

***Case No IV/M.1248 -
KINGFISHER / BUT***

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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 21/08/1998

*Also available in the CELEX database
Document No 398M1248*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.8.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

Dear Sirs,

Subject: Case No IV/M.1248 - Kingfisher/BUT

Notification of 17.07.1998 pursuant to Article 4 of Council Regulation No. 4064/89.

1. On 17 July 1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ of 21 December 1989 on the control of concentrations between undertakings, as last amended by Regulation 1310/97² by which the undertaking Kingfisher plc ("Kingfisher") will acquire within the meaning of Article 3(1)(b) of the Council Regulation control of the undertaking BUT S.A ("BUT").
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. Kingfisher is a broadly based non-food retail group (including electrical retailing, i.e. the retailing of domestic electrical appliances and consumer electronics) operating mainly within the United Kingdom but with significant interests also in Belgium, France, Germany and the Netherlands. Kingfisher operates in the electrical retailing sector in France through Darty et Fils S.A. ("Darty"), which it acquired in 1993.³ With the acquisition Kingfisher intends to complement its French retail business by entering the furniture market.

¹ OJ No L 395 of 30.12.1989; Corrigendum: OJ No L 257 of 21.09.1990, p. 13.

² OJ No L 189, 9.7.97; corrigendum OJ L 40, 13.2.98, p.17.

³ In Case No.IV/M.300-Kingfisher/Darty the Commission cleared this acquisition.

4. BUT is a company that operates solely in France and is active mainly in retailing of household furniture (60% turnover) as well as domestic electric appliances and consumer electronics (40% turnover). It operates 235 franchise stores under the BUT, 53 of which are consolidated as part of the BUT group; 28 outlets are owned by BUT.
5. Through its French subsidiary Darty, Kingfisher intends to acquire 35.68 % of the shares in BUT. Darty will purchase these shares from the Venturini family and from Mr Georges Yvrai, which will, together with the 26 % of the shares already held by Kingfisher, result in a controlling interest of 61.68 % in BUT. Kingfisher will also offer to purchase the remainder of the shares of BUT through a full public offer for cash.

II. CONCENTRATION

6. With the acquisition of the majority of shares and voting rights in BUT, Kingfisher acquires control in the company, thus making the operation a concentration within the meaning of Article 3(1)(b) of the Regulation.

III. COMMUNITY DIMENSION

7. The undertakings Kingfisher and BUT have a combined aggregate world-wide turnover of excess of 5,000 million ECU (Kingfisher 9,937.7 million ECU; and BUT [...]^❶). Each of them has a Community-wide turnover in excess of 250 million ECU (Kingfisher 9,934.4 million ECU; and BUT [...]^❷), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension according to Article 1(2) of the Merger Regulation. It does not qualify for co-operation with the EFTA surveillance Authority pursuant to the EEA Agreement.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product markets

8. The only economic sector in which there is any horizontal overlap in the activities of the parties is that of electrical retailing in France. The party states that this market can be broadly divided into the following four major segments: brown goods, i.e. audio and visual appliances, large domestic appliances, e.g. washing machines, freezers etc., small domestic appliances, e.g. toasters, irons etc., and computer and communication. The notifying party furthermore indicates that the extent of competition between their subsidiary Darty and the target BUT is strongly limited by the fact that they operate in different levels of the electrical retailing sector: Darty is a service oriented business operating in a higher price bracket of the market, whereas BUT's business focuses on low-price items without a fully integrated service.

❶ Deleted for publication.

❷ Deleted for publication.

9. In line with previous cases relating to the retail sector⁴, the procurement market where a retailer could exercise possible bargaining power has to be distinguished from the retailing market, even though an interrelation between these markets does exist.
10. It is not necessary to further delineate the relevant product markets because in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

B. Relevant geographic markets

11. The notifying party states that the relevant geographic market is either national or local. According to the parties, cross-border trading in electrical retailing within Europe is minimal. BUT for example had no export sales in 1997. Even though many of the suppliers are global players, they tend to have a national sales policy due to different consumer preferences as well as different national standards for some equipment, such as colour televisions. This assessment is in line with previous decisions concerning retail operations, where the Commission has defined the geographic market to be national, if not regional or local.⁵
12. In previous decisions the Commission has detailed the reasons according to which the procurement market for retailing in France is at least a national one⁶. This is particularly true for the non-food sector where there is no supply with local perishables, on the contrary many of the suppliers operate rather on a larger than national scale.
13. It is not necessary to delineate the relevant geographic markets because, in all alternative geographic market definitions considered effective competition would not be significantly impeded in the EEA area or any substantial part of that area.

