

***Case No COMP/M.2051 -
NORDIC CAPITAL /
HIAG / NYBRON /
BAUWERK***

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

Article 6(1)(b) NON-OPPOSITION
Date: 04/08/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, **04/08/2000**
SG(2000)D/105925

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties,

Dear Sirs,

**Subject: Case No COMP/M.2051 – NORDIC CAPITAL / HIAG / NYBRON /
BAUWERK**

Notification of 04.07.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 04.07.2000 the Commission received a notification of a proposed concentration pursuant of Article 4 of Council Regulation (EEC) No. 4064/89¹, whereby Nordic Capital and HIAG Holding AG through a vehicle will acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the whole of the undertakings Nybron (Sweden) and Bauwerk Parkett AG (Switzerland) by purchase of shares. The Swiss undertaking N.I. Flooring Corporation (formerly named HIAG Expo AG; which will be used in the following) is the vehicle and is jointly controlled by Nordic Capital and HIAG Holding AG.
2. The new entity will be active in the sector of the production and marketing of wooden flooring materials.
3. After examination of the notification, the Commission has concluded that the proposed operation falls within the scope of Council Regulation (EEC) no. 4064/89 and does not raise serious doubt as to its compatibility with the common market and the functioning of the EEA agreement.

¹ OJ L 395, 30.12.1989 p.1 corrigendum OJ L 257 of 21.09.1990, p.13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997, p1, corrigendum OJ L 40, 13.2.1998, p 17)

I. THE PARTIES

4. Nordic Capital is an investment firm mainly focusing on the Nordic Region. There are number of Funds bearing the name Nordic Capital. Each Fund is separate and distinct. The first Fund has been dissolved and does not exist anymore. The second Fund's portfolio companies are active in the markets for leather upholstery and automotive industries, plastic foils, beds and upholstery furniture and surgical and wound management products. The current transaction includes Nordic Capital Fund III and Fund IV. The business activities of Nordic Capital III include manufacturing of electronic components, pharmaceuticals, freight forwarding and production for the paper industry. Nordic Capital Fund IV is a newly established fund with no investments made to date.
5. HIAG Holding AG owns, controls or holds participation in several companies, whose activities include production and marketing of wooden flooring products, wood-based panels and various building material products, and wholesale and trading with wood and other wooden products.
6. Bauwerk Parkett AG (Switzerland) is a wholly owned subsidiary of HIAG Holding AG. Nybron (Sweden) belongs to the Swedish Skanska Group. Bauwerk Parkett AG and Nybron are both active in the manufacturing of wooden flooring products.

II. THE OPERATION

7. The operation will take place in several steps, the final aim of which is the transfer to HIAG Expo AG of Bauwerk Parkett AG's and Nybron's activities in the wood flooring sector. All the transfers are conditional upon each other. A first step has already been achieved with the whole of HIAG's wooden flooring business being transferred to Bauwerk Parkett AG. In a second step, HIAG Expo AG will acquire all of the shares in Bauwerk Parkett AG. In a third step, a Swedish company, Lagrummet December nr 680, wholly-owned by HIAG Expo AG will acquire all of the shares of Skanska Aktier Orange AB. The latter company is the owner of 100% of the shares of Nybron. Upon completion of the transaction, HIAG and Nordic Capital will jointly control HIAG Expo AG, whereby they will jointly control Bauwerk Parkett AG and Nybron.

III. THE CONCENTRATION

8. According to the shareholder's Agreement concluded between HIAG and Nordic Capital, each party is accorded veto rights. A number of strategic business decisions concerning the joint venture require the approval of at least one of each parties' board members. Each of HIAG and Nordic Capital then has the power to determine the strategic commercial behaviour of HIAG Expo AG and will exercise joint control over the joint venture. HIAG Expo AG will have its own board of directors and its own management dedicated to its day-to-day operations. It will have sufficient resources to conduct on a lasting basis business activities on the EEA wooden flooring market and will perform all the functions of an autonomous economic entity.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (HIAG: €478 million; Nordic Capital: €1 892 million; Nybron € 308.8 million). Each of the companies have a Community-wide turnover in excess of EUR 250 million (HIAG: €172.9 million; Nordic Capital: €1 435 million; Nybron: € 249 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.

