

***Case No COMP/M.5765 -
FOXCONN/ DELL
(PRODUCTS) POLAND***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/09/2010

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EUROPEAN COMMISSION

Brussels, 28.09.2010

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5765 - FOXCONN/ DELL (PRODUCTS) POLAND
Notification of 24/08/2010 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 24 August 2010, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which PCE Paragon Solutions Kft, a Hungarian corporation and wholly owned subsidiary of HON HAI Precision Industry Co Ltd, a company listed on the Taiwan Stock Exchange (together, "Foxconn"), acquires sole control over Dell Products (Poland) Sp. z.o.o. (the "Target"), a wholly-owned subsidiary of Dell Global B.V. and Dell International holdings VIII B.V. (together, "Dell"), by way of purchase of shares.

I. THE PARTIES

2. Foxconn is a provider of third-party electronic manufacturing services ("EMS") to original equipment manufacturers ("OEM") of electronic products such as computers, mobile

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

phones or televisions. Foxconn is headquartered in Taiwan and has operations across the Americas, Asia and Europe.

3. The Target is active in the construction, configuration and assembly of personal computers (including workstations, notebooks and desktops) and servers. The acquired company includes the Target's manufacturing facility, assets and inventory located in Łódź, Poland, which are currently used for the internal provision of EMS for Dell.
4. Foxconn and the Target together will be referred to below as "the parties" or the "merged entity".

II. THE OPERATION

5. The Transaction consists of two parts: (a) a preliminary share purchase agreement, which was entered into on 2 December 2009 between Foxconn and Dell, according to which Foxconn will acquire all of the shares of the Target, and as a result sole control over the Target, and (b) an outsourcing/production agreement whereby Foxconn agrees to supply Dell with certain PC products.
6. Whereas, after the transaction, Dell will continue to source specified PCs and servers from the Target, Foxconn will remain free to service other customers from the Target site. Foxconn will acquire all the assets necessary for the operations of the plant. Even taking into account the outsourcing/production agreement, the Target will have excess capacity.²
7. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

8. In 2009, the undertakings concerned had a combined aggregate worldwide turnover of more than EUR 5 000 million (Foxconn: EUR [...] million, Target: EUR [...] million). In 2009, both had an aggregate EU-wide turnover in excess of EUR 250 million (Foxconn: EUR [...] million, Target: EUR [...] million). Foxconn and the Target do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

IV. ASSESSMENT

A. Product market definition

9. Foxconn and the Target are both active in electronic assembly. The manufacture of electronic devices can either be conducted in-house by OEMs (like the Target) or outsourced to third party EMS providers (such as Foxconn).
10. According to the notifying party, the relevant market is the overall market for electronic assembly. According to the notifying party, it would not be appropriate to further delineate the market for electronic assembly based on a distinction between in-house production and

² This is in line with paragraph 27 of the Commission Jurisdictional Notice , OJ C 95 of 16.04.2008.

external electronic assembly (EMS). According to the notifying party, it would also not be appropriate to have:

- a segmentation of EMS based on the end-use (such as computers, televisions or mobile phones);
- a distinction of EMS for computers between servers or PCs;
- a segmentation of EMS for PCs between professional or personal use or between desktops and laptops;
- a segmentation of EMS for servers between server ranges.

