

NOTE

Approval of Triton's acquisition of Scandinavian Business Seating Holding AS, cf. Section 12c(2) of the Competition Act

On 11th September 2014, the Danish Competition and Consumer Authority ("the Authority") received a full notification of a proposed merger pursuant to Section 12b(1) of the Competition Act by which the undertaking Spinnaker Norway AcquiCo AS, which is ultimately controlled by funds managed by Triton ("Triton Funds" or "the notifying party"), acquires sole control of Scandinavian Business Seating Holding AS and its subsidiaries ("SBS").

According to Section 12h(5) of the Competition Act the time-limits in Section 12d(1) will begin to run from the weekday on which the Authority have received a complete notification together with documentation of the payment of the notification fee. The time-limits began to run on 15th September 2014.

Pursuant to Section 15c of the Competition Act, it has been agreed that the Authority process and make its decision in this case in English.

1. The merger

The proposed merger consists of two transactions which are dependent and conditional upon each other and which constitute one change of control of SBS from Spin International AB to Triton Funds. The proposed merger results in Triton Funds acquiring indirect sole control of SBS including its subsidiaries.

On 5 July 2014, two share purchase agreements were signed, on the basis of which Triton Funds will acquire indirect sole control over SBS, through the undertaking Spinnaker Norway AcquiCo AS. Spinnaker Norway AcquiCo AS will acquire 100 pct. of the shares of SBS. Therefore, the proposed merger constitutes a "merger" within the meaning of Section 12a(1)(ii) of the Competition Act.

2. The parties

2.1. Spinnaker Norway AcquiCo AS

Spinnaker Norway AcquiCo AS and its subsidiary Goldcup 10002 AB (now named Trispin Acquico AB), which are respectively the acquiring company in the two transactions, are indirect subsidiaries of the limited

partnerships together constituting the private equity firm Triton Fund IV. Triton Fund IV's investments are managed by Triton Managers IV Limited and TFF IV Limited, which form part of Triton Funds.

2.2. Triton Funds

Triton Funds is a private equity investment firm, which invests in medium-sized businesses headquartered in Northern Europe and primarily focusing on Austria, Germany, Switzerland and the five Nordic countries: Denmark, Finland, Iceland, Norway and Sweden. Triton Funds invest in a broad range of markets in the business service, industrial and consumer sectors. The private equity firm Triton Fund III, which is a part of the Triton Funds, is a significant shareholder in Stabilus GmbH ("Stabilus"), which is active within the field of gas springs and hydraulic vibration dampers, and Triton Fund III is, in the notifying party's view, likely deemed to have control of Stabilus for competition law purposes.

2.3. Stabilus GmbH

Stabilus is a supplier of highly-engineered and value-added gas springs and hydraulic dampers for the automotive and the industrial sectors worldwide. Furthermore, Stabilus supply gas springs that constitute a component in swivel chairs. As noted above, Stabilus is, according to the notifying party, likely to be indirectly ultimately controlled by Triton Funds (through Triton Fund III) for competition law purposes.

2.4. Scandinavian Business Seating Holding AS

SBS is a European producer of office furniture. The company develops and produces Scandinavian designed office furniture for private and public office environment. SBS is owned by Ratos AB through the subsidiary Spin International AB.

3. Jurisdiction

The undertakings concerned are Triton Funds and SBS.

In 2013 SBS had a total annual turnover of DKK [...] in Denmark, a total annual turnover of DKK [...] in EU and a total annual turnover of DKK [...] worldwide.

In 2013 Triton Funds had a total annual turnover of DKK [...] in Denmark, a total annual turnover of DKK [...] in EU and a total annual turnover of DKK [...] worldwide.

As the turnover of the undertakings concerned exceed the turnover thresholds in Section 12(1)(i) of the Competition Act, the merger therefore falls within the provisions relating to merger control as defined by the Competition Act. The merger shall therefore be notified to the Danish Competition and Consumer Authority. The merger may not be imple-

mented before the merger has been approved by either the Danish Competition and Consumer Authority or the Competition Council.

