

***Case No COMP/M.4265 -
PHILIPS / AVENT***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 28/08/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28-VIII-2006

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party

Dear Sir/Madam,

**Subject: Case No COMP/M.4265 - Philips / Avent
Notification of 20/07/2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

I. INTRODUCTION

1. On July 20, 2006, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 by which the Dutch company Koninklijke Philips Electronics N.V. (hereinafter referred to as “Philips”) acquires sole control of the British company Avent Holdings Limited (hereinafter referred to as “Avent”).

II. THE PARTIES

2. **Philips** is a company active in the manufacture, design and sale of a broad range of electronic products such as kitchen appliance, household products and personal care products.
3. **Avent** develops, manufactures, and sells baby care products for babies, breast-feeding mothers and other persons caring for newborn children.

¹ OJ L 24, 29.1.2004 p. 1.

III. THE CONCENTRATION

4. The operation consists of the acquisition of sole control by Philips of the whole of Avent, by way of purchase of all shares. It would therefore constitute a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

5. The concentration does not have a Community dimension under Article 1 of the Merger Regulation. Avent, one of the two undertakings concerned, has a Community-wide turnover that is less than EUR 250 million. Furthermore, Avent's aggregate turnover does not reach EUR 25 million in three or more member states.
6. The Commission acquired jurisdiction to review the notified operation by means of referral under Article 4 (5) of the Merger Regulation. On 13 June 2006, the Commission received the referral request by means of a reasoned submission pursuant to Article 4(5) of the Merger Regulation and Article 6(5) of Protocol 24 of the EEA agreement. No Member States or EFTA country competent to examine the concentration under its national competition law (namely Austria, Cyprus, Germany, Ireland, Italy, Malta, Slovakia, Slovenia, the United-Kingdom, Spain, and Norway) has expressed disagreement as regards the request of referral. Consequently, the transaction is deemed to have a Community dimension pursuant to Article 4 (5) of the Merger Regulation.

V. COMPETITIVE ASSESSMENT

A. MARKET DEFINITION

7. The transaction involves two companies both active in the supply of baby-care products. While Avent provides a wide range of baby-care products (bottle warmers, sterilizers, breast feeding products, bottle feeding products, soothers, baby travel products, baby and "mother-to-be" skincare products), its activities overlap with those of Philips only in the marketing of bottle warmers.

1) RELEVANT PRODUCT MARKETS

8. The parties submit that bottle warmers constitute a relevant product market. Bottle warmers are devices that warm bottles and cups filled with milk and other baby food. The parties submit that this market would also include multi-purpose steaming products. Multi-purpose steaming products not only warm bottles and cups but are also able to prepare baby food and sterilise baby feeding products by using warm steam.
9. The market investigation confirmed that a relevant product market for bottle warmers can be defined. Nevertheless, it provided no clear outcome on whether such a market should encompass multi-purpose products². Indeed, while one functionality of bottle warmers and multi-function products overlaps, the latter are priced significantly higher:

² One respondent noted that bottle warmers and multi-purpose products were following different dynamics as she expected the former to decline and the latter to grow.

for example, on average, the retail prices of Philips' bottle warmers and multi-function products are respectively around EUR 40 and EUR 100.

10. However, the question of the inclusion of multi-purpose products in the market for bottle warmers can be left open as it does not change the competitive assessment of the transaction: Avent does not produce such devices and, therefore, a possible market for multi-purpose products would not be affected by the operation. Also, sales of such products are very limited compared to those of bottle warmers and, consequently, market shares on the market for bottle warmers are marginally affected by the inclusion of multi-purpose products.

2) RELEVANT GEOGRAPHIC MARKETS

11. The parties submit that the market for bottle warmers is EEA-wide in scope as products characteristics and usage are allegedly homogeneous across Europe and consumer preferences are comparable.
12. However, both the examination of national specificities and the market investigation strongly suggest that the markets for bottle warmers have a national span. As submitted by the parties, the competitive environment as well as market conditions — such as the brand awareness of Philips for bottle warmers and the presence of private labels — differ from one country to another.
13. Furthermore, the parties note that, in some countries (e.g. the UK, Germany, and Austria), governments encourage the use of bottle warmers (as opposed to micro-wave ovens) whereas, in some other countries, governments take the opposite stance (e.g. Scandinavian countries). Consequently, the demand and the market penetration of bottle warmers can differ significantly across EEA-countries.
14. In addition, a majority of the customers express their preference for suppliers with local distribution network, even if some respondents asserted that the market could be considered as EEA-wide.
15. In the present case, however, the precise geographical market definitions can be left open since, under any of the possible definition, no competition problems arise.

B. COMPETITIVE ASSESSMENT

16. The following assessment is based on market shares that include Philips' sales of multi-function steaming products. Excluding multi-function products from the product market for bottle warmers has a marginal impact on market shares (<3%)—the only exception being Denmark ([5-10]%)—and does not change the conclusions of the competitive assessment.

