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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Georg Fischer AG
Amsler-Laffon-Strasse 9
8200 Schaffhausen
Switzerland

Subject: **Case M.11211 – GEORG FISCHER / UPONOR**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 18 September 2023, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation.[3]

(2) This notification concerns the following undertakings:

(a) Georg Fischer AG ('Georg Fischer', Switzerland), and

(b) Uponor Oyj ('Uponor', Finland) (together, the 'Parties').

(3) Georg Fischer will acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Uponor (the 'Transaction'). Georg Fischer is referred to as the 'Notifying Party'.

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

3 Publication in the Official Journal of the European Union No OJ C 339, 26.9.2023, p. 16.

(4) The concentration is accomplished by way of public bid announced on 12 June 2023.

1. THE PARTIES

(5) **Georg Fischer** is a publicly listed company established in Switzerland that is active in the development, manufacturing and marketing of, *inter alia*, piping systems, casting solutions and machining solutions. Georg Fischer generates turnover globally, with significant sales in its home country Switzerland as well as in Germany.

(6) **Uponor** is a publicly listed company established in Finland that is active in the designing, manufacturing and marketing of plumbing, radiant heating and cooling systems, as well as local heat and water distribution and infrastructure solutions. Uponor is mainly active in the Nordics and the U.S.

2. THE OPERATION

(7) Pursuant to a Combination Agreement concluded on 12 June 2023 between Georg Fischer and Uponor, Georg Fischer made a voluntary recommended public cash tender offer to purchase all issued and outstanding shares in Uponor (the 'Tender Offer') to a total value of approx. EUR 2.1 billion. The completion of the Tender Offer is subject to Georg Fischer gaining control of more than 50% of the issued and outstanding shares in Uponor on a fully diluted basis.[4] As a result of the Transaction, Georg Fischer will acquire sole control over Uponor within the meaning of Article 3(1)(b) of the EUMR.

(8) According to the Parties, the key driver behind the Transaction is the possibility to create synergies across the complementary nature of the Parties' activities with regard to product offering, geography and customer base.

3. UNION DIMENSION

(9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Georg Fischer: EUR 3.98 billion; Uponor: EUR 1.4 billion).[5] Each of them has a Union-wide turnover in excess of EUR 250 million Georg Fischer: EUR […]; Uponor: EUR […]), and not each of them achieves more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

4. MARKET DEFINITION

(10) The Transaction gives rise to affected markets in relation to the manufacture and supply of water pressure pipe systems within buildings that are of 'PEX/PERT'

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4 Pursuant to the Finnish Companies Act, a shareholder that holds more than 50 percent of the shares and voting rights carried by the shares in a company has sufficient voting rights to decide on, among other things, the appointment of board members and distribution of dividends, and a shareholder that holds more than two-thirds (⅔) of the shares and voting rights carried by the shares in a company has sufficient voting rights to decide upon the merger of a company into another company.

5 Turnover calculated in accordance with Article 5 of the Merger Regulation.

material (premium cross-linked polyethylene and polyethylene of raised temperature) and 'multilayer' material (a combination of plastic and metal layers).

4.1. Product market definition

4.1.1. The Notifying Party's views

(11) The Notifying Party submits that the market for pipe systems should be segmented between pipe systems for the building sector and pipe systems for the infrastructure sector, due to the difference in e.g. (i) function and technical characteristics (in the infrastructure sector, pipe systems are larger and typically transport liquids underground over longer distances, while in the building sector, pipe systems are smaller, more flexible and used within buildings), (ii) regulatory requirements, (iii) customers (in the infrastructure sector customers are mainly municipalities and local authorities, and in the building sector they are mainly wholesalers, contractors, and plumbers) and (iv) marketing (products are sold in complete systems in the building sector, and typically as individual components in the infrastructure sector).[6] The Notifying Party also claims that it is only relevant to segment pipe systems between components, i.e. pipes, valves and fittings, in the infrastructure sector and not in the building sector, since products are more standardised in the former sector allowing components from different manufacturers to be combined.[7] The Notifying Party further segments the building sector based on the application of the pipe systems, identifying, *inter alia*, hot and cold-water pipe systems in buildings (i.e. systems transporting hot and cold-water in buildings) and heating systems in buildings (i.e. systems conveying and controlling water in heating systems in buildings) as relevant segments, which according to the Notifying Party are types of water pressure applications.[8] While the Notifying Party submits that a further segmentation by material is not relevant, it still provides a competitive assessment based on material.

