

# Anticipated acquisition by Iconex LLC of Hansol Denmark ApS and R+S Group GmbH

## REQUEST PURSUANT TO ARTICLE 22 OF COUNCIL REGULATION (EC) 139/2004

ME/6798/19

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

### Introduction

1. The Competition and Markets Authority (**CMA**) submits this request to the European Commission (the **Commission**) pursuant to Article 22(2) of Council Regulation 139/2004 (**EUMR**). It requests that the Commission examines the UK aspects of the acquisition by Iconex LLC (**Iconex**) of Hansol Denmark ApS and its subsidiary Schades A/S (collectively, **Schades**) and R+S Group GmbH (**R+S**) (the **Merger**). Schades and R+S are together referred to as the **Target Companies**, and Iconex, Schades and R+S are together referred to as the **Parties**.
2. The request is made pursuant to Article 22(2) EUMR since the German Competition Authority (the **Bundeskartellamt**) made the initial Article 22 EUMR request with respect to the same transaction (the **Initial Request**). The CMA was informed by the Commission of the Initial Request on 8 February 2019. Therefore, the 15 working days deadline by which the CMA must join the request is 1 March 2019.
3. The purpose of this document is to set out the evidence and issues that the CMA considered in making a preliminary assessment as to whether the criteria for making a referral request under Article 22 EUMR have been met. In this context, the evidence set out in this document, while considered sufficient to support this request, has not been subject to the rigour of a full merger control investigation.
4. The CMA has based this request on the limited information it has received from the Parties during pre-notification discussions. For the avoidance of doubt, the Parties have not (as yet) formally notified the Merger in the UK.

## Parties and Transaction

5. Iconex has its registered office in Duluth, USA and is ultimately owned by industrial holding company Atlas FRM LLC d/b/a Atlas Holdings LLC (**Atlas**). Iconex produces and sells self-adhesive labels, receipt paper rolls, inking products and cartridges (toners), and cleaning products. Atlas' worldwide and EEA turnover in the financial year 2017 was approximately €[X] and €[X] (approximately £[X] and £[X]), respectively. Its UK turnover in the financial year 2017 was approximately €[X] (approximately £[X]).
6. The Target Companies are ultimately owned by Hansol Paper Co. Ltd. In addition, Mirae Asset Daewoo Hunters Private Equity Fund is a shareholder in Hansol Denmark ApS and will sell its shares to Iconex as part of the Merger. Schades is headquartered in Denmark whilst R+S is headquartered in Germany. The Target Companies also produce and sell self-adhesive labels and receipt paper rolls. The Target Companies' combined worldwide and EEA turnover in the financial year 2017 was approximately €[X] and €[X] (approximately £[X] and £[X]) respectively. Their combined UK turnover in the financial year 2017 was approximately €[X] (approximately £[X]).
7. Iconex agreed to acquire 100% of the shares in the Target Companies under a sale and purchase agreement dated 5 November 2018. The consideration for the Merger is [X]. The Merger is conditional upon merger clearance by the Bundeskartellamt (among other conditions).
8. The Parties overlap in the supply of (i) lightweight thermal paper (**LWTP**) converted rolls for use in point of sale devices and ATMs, and (ii) LWTP self-adhesive labels (used eg for labels on packaging).<sup>1</sup> The Parties both purchase 'LWTP Jumbo Rolls' from their suppliers, cut/convert these into smaller rolls and resell these to distributors and end-users.

## Article 22 EUMR requirements

9. In considering whether to make a referral request to the Commission under Article 22 EUMR, the CMA has considered whether the Merger satisfies the following criteria:

- it is a concentration that does not have a European Union dimension;

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<sup>1</sup> The Parties submitted that their combined market presence in the supply of LWTP self-adhesive labels in the UK and EEA is *negligible* with a less than [0-5]% combined share of supply in the UK and less than [0-5]% combined share of supply in the EEA. Therefore, this overlap is not considered further in this request.

- that affects trade between Member States; and
- that threatens to significantly affect competition in the UK.<sup>2</sup>

10. For the reasons set out below, the CMA believes that each of these criteria is met.

### **Concentration that does not have a European dimension**

11. The CMA believes that the Merger meets the requirements to be considered a concentration under Article 3 EUMR. A concentration occurs where two or more undertakings merge, or where one or more undertakings acquires '*control*' over the whole or parts of one or more undertakings. For these purposes, '*control*' is defined as the ability to exercise '*decisive influence*' over one or more undertakings.<sup>3</sup>
12. The CMA believes that the Merger creates a '*concentration*' as defined in Article 3(1) EUMR. Iconex will acquire all shares in and sole control over the Target Companies,<sup>4</sup> each of which constitutes an '*undertaking*' for the purposes of the EUMR. However, this '*concentration*' does not have a European Union dimension, as the thresholds in Article 1 EUMR are not met on the basis of the Parties' 2017 audited turnover.<sup>5</sup>

