according to which the computed average growth rate ('CAGR') of SMD Logistics' net revenues between 2022 and 2025 will be around [...] % and SMD Logistics' EBITDA margin will remain around [...] % in 2025.³⁶ According to the commercial due diligence report, SMD Logistics' business plan is realistic and achievable.³⁷
- (35) This is also the view of the Trustee's Reasoned Opinion according to which R12 Kapital has the capabilities and the proper incentives to maintain and develop the Divestment Business.³⁸
- (36) In view of the information provided by PMI and taking into account the Reasoned Opinion submitted by the Trustee, the Commission considers that R12 Kapital has a proven incentive to continue investing to maintain and develop the Divestment Business.

2.3.3. *Absence of prima facie competition problems or risk of delayed implementation*

- (37) According to paragraph 15(c) of the Commitments, the acquisition of the Divestment Business by the purchaser must neither be likely to create prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, in light of the information available to the Commission.
- (38) In particular, the purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business and [...]
- (39) R12 Kapital (including its controlled portfolio companies) is not active in the market for distribution of combustible tobacco, smoke-free, and related products in Sweden or Norway, nor in any market upstream or downstream from this market.³⁹ As a result, there is no horizontal overlap or vertical relationship between the activities of R12 Kapital and the Divestment Business.
- (40) Given that R12 Kapital (including its controlled portfolio companies) is not active in the manufacture or supply of (i) factory manufactured cigarettes, (ii) roll-your-own tobacco products, (iii) heated tobacco products, (iv) snus or (v) nicotine pouches and that it has no relationship or arrangement with any manufacturer of such products, it cannot be considered as a [...] for any of these products.⁴⁰
- (41) Likewise, none of R12 Kapital's managing partners and the companies in which R12 Kapital holds non-controlling shareholdings are active in the markets for the manufacture, supply or distribution of combustible tobacco, smoke-free, and related products in Sweden or Norway, nor in any market upstream or downstream from this market.⁴¹ In particular, none of R12 Kapital's managing partners and the companies in which R12 Kapital holds non-controlling shareholdings are [active in

³⁶ Annex IX to the Trustee's Reasoned Opinion.

³⁷ Annex VI to the Trustee's Reasoned Opinion.

³⁸ Trustee's Reasoned Opinion, paras. 11 – 12.

³⁹ PMI's Reasoned Proposal, paras. 2.34.

⁴⁰ PMI's Reasoned Proposal, para. 2.33.

⁴¹ PMI's Reasoned Proposal, para. 2.34. See also PMI's response to the Commission's RFI of 12 May 2023, question 2.

the supply of (i) factory manufactured cigarettes, (ii) roll-your-own tobacco products, (iii) heated tobacco products, (iv) snus or (v) nicotine pouches].⁴²

- (42) Finally, PMI submits that the acquisition of the Divestment Business by R12 Kapital is not subject to approval under merger control provisions in any jurisdiction and according to R12 Kapital, no foreign investment filings or other regulatory approvals are required.⁴³
- (43) The Trustee's Reasoned Opinion also considers that the Transaction will not raise prima facie competition concerns as R12 Kapital and its portfolio companies are not active in the market for the distribution of combustible tobacco, smoke-free and related products in Sweden or Norway, nor any market upstream or downstream of these markets.
- (44) In view of the foregoing and taking into account the Reasoned Opinion submitted by the Trustee, the Commission considers that the acquisition by R12 Kapital of the Divestment Business does not give rise to prima facie competition concerns nor to a risk that the implementation of the Commitments will be delayed.