(12) Nevertheless, the Notifying Party submits that the exact product market definition can be left open, given that the Transaction will not lead to competition concerns irrespective of market definition.[9]

4.1.2. The Commission's past practice

(13) In past decisional practice, the Commission has considered whether the market for pipe systems should be segmented on the basis of several aspects.

(14) In particular, while leaving the exact product market definition open, the Commission has considered that pipe systems can be segmented between pipes and fittings because, *inter alia*, pipes and fittings are both sold and purchased separately and customers are able to combine products from different manufacturers.[10] However, the Commission has also considered that exceptions may exist, e.g. in highly specialised technical applications.[11] Moreover, in a case concerning pipe systems for the building materials sector, the Commission

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6 Form CO, paragraphs 89-100.
7 Form CO, paragraph 142.
8 Form CO, Table 7.
9 Form CO, paragraphs 116.
10 M.2294 Etexgroup/Glynwed Pipe Systhis items paragraph 7; IV/M.565, Solvay/Wienerberger, paragraph 20; M.6563 Mexichem SIH/Wavin, paragraphs 24-26.
11 M.2294 Etexgroup/Glynwed Pipe Systems, paragraph 7.

considered one single market for the manufacture of plastic pipes and fittings, although it ultimately left the precise market definition open.[12]

(15) Furthermore, the Commission has considered that pipe systems should be segmented on the basis of the following applications: (i) water pressure (high pressure pipes used for the transport of water); (ii) gas pressure (high pressure pipes used for the transport of gas); (iii) sewage (non-pressure pipes used for sewerage systems); (iv) drainage; (v) cable-ducting (non-pressure pipes that can be used as protection layers for electricity and telecommunication cables); (vi) irrigation; and (vii) electroprotection, although the precise market definition has been left open.[13] However, the Commission has not previously considered whether, within water pressure pipes systems, sub-segments should be identified for the applications hot and cold-water pipe systems or for heating systems. Nor did the Commission previously consider a segmentation between pipe systems intended for the building sector and those intended for the infrastructure sector.

(16) The Commission has also considered if pipe systems should be segmented on the basis of material, such as plastic and non-plastic materials, but ultimately left the exact market definition open.[14]

(17) Moreover, the Commission has considered that pipes could be segmented between large and small pipes, as the number of suitable materials appear to differ depending on the pipe size. The Commission however noted that it is difficult to establish a specific diameter beyond which conditions of competition change. Ultimately, the precise market definition was left open.[15]

(18) The Commission has also concluded that sewage pipes should be segmented based on the shape of the pipe (i.e. circular and non-circular pipes).[16]

4.1.3. The Commission's assessment

(19) The Commission has investigated whether the market for the manufacture and supply of pipe systems should be segmented on the basis of several aspects for the purposes of assessing this Transaction.[17]

4.1.3.1. Segmentation by sector

(20) In response to the market investigation carried out by the Commission, a majority of customers and competitors who expressed an opinion held that the pipes, valves and fittings used in the building sector generally cannot be used as a substitute in the infrastructure sector, and vice-versa.[18] The market participants mainly referred to the difference between the sectors in (i) application and technical features, as pipe systems have different purposes in the different sectors, (ii) customer base, (iii) procurement process, with tenders being more common in the infrastructure

12 M.3142 CVC/Danske Traelast, paragraphs 9 and 11-13.

13 See e.g. M.6563 Mexichem SIH/Wavin, paragraph 27-30; Case IV/M.565 Solvay/Wienerberger, paragraphs 18-19 and 21; M.2294 – Etexgroup/Glynwed Pipe Systems, paragraphs 9-10; M.8356 Case M.8356 Wietersdorfer/Amiantit/Hobas JV, paragraph 40.

14 M.6563 Mexichem SIH/Wavin, p 31-33; M.8356, Wietersdorfer/Amiantit/Hobas JV, paragraph 83.

15 M.8356 Wietersdorfer/Amiantit/Hobas JV, paragraphs 52-53.

16 M.8356 Wietersdorfer/Amiantit/Hobas JV, paragraph 96.

17 It should be noted that, since all pipes manufactured and sold by the Parties in the building and infrastructure segments are circular, a potential segmentation based on shape was not investigated.