### ***Transaction subject to UK jurisdiction***

13. The CMA is satisfied that the Merger qualifies for domestic assessment under the merger control provisions of the Enterprise Act 2002 (the **Act**). Iconex, Schades and R+S are enterprises for the purposes of section 23 of the Act. The Merger will bring these three enterprises under the common control of Iconex and thus they will cease to be distinct.
14. The CMA believes that the share of supply test under section 23 of the Act is met. The Parties overlap in the supply of LWTP converted rolls in the UK. As a result of the Merger, Iconex's share of supply in the supply of LWTP converted

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<sup>2</sup> As set out in paragraph 44 of the Commission Notice on Case Referral, 'a referring Member State or States is/are required in essence to demonstrate that, based on a preliminary analysis, there is a real risk that the transaction may have a significant adverse impact on competition, and thus that it deserves close scrutiny. Such preliminary indications may be in the nature of *prima facie* evidence of such a possible significant adverse impact but would be without prejudice to the outcome of a full investigation.'

<sup>3</sup> Article 3(2) EUMR.

<sup>4</sup> Paragraph 2(a)(1) of the draft Merger Notice states that '[Iconex] intends to acquire, indirectly through an acquisition vehicle, all shares in and sole control over [R+S] and [Schades].'

<sup>5</sup> The CMA understands that audited figures for 2018 are not yet available. [X].

rolls in the UK will be more than 25% ([40-50]%), with an increment of [10-20]% being brought about by the Merger.

15. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation for the purposes of the Act.<sup>6</sup>

## **The Merger affects trade between Member States**

16. There are indications that the markets affected by the Merger are wider than national in scope, and at least EEA-wide. The Parties submitted that the geographic market is at least EEA-wide on the basis that LWTP converted rolls are non-perishable and easily packaged and transported, meaning that LWTP converted rolls can be, and are, routinely shipped across the whole of the EEA to satisfy customer demand. This position is consistent with the Commission's decisional practice in neighbouring product markets (including self-adhesive label stock, BOPP film, industrial foils and release liners) in which geographic markets have consistently been considered to be EEA-wide or wider in scope.<sup>7</sup>
17. Furthermore, the CMA understands that the Parties' customers procure, and that the Parties' competitors typically compete on, a cross-border basis. The Parties submitted that LWTP converted rolls are commodity products and that the main cost drivers are (i) the cost of paper (which is generally homogenous across European countries), (ii) transportation costs, and (iii) labour costs. The Parties consider that this supports the position that cross-border trade is therefore economically viable. In this context, the Parties submitted that the Target Companies supply their [X] customers from their production sites in [X], that Iconex serves customers in [X] from its production site in [X], and that some EEA customers are supplied by LWTP converters from outside the EEA (including from Turkey, Russia and China).
18. Based on the information currently available, the CMA therefore considers that the Merger affects trade between Member States.

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<sup>6</sup> *Mergers: Guidance on the CMA's jurisdiction and procedure* sets out at paragraph 18.49 that the CMA would be unlikely, absent unusual circumstances, to make a referral request under Article 22 EUMR unless the merger would qualify for investigation under the Act, even though Article 22 EUMR does not restrict referral requests to Member States that have jurisdiction to review a concentration under their own domestic legal provisions.

<sup>7</sup> The Commission found an EEA-wide or wider market in the following cases: Case COMP M.2867 – UPM-Kymmene/Morgan Adhesives, paragraph 21, Case COMP M.3946 – Renolit/Solvay, paragraph 33, Case COMP M.3025 – Bain/DOR Chemical/Trespaphan, paragraph 23 and Case COMP M.5155 – Mondi/Loparex, paragraph 29, and considered (but left open) a possible EEA-wide or global market in Case COMP M.4319 – Mondi/Schleipen&Erkens, paragraph 16.

## The Merger threatens to significantly affect competition in the UK

19. As set out in more detail below, based on the information currently available, the CMA's preliminary analysis indicates that the Merger threatens to significantly affect competition in the UK. The CMA believes that the Merger raises the possibility of horizontal unilateral effects in the UK and warrants the close scrutiny that a merger assessment will bring.