The merger does not exceed the turnover thresholds in the EC Merger Regulation and is, thus, not notifiable to the European Commission.

4. Assessment

There are no horizontal overlaps between the activities of Triton Funds and the activities of SBS. The notified merger gives rise to a vertical relationship, through Triton Funds' portfolio company, Stabilus, under Triton Fund III. Stabilus is a company active in the manufacturing of gas springs, a component which is used in the production of swivel chairs. Stabilus and SBS' activities are therefore vertically related and SBS is currently one of Stabilus' customers.

4.1. The relevant product and geographic market(s)

Upstream market for gas springs

Product market

Gas springs are a type of spring using gas, contained in a cylinder and variably compressed by a piston rod to exert force. The power of a gas spring can be adjusted by changing the pressure of the gas inside a pressure tube. Gas springs are frequently used in automotive applications (e.g. supporting the weight of open vehicle doors, engine hoods, trunk lids, adjustment of passage seats in buses and railway vehicles etc.), industrial applications (e.g. hospital beds, roof windows, automatic telling machines, overhead lockers in aircraft, medical equipment etc.) and swivel chairs. In swivel chairs, gas springs are used for a variety of applications, including seat height, backrest, seat inclination and synchronous adjustment.

The notifying party submits that the relevant product market, for the purpose of this transaction, may be defined as the market for production and sale of gas springs. The notifying party has, however, for the purpose of the notified merger, provided market share data on the potentially narrower product market for the supply of gas springs to manufacturers of swivel chairs only.

In previous decisions, the European Commission has considered whether that gas springs for automatic telling machines (ATM's) and for automotive applications possibly could be considered as separate product markets.¹ However, such potential sub-segmentation of gas springs according to end-application has been left open.²

¹ Commission decision of 09.09.2002 of Case M. 2930 KKR/Demag Holding/Siemens businesses and Commission decision of 30.09.2011 of Case M.6319 Triton/Europart.

² See for example Commission decision of 30.09.2011 of Case M.6319 Triton/Europart, paragraph 15.

However, in the present case, the exact definition of the relevant product market (gas springs for swivel chairs or gas springs irrespective of application) can be left open as the notified merger does not raise any competition problems under any potential market definitions.

Geographic market

With respect to the geographic scope of the market for gas springs, the notifying party submits that the market for gas springs is worldwide, as the customers purchase these products on a worldwide basis and as the transportation costs are limited compared to the overall production costs and are not a decisive factor for the decision where to purchase. In addition, the notifying party states that Asian competitors do exercise competitive pressure on the producers in EEA and that several European manufacturers of swivel chairs source gas springs from Chinese gas spring manufacturers.

In any case, the exact definition of the relevant geographic market (EEA or worldwide) can be left open since the notified transaction would not raise any competition concerns under any potential geographic market definition.

Downstream market for the production and sale of office furniture

Product market

SBS manufactures chairs and other furniture for use in office environments. The company's product portfolio encompasses a range of office swivel chairs, meeting and visitor's chairs, conference chairs, lounge and canteen chairs as well as a several types of tables. Office swivel chairs constitute SBS' largest product category.

The notifying party submits that the relevant product market should be defined as the market for production and sale of office furniture. In the notifying party's view, the market for production and sale of office furniture may also potentially be segmented into more narrow segments within office furniture, with respect to the merger concerned, leaving a market for office seating, i.e. covering swivel chairs, meeting chairs and business chairs. The notifying party submits, for the purpose of the assessment, the market for office seating may hypothetically be segmented further into three segments (swivel chairs, meeting chairs and business chairs), leaving a separate market for swivel chairs. But the notifying party claims that swivel chairs are, in principle, provided to customers in all segments, and, therefore, the notifying party submits such delineation is too narrow. However, the notifying party submits that the exact product definition can be left open.

