

***Case No COMP/M.4503 -
PBDS / PHILIPS APM***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 16/02/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16/02/2007

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.4503 – PBDS/PHILIPS APM
Notification of 12/01/2007 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 12 January 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("Merger Regulation") by which the undertaking Philips&BenQ Digital Storage Corporation ("PBDS", Taiwan) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the APM ("Automotive Playback Module") business of Koninklijke Philips Electronics N.V. ("Philips APM business", The Netherlands) by way of purchase of shares and assets.

I. THE PARTIES

2. PBDS, a joint venture currently owned by Philips and BenQ Corporation ("BenQ"), is active in the development, design, marketing, and sale of optical data-storage disk drives for personal computers ("PC ODDs"). Since a partial change in the ownership in PBDS will occur in the near future, the parties make reference to merger case COMP/M.4502 – LITE-ON/PBDS, which was notified on the same day as this case. It will have as a result that Lite-On IT Corporation ("Lite-On"), a Taiwan-based manufacturer of PC ODDs and personal computers ("PCs"), will replace BenQ Corporation as shareholder in PBDS, while the governing provisions for PBDS will remain unchanged². Hence, the

¹ OJ L 24, 29.1.2004 p. 1.

² In the future, PBDS will be renamed to Philips&Lite-On Digital Storage Corporation ("PLDS").

competitive assessment of the present transaction will take into account Lite-On's activities in APMs and PC ODDs.

3. Philips APM business provides APMs, such as CD and DVD drives, for in-car multimedia and navigation applications.

II. THE OPERATION AND THE CONCENTRATION

4. Pursuant to a sale and purchase agreement executed on [...], PBDS intends to acquire sole control of Philips APM business³. Hence, the operation constitutes a concentration for the purposes of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

5. The present transaction fulfils the criteria of Article 1(3) of the Merger Regulation. The parties have a combined worldwide turnover of more than €2.5 billion. In each of at least three Member States (France, Germany, United Kingdom and Portugal), whereas the combined aggregate turnover of all the undertakings concerned exceeds €100 million. The aggregate turnover of each of PBDS, including that of its parents, and Philips APM business is more than €25 million in the same four Member States and the aggregate Community-wide turnover of each PBDS, including that of its parents, and Philips APM business exceeds €100 million. Neither PBDS nor Philips APM business has achieved more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The concentration therefore has a Community dimension.

IV. RELEVANT MARKETS

6. The parties' activities overlap in some markets. With respect to the horizontal overlap, both companies carry out supply activities in the market for APMs. With regard to the vertical relationship, Lite-On is active in the manufacturing of APM while PBDS is active in the onward sale of APMs to customers in the automotive industry.

APMs

7. The parties submit that an APM is a type of ODD, mostly in the form of CD- and DVD-modules, which is used in a variety of automotive makes and models. Their main purpose is to provide high-quality media playability, vibration and temperature stability in the harsh automotive environment.
8. According to the parties, the *relevant product market* for APMs is distinct from the market for PC ODDs because the latter are designed for PCs. APMs dispose of fundamental additional design features which ensure that they function smoothly and reliably despite vehicle movement and changes in temperature. As a logical consequence, product specifications are different from those of PC ODDs and manufacturing processes for APMs show considerable differences. APMs are multiple-times more expensive than PC ODDs. Customers of PC ODDs, which are mainly PC manufacturers in strong price competition among themselves, consider that APMs are no substitute product to PC ODDs.
9. Furthermore, the parties consider distinguishing APMs into four potential sub-categories: CD-Modules, DVD modules, tape decks, Car Juke boxes and DVD changers. While the first two sub-categories account for approximately 95% of all sales, tape decks are likely to

³ The manufacturing arm of Philips APM business will be sold to Lite-On [...], whereby PBDS will retain all other activities of Philips APM business, e.g. sales and marketing, research and development.

disappear from the market soon. Car Juke boxes and DVD changers only represent an insignificant part of the market as they concern products that have only recently been launched in the market. For the purpose of the present case, however, the precise definition as regards the product categories can be left open since even considering the narrower definitions the proposed transaction would not give rise to competition concerns.

10. In previous decisions⁴, when assessing the market for ODDs, the Commission took the view that this can be done on the basis of either the overall market for PC ODDs or on a narrower basis by type of PC ODD, whereby APM would be a distinct type of product as outlined in paragraph 8.
11. With respect to the relevant geographic market, the parties submit that the market for APMs is world-wide in scope, reasoning that no significant price differences exist among the various world regions, a large part of APMs are manufactured outside the EEA and that technical standards do not differ among Member States.
12. In view of the parties' negligible increase in their combined market share, the precise market definition, however, can be left open since even on the narrowest level considered, i.e. the EEA, the proposed transaction would not give rise to competition concerns.
13. Thus, for the competitive assessment of the proposed transaction, the relevant market to be considered will be both the global and the EEA-wide overall market for APMs, but also the potential sub-markets according to the type of APMs.

