

***Case No COMP/M.5859 -
WHIRLPOOL/
PRIVILEG RIGHTS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 07/07/2010

***In electronic form on the EUR-Lex website under
document number 32010M5859***



Brussels, 7.7.2010

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

SG-Greffe(2010) D/10221
C(2010) 4843

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.5859 – WHIRLPOOL/ PRIVILEG RIGHTS
Notification of 2 June 2010 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 2 June 2010, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Whirlpool Corporation (“Whirlpool”, US) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of trademarks, trademark applications and domains comprising the name “Privileg” (the “Privileg Rights”).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the EC Merger Regulation but does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement.

I. THE PARTIES

3. **Whirlpool** is a US-based company active in the manufacturing and marketing of domestic appliances, primarily for home use. Whirlpool’s principal products are major domestic appliances (laundry appliances, refrigerators, cooking appliances, dishwashers etc.). In Europe, Whirlpool markets its major domestic appliances primarily under the brands Whirlpool, Maytag, Amana, Bauknecht, Ignis, Laden and Polar, and major and small domestic appliances under the KitchenAid brand.
4. **The Privileg Rights** have previously been used by the now insolvent German retailer Quelle GmbH i.L. (“Quelle”) to market major and small domestic appliances, mainly in

¹ OJ L 24, 29.1.2004, p. 1 (“the Merger Regulation”).

Germany and Austria. In November 2009, the Privileg Rights were acquired by the German home-shopping group Otto in the course of Quelle's liquidation, together with other assets. The Commission cleared this transaction on 16 February 2010 subject to remedies (these remedies did not relate to domestic appliances).² Privileg-branded domestic appliances were effectively off the market since late 2009.

II. THE OPERATION AND THE CONCENTRATION

5. Otto and Whirlpool agreed on 10 March 2010 that Whirlpool will acquire the Privileg Rights on a global basis for an unlimited time [...].³ It should be noted that Otto already distributes various domestic appliances of Whirlpool under brands of Whirlpool and/or Otto.
6. The present transaction does not relate to an acquisition of an undertaking by way of a share deal but to the acquisition of specific assets. According to Article 3(1)(b) of the Merger Regulation, also the acquisition of certain assets of an undertaking may constitute the object of control for the purposes of the Merger Regulation. In particular, Paragraph 24 of the Commission's Consolidated Jurisdictional Notice further specifies that assets such as brands, without additional assets may constitute a business with a market presence, to which a market turnover can be clearly attributed.
7. Privileg is a well recognised and long-established trademark in Germany and Austria. The market investigation has shown that brand names/good reputation play a significant role in the competitive process in the markets concerned. The market investigation has also confirmed that customers are likely to demand Privileg-branded products even without a transfer of customer lists, sales organisations or similar assets to Whirlpool. Furthermore, the fact that Quelle did not have its own production assets for Privileg-branded domestic appliances (but used third party suppliers) underlines that in the case at hand production assets do not appear essential for a market presence and that the use of the Privileg brand would suffice to achieve such presence. It is therefore likely that, in this particular and very specific case, the transfer of the Privileg trademark will be sufficient to transfer the market presence of Privileg in the markets concerned.
8. As the rights to the Privileg brand thus constitute a business with a market presence, to which a market turnover can be clearly attributed, the acquisition of these rights by Whirlpool constitutes an acquisition of control within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

9. The undertakings concerned had a combined aggregate worldwide turnover of more than EUR 5 billion (Whirlpool - EUR 12,259 million in 2009, Quelle with Privileg in its last audited financial year 2007/008 - EUR [...]). The Community-wide turnover of each undertaking concerned is more than EUR 250 million (Whirlpool - EUR [...] and Privileg - EUR [...]). Whirlpool did not achieve more than two thirds of their Community-wide turnover within one Member State. Therefore, the proposed

² Case COMP/M.5721 *Otto/Primondo Assets*.

³ [...].

transaction has EU dimension within the meaning of Article 1(2) of the Merger Regulation.⁴

IV. RELEVANT MARKETS

A. Preliminary remarks

10. The parties' activities overlap in (i) major domestic appliances, namely in cooking appliances, hoods, dishwashers, refrigerators, freezers, microwave ovens⁵, washing machines, tumble dryers, and air conditioners, and (ii) certain small domestic appliances, namely in espresso machines, food preparation appliances, toasters, as well as sandwich makers and waffle makers.

B. Relevant product markets

11. The market investigation revealed that separate markets exist for each family of major domestic appliances, in particular for cooking appliances, hoods, dishwashers, refrigerators, freezers, microwave ovens, washing machines and tumble dryers. This is in line with previous Commission practice.⁶

12. In any event, it is not necessary for the purpose of the present case to conclude on the precise product market definitions, as the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market under any possible market definition.

C. Relevant geographic markets

13. In previous cases, the Commission has left open whether markets for major domestic appliances are national or EEA-wide in scope.⁷

14. The parties submit that all relevant markets are EEA-wide in scope. For each family of major domestic appliance, manufacturers tend to centralize manufacturing in one or a few European sites and supply the entire EEA from those sites, and transportation costs

⁴ The same is true if the year 2008/2009 is taken into account for Privileg.