EEA level

17. If the market for bottle warmers is to be considered EEA-wide in scope, the market position of the new entity will be limited³: indeed, the new entity will hold a rather

³ Parties' estimates. The size of the market is estimated to EUR 55 to 60 million.

limited market share ([20-30]%) and will face the competition from another important player, Chicco ([25-35]%) as well as from smaller market players:

EEA (2005)	Market share
Avent	[15-25]%
Philips	[5-10]%
Chicco	[25-35]%
NUK	[5-15]%
Thermobaby	[5-15]%
Tefal	[5-10]%

18. The figures of the above table indicate that the overlap ([5-10]%) should not significantly increase the market power of the new entity and lead to anti-competitive effects.
19. Furthermore, products of the market exhibit differentiation, and Philips's and Avent's products have a different positioning. Indeed, it has been brought to the attention of the Commission that several technological features of bottle warmers—such as speed of heating (faster steam technology), the presence of a timer device or/and an alarm, the possibility to use the bottle warmer for baby foods other than milk, etc.—entail a certain degree of market differentiation. Internal documents from the parties⁴ suggest other factors of differentiation such as sales channels (i.e. specialty retailers (baby specialty/pharmacy channels) vs. large retailers), the recognition of the brand from professionals (e.g. Paediatricians) as well as from end-consumers. In this respect, both the parties' submission and the market investigation indicate that brand awareness plays a significant role on the market⁵.
20. While the market investigation revealed that Avent and Philips are regarded as producing quality products, their strength on the market rely on different factors. Due to its portfolio of baby-care products, Avent benefits from a very strong brand image in bottle warmers which enables the company to sell its baby-care products with a price premium. By contrast, Philips' brand image is more based on its portfolio of electric appliances and the company appears to be a stronger innovator. Also, Avent has a strong presence among specialty retailers while Philips has closer relationships with large retailers.
21. Consequently, the two companies' respective strengths appear rather complementary and non-coordinated effects resulting from the transaction are unlikely. Accordingly, many customers of the parties welcomed the merger in their response to the market investigation. They indeed expect Avent to add Philip's experience in developing electrical equipment to its understanding of the mother and baby markets⁶. At the same time, market actors do not expect prices to go up after the transaction. Some customers

⁴ Annex 5.4 A of the form CO

⁵ Consequently, the market investigation has shown that the market is subject to brand loyalty, which makes it rather difficult to enter the market. This result is in line with the findings of the Commission in the case M.2621 — SEB/Moulinex, which also concerned small appliances.

⁶ See the answers of Mothercare UK limited and Imgreoma BV to the market investigation, question 15.

even expect the new entity to streamline its cost structure and consequently to be able to decrease prices⁷.

22. Thus, it can be concluded from the above analysis and the market investigation that the operation is not likely to significantly impede effective competition on the possible EEA market for bottle warmers.

National level

23. If the markets are to be considered national in scope, a number of national markets are affected by the operation as summarized in the following table:

	Philips	Avent	P+A
Spain	[10-20]%	[15-25]%	[30-40]%
The Netherlands	[5-15]%	[15-25]%	[30-40]%
UK	[0-5]%	[35-45]%	[40-50]%
Austria	[0-5]%	[10-20]%	[10-20]%
Belgium	[5-10]%	[15-25]%	[25-35]%
Germany	[5-10]%	[10-20]%	[15-25]%
Denmark	[20-30]%	[5-15]%	[30-40]%
Finland	[20-30]%	[5-10]%	[25-35]%
Ireland	[0-5]%	[25-35]%	[25-35]%
Sweden	[15-25]%	[0-5]%	[15-25]%
Norway	[15-25]%	[25-35]%	[45-55]%

Spain

24. The Spanish market (EUR 4.8 million) is concentrated and the operation will lead to the creation of a market leader vying with two other strong actors Chicco and Jané. According to the parties' estimates for the year 2005, the market structure is the following:

Spain	Market share
Avent	[15-25]%
Philips	[10-20]%
Chicco	[25-35]%
Jané	[20-30]%

25. Despite relative high market shares, the operation is not likely to lead to *non-coordinated* effects in Spain. First, the factors of competition at the European level remain valid in Spain such as the different positioning of Philips—more innovative—and Avent—strong brand. Also, Avent has a strong presence among specialist retailers which is not the case for Philips. Second, despite the high degree of concentration, many competitors are active on the market and large competitors, including the new entity, will have to defend its market position against such actors as Thermobaby, REER, Nuk. Third, retailers (e.g. Carrefour, Auchan) could take advantage of any decrease in the innovation rate and an increase in prices to develop their already existing private labels.

⁷ These findings are in strong contrast with one competitor's assertion that the transaction will lead to price increase and lower pace in technological change.

