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***Case No IV/M.940 -
UBS / MISTER MINIT***

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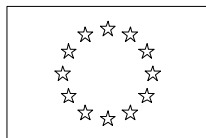
**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(a) INAPPLICABILITY
Date: 009/07/1997

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COMMISSION DES COMMUNAUTÉS EUROPÉENNES

Bruxelles, le 09.07.1997

PUBLIC VERSION

**MERGER PROCEDURE
ARTICLE 6(1)(a) DECISION**

To the notifying parties

Dear Sirs,

Subject : Case No. IV/M.940 - UBS/Mister Minit

Notification of 6.6.1997 pursuant to Article 4 of Council Regulation No. 4064/89

1. On 6 June 1997 the Union Bank of Switzerland (UBS) notified to the Commission its acquisition of sole control of the Swiss company, Rydon S.A. (Rydon), the ultimate holding company of Minit International S.A. (MI), which in turn holds the activities of the Mister Minit group (Mister Minit) in Europe.
2. After examination of the notification, the Commission has concluded that the notified operation does not have a Community dimension and, therefore, does not fall within the scope of the Merger Regulation.

I THE PARTIES AND THE OPERATION

UBS

3. UBS, is an international merchant banking group, mainly active in providing financial services. It will carry out the acquisition through its indirectly wholly-owned subsidiary, UBS Capital B.V., incorporated in the Netherlands.

MI

4. MI, which is incorporated in Luxembourg, is the holding company for Mister Minit's European activities, which consist mainly of shoe repair, key cutting, engraving and printing services. Mister Minit carries out these activities through some 3,358 shops world-wide, some 19% of which it operates on a franchise basis. Within the EU, some 39% of its German outlets are franchised and some 14% of those in France, the UK and Ireland.

5. The franchised Mister Minit businesses are operated by [...] who are virtually all former employees of Mister Minit, though this is not a mandatory requirement to obtain a franchise.
6. Through its acquisition of sole control of Rydon, UBS acquires sole control of MI and ultimately sole control of the Mister Minit businesses.

II CONCENTRATION

7. The acquisition by UBS of all the issued shares in Rydon constitutes a concentration within the meaning of Article 3.1. (b) of the Merger Regulation.

III COMMUNITY DIMENSION

8. The combined world-wide turnover of UBS and MI exceeds 5,000 million ECU and the aggregate Community-wide turnover of UBS exceeds 250 million ECU. However, the aggregate Community-wide turnover of MI only meets the Community-wide threshold of 250 million ECU if the turnover of Mister Minit's franchised businesses are aggregated to its group turnover.
9. The notifying party, UBS, contends that the said turnover of Mister Minit's franchisees' businesses should be aggregated to that of MI, and broadly bases its contention on the particular franchisor/franchisee relationship which exists in the present case.

The Franchisor/Franchisee Relationship and the Calculation of Turnover

10. With regard to the particular relationship between Mister Minit and its franchisees and the repercussion of this on the calculation of MI's turnover, the party, broadly-speaking, bases its case on two aspects: i) the fact that Mister Minit owns the equipment and fixtures used by the franchisee (to whom they are rented), which it says constitute "more than half of the business assets" of the franchisee's business, in accordance with the first indent of article 5.4. (b) of the Merger Regulation and ii) the fact that, due to the specific terms of the franchise agreement and the previous relationship of employer/employee which has (in most cases, though not necessarily) existed between Mister Minit and its franchisee, a situation of "economic dependence" of the franchisee on Mister Minit exists and, hence, "de facto control" by Mister Minit over the franchisee exists.

The Franchise Agreement

11. The main aspects of the franchise agreement which the party underlines in arguing its case for "de facto control" are i) the obligation of the franchisee to operate its business in accordance with training provided by Mister Minit and the instructions in the Mister Minit franchise manual and ii) the franchisor's agreement to monitor market conditions and negotiate with suppliers and provide the franchisee with advertising materials and management services in the form of on-going assistance and advice (notwithstanding the fact that the franchisees are free to set the prices for the goods they sell and the services they provide).