18 Questionnaire to customers, question C.1; Questionnaire to competitors. question C.1.

sector, (iv) distribution channel, (v) size, with larger pipes in the infrastructure sector compared to the building sector, since larger volumes of liquid are transported in the former sector, (vi) material, as some materials are not allowed in buildings (vii) regulatory standards and approvals, (viii) price, with higher prices in the infrastructure sector.[19]

(21) In light of the above, the Commission considers that a segmentation of the market for the manufacture and supply of pipe systems between the building sector and the infrastructure sector is appropriate. However, ultimately, the exact product market definition can be left open since the Transaction does not raise serious doubts as to its compatibility with the internal market irrespective of the product market definition, as will be further explained in the competitive assessment.

4.1.3.2. Segmentation by component

(22) A majority of customers who expressed an opinion indicated that, in the building sector, they mainly purchase complete pipe systems from each manufacturer, instead of individual components.[20] One customer explained that '*in the building sector, it is the norm to sell whole systems to customers*.'[21]

(23) In light of the above, the Commission considers that a segmentation of the market for the manufacture and supply of pipe systems by component in the building sector is not appropriate. However, ultimately, the exact product market definition can be left open since the Transaction does not raise serious doubts as to its compatibility with the internal market irrespective of the product market definition, as will be further explained in the competitive assessment.

4.1.3.3. Segmentation by application

(24) The Commission considers that, consistent with its past practice and absent indications to the contrary from the market investigation, a distinction between the applications water pressure, gas pressure, sewage, drainage, irrigation and electroprotection is warranted in the present case.

(25) A majority of customers and competitors held that there is a difference between pipe systems used for the applications water pressure, gas pressure, sewage, drainage, irrigation and electroprotection, and that, as such, pipe systems used for each of the abovementioned applications cannot substitute one another.[22]

(26) By contrast, a majority of customers and competitors who expressed an opinion held that, for the products identified by the Parties as relevant products within the application water pressure in the building sector (namely hot and cold-water systems and heating systems), the same type of pipe system can be used.[23] A majority of competitors also confirmed that hot and cold-water systems and heating systems in the building sector are typically produced on the same production lines.[24]

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19 Questionnaire to customers, question C.2; Questionnaire to competitors, question C.2.

20 Questionnaire to customers, question C.3.

21 Questionnaire to customers, question C.4.

22 Questionnaire to customers, question C.7; Questionnaire to competitors question Q.6.

23 Questionnaire to customers question C.8; Questionnaire to competitors, question C.7.

24 Questionnaire to competitors, question C.9.

(27) The results of the market investigation thus confirm the past decisional practice of the Commission with regard to a segmentation of the market for the manufacture and supply of pipe systems on the basis of application. Specifically with regard to the application water pressure, the market investigation indicates, in line with past practice, that the narrowest plausible application is water pressure. Ultimately, the exact product market definition can be left open since the Transaction does not raise serious doubts as to its compatibility with the internal market irrespective of the product market definition, as will be further explained in the competitive assessment.

4.1.3.4. Segmentation by material

(28) A majority of customers and competitors who expressed a view held that each of the materials PEX/PERT, multilayer, copper/brass, PP/PB (plastics) and metal can be used for water pressure pipe systems in the building sector, regardless of whether it concerns the products hot and cold-water pipe systems or heating pipe systems.[25] Nevertheless, some market participants were of the view that PEX/PERT pipes need to be modified in order to be used for heating systems to avoid corrosion from oxygen.[26]

(29) In light of the above, the market investigation indicates that a segmentation of water pressure pipe systems in the building sector between different materials would not be appropriate, although the results are not conclusive. Ultimately, the exact product market definition can be left open since the Transaction does not raise serious doubts as to its compatibility with the internal market irrespective of the product market definition, as will be further explained in the competitive assessment.

(30) It should be noted that, since all pipes manufactured and sold by the Parties in the building and infrastructure segments are circular, a potential segmentation based on shape was not investigated.