26. As for *coordinated effects*, they do not seem likely to arise after the transaction despite the fact that [85-95]% of the market is held by three actors with rather symmetric market shares. It has been mentioned above that the market is highly differentiated. The fact that products are heterogeneous makes it hard for competitors to tacitly agree on prices. Furthermore, given that innovation is a factor of competition on the market, the market is subject to certain dynamics, making coordination even harder. Third, such coordination would enable numerous actors in Spain to expand their hitherto limited sales, be it in the form of branded bottle warmers or private labels.
27. The conclusions of the above analysis are confirmed by Spanish respondents to the market investigation⁸. Akin to the answers at the EEA level, their answers show that they do not expect prices to go up and there is some expectation that the transaction could bolster innovation.
28. Thus, for these reasons, it can be concluded that the operation is unlikely to lead to non-coordinated or coordinated effects in Spain and therefore to significantly impede effective competition on the possible Spanish market for bottle warmers.

The Netherlands

29. The Dutch market amounts to EUR 3 million of sales. The transaction will reinforce the leadership of Avent. According to the parties' estimates for the year 2005, the market structure is the following:

Netherlands	Market share
Avent	[15-25]%
Philips	[5-15]%
Tefal	[15-25]%
Beaba	[5-10]%

30. Regarding possible non-coordinated effects, the analysis laid out for the Spanish market remains accurate: the products of the parties do not convey the same image and many competitors are active on the market, besides Philips and Avent: Tefal ([15-25]% of the market), BibiNuk ([5-15]%), Beaba ([5-10]%), Severin, Hema, Prenatl, REER, MBO (1-4%). As for coordinated effects, they are unlikely due to the fragmentation of the market: besides the first two actors (the new entity and Tefal) which will hold half of the market, the next competitor will have [5-10]% of the market.
31. It can therefore be concluded that the operation is unlikely to lead to non-coordinated or coordinated effects in the Netherlands and therefore to significantly impede effective competition on the possible Dutch market for bottle warmers.

United Kingdom

32. The British market is the largest national market (EUR 6.5 million) after the German one and exhibits the following structure:

⁸ The respondent represent an estimated 63% of retail sales of bottle warmers in Spain.

UK	Market share
Avent	[35-45]%
Philips	[0-5]%
Mothercare	[15-25]%
Lindam	[10-20]%
Boots	[5-15]%

33. The transaction leads to a very limited overlap. In fact, most of this overlap is due to the sales of multi-function products from Philips. Thus, in addition to the difference noted above among the two companies' products, the latter are very remote substitutes in the UK (if not part of different product markets as discussed above in the product market definition) so that effect on prices is likely to be non-existent. Furthermore, an additional particularity of the market is the strength of private labels: Mothercare ([15-25]%) and Boots ([5-15]%)⁹. This strongly suggests that the new entity will have to continue to innovate to differentiate its products from private labels.
34. The conclusions of this analysis—valid for non-coordinated as well as coordinated effects—are confirmed by British respondents to the market investigation which did not express concerns with respect to the transaction while many welcomed it.
35. Thus, it can be concluded that the operation is unlikely to lead to non-coordinated or coordinated effects in the United Kingdom and therefore to significantly impede effective competition on the possible British market for bottle warmers.

Austria, Belgium, and Germany

36. In Austria, Belgium, Germany, and the Netherlands, the transaction does not appear to have a significant impact on the market structure. The overlap and the combined market shares vary respectively between [0-10]% and [15-30]%. In addition, many competitors are active in these countries. For example, in Germany, besides the merging parties, the following companies are active: Chicco ([10-20]%), REER ([5-15]%), Petra ([5-10]%), MBO, Baby Nova, Ameda, Tefal, etc. (all [0-5]%). This is also true in Belgium with Tefal ([5-15]%), Beaba ([5-15]%), Chicco ([5-10]%), Tigex, REER, and Prémaman (all [0-5]%).
37. This together with the fact that Avent and Philips's products have a different positioning implies that any competitive effect resulting from the transaction is unlikely on the market for bottle warmers in Austria, Belgium, and Germany.

Denmark, Finland, Ireland, Sweden, and Norway

38. In Denmark, Finland, Ireland, Sweden, and Norway, the market shares of the parties can reach high levels such as [45-55]% in Norway with an overlap of [15-25]%. However, these markets are characterized by a strong reluctance from customers to use bottle warmers¹⁰. As a result, the size of those markets are very small, amounting to less than EUR 300 000 in all of these countries.

⁹ This is possibly due to the size of the market which makes the development of private labels profitable.

¹⁰ As indicated above, some governments discourage the use of bottle warmers and recommend instead micro-wave ovens.

39. Consequently, given the lack of maturity of these markets, it is doubtful that market shares are an appropriate indication of market power and of the ability of the merged entity to raise prices. To the contrary, Philips and Avent have to overcome consumers' reluctance to use their respective products. In this environment, any attempt from the new entity to increase prices by non-coordinated or coordinated effects would jeopardize their fragile sales and are very unlikely to prove profitable.
40. Consequently, any competitive effect resulting from the transaction is unlikely on the market for bottle warmers in Denmark, Finland, Ireland, Sweden, and Norway.

VI. CONCLUSION

41. 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 (EC) No 139/2004.

For the Commission
signed
Louis MICHEL
Member of the Commission