

***Case No IV/M.1333 -
KINGFISHER /
CASTORAMA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION

Date: 17/12/1998

*Also available in the CELEX database
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17/12/1998

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1333 – KINGFISHER/CASTORAMA

Notification of 16.11.98 pursuant to Article 4 of Council Regulation No 4064/89

1. On 16.11.1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking Kingfisher plc (“Kingfisher”) acquires within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking Castorama Dubois Investissements S.C.A. (“CDI”) by way of purchase of shares and transfer of assets.
2. Following 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 EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. The business activities of the undertakings concerned are :
 - for Kingfisher : non-food retailing, notably retailing of repair, maintenance and improvement products for the home ; domestic electrical appliances and consumer electronics ; furniture ; toys.
 - for B&Q : do-it-yourself products for home and garden.
 - for CDI : non-food retailing, notably retailing of repair, maintenance and improvement products for the home ; do-it-yourself products ; building materials ; pet care product.
4. Kingfisher will transfer 100 % of B&Q to CDI in return for new shares in CDI representing 54,6 % of the capital of CDI.

5. The joint venture business include repair, maintenance and improvement products for the home, which is business in which both parties participate.

II. CONCENTRATION

6. CDI is organised under French law in France as *Société en Commandité par Actions*, with two executive bodies (*Assemblée des Commandités* and *Conseil de Gérance*) where both parties (Kingfisher and the *CDI Commandités*) will have equal representation. [*Deleted for publication ; the text describes voting rules*].
7. It is agreed that Kingfisher will exercise voting rights in relation to its shares only up to 50 % of the share capital of CDI for at least two and a half years. After this deadline, Kingfisher may, at its option, exercise a casting vote which would give to it sole control, provided that it first makes an offer to purchase the remainder of the shares in CDI. This would involve a change from joint control to sole control and consequently trigger a new notification.
8. The operation is therefore a concentration since the operations described above will result in CDI (and its subsidiaries which post transaction will include B&Q) falling under the joint control of Kingfisher on the one hand and the *CDI Commandités* on the other hand.
9. Furthermore, the joint venture will perform on a lasting basis all the functions of an autonomous economic entity and its creation will not give rise to coordination of the competitive behaviour of the parties amongst themselves or between them and the joint venture.

III. COMMUNITY DIMENSION

10. Undertakings KINGFISHER and CDI have a combined aggregate worldwide turnover in excess of ECU 5,000 million (KINGFISHER, ECU [...] million; and CDI, ECU [...] million). Each of them has a Community-wide turnover in excess of ECU 250 million (KINGFISHER, ECU 10,195.8 million; and CDI, ECU 2,403.1 million), 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. COMPETITIVE ASSESSMENT

A. Relevant product markets

11. The notifying parties claim that the product market relevant for this operation is the market for the sale of repair, maintenance and improvement (RMI) products for the home, which may be subdivided into narrower sub-markets (the Do-It-Yourself retail segment, the Trade segment and the (“grandes surfaces de bricolage”) GSB segment).
12. In line with previous cases relating to the retail sector¹, 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.

¹ Case IV/M:803 - Rewe/Billa; case IV/M.991 – Promodes Casino; case IV/M.1085 - Promodes Catteau.

13. However, 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 market(s)

14. The RMI retail market displays both national and regional characteristics :
- national, as prices, payment terms and other conditions are influenced by national competition, and advertising is extensively national.
 - regional, since from a consumer demand perspective the parties compete within a catchment area of approximately 20 km. However, the market might cover a larger region or even the whole territory of country, if and insofar as the local catchment areas overlap each other. 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.²
15. In previous decisions the Commission has detailed the reasons according to which the procurement market for retailing is in France at least a national one³. This is particularly true for the non-food sector where there is no supply with local perishables. For the present case, even though many of the suppliers are global players, market tests show they tend to have a national sales policy due to different consumer preferences as well as technical specificities and commercial practices of each country.
16. However, it is not necessary to further delineate the relevant geographic markets because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

C. Assessment

17. As regards the retail market, the notifying parties claim that there are no horizontally or vertically affected markets within the meaning of Form CO. While the parties are both present in the market for the sale of repair, maintenance and improvement (RMI) products for the home, the geographic market for such products is no wider than national. Consequently, there is no geographic overlap on this market between B&Q and Castorama.
18. A deeper inquiry has shown that, in relation to specific product markets, there are some product overlaps in the sales of Castorama and Kingfisher's French subsidiaries (But and Darty) in France, mainly in the landline telephone market. Nevertheless, the new entity will have less than 15% market shares at a national level and therefore this market won't be affected. Even at a local level, the new entity won't acquire a significant position on this market and will face other strong competitors (France Telecom in the first instance).
19. As regards the procurement market, the parties' position vis-à-vis their suppliers won't significantly alter because these suppliers operate at a national level/ *Deleted for*

² Case IV/M.784 - Kesko/Tuko; case IV/M.890 - Blokker/Toys "R" Us; case IV/M.1188 - Kingfisher/Wegert/ProMarkt ; case IV/M.1248 - Kingfisher /But.

³ Case IV/M.991 - Promodes Casino; case IV/M.1085 - Promodes Catteau.

publication ; the text describes the supplying policy of the new entity]. On a European level, any strengthening of the position which the joint venture would hold vis-à-vis these suppliers would equally be negligible.

20. 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. ANCILLARY RESTRICTIONS

21. *[Deleted for publication; the text describes a non-competition clause].* The clause is directly related to the implementation of the transaction, in the sense that it is subordinated to the overall purpose of grouping the parties' DIY activities within CDI, and therefore covered by this decision.

VI. CONCLUSION

22. 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,