### **Relevant markets**

#### *Product scope*

20. The Parties submitted that the relevant frame of reference is the supply of LWTP converted rolls for use in point of sale devices and ATMs. The Parties have further submitted that a segmentation according to customer type, customer size or customer location would be inappropriate because the competitive conditions do not differ between possible segments.
21. At this stage of its investigation, the CMA has not reached a definitive view on the relevant product frame of reference. However, some of the internal documents reviewed indicate that further segmentation of the product frame of reference may be appropriate in this case. For example:

(a) [REDACTED];<sup>8</sup> and

(b) [REDACTED]:

- [REDACTED]; and
- [REDACTED].<sup>9</sup>

#### *Geographic scope*

22. The Parties submitted that the relevant geographic frame of reference is EEA-wide. As set out at paragraph 17 above, the Parties submitted that they regularly supply to customers across the EEA. Iconex further submitted that customers can place orders with it even where it does not have localised sales support presence and that there is no difference between orders originating in countries where Iconex is not physically present and those where it is. An Iconex internal document also [REDACTED].<sup>10</sup> On the basis of the evidence available at

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<sup>8</sup> [REDACTED].

<sup>9</sup> [REDACTED].

<sup>10</sup> [REDACTED].

this stage, the CMA believes that the relevant geographic frame of reference is likely to be wider than national in scope.

**Significant adverse impact on competition**

23. The Parties submitted share of supply information for the supply of LWTP converted rolls for use in point of sale devices and ATMs to UK and EEA customers. The products supplied in this market appear to be relatively homogenous, and therefore shares of supply may provide a good indicator of the competitive significance of the Parties. The share of supply data submitted by the Parties indicated that they have a combined share of supply of [40-50]% on a UK-wide basis, and [20-30]% on an EEA-wide basis.

**Table 1: LWTP converted rolls for use in point of sale devices and ATMs to customers in the UK<sup>11</sup>**

<b>Supplier</b>	<b>Metric Tonnes</b>	<b>UK share of supply</b>
<i>Iconex</i>	[X]	[10-20]%
<i>Target Companies</i>	[X]	[30-40]%
<i>Combined</i>	[X]	[40-50]%
Premier Vanguard	[X]	[10-20]%
Merley Paper	[X]	[5-10]%
Tayrol	[X]	[5-10]%
Veit	[X]	[0-5]%
Royce	[X]	[0-5]%
Others	[X]	[20-30]%
<b>TOTAL</b>	[X]	<b>100.0%</b>

**Table 2: LWTP converted rolls for use in point of sale devices and ATMs to customers in the EEA**

<b>Supplier</b>	<b>2018 POS Metric Tonnes Sold</b>	<b>Percentage of market</b>
<i>Iconex</i>	[X]	[0-5]%
<i>Target Companies</i>	[X]	[10-20]%
<i>Combined</i>	[X]	[20-30]%
Veit	[X]	[10-20]%
Rotolificio Bergamasco	[X]	[0-5]%

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<sup>11</sup> The Parties submitted that these figures represent Iconex' best estimates based on internal information, publicly available revenue information from which volumes have been estimated, as well as other third-party data sources.

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Supplier	2018 POS Metric Tonnes Sold	Percentage of market
Imports	[REDACTED]	[5-10]%
Others	[REDACTED]	[50-60]%
<b>TOTAL</b>	[REDACTED]	<b>100%</b>

24. The CMA believes that there is a possibility that these shares of supply understate the Parties' competitive strength in the UK and the EEA. As stated by the Bundeskartellamt in the Initial Request, [REDACTED].<sup>12</sup> In this context, the Parties' internal documents also suggest that the Parties' shares of supply may be higher than the figures in submitted by the Parties as set out in Tables 1 and 2 above. In particular:

(a) [REDACTED];<sup>13</sup>

(b) [REDACTED];<sup>14</sup>

(c) [REDACTED];<sup>15</sup>

(d) [REDACTED];<sup>16</sup>

(e) [REDACTED];<sup>17</sup> and

(f) [REDACTED].<sup>18</sup>

25. The CMA's preliminary analysis also indicates that the Parties are close competitors in the supply of LWTP converted rolls for use in point of sale devices and ATMs in the UK and EEA. Bidding data submitted by the Parties shows that Iconex competed against one or more of the Target Companies in at least [20-30]% of bids with a value of [REDACTED]. While the Parties submitted that the bidding data they have provided is incomplete (and therefore not fully representative of competitive conditions), the CMA believes that this data nevertheless suggests there may be close competition between the Parties (at least in some segments), which should be investigated further as part of a full

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<sup>12</sup> Initial Request, page 4.

<sup>13</sup> [REDACTED].

<sup>14</sup> [REDACTED].

<sup>15</sup> [REDACTED].

<sup>16</sup> [REDACTED].

<sup>17</sup> [REDACTED].