¹ Deleted. Business secret.

Risks Bearing Aspects

12. The party argues that Mister Minit, “[...] continues to bear [...] risks in relation to the franchised operations”. In this context it specifically mentions the risks borne by Mister Minit with regard to, among others, i) the premises (which it [...] lets to the franchisee), ii) the equipment, fixtures and fittings (which it owns), iii) the initial stock [...] and iv) the goodwill of its franchise.
13. At the same time, the party recognizes that Mister Minit’s franchisees “fix their own prices and run the risks related to the commercial success of their outlet and their livelihood”.

Analysis of the Party’s Arguments

i) The “ownership of assets” argument of the party

14. As already stated above, the party’s first argument is based on the “ownership” by Mister Minit of “more than half the business assets” of the franchisee’s business in accordance with the first indent of Article 5.4.(b) of the Merger Regulation in relation to the calculation of turnover. However, the said indent cannot be interpreted to cover a situation in which the undertaking which owns the assets is paid by another undertaking for the use of those assets in carrying out its own business activities for the duration of a given contractual period. The object and consequence of the said counter-payment by the other undertaking is that it acquires control over the assets concerned for the purposes of their exploitation in its own business during that period. Such is the situation in the present case where the franchisee pays [...] rent to the franchisor for the use of the equipment and fixtures owned by this latter undertaking. Thus, the Commission considers that Mister Minit, the franchisor, does not control the assets concerned and, consequently, cannot be said to effectively “own” them for the purposes of interpreting Article 5.4.(b) of the Merger Regulation. Therefore, the Commission considers that the said Article 5.4.(b), first indent, cannot be invoked to justify including the turnover of the franchised businesses in the aggregate turnover of Mister Minit.

ii) The “de facto/control economic dependence” arguments of the party

15. With regard to the “de facto control/economic dependence” arguments of the party, outlined above, in so far as they are based on specific terms of the contractual arrangements of the franchise agreement, the Commission considers that the specific terms invoked by the party in support of their argument are in fact “typical” of those governing a franchisor/franchisee relationship. With regard to the

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prior relationship of employer/employee (which is not in any case mandatory), it is in fact a “prior” relationship and its very termination and transformation into a franchisor/franchisee relationship is seen by the Commission as the acquisition of economic “independence” from its former employer by the franchisee, rather than as evidence of a relationship of economic dependence, as contended by the party.

16. In so far as concerns the above-described risk-bearing aspects of the argumentation of the party, the risks assigned by the party to the franchisor, on the one hand, and to the franchisee, on the other hand, are considered by the Commission to correspond to risks in relation to two separate businesses, i.e., those of the franchisor, in relation to his franchisor business (i.e. the franchising of know-how, trade mark use, goodwill etc., the leasing/renting of the related premises, equipment etc. and the provision and negotiation of supplies) and those of the franchisee, in relation to the franchisee business (i.e. the provision of shoe repair and key-cutting services etc.).
17. Furthermore, the “de facto control/economic dependence” arguments of the party discussed above do not demonstrate (nor does the party so claim) that Mister Minit has “the right to manage” the franchisee’s affairs, in accordance with the last indent of Article 5.4.(b) of the Merger Regulation. Consequently, the Commission likewise considers that the said arguments do not justify the party including the turnover of the franchised businesses in the aggregate turnover of Mister Minit.

Conclusion

18. Given the above, the Commission considers that the aggregate Community-wide turnover of MI, one of the two undertakings concerned by the operation, fails to meet the corresponding turnover threshold requirement of Article 1.2.(b) of the Merger Regulation.

IV CONCLUSION

19. For the above reasons, the Commission has concluded that the notified operation does not have a Community dimension within the meaning of Article 1 of the Merger Regulation. This decision is adopted in application of Article 6.1.(a) of Council Regulation (EEC) No. 4064/89.

For the Commission,