4.2. Geographic market definition

4.2.1. The Notifying Party's views

(31) The Notifying Party submits that the exact geographic market definition can be left open, given that the Transaction will not lead to competition concerns irrespective of market definition.[27]

4.2.2. The Commission's past practice

(32) In past practice the Commission has considered whether the market for pipes and pipe systems is EEA-wide in scope, since the delivery of products is EEA-wide.[28] The Commission has also considered that the market could be national due to (i) considerable differences in prices, (ii) suppliers being subject to strong national competition, (iii) the presence of multiple national plants limiting transportation

25 Questionnaire to customers, C.10; Questionnaire to competitors C.10.
26 Questionnaire to customers, C.11.
27 Form CO, paragraph 116.
28 M.1644 Wienerberger/DSCB/Steinzeug, paragraph 23.

costs and (iv) differing national technical requirements.[29] However, the Commission has also considered that certain elements point towards a regional scope, such as wider-than-national exports of pipe systems by manufacturers and customer purchases in neighbouring countries.[30] Ultimately, in these cases the Commission left the exact market definition open.

4.2.3. The Commission's assessment

(33) In response to the market investigation carried out by the Commission, a majority of competitors who expressed an opinion indicated that pipe manufacturers tend to supply their products on a wider geographic scale than the countries where their manufacturing plants are located.[31] However, competitors also indicated that they negotiate contracts and prices with their customers and carry out marketing campaigns at national level.[32] Similarly, a majority of customers reported that their contracts, prices and discounts are negotiated with suppliers at national level.[33] A majority of market participants further indicated that different national standards and requirements for pipes systems exist.[34]

(34) On balance, the results of the market investigation suggest that the markets for the manufacture and supply of pipe systems may be national in scope. However, for the purpose of this decision, the exact geographic market definition can be left open since the Transaction does not raise serious doubts as to its compatibility with the internal market irrespective of the geographic market definition of the relevant markets, as will be further explained in the competitive assessment.

5. COMPETITIVE ASSESSMENT

5.1. Legal framework

(35) Article 2 of the Merger Regulation requires the Commission to examine whether notified concentrations are compatible with the internal market, by assessing whether they would significantly impede effective competition in the internal market or in a substantial part of it. The Commission Guidelines on the assessment of horizontal mergers under the Merger Regulation (the 'Horizontal Merger Guidelines') distinguish two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, including, for the purposes of assessing the Transaction, non-coordinated effects.[35]

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29 M.2294 Etexgroup/Glynwed Pipe Systems, paragraphs 10-15, and M.6563 Mexichem SIH/Wavin, paragraphs 40-41.

30 M.8356 Wietersdorfer/Amiantit/Hobas JV, paragraphs 101-103 and a proposal of regional segmentation can be found at M.565 Solvay/Wienerberger, paragraphs 23-25.

31 Questionnaire to competitors, question D.1.

32 Questionnaire to competitors, question D2.

33 Questionnaire to customers, question D1.

34 Questionnaire to customers, question D3. Questionnaire to competitors, question D.3.

35 OJ C 31, 05.02.2004, p. 5. The remainder of this Decision focuses on non-coordinated horizontal effects and conglomerate effects.

(36) Non-coordinated effects may significantly impede effective competition by eliminating the competitive constraint imposed by one merging party on the other, as a result of which the combined entity would have increased market power without resorting to coordinated behaviour. According to recital (25) of the preamble of the Merger Regulation, a significant impediment to effective competition can result from the anticompetitive effects of a concentration even if the combined entity would not have a dominant position on the market concerned. In this regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger.[36]

(37) The Horizontal Merger Guidelines list a number of factors, which may influence the rise of substantial non-coordinated effects from a merger, such as: the large market shares of the merging firms; the fact that the merging firms are close competitors; the limited possibilities for customers to switch suppliers; or the fact that the merger would eliminate an important competitive force. The list of factors applies equally if a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of those factors need to be present to make significant non-coordinated effects likely and the list itself is not an exhaustive list.[37]

5.2. Horizontal non-coordinated effects

(38) The Commission will address potential competition concerns in all affected markets under the narrowest plausible market definition. The Commission will focus its assessment on the narrowest plausible markets, because, in the present case, the Parties' combined market shares and overall competitive position are the strongest in these narrowest plausible markets (rather than in any broader plausible market). Where the Commission finds that the concentration does not raise serious doubts as to its compatibility with the internal market at the narrowest plausible level, the Commission therefore also concludes this to be the case also for any broader plausible markets, since the reasons for finding that the concentration does not raise serious doubts as to its compatibility with the internal market apply even more strongly as regards those broader plausible markets.

