

***Case No COMP/M.2965 -
STAPLES / GUILBERT***

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

Article 6(1)(b) NON-OPPOSITION
Date: 14/10/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14/10/2002

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.2965 – Staples/Guilbert
Notification of 12/09/2002 pursuant to Article 4 of Council Regulation
N° 4064/89¹**

1. On 12/09/2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) N° 4064/89 by which the US undertaking Staples Inc. (“Staples”) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the distant selling business of the French undertaking Guilbert SA (“Guilbert”) by way of purchase of shares.
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of the Council Regulation N° 4064/89 and that it does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. Staples is a US-based, publicly quoted company, listed on the Nasdaq. It is not controlled by any third party. Staples is a distributor of office supplies and office furniture. It has a strong position in the US market for office supplies, where it owns the second-largest office supply superstores chain. It is also active in Canada, as well as in the UK, Germany, the Netherlands and Portugal.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

4. Guilbert is a French company, controlled by the French Pinault-Printemps-Redoute Group (“PPR”), which in turn is ultimately controlled by the Artémis financial holding of Mr. Pinault and his family. Guilbert is also a distributor of office supplies and office furniture.

II. THE OPERATION

5. Staples intends to acquire all the shares of each of the companies operating Guilbert’s distant selling business. These companies are active in France, Belgium, Italy, Spain and the UK. Following the terms of the Share and Purchase Agreement signed on 21 August 2002, Guilbert will sell to Staples 100% of the issued and outstanding shares of capital stock of each of the companies operating Guilbert’s distant selling business: Reliable France, JPG Benelux, Mondoffice, Brenard SA, Neat Ideas, Sundex and Sistemas Kalamazoo (the “Companies”). The acquisition is for a total consideration of 825 million Euros, which will be financed by Staples in a combination of cash, debt and equity.

III. CONCENTRATION

6. Staples will acquire exclusive control of the Companies operating the distant selling business of Guilbert. The operation is therefore an acquisition of sole control of parts of Guilbert by Staples within the meaning of Article 3(1) (b) of Council Regulation (EEC) N° 4064/89.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (12,059 billion Euros for Staples and 441 million Euros for Guilbert’s distant selling business). Each of the parties have a Community-wide turnover in excess of EUR 250 million (894 million Euros for Staples and 441 million Euros for Guilbert’s distant selling business), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. There is no Member State in which both parties achieve more than two-third of their respective Community-wide turnover. The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

A. Market definitions

Product market definitions

8. Both parties are active in the market for distribution of office supplies. Office supplies consist of a large variety of products which have in common that they are used in offices. They include *inter alia* commercial envelopes, books and pads, cut office paper,

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.

writing and graphic supplies (such as pencils), storage and filing products, electronic office supplies (such as printer cartridges) and office and desk accessories (such as staplers and punches) and basic office furniture (seating, desks, storage and computer furniture). Neither Staples nor Guilbert's distant selling companies are engaged in the manufacturing of these products. Within the market for the distribution of office supplies, and given the range of products concerned, several distribution channels can be identified: direct sales from manufacturers, office supply wholesalers, contract sales, office supplies superstores, department stores and comparison stores, high street stationary specialists, distant selling (mail order and Internet sales), or even supermarkets. These categories are in line with those usually used by the industry participants, as illustrated by MPA studies[...]³.

9. The Commission, in previous decisions relating to concentrations in the same economic sector⁴ has already considered the possibility for certain distribution channels to constitute separate relevant markets. This is due to the fact that different distribution channels correspond to the needs of different consumer groups, although certain consumers groups may be served through several channels. Office supplies customers include large companies, small office home office (SOHO) customers, schools and students and families. In the case *Buhrmann/Samas Office Supplies*, the Commission concluded that, in the Netherlands, the contract stationing for the distribution of office supplies constituted a separate market within the larger market for the distribution of office supplies. This market definition was based on the finding that contract stationers have specific characteristics that particularly match with the large customers'⁵ needs (they mainly provide a full range of products, that makes them a "one stop shop" for catering all customers' need, they are able to offer customised products and they conclude framework agreements with customers by which the latter may order supplies whenever the need arises). These characteristics are not reproduced by the other distribution channels. In addition, although smaller customers may also wish to purchase from contract stationers, they do not achieve individually a sufficient amount of annual purchases to be targeted by contract stationers.
10. In the present case, the notifying party is of the opinion that the relevant product market to be taken into account for the purpose of the present transaction is the market for distribution of office supplies as a whole. Nevertheless, it acknowledges that alternative market definitions could be considered, in relation to different distribution channels. The notifying party acknowledges that while the needs of larger customers are primarily met through "direct sale" channels (that is to say contract stationers and more marginally through direct sale from manufacturers and office product wholesalers), the needs of the so-called "SOHO" sector (Small Office Home Office) are met in particular via "distant selling" channels (mail order and internet sales). According to the notifying party, this is due to the fact that the SOHO sector, on the one hand, and large- and medium-sized customers, on the other, have different needs in terms of office supplies: whereas the SOHO sector primarily relies on suppliers capable of delivering rapidly small size

³ UK office products and stationary market 1999-2004. MPA International November 2000. UK office products & stationary update 2000. MPA International October 2001.