In the notifying party's view, there is substitutability between the products within the market for office seating. For example, the notifying party

claims that swivel chairs from a demand-side perspective constitute an important alternative to meeting and conference chairs.

However, preliminary examinations by the Authority indicate that swivel chairs and other types of office chairs within the segment of office chairs are not to be regarded as interchangeable or substitutable by consumers by the reason of the products' characteristics. Pursuant to the provisions laid down by the Danish Working Environment Authority, wherever work is performed in a sitting position in front of a display screen, the work chair shall be adjustable in height, the seat backrest shall be adjustable in both height and angle and the chair shall allow free movement.³

The characteristics vary between swivel chairs and other types of office chairs (e.g. meeting chairs) with respect to ergonomics, design and adjustability. A swivel chair is in contrast to other office chairs adjustable in height, able to swivel and allow necessary ergonomic adjustment. This indicates that other types of office chairs than swivel chairs may not constitute an alternative to swivel chairs from a demand-side perspective and, thus, swivel chairs may constitute a separate product market.

Further, the notifying party claims that there is substantial supply-side substitutability.

However, the exact definition of the relevant product market can be left open since the notified merger does not raise any competition concerns under any potential product market definition.

Geographic market

The notifying party submits that the geographic scope of the production and sale of office furniture is Europe. However, the notifying party has, for the purpose of the assessment only, provided information for a Danish geographic market. The notifying party submits that the exact geographic market definition can be left open as the merger would not raise competition problems under any alternative market definition.

The Authority has also considered other alternative geographic market definitions (e.g. Northern European, Scandinavian, national etc.), but ultimately the exact definition of the relevant geographic market can be left open since the notified merger does not raise any concerns under any potential geographic market definition.

4.2. Competitive assessment

The Authority will assess whether the merger will significantly impede effective competition.

³ Executive Order No. 96 of 13 February 2001, Executive Order No.1108 of 15 December 1992 and Annex 1 to Executive Order No.1108 of 15 December 1992.

The only vertically affected markets are the production of gas springs (in which Triton Funds' portfolio company Stabilus is active) for use in swivel chairs (as produced by SBS).

On the potential, narrow upstream product market for the supply of gas springs to swivel chairs manufacturers, based on the estimations of the notifying party, Stabilus' market shares is [10-20]% worldwide for such products and [20-30]% EEA-wide. The notifying party also submitted market shares based on volume; according to which Stabilus' market share is [0-10]% worldwide and approximately [10-20]% in the EEA area.

On the potential, wide downstream product market for office furniture, the notifying party submits that SBS' market share amounts to approximately [10-20]% on a national basis in Denmark, while on the potential, narrow downstream product market for swivel chairs, the market share of SBS amounts to [30-40]% in Denmark. The notifying party also submitted that SBS' market share on the market for swivel chairs would not exceed the Danish market share on a potential wider geographic market (i.e. Northern Europe or Europe).

With respect to concentration levels, the concentration (HHI) level for the potential global market for gas springs to swivel chairs manufacturers exceeds 2,000, while the concentration (HHI) level for the Danish market for production and sale of swivel chairs is below 2,000.

Based on both market shares and concentration levels as a first indicator, the Authority will in accordance with the European Commission's Guidelines on the assessment of non-horizontal mergers⁴ consider the possible issue of foreclosure, since the "safe harbor" in paragraph 25 of the guidelines does not apply.

Two forms of foreclosure can be distinguished. The first is where the merger is likely to raise the costs of downstream competitors by restricting their access to an important input (input foreclosure). The second is where the merger is likely to foreclose upstream competitors by restricting their access to a sufficient customer base (customer foreclosure).⁵

Input foreclosure

For input foreclosure to be a concern it should be likely that Stabilus would restrict access to gas springs for swivel chairs that it would have

⁴ The European Commission Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("non-horizontal merger guidelines") (2008/C 265/07).