11. The notifying party argues that there are several factors that support a single product market including in-house production and the provision of EMS by third parties. First, there is a growing tendency for OEMs to outsource production to third-party EMS providers. Second, OEMs could easily (in terms of time and cost) switch back outsourced production to in-house production. Third, the cost differential that third-party EMS providers enjoy relative to OEMs' in-house production is small and is largely attributable to EMS providers' generally higher capacity utilisation rates. In the case of computers, this is illustrated by the fact that OEMs internally separate their in-house manufacturing operations organisation and their sales organisation. Certain OEMs (such as Acer/Wistron and ASUSTek/Pegatron) have even created EMS providers out of spin offs from their manufacturing legs. An example, mentioned by the notifying party, of the fierce competition between an EMS provider and a customer's own in-house manufacturing is [...]s server production where the EMS provider's quotation is systematically compared to an internal price quote prior to a sourcing decision.
12. The notifying party furthermore considers that it is not necessary to distinguish between different types of end-uses, as EMS providers could easily (in terms of time and cost) switch their assembly lines between different end-products. First, the production equipment used by EMS providers is not product-specific and can be easily reprogrammed to manufacture different products. Second, the production processes and technical skills required to produce different products are very similar. The notifying party illustrated this supply-side substitutability with switches it undertook at minimal cost from the assembly of PCs to mobile phones and from the production of network device motherboards for routers to motherboards for iPods.
13. The notifying party submits that a further segmentation as regards the provision of EMS for computers, based on a distinction between PCs and servers would not be appropriate. Indeed, the production lines for PCs and servers are the same as those used for set-up boxes and routers.
14. The notifying party further argues that a segmentation of the provision of EMS for servers according to different server ranges is, from a supply-side substitutability standpoint, meaningless. EMS providers produce all types of servers on identical production lines and ultimately the decision on the type of servers produced is determined by the OEM.
15. As regards a segmentation of the provision of EMS for PCs according to professional or personal use, the notifying party first outlines that the production line is the same and that the final use of the hardware depends ultimately on the software installed. Consequently, the EMS provider does not have information on the final use of the hardware. Second, the notifying party argues that a segmentation based on end-use is not relevant since EMS

providers do not compete for end-use customers and do not use the same distribution channels as the OEMs. EMS providers compete for the provision of services regardless of the type of products and often contracts refer to a mix of products.

16. As regards a segmentation of the provision of EMS for PCs between desktops and laptops, the notifying party considers that it is not relevant from an EMS provider's point of view. According to the notifying party, the same Printed Circuit Board (PCB) assembly lines can be used to assemble PCBs for notebook and desktops PCs. With regard to systems assembly, the notifying party considers it is highly labour intensive and that the main difference, besides the components used, resides in the hand tool used. According to the notifying party, since the equipment for a production cell is relatively simple, the switch from the assembly of desktops to the assembly of laptops can be performed in one or two days. The notifying party illustrates this point with the example of one of its plants in Mexico where the same assembly lines are used for both desktops and laptops.
17. In previous decisions dealing with EMS, the Commission has not included in-house production and assembly for the purposes of defining the scope of relevant product market.³ The Commission has also left open the question of whether EMS for different end-use products constitute separate relevant product markets.⁴ However, the supply-side substitutability between different electronic products has been confirmed by various Commission market investigations.⁵
18. The Commission has considered servers as a separate product market in a number of decisions.⁶ In particular, the Commission has considered that, since servers are products designed for simultaneous sharing by multiple users, where key features are resilience, data capacity and performance scalability, they differ from workstations and personal computers, which are designed for single users, where graphics capability, audio and ergonomics tend to dominate. It has also considered a potential sub-segmentation of servers into different ranges in two decisions.⁷ In its *HP/Compaq* decision,⁸ the Commission has considered that the market for PCs could be broken down between consumers and commercial customers. Whereas the Commission's decision in the State aid case C 46/2008⁹ refers to a potential segmentation of PCs along desktops and laptops, ultimately

³ See for example Commission decisions in M.5870 Foxconn/Sony LCD TV manufacturing company in Slovakia; M.5140 Foxconn/Sanmina SCI; M.4766 Flextronics/Solelectron; M.3586 Flextronics/Nortel; M.2629 Flextronics/Xerox; M.2479 Flextronics/Alcatel; M.1841 Celestica/IBM (EMS).

⁴ See for example Commission decisions in M.5870 Foxconn/Sony LCD TV manufacturing company in Slovakia; M.5140 Foxconn/Sanmina SCI, (paragraph 11); M.4766 Flextronics/Solelectron (paragraphs 9-10); M.3586 Flextronics/Nortel (paragraphs 9-11).