⁴ In particular in cases M. 2286 – *Buhrmann/Samas Office Supplies*, M.1653 – *Buhrmann/Corporate Express* and M.1117 – *Pinault/Guilbert*

⁵ In the *Buhrmann/Samas Office supplies* Decision, large customers have been defined as customers with a number of workers exceeding 100-200.

orders, larger customers put prime importance on low prices, full ranges of products and the need for office products supply contracts.

11. Staples is mainly active in the office supplies distribution through superstores, and to a lesser extent through distant selling, while the business acquired from Guilbert only deals with distant selling. According to the above-mentioned MPA studies, these two channels share a number of key characteristics : (i) they mostly focus on SOHO customers, (ii) they offer a wide range of office products, (iii) they use more sophisticated methods of pricing than the traditional commercial stationers and (iv) they enjoy significant global purchasing power. In addition, distant selling and superstores distribution channels have established themselves only recently and are steadily gaining customers from traditional distribution channels. Consequently, the Commission tried, in its investigation, to clarify whether (i) office supplies distribution through distant selling may be a distinct market; or (ii) there may exist a distinct market for office supplies distribution through distant selling and superstores; or (iii) if office supplies distribution through distant selling may be part of a wider market including superstores as well as other channels.
12. The notifying party strongly contests that there could exist a market for the distribution of office supplies through distant selling and superstores. Firstly, it contends that distant selling and superstores channels belong to different product markets. In this respect, the notifying party mainly submits that both channels have different geographic coverage since superstores are often located in suburban zones so that distance from home and traffic congestion limits their catchment area significantly. In addition, the notifying party submits that even though superstores, alike distant selling companies, mainly target the SOHO customers, students, schools and families represent a significant part of their customer base. Secondly, the notifying party contends that superstores compete with traditional dealers at least to the same extent as with distant selling companies. In this respect, it relies on the conclusion reached in the MPA studies.
13. The market investigation confirmed that large firms tend not to use distant selling or superstores and prefer contract stationers for their office supplies. It also showed that SOHO customers, students and schools and families typically use a variety of distribution channels, among which superstores and distant selling⁶. The investigation also showed that the number of references between distant selling and superstores was comparable, if not identical, and fairly different from the one of high street specialists, department stores and comparison stores and supermarkets. At the same time, it was not clear whether customers would switch from distant selling to superstores in the case of a non-temporary price increase in this channel, or if they would prefer another distribution channel. However, it is not necessary for the purpose of this decision to conclude as to the precise market definition, since whatever market definition is retained, no competition concern arises.

⁶ However, the Commission's investigation revealed that students, schools and families use distant selling to a lesser extent than other channels.

B. Geographic market

14. The notifying party submits that the market for distant selling is national in scope. This is in line with the conclusion reached by the Commission in previous decisions relating to the same economic sector⁷.
15. The market investigation indicated that office supplies distant selling may be national in scope, among other things due to language and cultural differences for catalogues, to the close proximity to customer base required for efficient delivery costs and to the fact that the same references are usually available within the national market. However, the precise market definition can be left open, as with any possible definition, no competition concern arises.

C. Impact of the operation

16. Whatever the product market definition is retained, the parties activities only overlap in the UK. In addition, only if an hypothetical market definition combining distant selling and superstores is retained, would there be an affected market in this operation.
17. Should the market be defined as that of the distribution of offices supplies, all channels included, the proposed transaction will result in a combined market share in the range of [5-10%] (Staples: [5-10%] and Guilbert distant selling business: [0-5%]). The market would not be highly concentrated, and the merged entity would face competition from Viking, a subsidiary of Office Depot, (circ. [5-10%]) and Corporate (circ. [0-5%]), in addition to comparison stores such as WH Smith, Woolworths and High Street Stationary specialists like Ryman, The Stationer or Stationary Box. And according to the above-mentioned MPA studies, both high-street retailers and dealer group have managed in the past few years to resist to the competition from superstores, even though the latter won market shares.
18. Should the market be defined as that of the distribution of office supplies through distant selling, the proposed transaction will result in a combined market share in the range of [10-15%] (Staples [0-5%] and Guilbert [5-10%]). The main (and probably the only) competitor would be Viking with an overwhelming market share in the range of [70-80%].
19. Should the market be defined as that of distant selling plus superstores distribution channels, the merged entity will hold a market share in the range of [25-35%]. Its main competitors would be Viking with a market share in the range of [40-50%], and Office World, a subsidiary of a Swiss-based company, with a market share of approximately [10-15%]. The new entity would therefore still be facing competition after the operation.
20. In addition, the possibility of oligopolistic dominance does not appear realistic after the merger. The new entity and Viking would have different cost structures and different competition incentives. Indeed, Viking is only present in the distant selling business, where it has established itself as the clear market leader, whereas Staples is present in both distant selling and superstores channels. According to the MPA studies, Staples opened 31 new superstores in the UK between 1997 and 2000 and Viking has a strong organic growth. In addition, as stated above, distant selling and superstores distribution

⁷ Cases M.2286 – Buhrmann/Samas Office Supplies and M.1653 – Burhmann/Corporate Express

channels are growing more rapidly than other channels but still have to establish themselves against more traditional distribution channels, which represent more than 80% of the total office supplies distribution market. It is therefore unlikely that the new entity and Viking would have incentives to raise prices, notably because this would potentially damage the migration of customers from the more established channels to superstores and distant selling.

21. In conclusion, whatever the market definition, the proposed operation does not raise competition concerns.

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. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) N° 4064/89.

For the Commission

(signed)
Franz FISCHLER
Member of the Commission