V. COMPETITIVE ASSESSMENT

A. Market definitions

10. The notified transaction concerns production, distribution and marketing of flooring materials. There are several common flooring materials in Europe but both Nybron and Bauwerk are wooden flooring manufacturers. Laminate and wooden flooring could be considered as substitutable in demand insofar as they meet the same need as regards function, aesthetics and price. In addition, the optical appearance of laminate flooring resembles wooden flooring and its properties are in many aspects similar. Moreover, the two types of flooring are also substitutable as they are supplied through the same channels. Laminate flooring is distributed in the same manner as wooden flooring i.e. through professional installers, dealers and do-it –yourself home centres.
11. Two wholly-owned subsidiaries of HIAG Holding are active in manufacturing and marketing of chipboard flooring for industrial use. Chipboard as flooring material is used essentially in industrial and commercial facilities for heavy use. It withstands mechanical and chemical wear and tears robustly. It is not used for residential purposes. This product differs substantially from wooden and laminate flooring in production and range of usability, prices and end-customers and is not considered to form part of the same market as laminate and wooden flooring.
12. Both undertakings market and sell their products in most or several EEA countries and there are no significant barriers to trade between EEA-states. The market could therefore be considered as EEA-wide.
13. However, it is not necessary to define the products market further for the purpose of this decision, because the concentration even on the most narrow market definition does not create or strengthen a dominant position in the EEA.

B. Assessment

14. Only if the wooden flooring segment were being considered as a distinct market, would the transaction give rise to a horizontal overlap where the parties combined market shares in the EEA would be 15.9%. Thus, for the purpose of this decision, only the wooden flooring segment is being analysed as a horizontally affected market. At a national level, the parties' combined market shares are between 15%-20% in 3

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

countries (Austria: 17,2%; Belgium: 17%; Germany: 18,6%) and exceed 30% in one country (France: 31% with Nybron having already 27% before the operation). The largest competitors in Austria, France and Germany all have market shares between 10%-15%. At the EEA-level, the parties' largest competitor has a market share of 7.1%. In France, where Nybron's market share is highest (27%), the increase in market shares resulting from the concentration is only 4%, so there is no creation or strengthening of a dominant position. Given these market shares and the competitive structure of the market, the concentration does not give rise to competition concerns.

15. Approximately 12% of Bauwerk Parkett AG's turnover is sold to and distributed through the wholesale and trading business conducted by other entities within the HIAG Group. No contractual commitments exist, and the relationship is the one of seller – buyer and supplier – distributor. This relationship will not be terminated through the merger. Bauwerk Parkett AG also has a shareholding in the French joint venture Huot Bauwerk Parkett³. The vertical activities of Bauwerk Parkett AG or Nybron are not significant and do not give rise to any serious competition concerns.
16. Nybron is not vertically integrated, with an exception of a 10% ownership in the Spanish distributor Kährs Iberica S.A. This company distributes wooden flooring products only in the Spanish market and even under the assumption of the narrowest market definition the concentration would not raise any competition concerns. Nybron also has a number of sawmills, providing it with only in-house sawing capacity.
17. HIAG has transferred all its wooden flooring activities to HIAG Expo AG and will after the setting up of the joint venture not hold any other interests in undertakings active on the EEA wooden flooring market.
18. One of the portfolio companies (Starkki) in Nordic Capital Fund III is a building material wholesaler. Starkki has a market share of approximately 8% of the Finnish wholesale market for wooden flooring products. Starkki does not produce wooden flooring products⁴. The company is not active outside Finland and considering this market share on the narrowest market, the concentration raises no concerns.

VI. CONCLUSION

19. 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

³ This turnover has been included at 100% in the calculation of Bauwerk Parkett AG's market shares.

⁴ Starkki is a wholesaler of wooden flooring products. The company's sales of these products have not been included in the market shares provided on an EEA basis for Nybron and Bauwerk.