⁵ See for example Commission decisions in M.5140 Foxconn/Sanmina SCI (paragraph 16); M.3586 Flextronics/Nortel (paragraph 9) and M.2479 Flextronics/Alcatel (paragraph 8).

⁶ M.1643 IBM/Sequent, paragraph 12; M.1120 Compaq/Digital, paragraph 7; and M.1477 Fujitsu/Amdahl paragraph 6.

⁷ M.1643 IBM/Sequent, paragraph 11; M.1841 Celestica/IBM (EMS), paragraph 12.

⁸ M.2609 HP/Compaq, paragraph 13.

⁹ C 46/2008 Aid which Poland is planning to implement for Dell Products (Poland) Sp. z o.o., recital 130.

the product market definition was left open. However, in all instances, such distinctions were established with regard to OEM markets, not to EMS markets.

19. The market investigation has tested the supply-side substitutability between in-house production and third-party EMS. Whereas several examples of OEMs switching their supplies from in-house production to external EMS have been reported, it remains unclear from the customers' replies whether OEMs would switch back from external supplies to in-house production in case of a non temporary price increase by 5-10% of EMS. In particular, the market investigation tends to show that time and costs to switch back to in-house production are significant and that only a major shift in cost structures would trigger a switch back to in-house production. One respondent indicates that only a portion of EMS would be switched back in-house in such a scenario.
20. The market investigation has also tested the supply-side substitutability of the provision of EMS for different electronic end-products as an indication of the relevance of a segmentation of EMS market according to end-use. Most respondents¹⁰ share the view that the manufacturing processes involved in EMS for computers and other electronic end-products are similar so that switching from the assembly of computers to other electronic goods does not imply significant technical difficulties. Furthermore, six respondents (out of nine) confirm that EMS providers switch (or have the capacity to switch) between different end-products.
21. The market investigation is inconclusive on the question whether the provision of EMS for personal computers and the provision of EMS for servers are separate markets.¹¹
22. The Commission has also investigated the relevance of a further segmentation of the provision of EMS for servers. In this regard, one respondent to the market investigation outlines that higher end server designs are more complex and generally include OEM intellectual property and suggests that Foxconn is targeting the provision of EMS for lower range servers. However, three respondents reject a distinction of manufacturing processes involved in EMS for servers on that basis, with one respondent arguing that the differences are not so significant as to prevent the switching of production between different categories of servers.
23. The market investigation is inconclusive on the question whether further segmentations in EMS for PCs, according to the type of use or the distinction between notebooks and desktops, are relevant.
24. The exact product market definition may be left open as the proposed transaction does not raise competition concerns under any of the alternative definitions. In particular, for the

¹⁰ Five respondents out of nine, see replies to question 4 of the questionnaire to competitors and to question 6 of the questionnaire to customers.

¹¹ Three respondents consider that it is relevant to distinguish between the manufacturing processes involved in EMS for servers and personal computers, two respondents consider that such a distinction is irrelevant and four respondents do not know (see replies to question 8 of the questionnaire to competitors and to question 10 of the questionnaire to customers). In addition, three respondents indicate that the manufacturing processes involved in the production of servers are technically similar to the processes involved for PCs and two respondents outline that, although the assembly processes are similar, the test processes are different (see replies to question 8.1 of the questionnaire to competitors and to question 10.1 of the questionnaire to customers).

purposes of the present case, it is not decisive whether the competitive constraint from OEM's in-house production is taken into account at the stage of market definition or competitive assessment.

B. Geographic market definition

25. The notifying party submits that the relevant market is worldwide. First, EMS providers usually conclude EMS agreements with OEMs on a global basis. Second, shipping costs and tariffs are limited. This is evidenced by the existence of significant imports of EMS-produced goods into the EEA (20% of the total value of EMS-produced goods sold within the EEA).
26. In previous cases, the Commission has considered the provision of EMS as worldwide or at least EEA-wide, but has ultimately left the question open.¹²
27. All respondents to the market investigation confirm that the provision of EMS is worldwide.
28. Whether the provision of EMS is wider than EEA-wide can be left open as the proposed transaction does not raise competition concerns under any of the alternative geographic market definitions.