V. ASSESSMENT

A. APMs

14. Lite-On only recently entered into the supply of APMs. Its sales on the overall market for APMs represented a market share of [0-10]% in 2005, both world-wide and at the EEA level. Even when considering each of the potential sub-categories of APMs, CD modules and DVD modules, the market share of Lite-On remains [0-10]% for CD modules, [...]. On an overall market for APMs, Philips APM business represents a market share of approximately [0-10]% worldwide and [20-30]% at the EEA level⁵. Hence the combined market share of the new entity would only negligibly increase by [0-10]%, both on an overall market for APMs and on a market for CD modules and for DVD modules respectively.
15. The new entity will continue to face several strong competitors, with Pioneer enjoying on the overall market for APMs a market share of about [10-20]% world-wide ([10-20]% at EEA level), Panasonic with [10-20]% ([0-10]%), Tanashin with [10-20]% ([10-20]%), Clarion with [0-10]% ([0-10]%), Alpine with [0-10]% ([0-10]%) and Kenwood with [0-10]% ([0-10])⁶. Many of these competitors are integrated manufacturers supplying tier 1 customers⁷

⁴ Cases COMP/M.2260 – Hitachi/LG Electronics/JV, COMP/M.3349 – Toshiba/Samsung/JV, COMP/M.4139 – Sony/NEC/JV

⁵ [...].

⁶ With respect to the market shares that these competitors enjoy in the potential sub-categories, they vary to some degree. In any event, in each of the sub-categories the new entity continues to face largely the same strong competitors as on the overall market for APMs.

⁷ Tier-1 customers are manufacturers assembling the entertainment unit which is built into the final application by the end customer, typically a car manufacturer or similar. Tier-2 customers are typically wholesalers, retailers and

and tier 2 suppliers with which they have established relationships on a long term basis. Above that, these competitors sell to 3rd party-tier 1 suppliers as the parties do in the same way. It is a common feature of this industry that customers usually also apply a dual-source policy.

16. Customers of entertainment units appear to exercise a significant degree of buyer power vis-à-vis integrated manufacturers. Typically, supply contracts are concluded for a short period, which is the case for instance with car manufacturers. In particular with the latter type of customers, the supply contracts are typically even linked to a specific car model only. Reward on the basis of existing supply agreements is atypical for this industry. Moreover, these contracts contain clauses by which the manufacturer has to agree to price decreases on a yearly basis. Therefore, the new entity would unlikely be in a position to alter unilaterally its pricing policy, both on the basis of existing contracts and in future tenders.
17. In view of the foregoing, it can be concluded that the proposed operation would not, in any of the markets considered, give rise to serious doubts as to its compatibility with the common market.

B. Vertical aspect

18. Lite-On is active in the manufacturing of APMs that can be considered to be an upstream activity to PBDS' business in the onward sale of APMs to customers in the automotive industry. The parties submit that the vertical overlap arising from this concentration is limited to the market for the production of APMs. As outlined above, APMs are distinct from PC ODDs in many respects. When considering the vertical overlap arising as a result of the combination of the APM activities and those of Lite-On, this share will be increased negligibly by [0-10]% of Lite-On's production and supply activities upstream.
19. According to the parties' own estimates, which were prepared on the basis of their anticipated sales of APMs for the period 2007 to 2009, Lite-On's market share would be expected to be approximately [0-10]% on the *overall market for APMs* both world-wide and at the EEA level. With respect to the potential sub-market for *CD modules*, Lite-On intends [...], whereas for *DVD modules* a market share of approximately [0-10]% world-wide (and [0-10]% at the EEA level) is expected. The parties assume an annual expansion of the total market volume for DVD modules by approximately [0-10]%, both worldwide and the EEA level, while their production volumes [...]⁸.
20. In the light of the above, the Commission concludes that the vertical effects stemming from the proposed transaction would not give rise to serious doubts as to its compatibility with the common market.

IV. CONCLUSION

21. 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

distributors who sell APMs as branded products. However, the product supplied to both types of customers is identical and hence no distinction between the two sales channels appears justified.

⁸ [...].

signed
Neelie KROES
Member of the Commission