<sup>18</sup> [REDACTED].

merger review. Moreover, certain of Iconex' internal documents also frequently reference the Target Companies, [REDACTED].<sup>19</sup>

26. The information reviewed by the CMA also suggests that there might be insufficient competitors left post-Merger to effectively constrain the merged entity. While the Parties submit that LWTP converted rolls are commodity products and that competition takes place on the basis of price and reliability of supply, EEA-wide shares of supply estimates provided by the Parties show that the merged entity would be by far the largest supplier in Europe, with the next largest competitor (Veit) having an [10-20]% share of supply and no other competitor achieving a share of supply of more than [0-5]%. In the UK, the Parties' shares of supply indicate that they would be more than three times as large as the next largest competitor (Premier Vanguard which has a [10-20]% share of supply), with no other competitor achieving a share of supply of more than [10-20]%. This view is supported by some statements in the internal documents. For example:

(a) [REDACTED]; and

(b) [REDACTED].<sup>20</sup>

27. On the basis of this preliminary analysis, the CMA therefore believes that there is a material prospect that the Merger may have a significant adverse impact on competition in the UK, and potentially more widely in the EEA, as a result of horizontal unilateral effects in the supply of LWTP converted rolls for use in point of sale devices and ATMs, as well as in a number of further potential segments based on customer size and/or customer type.

### Further reasons for using Article 22 EUMR

28. According to the Commission Notice on Case Referral in respect of concentrations (the **Commission's Notice on Case Referral**),<sup>21</sup> in making a request, Member States should take account of the principle of subsidiarity, and, in particular, which is the more appropriate authority for carrying out the investigation, the benefits inherent in a 'one-stop shop' system and the importance of legal certainty with regard to jurisdiction.<sup>22</sup> The CMA has also had due regard to the factors outlined in its own guidance on making an Article

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<sup>19</sup> [REDACTED].

<sup>20</sup> [REDACTED].

<sup>21</sup> 2005/C 56/02.

<sup>22</sup> Commission Notice on Case Referral, paragraph 8.



22 EUMR request (which overlap significantly with the Commission's Notice on Case Referral).<sup>23</sup>

29. The CMA notes, in this regard, that the Merger has been notified to the Bundeskartellamt in Germany (on 18 January 2019) and qualifies for an investigation under UK law. The CMA also understands that the French Competition Authority is considering joining the Initial Request. The evidence cited in paragraph 24 above suggests that the Merger may also give rise to significant shares of supply (above the typically threshold level of concern) in other Member States. Therefore, the locus of any impact on competition may well be in other Member States in addition to the UK.
30. The CMA considers that a review by the Commission would be useful and proportionate, offering the efficiencies of a 'one-stop-shop' for both the notifying parties and the national competition authorities (**NCA**s). In particular:
  - (a) Given that the Parties' competitors appear to be active in, and customers procure from suppliers across, multiple Member States, it is more effective for a single authority to undertake the substantive assessment of the Merger (with appropriate input from the other NCA's as appropriate). Furthermore, as noted at paragraph 17 above, both Parties' customers are located throughout the EEA. In the absence of an Article 22 EUMR referral, it is likely that the same customers and competitors will receive similar information requests from multiple NCA's; and
  - (b) It is important to avoid inconsistent decision making across NCA's. The CMA's preliminary analysis has identified the substantive issues set out above and, at this stage, it cannot dismiss the significant risk of diverging outcomes and remedies (if necessary).
31. Therefore, the CMA believes that the Commission is better placed to examine the Merger.

## **Conclusion**

32. The CMA's view is based on its preliminary assessment for the purposes of Article 22 EUMR and on the information before it at this stage of its pre-notification discussions with the Parties. The CMA has not yet come to a view on whether a referral to a Phase 2 investigation in the UK would be likely and its preliminary view is without having conducted a full merger investigation.

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<sup>23</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure](#), paragraphs 18.48-58.

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33. For the reasons set out above, the CMA considers that the conditions set out in Article 22 EUMR, the Commission's Notice on Case Referral,<sup>24</sup> and its own guidance on handling Article 22 EUMR requests,<sup>25</sup> indicate that a referral of jurisdiction to the Commission in this case is appropriate.
34. In line with its own guidance and the Commission's Notice on Case Referral, and for the reasons set out above, the CMA therefore joins the existing Article 22 Initial Request by the Bundeskartellamt for the Commission to accept the case referral and to investigate the Merger.
35. Finally, the CMA notes that, as at the date of this request, the UK's exit from the European Union (**EU Exit**) is due to be effective in the UK from 11pm on 29 March 2019 (**Exit Day**). In the event of a 'no deal' EU Exit, if the Commission has not issued a decision in relation to the Merger before Exit Day, the CMA would have jurisdiction to review the Merger, and its effects within the UK, assuming that the UK jurisdictional requirements are met (which, as explained in paragraphs 13 to 15 above, the CMA currently considers to be the case).

27 February 2019

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<sup>24</sup> 2005/C 56/02.

<sup>25</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure](#), paragraphs 18.48-58.