2.4. Sale in accordance with the Commitments

- (45) The Proposed Agreements consist of a Share Purchase Agreement⁴⁴ entered into between PMI and Kommstart 3620 AB on 25 April 2023, and the Transitional Services Agreement ('TSA').⁴⁵

2.4.1. Share Purchase Agreement

- (46) The Commission takes the view that the provisions of the Share Purchase Agreement are in line with the Commitments.⁴⁶
- (47) First, the scope of the Divestment Business is in line with Schedule 1 of the Commitments.
- (48) Second, the only condition precedent is the approval of R12 Kapital by the Commission which limits the risk of delay in the implementation of the Commitments.⁴⁷ Furthermore, the closing date is set on [...].⁴⁸ This gives an incentive to the parties to close the transaction and implement the transaction as soon as possible.
- (49) Third, the Commission has not identified any provision in the Share Purchase Agreement that could limit the independence of R12 Kapital vis-à-vis PMI and its Affiliated Undertakings, that could deter R12 Kapital from maintaining and developing the Divestment Business or otherwise jeopardise the viability or competitiveness of the Divestment Business.

⁴² PMI's Reasoned Proposal, para. 2.34. See also PMI's response to the Commission's RFI of 12 May 2023, question 2.

⁴³ PMI's Reasoned Proposal, paras. 2.35 – 2.38.

⁴⁴ PMI's Reasoned Proposal, Annex 1.4.

⁴⁵ Schedule 1.73 of the Share Purchase Agreement.

⁴⁶ Trustee's Reasoned Opinion, para. 18.

⁴⁷ PMI's Reasoned Proposal, Annex 1.4. Article 4.

⁴⁸ PMI's Reasoned Proposal, Annex 1.4. Article 6.

(50) This is consistent with the Trustee’s Reasoned Opinion which confirms that the Share Purchase Agreement is consistent with the Commitments.⁴⁹

2.4.2. TSA

(51) The Commission also takes the view that the provisions of the TSA are consistent with the Commitments.

(52) First, the scope of the services covered by this TSA is consistent with para. 2.8 of Schedule 1 of the Commitments.⁵⁰

(53) Second, the services provided will be offered at a [...] based on the [...].⁵¹

(54) Third, an [...] has been agreed which should enable the parties to quickly solve potential disputes concerning the performance of each party’s obligations under the TSA.⁵²

(55) Fourth, as provided for in the Commitments, R12 Kapital opted [...].

(56) Fifth, the TSA will cover [...]. Instead of the [...] period initially foreseen in the Commitments, which could be extended by [...] at the option of R12 Kapital, the Parties agreed that an initial period of [...] should be sufficient for these services. However, R12 Kapital will keep the possibility to extend this period to up to [...] as envisaged in the Commitments if needed. In that context, the Commission considers that this deviation from the text of the Commitments does not negatively affect the viability and competitiveness of the Divestments Business.

(57) Sixth, the Commission has not identified any provision in the TSA that could jeopardise the viability or competitiveness of the Divestment Business.

(58) This is in line with the Trustee’s Reasoned Opinion which confirms that the Share Purchase Agreement is consistent with the Commitments.⁵³

2.4.3. Conclusion

(59) In view of the foregoing, the information provided by PMI and the Trustee’s Reasoned Opinion, the Commission considers that the Proposed Agreements are consistent with the Commitments and that the Divestment Business will be sold to R12 Kapital in accordance with the Commitments.

3. CONCLUSION

(60) On the basis of the above assessment, the Commission approves R12 Kapital as a suitable purchaser for the above-mentioned reasons. On the basis of the Proposed Agreements, the Commission further concludes that the Divestment Business is being sold in accordance with the Commitments.

⁴⁹ Trustee’s Reasoned Opinion, para. 18.

⁵⁰ R12 Kapital opted [...] (see PMI’s response to the Commission’s RFI of 12 May 2023, question 6(a)).

⁵¹ Trustee’s Reasoned Opinion, para. 19.

⁵² Trustee’s Reasoned Opinion, para. 19.

⁵³ Trustee’s Reasoned Opinion, para. 19.

- (61) This decision only constitutes approval of the proposed purchaser identified herein and of the Proposed Agreements. This decision does not constitute a confirmation that PMI has complied with its Commitments.
- (62) This decision is based on Section D of the Commitments attached to the Commission Decision of 25 October 2022.

For the Commission

(Signed)
Olivier GUERSENT
Director-General