(39) Depending on how the market for the manufacture and supply of pipe systems is defined, the Parties' activities give rise to horizontally affected markets in several product segments concerning the manufacture and supply of certain pipe systems for the building sector at national level.[38]

(40) More specifically, affected markets only arise in the manufacture and supply of certain pipe systems for the building sector in certain EEA countries. As confirmed by the Parties, estimated market shares for product segments in the building sector only allow for a more conservative assessment of their overlapping activities (as

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36 Horizontal Merger Guidelines, paragraphs 24-38.

37 Horizontal Merger Guidelines, paragraphs 26-38.

38 It should be noted that the Transaction also results in overlaps for a number of additional markets. However, these overlaps do not give rise to affected markets as a result of the application of the Notice on Simplified Procedure. Furthermore, there are some affected markets in which the increment brought about by the Transaction is lower than [0-5]%. As a result, the concentration does not bring a material change to these markets and on this basis the Commission finds that the concentration does not raise serious doubts concerning these markets.

opposed to market shares in a combined market comprising both the manufacture and supply of certain pipe systems that include both the building and infrastructure sectors).[39]

(41) As regards a possible segmentation of the building sector based on application, affected markets would only arise in relation to the manufacture and supply of water pressure pipe systems, which is the narrowest plausible segmentation by application envisaged in past practice.[40] The Parties confirm that their estimated 2022 combined market share in this application is below 25% at both EEA level and national level.[41] The Parties also confirm that their estimated 2022 combined market share would not be higher when segmenting the market for the manufacture and supply of water pressure pipe systems for the building sector by component, i.e. between pipes, valves and fittings.[42]

(42) With regard to a possible segmentation of water pressure pipe systems in the building sector based on materials, the Parties have not been able to estimate their market shares in such segments. However, they have been able to provide market shares segmented by material for a water pressure sub-application that they have identified, namely hot and cold-water pipe systems in the building sector, which is narrower than the narrowest plausible market segment for the purposes of assessing this Transaction.[43] This estimate provides for a more conservative view of the relevant markets, since the market shares calculated for each material at this sub-application level identified by the Parties would be higher than on the segment for water pressure pipe systems. The Parties have confirmed that their market shares in the manufacture and supply of water pressure pipe systems segmented by material would not be higher than their market shares in hot and cold-water pipe systems segmented by material.[44] Therefore, for the purposes of assessing the impact of the Transaction on the market for the manufacture and supply of water pressure pipe systems, the Commission will apply the Parties' market shares in hot and cold-water pipe systems in the building sector segmented by material to the narrowest plausible segmentation by application as envisaged in past practice, i.e. water pressure pipe systems (further segmented by material). This methodology provides a more conservative view of the relevant markets.

(43) On this basis, affected markets arise only in Austria, Finland and Norway as per the table below.

39 Form CO, paragraph 106.
40 Form CO, Table 11.
41 Form CO, Table 13.
42 Form CO, Table 13 and paragraph 203.
43 It is noted that the Parties did not overlap in the manufacture and supply of pipe systems segmented by material for any other water pressure sub-applications, at national level.
44 Form CO, paragraph 204.

Table 1: Affected markets (2022 value market shares)[45]

Jurisdiction	Segment	Georg Fischer	Uponor	Combined
Austria	Water pressure application (multilayer) in the building sector	[0-5]%	[20-30]%	[20-30]%
Finland	Water pressure application (multilayer) in the building sector	[0-5]%	[30-40]%	[40-50]%
Norway	Water pressure application (PEX/PERT) in the building sector	[10-20]%	[40-50]%	[60-70]%

(44) The Parties submit that the Transaction does not lead to any competition concerns under any plausible market definition because (i) Georg Fischer and Uponor are not close competitors – rather their offerings are complementary as Uponor focuses on hot and cold-water pipe systems made of PEX material whereas Georg Fischer has a broader portfolio with a focus on […] and specialised products;[46] (ii) several strong alternative suppliers would remain; (iii) customers are large wholesalers with countervailing buyer power;[47] and (iv) there are no significant barriers to entry or expansion, as regulations for pipe systems for buildings are largely harmonized across the EU.[48]

5.2.1. Norway

(45) In Norway, Uponor is one of the market leaders in the building sector […]. Georg Fischer has sales in Norway […].[49]

(46) As explained above, for the purposes of this analysis, the Parties' combined market share in the sub-application hot and cold-water pipe systems made of PEX/PERT material ([60-70]%) is applied as a proxy to the segment water pressure pipe systems of PEX/PERT material. It is noted that the Parties will be constrained by the prices of water pressure pipe systems of other materials than PEX/PERT. In a potential market for water pressure pipe systems in buildings, regardless of material, the Parties' combined market share is below 25% in Norway[50] and there are many competitors constraining the Parties[51]. Even if some customers via tender specifications are requiring a certain material for a project, any attempt at raising prices on PEX/PERT water pressure pipe systems could trigger customers to require other materials in tenders in the mid-term. As mentioned, a majority of customers and competitors who expressed an opinion are of the view that, besides

45 As explained, the market shares in these segments are provided by using the market shares proposed by the Parties in relation to narrower segments as a proxy.