⁵ Non-horizontal merger guidelines, paragraph 30.

otherwise have supplied to SBS' downstream competitors absent the merger, thereby raising SBS' downstream competitors costs by making it harder for them to obtain gas springs under similar prices and conditions as absent the merger. The possible concern is that the merger may lead Stabilus to profitably increase the price charged to manufacturers of swivel chairs and, thus, result in a significant impediment to effective competition.

The notifying party submits that the merger does not give rise to input foreclosure as Stabilus will have neither the ability nor the incentive to limit SBS' competitors' access to Stabilus' gas springs input.

As regards supply of gas springs to manufacturers of swivel chairs, the notifying party submits that Stabilus is not in a position to raise its prices as it faces competition from Asian, especially Chinese, producers. The notifying party argues, with reference to Stabilus' market share, that SBS' downstream competitors easily will have the ability to obtain gas springs from suppliers of gas springs other than Stabilus; e.g. Samhongsa, Lant, Korea Gas Springs, who all possess larger market shares than Stabilus on a potential world-wide market. Even on a potential, narrow EEA-wide market Samhongsa and Korea Gas Springs market shares is equal to or larger than Stabilus' market share.

Furthermore, the notifying party submits there are neither capacity restrictions in the gas spring market or specific product solutions developed by Stabilus, which indicate that competitors to Stabilus can increase their supply if necessary.

Moreover, Stabilus already supplies a number of other SBS' downstream competitors and as such SBS cannot based on turnover be considered a significant customer to Stabilus.

Finally, according to information of the notifying party, despite a gas spring may represent a critical component of a swivel chair, the cost of gas springs constitute only a small proportion of a swivel chairs total production costs. The notifying party submits that the cost of a gas spring is in the level of EUR [...] to EUR [...], which constitutes [0-10]% to [0-10]% of SBS' production cost of a swivel chair depending on the given product series produced. Furthermore, the cost of gas springs represents less than [0-10]% of SBS' total production costs.

In light of the above, the Authority concludes that the proposed merger does not raise concerns as to possible input foreclosure with respect to supply of gas springs to swivel chairs manufacturers.

Customer foreclosure

For customer foreclosure to be a concern there would have to be grounds to consider that the proposed merger could lead to SBS switching all or a large proportion of its demand of gas springs from Stabilus' upstream competitors to Stabilus, thereby depriving Stabilus' upstream competitors of an important source of demand of gas springs to swivel chairs.

The notifying party submits that following the merger, Stabilus' current or potential competitors will have access to the same customer base as prior to the merger given the fact that SBS currently purchases [...] % of its demand of gas springs from Stabilus. Based on information from the notifying party, there is an existing [1-5]-year supply agreement between SBS and Stabilus, which is non-exclusive. The notifying party submits that the merger will not give rise to any incentive to customer foreclosure and a possible foreclosure strategy will, in any event, not reduce Stabilus' competitors' ability to compete in the market for gas springs to swivel chairs.

Based on information submitted by the notifying party, it should be noted that sales of gas springs to swivel chairs manufacturers constitute only a small part of Stabilus' activity. The notifying party estimate that sales of gas springs to swivel chairs manufacturers accounts for only approximately [0-10] % of Stabilus' total sales worldwide. The volume of gas springs sold by Stabilus to SBS constitutes only [0-10] % of Stabilus' turnover of gas springs to swivel chairs, which in turn constitutes less than [0-10] % of Stabilus' total turnover.

Overall, SBS cannot be considered as an important customer within the segment of manufacturing of gas springs for swivel chairs.

In light of the above factors, it is concluded that the proposed merger does not raise concerns as to possible customer foreclosure.

5. Conclusion

The Authority concludes based on the information provided that the notified merger will not significantly impede the effective competition, in particular due to the creation or strengthening of a dominant position, cf. Section 12c(1) of the Competition Act, cf. Section 12c(2) of the Competition Act.

The Authority have decided to approve the merger based on the simplified procedure, cf. Section 12c(7) of the Competition Act.

The approval of this merger is under the assumption the information given in this notification is true and correct, cf. Section 12f(1)(i) of the Competition Act.