

Mergers: Commission opens in-depth investigation into proposed acquisition of Gemalto by Thales

Commissioner Margrethe **Vestager**, in charge of competition policy, said: *“Our society is increasingly dependent on data security solutions to secure all sorts of social, commercial or personal information. We are opening this in-depth investigation to ensure that the proposed transaction between Thales and Gemalto would not lead to higher prices or less choice in hardware security modules for customers looking to safely encrypt their data”.*

The proposed transaction would combine the two largest suppliers of hardware security modules used for enterprise key management solutions, both in the European Economic Area (EEA) and at global level. A hardware security modules (HSM) is a dedicated hardware appliance running on encryption software to generate, protect, and manage encryption keys used to protect data in a secure tamper-resistant module. The combined entity would become by far the largest player in the market for HSMs in Europe and worldwide.

The Commission's competition concerns

Thales and Gemalto currently closely compete against each other in **the market for hardware security modules at the European and global level**. At this stage, the Commission is concerned that the proposed transaction would eliminate the competitive constraint that Thales and Gemalto exercise on each other and on the other few players that would remain in the market and would risk creating a dominant player at the European and global level.

The Commission is also concerned that by reducing the number of players in the market and by lowering the merged entity's incentives to compete effectively, the transaction could lead to higher prices and reduce innovation.

The Commission will now carry out an in-depth investigation into the effects of the transaction to determine whether its initial competition concerns are confirmed. The Commission will in particular further assess: (i) the extent to which the parties are close competitors, (ii) the potential response of the merged entity's competitors, and (iii) the ability of software-based solutions to reach the same security level as hardware security modules, and therefore compete with the latter.

The transaction was notified to the Commission on 18 June 2018. The Commission now has 90 working days, until 29 November 2018, to take a decision. The opening of an in-depth investigation does not prejudice the outcome of the investigation.

Companies and products

Thales, based in France, is a global group active in aeronautics, space, ground transportation, defence and security.

Gemalto, based in the Netherlands, is an international digital security company active in mobile platforms and services, mobile embedded software & products, smart cards, identification documents, government programmes, machine to machine communication (Internet of Things), and enterprise security.

Merger control rules and procedures

The Commission has the duty to assess mergers and acquisitions involving companies with a turnover above certain thresholds (see Article 1 of the [Merger Regulation](#)) and to prevent concentrations that would significantly impede effective competition in the EEA or any substantial part of it.

The vast majority of notified mergers do not pose competition problems and are cleared after a routine review. From the moment a transaction is notified, the Commission generally has a total of 25 working days to decide whether to grant approval (Phase I) or to start an in-depth investigation (Phase II).

There are currently five other on-going Phase II merger investigations: the [proposed acquisition of MKM by KME](#), the [proposed acquisition of Alstom by Siemens](#), the [proposed acquisition of Solvay's nylon business by BASF](#), the [proposed acquisition of Tele2 NL by T-Mobile NL](#), the [proposed acquisition of Shazam by Apple](#) and [the proposed merger of Praxair and Linde](#).

More information will be available on the Commission's [competition](#) website, in the [public case register](#) under the case number [M.8797](#).

Merger: Commission opens in-depth investigation into KME's proposed acquisition of competing copper products supplier MKM

Commissioner Margrethe **Vestager**, in charge of competition policy, said:
"Copper is a key input in many industries including electrical equipment and pipes for heating equipment in our homes. Our investigation aims to ensure that these customers, and ultimately final consumers, will not pay higher prices for this important input, following the proposed acquisition of MKM by KME."

KME and MKM are both active in the manufacturing and marketing of copper and

copper alloy products, including rolled copper products and copper alloys, and copper tubes (including sanitary copper tubes). Rolled copper products are used as an input in the manufacturing of many products, including electrical transformers, semiconductors, heat exchangers, and roofing materials. Sanitary copper tubes are used in the construction industry for drinking water installations, radiator connections, surface heating and cooling and sanitary gas installations.

The Commission's preliminary competition concerns

The Commission's initial market investigation identified the following main preliminary concerns:

- For **rolled copper products, and notably for pure copper and some specific copper alloys**, the elimination of competition between the companies could lead to higher prices.
- MKM is also active in the supply of **pre-rolled strip**, an intermediate product for manufacturing rolled copper products. Following the transaction, MKM could make access to this important input more costly or difficult for KME's competitors.
- For **sanitary copper tubes**, MKM is a serious challenger to KME, the EU market leader. The transaction would eliminate competition between the companies in many EU countries where the supply of sanitary copper tubes is already particularly concentrated.

The transaction was notified to the Commission on 4 June 2018. On 2 July 2018, KME submitted commitments to address some of the Commission's preliminary concerns. However, the Commission considered these commitments insufficient to clearly dismiss its serious doubts. The Commission therefore did not test them with market participants.

The Commission now has 90 working days, until **29 November 2018**, to carry out an in-depth investigation into the effects of this transaction and determine whether its initial competition concerns are confirmed. The opening of an in-depth investigation does not prejudice the outcome of the investigation.

Companies and products

KME, a European industrial group based in Germany, is active in the manufacturing and marketing of copper and copper alloy products, including rolled copper and copper alloy products, and copper tubes. KME operates several production sites in Germany, Italy, France, Spain, the US and China. KME is a wholly-owned subsidiary of Intek Group, a listed joint stock

corporation, with headquarters in Milan, Italy.

MKM, also based in Germany with one plant there, is a manufacturer of intermediate and semi-finished products made from copper and copper alloys. MKM manufactures copper wire, pre-rolled strip, rolled products and tubes.

Merger control rules and procedures

The Commission has the duty to assess mergers and acquisitions involving companies with a turnover above certain thresholds (see Article 1 of the [Merger Regulation](#)) and to prevent concentrations that would significantly impede effective competition in the EEA or any substantial part of it.

The vast majority of notified mergers do not pose competition problems and are cleared after a routine review. From the moment a transaction is notified, the Commission generally has a total of 25 working days to decide whether to grant approval (Phase I) or to start an in-depth investigation (Phase II).

In addition to the current transaction, there are six ongoing Phase II merger investigations: the [proposed acquisition of Gemalto by Thales](#), the [proposed acquisition of Alstom by Siemens](#), the [proposed acquisition of Solvay's nylon business by BASF](#), the [proposed acquisition of Tele2 NL by T-Mobile NL](#), the [proposed acquisition of Shazam by Apple](#), and [the proposed merger of Praxair and Linde](#).

More information will be available on the Commission's [competition](#) website, in the [public case register](#) under the case number [M.8909](#).

ESMA updates UCITS and AIFMD Q&As

The Q&A documents include new questions and answers on:

- UCITS investing in other UCITS with different investment policies;
- Calculation of issuer concentration limits pursuant to Article 52 of the UCITS Directive;
- Reuse of assets by a UCITS depositary under Article 22(7) of the UCITS Directive; and
- The supervision of branches of UCITS Management Companies or AIFMs providing MiFID investment services.

The purpose of these Q&A documents is to promote common supervisory approaches and practices in the application of the UCITS Directive and AIFMD and their implementing measures.

ESMA will periodically review these Q&A documents and update them where

required.

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