46 Form CO, paragraphs 296-297, 356-357, 403-404, 490-491 and 562.

47 Form CO, paragraphs 337, 386, 429, 472, and 531.

48 Form CO, paragraphs 331, 380, 425, 467, 525 and 598.

49 Form CO, paragraph 574; The Notifying Party's response to RFI 5, question 1.

50 Form CO, Table 13.

51 Horizontal Merger Guidelines, paragraph 28 *('It is therefore less likely that a merger will significantly impede effective competition, in particular through the creation or strengthening of a dominant position, when there is a high degree of substitutability between the products of the merging firms and those supplied by rival producers'*).

PEX/PERT, also multilayer, PP/PB, copper/brass and metal can be used for water pressure pipe systems.[52]

(47) For the reasons set out below, despite the high combined market shares of the Parties and increment brought by the Transaction, as estimated by the Parties, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement with regard to the supply of water pressure pipe systems made of PEX/PERT material in Norway.

(48) *First*, taking into account the lack of comprehensive market reports in the pipe industry, the market share estimates provided by the Parties may not be accurate, and there are reasons to believe they may overstate the actual shares on this segment. Several market participants have estimated the Parties' combined market share to be well below 50% in water pressure pipe systems of PEX/PERT material.[53]

(49) *Second*, there are several alternative suppliers competing with Uponor and Georg Fischer in the market for water pressure pipe systems of PEX/PERT material in Norway[54]. Market participants have identified LK Systems, Roth, Geberit, Rehau, Tece, Canes, Høiax, TeTe, Eurotubi, Viega, Altec and Kaczmarek as alternative suppliers.[55] Also, no production capacity limitations[56] were reported by any market participant. According to a competitor, capacity is not a limiting factor in the pipe industry, and additional capacity can be installed at relatively low cost.[57] The competitors remaining on the market will thus be able to exercise a competitive constraint on the merged entity.

(50) *Third*, the market investigation suggests that Georg Fischer and Uponor are not close competitors in Norway.[58] Market participants have indicated that, in the supply of pipe systems overall, there are limited overlaps in their product ranges.[59] With regard to water pressure pipe systems of PEX/PERT material in Norway, a majority of competitors who expressed an opinion held that Georg Fischer and Uponor compete but not closer to each other than vis-à-vis other competitors in terms of product offering, quality, capabilities, pricing, innovation or brand.[60] While some customers stated that the parties have equivalent products or are close

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52 Questionnaire to customers, C.10; Questionnaire to competitors C.10.

53 Questionnaire to competitors, question E.A.5; Questionnaire to customers, question E.A.1; Minutes of a call with a customer on 1 September 2023, paragraph 5.

54 Horizontal Merger Guidelines, paragraph 28 *('It is therefore less likely that a merger will significantly impede effective competition, in particular through the creation or strengthening of a dominant position, when there is a high degree of substitutability between the products of the merging firms and those supplied by rival producers'*).

55 Questionnaire to customers, questions E.A.1 and E.A.3; Questionnaire to competitors, question E.A.5.

56 Horizontal Merger Guidelines, paragraph 33 ('*Conversely, when market conditions are such that rival firms have enough capacity and find it profitable to expand output sufficiently, the Commission is unlikely to find that the merger will create or strengthen a dominant position or otherwise significantly impede effective competition.'*)

57 Minutes of a call with a competitor on 1 September 2023, paragraph 24.

58 Horizontal Merger Guidelines, paragraph 28 ('*The merging firms' incentive to raise prices is more likely to be constrained when rival firms produce close substitutes to the products of the merging firms than when they offer less close substitutes.*')

59 Questionnaire to competitors, question E.A.4.

60 Questionnaire to competitors, question E.A.3.

competitors, the same number of customers stated that the Parties are not close in terms of e.g. quality, capabilities, pricing, innovation or brand.[61]

(51) *Fourth*, Georg Fischer's customer base in Norway with regard to water pressure pipe systems of PEX/PERT material is very concentrated. Thus, even smaller shifts of volume away from Georg Fischer by these customers would significantly reduce its market share.