C. Competitive assessment

14. On the basis of a local or regional market an overlap between the parties would be limited to certain areas only. The parties operate largely in different complementary parts of the market. Darty operates in prime urban areas with a marked presence in the Ile-de-France, Centre-East and South-East. Darty is for example present in towns such as Nice, Mulhouse, Amiens and Auxerre, where BUT is not present. BUT on the other hand is present in Cahors, Bastia, Dinan, Cambrai and GAP, where Darty has either no or just a very small presence. The Commission has found that there is no local catchment area where the combined market share of the parties would be above 25%, with the exception of the Paris region where the parties' estimated market share lies between 25% and 30%. Only Darty is present in the centre of Paris. Where both Darty and BUT are present in the periphery, the large national competitors are present as well.

⁴ Case IV/M:803 - Rewe/Billa; case IV/M.991 – Promodes Casino; case IV/M.1085 - Promodes Catteau.

⁵ Case IV/M.784 - Kesko/Tuko; case IV/M.890 - Blokker/Toys “R” Us; case IV/M.1188 – Kingfisher/Wegert/ProMarkt.

⁶ Case IV/M.991 – Promodes Casino; case IV/M.1085 - Promodes Catteau.

15. In the course of the Commission investigation some competitors expressed a general concern about the size of the combined Darty/BUT group. On the other hand, according to another opinion that was expressed, a larger competitor present on the market might even have a stimulating effect on competition. Only one of Darty's and BUT's major competitors expressed a more substantiated concern with regard to the combined market share of the former companies for large and small domestic appliances which he considers to be at [...] in the Ile de France. However, since the market share addition due to the operation in these sectors is marginal⁷, and a number of sufficiently large competitors are present⁸ the market position of the combined Darty/BUT group in these market segments can not give rise to doubts regarding the compatibility of the present operation with the Common Market.
16. Should the relevant market be defined as France the combined market share of the parties in electrical retailing, including all of BUT's franchise operations, can be estimated at 17%. Even if one were to break these figures down according to the various product segments the combined market share of the parties is below 20%, exceeding this figure only for large domestic appliances ([...]). These figures were borne out by the market enquiry of the Commission.
17. The new group will be the largest electrical retailer in France with a 17% market share. It will however be faced with the competition of a number of large retailers, such as hypermarkets, specialised stores, multispecialists and department stores, many of which are in a position to exercise an effective competitive presence. The next largest competitors are the group Pinault/Printemps with [...], Carrefour with [...] and the Auchan group (including Mammouth and Boulanger) with [...] market share. A large share of the market is made up by independents (estimated between [...]).
18. With regard to the procurement side any position which Kingfisher, as a result of the operation, would hold vis-à-vis its suppliers, would not be significantly stronger, because the addition of the BUT group, which has a 4.7% market share in France, is not expected to increase Kingfisher's bargaining power more than marginally. The market enquiry has not revealed any concerns by the suppliers regarding the bargaining position of the combined Darty/BUT group.

⁶ Deleted for publication; the figure is between 25% and 35%.

⁷ For large domestic appliances Darty's share is estimated to be up to *[deleted for publication; the figure is below 40%]*, BUT would account for an increment of approximately *[deleted for publication the figure is below 5%]*; for small domestic appliances Darty's share is estimated between *[deleted for publication; the figure is between 25% and 30%]*, while BUT would account for an increment below 1%.

⁸ For the segment of large domestic appliances the market shares of the next largest competitors (Carrefour Group, Auchan Group, Pinault Group) are estimated at around *[deleted for publication; the figure is between 5% and 15%]*; for small electric appliances the share of the Carrefour Group is estimated between *[deleted for publication; the figure is between 20% and 25%]*, followed by the Auchan Group with between *[deleted for publication; the figure is between 10% and 15%]*.

⁴ Deleted for publication; the figure is between 20% and 30%.

⁵ Deleted for publication; the figure is between 10% and 15%

⁶ Deleted for publication; the figure is between 10% and 15%.

⁷ Deleted for publication; the figure is between 5% and 10%.

⁸ Deleted for publication; the range is between 10% and 25%.

19. In view of the market position of the parties to the concentration, it appears that the notified operation will have a de minimis impact on competition in the EEA. Consequently, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

V. CONCLUSION

20. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,