⁵ It should be noted that in case COMP/IV/M.458 – *Electrolux / AEG* microwave ovens were treated as major domestic appliance while in case COMP/M.2621 *SEB/Moulinex* they were treated as small household electrical appliance. The approach in the present decision follows the approach in the case COMP/IV/M.458 – *Electrolux / AEG*.

⁶ Cases COMP/M.2703 – *Merloni / GE / GDA JV*, para 9 – 12 and COMP/IV/M.458 – *Electrolux / AEG*, para 7 – 11. Possible subdivisions of microwaves (countertop models and built-in units) (see case COMP/M.5421 *Panasonic / Sanyo*, para 150 – 151 and 157 - 160) does not play a role in the present case. The value-based market share of Whirlpool in the market for built-in microwaves is higher than on the overall microwaves market, but the market share of Privileg on the market for built-in microwaves was negligible (not more than [0-5]%).

⁷ Although the Commission assumed an EEA (Western Europe) wide market in case COMP/IV/M.458 – *Electrolux / AEG*, para. 21, the market investigation in the subsequent 2002 case COMP/M.2703 *Merloni / GE / GDA JV*, para 19, indicated that the markets would be national in scope, at least as far as the UK and Ireland were concerned, but the question was left open. In case COMP/M.5421 *Panasonic / Sanyo*, para 152 and 162 (microwave ovens) the geographic market definition was left open. In case COMP/M.2621 *SEB/Moulinex* para. 60-67 the Commission defined the geographical markets for small electrical household appliances as national (except for the UK and Ireland, which were treated as one market).

are low. Moreover, most manufacturers are present across Europe, with a broadly similar range of products. In general, there is EEA-wide branding and marketing, and no legal, regulatory or technical barriers to supplying all of the EEA.

15. The market investigation partly confirmed these arguments but also revealed that consumers in different European countries might have different preferences for major domestic appliances and that in some countries (for example Germany, Slovenia) the consumers might have relative preferences for local brands. The suppliers normally have sales forces organized on the national level.
16. In any event, it is not necessary for the purpose of the present case to conclude on the precise geographic market definition, as the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market under neither EEA-wide nor national market definitions.

V. COMPETITIVE ASSESSMENT

17. It should be noted at the outset that Whirlpool sells its domestic appliances only at wholesale level (i.e. to retailers, kitchen manufacturers and wholesalers) while Privileg-branded domestic appliances have formerly been sold by Quelle at retail level (i.e. directly to end consumers). In order to assess the competitive position of the merged entity the Commission has used market data on the basis of the retail level. However, as the sale of an appliance by a retailer to a consumer is always preceded by a corresponding sale of the appliance from the manufacturer to the reseller, market shares on retail and wholesale level will not differ significantly.
18. The transaction would lead to affected markets for several major domestic appliances in Germany, Austria and the EEA.⁸ The table below shows the combined market shares⁹ of the parties on the retail market.

⁸ The parties argue that no affected markets arise in other Member States such as the Czech Republic, Estonia, Hungary, Latvia, Poland, Slovakia and Slovenia due to minimal sales of the Privileg business (aggregate sales in these countries below EUR [...]).

⁹ All information is based on data from the market research company GfK and for the year 2009. Since GfK does not provide separate information for Privileg, the parties have used own data for Privileg. Data for Whirlpool originates from GfK.

Product	Affected market	Whirlpool¹⁰	Privileg	Combined market share	Main competitors
Cooking appliances	Germany (value) [...]	[5-10]%	[0-5]%	[10-20]%	BSH [40-50]% Electrolux [10-20]% Miele [5-10]%
	Germany (volume) [...]	[10-20]%	[0-5]%	[10-20]%	BSH [30-40]% Electrolux [20-30]% Gorenje [0-5]%
	Austria (value) [...]	[5-10]%	[0-5]%	[10-20]%	BSH [40-50]% Miele [10-20]% Electrolux [10-20]%
	Austria (volume) [...]	[10-20]%	[5-10]%	[10-20]%	BSH [30-40]% Electrolux [10-20]% Miele [10-20]%
Hoods	Austria (value) [...]	[10-20]%	[0-5]%	[10-20]%	BSH [30-40]% Miele [10-20]% Electrolux [5-10]%
	Austria (volume) [...]	[20-30]%	[0-5]%	[20-30]%	BSH [20-30]% Electrolux [10-20]% Miele [5-10]%
Dishwashers	Austria (value) [...]	[10-20]%	[0-5]%	[10-20]%	BSH [40-50]% Miele [20-30]% Electrolux [10-20]%
	Austria (volume) [...]	[10-20]%	[0-5]%	[10-20]%	BSH [30-40]% Miele [10-20]% Electrolux [10-20]%
Refrigerators	Austria (value) [...]	[10-20]%	[0-5]%	[10-20]%	BSH [20-30]% Liebherr [20-30]% Miele [5-10]%
	Austria (volume) [...]	[10-20]%	[5-10]%	[10-20]%	BSH [10-20]% Liebherr [10-20]% Electrolux [10-20]%

¹⁰ It should further be noted that Whirlpool manufactures domestic appliances for other companies who then re-sell these appliances under their own brand or private label. According to the market data provided by the parties, if sales of major domestic appliances manufactured by Whirlpool for other entities were added to Whirlpool's market share, the market shares of Whirlpool would not increase by more than [0-5] percentage points (except for the market for freezers, where the volume-based share of sales of Whirlpool would increase from [10-20]% to [10-20]% at the EEA level).