(52) Finally, the absence of competition concerns seems confirmed by the views expressed by market participants, and in particular customers. In particular, a majority of customers who expressed an opinion held that the impact of the Transaction on the market for water pressure pipe systems of PEX/PERT material in Norway would be neutral or even positive.[62] As to competitors, while they voiced negative views on the impact of the Transaction on the market for water pressure pipe systems of PEX/PERT material in Norway,[63] they further clarified that they did not think that the combined entity would be able to worsen the terms and conditions with regard to the supply of any pipe systems, e.g., increase prices in Norway, without losing market shares/customers.[64]

5.2.2. Austria and Finland

(53) With regard to water pressure pipe systems for buildings segmented by material, affected markets arise in relation to multilayer water pressure pipe systems in Finland (combined share [40-50]%) and Austria (combined share [20-30]%).[65]

(54) The Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement with regard to the supply of water pressure pipe systems for buildings regardless of the material in Finland and Austria due to the following considerations:

(55) *First*, while the combined market shares of the Parties are relatively high in Finland with regard to water pressure pipe systems for buildings of multilayer material, the increment brought by the Transaction is small ([40-50]% combined market share with an increment of [0-5]% in Finland (HHI delta […][66]). Moreover, in Austria, the combined market share is moderate and the increment small ([20-30]% combined share in water pressure pipe systems for buildings of multilayer material in Austria with an increment of [0-5]% (HHI delta […])[67]. The market investigation confirmed the approximate level of market shares of the Parties to the Transaction in Austria and Finland.

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61 Questionnaire to customers, question E.A.6.

62 Questionnaire to customers, question E.A.8.

63 Questionnaire to competitors, question F.1.

64 Questionnaire to competitors, question F.4.

65 As mentioned above, for the purposes of this analysis, the Parties' combined market share in the sub-application hot and cold-water pipe systems made of multilayer material is applied as a proxy to the segment water pressure pipe systems of multilayer material. In Austria and Finland, the Parties will also be constrained by the prices of pressure pipe systems of other materials than multilayer (source: Questionnaire to customers, C.10; Questionnaire to competitors C.10.).

66 Horizontal Merger Guidelines, paragraph 20 ('*The Commission is also unlikely to identify horizontal competition concerns in a merger with a post-merger HHI between 1 000 and 2 000 and a delta below 250, or a merger with a post-merger HHI above 2 000 and a delta below 150, except where special circumstances such as, for instance, one or more of the following factors are present: (…)*')

67 Idem.

(56) *Second*, market participants indicated that there are multiple plausible competitors[68] present in the affected markets in the two Member States.[69] With regard to Finland in particular, market participants have identified Roth, LK Systems, Wavin, Geberit, Thermotech, Henco, Viega and Mepla as alternative suppliers to the Parties.[70] According to a competitor active in Finland, capacity[71] is also not a limiting factor in the pipe industry, and additional capacity can be installed at relatively low investment cost.[72] The competitors remaining on the market will thus be able to exercise a competitive constraint on the merged entity.

(57) Finally, a majority of both customers and competitors expressing a view considered that the Transaction would have a neutral impact on the markets concerned in Austria and Finland.[73]

6. CONCLUSION

(58) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Didier REYNDERS
Member of the Commission

68 Horizontal Merger Guidelines, paragraph 28 (‘*The merging firms' incentive to raise prices is more likely to be constrained when rival firms produce close substitutes to the products of the merging firms than when they offer less close substitutes.*’).

69 Questionnaire to customers, question E.B.1; Questionnaire to competitors, question E.B.1.

70 Questionnaire to customers, question E.B.1; Questionnaire to competitors, question E.B.1.

71 Horizontal Merger Guidelines, paragraph 33 (‘*Conversely, when market conditions are such that rival firms have enough capacity and find it profitable to expand output sufficiently, the Commission is unlikely to find that the merger will create or strengthen a dominant position or otherwise significantly impede effective competition.*’).

72 Minutes of a call with a competitor on 1 September 2023, paragraph 24.

73 Questionnaire to customers, question E.B.3; Questionnaire to competitors, question F.1.