Product	Affected market	Whirlpool ¹¹	Privileg	Combined market share	Main competitors
Microwave ovens	EEA (value) [...]	[10-20]%	[0-5]%	[10-20]%	BSH [10-20]% Samsung [5-10]% LG [5-10]%
	EEA (volume) [...]	[5-10]%	[0-5]%	[5-10]%	Samsung [5-10]% LG [5-10]% Panasonic [5-10]%
Washing machines	Germany (value) [...]	[10-20]%	[5-10]%	[10-20]%	BSH [30-40]% Miele [20-30]% Electrolux [10-20]%
	Germany (volume) [...]	[10-20]%	[5-10]%	[20-30]%	BSH [30-40]% Electrolux [10-20]% Miele [10-20]%
	Austria (value) [...]	[5-10]%	[5-10]%	[10-20]%	Miele [20-30]% BSH [20-30]% Electrolux [10-20]%
	Austria (volume) [...]	[10-20]%	[5-10]%	[10-20]%	BSH [10-20]% Indesit [10-20]% Miele [10-20]%
Tumble Dryers	Germany (value) [...]	[5-10]%	[5-10]%	[10-20]%	BSH [40-50]% Miele [20-30]% Electrolux [10-20]%
	Germany (volume) [...]	[10-20]%	[5-10]%	[20-30]%	BSH [30-40]% Electrolux [10-20]% Miele [10-20]%
Freezers	EEA (value) [...]	[10-20]%	[0-5]%	[10-20]%	BSH [10-20]% Electrolux [10-20]% Liebherr [10-20]%
	EEA (volume) [...]	[10-20] ¹² %	[0-5]%	[10-20]%	Electrolux [10-20]% BSH [10-20]% Liebherr [5-10]%

¹¹ It should further be noted that Whirlpool manufactures domestic appliances for other companies who then re-sell these appliances under their own brand or private label. According to the market data provided by the parties, if sales of major domestic appliances manufactured by Whirlpool for other entities were added to Whirlpool's market share, the market shares of Whirlpool would not increase by more than [0-5] percentage points (except for the market for freezers, where the volume-based share of sales of Whirlpool would increase from [10-20]% to [10-20]% at the EEA level).

¹² This market share results from the inclusion of freezers manufactured by Whirlpool for other players.

19. As is illustrated by the table above, the parties' market shares remain relatively moderate in all relevant product and geographic markets. In addition, the notifying party points out that Whirlpool acquires the Privileg Rights out of insolvency and that these rights have been deteriorating since Quelle filed for insolvency in June 2009. According to the notifying party, this has not only impaired the value of the Privileg brand but also allowed other manufacturers of branded domestic appliances to move into the former market position of Quelle. Therefore, Whirlpool submits that only a certain percentage of Quelle's previous turnover with Privileg-branded products should be taken into account for the competitive assessment of the present case. The market investigation has confirmed that not the full turnover previously achieved by Quelle should be attributed in the present case. As a result, the parties' actual combined market share is likely to be lower than reflected in the table above.
20. The market investigation has shown that the brand is one of the factors taken into consideration by the end consumers and that the consumers might have relative preferences for local brands. A small minority of respondents expressed concerns that taking into account that the German and Austrian markets are predominantly occupied by German brands, the concentration may worsen the market position and/or make potential market entry more difficult for the non-German brands.
21. However, the market investigation has shown that numerous competitors (strong multinational companies such as BSH, Miele, Electrolux as well as local suppliers) with existing strong brands are active in all major domestic appliances markets and will continue to exercise significant competitive constraints on the parties. The merged entity would only become the market leader in hoods and washing machines in Austria (on the basis of volume) and would remain the market leader in microwave ovens in the EEA (increment of [0-5]%).
22. There have also been recent entries in several segments of major domestic appliances (washing machines, refrigerators, tumble dryers, freezers) and new suppliers can be expected to enter some markets in the next years. Furthermore, the market investigation has shown that the existing manufacturers tend to have spare capacity.
23. Moreover, the market investigation has shown that customers at wholesale level usually multi-source and do not incur significant switching costs when shifting volume from one supplier to another due to the standard sizes of domestic appliances.
24. In the light of the above, no serious doubts arise as to the compatibility of the proposed transaction with the internal market or with the EEA Agreement.

VI. CONCLUSION

25. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the European Commission,
(signed)
Andris PIEBALGS
Member of the European Commission