C. Competitive assessment

29. The Target produces computers (PCs and servers). Foxconn proposes to acquire the Target and to enter into a supply agreement with Dell. Dell will thereby outsource current in-house production, and Foxconn will enlarge its scope of activities at the EMS level.
30. The proposed transaction gives rise to a horizontal overlap in the assembly of electronic products. Furthermore, it will give rise to a vertical relationship as Foxconn is active in the supply of components for computers.

Horizontal effects

31. On a worldwide market for electronic assembly including both in-house production from OEMs and third-party EMS, Foxconn's market share in value would reach [5-10]%.
32. The below table shows selected market shares for Foxconn, considering third-party EMS only, measured in value and based on the notifying party's estimates.^{13 14}

¹² e.g. M.5140 Foxconn/Sanmina SCI (paragraph 18); M.2629 Flextronics/Xerox (paragraph 10); M.2479 - Flextronics/Alcatel (paragraph 12).

¹³ The notifying party argues that market shares in value are a much better proxy for the competitive situation, as volume figures would not differentiate between different products and instead show the same data for very different products such as plugs or cables vs. televisions or servers. The Commission considers this argument as reasonable in the present case.

¹⁴ On 25 June 2010, the European Commission has cleared, under the Merger Regulation, the acquisition by Foxconn of Sony entities producing LCD televisions in Slovakia and Mexico. The market shares presented below are indicative of Foxconn's competitive position after both transactions.

	Foxconn's market share	Target's market share	Foxconn's market share post-transaction ¹⁵
Worldwide 3 rd party EMS (all products)	[20-30]%	[0-5]%	[20-30]%
Worldwide 3 rd party EMS for PCs	[20-30]%	[5-10]%	[30-40]%
Worldwide 3 rd party EMS for servers	[30-40]%	[0-5]%	[30-40]%
EEA-wide 3 rd party EMS (all products)	[30-40]%	[5-10]%	[30-40]%
EEA-wide 3 rd party EMS for PCs	[10-20]%	[10-20]%	[20-30]%
EEA-wide 3 rd party EMS for servers	[20-30]%	[10-20]%	[30-40]%

Table 1: Percentages of third party EMS sales in value (including Target's sales as third party sales), 2009

33. As shown in the table above, Foxconn's market share on a worldwide market for third-party EMS would remain moderate with [20-30]%. Moreover, the increment stemming from the proposed transaction would be small.
34. If narrower product market definitions are retained (EMS for PCs on the one hand and EMS for servers on the other hand), Foxconn's market shares after the proposed transaction will be higher. On the servers market in particular, Foxconn would increase its market share up to [30-40]%. However, the increment stemming from the proposed transaction would be small. On the PCs markets, whilst the impact of the transaction on Foxconn's competitive position is more significant, Foxconn's share is estimated at [30-40]% post transaction.
35. If the markets are considered at the EEA level, the impact of the transaction is quite significant, with a [10-20]% increment on the PCs market and [10-20]% increment on the servers market. However, post transaction Foxconn's market shares remain around [30-40]% for both products.
36. In any event, regardless of the exact market definition and of the fact that none of the respondents to the market investigation complained, a number of competitive constraints will remain after the proposed transaction. Several Commission decisions refer to the high degree of competition in the EMS market¹⁶, to the fact that OEMs multisource for EMS¹⁷ and to the strong bargaining power of OEMs vis-à-vis EMS providers¹⁸. A recent market investigation carried out by the Commission has confirmed that the EMS market is competitive, that EMS providers do not face any capacity constraints, that OEMs can

¹⁵ Since the Target is currently not active on the EMS market, as a consequence of the completion of the proposed transaction, not only Foxconn's revenue but the entire EMS market will get larger. This explains why the sum of the individual shares does not correspond to the projected combined market share post-transaction.

¹⁶ M.2479 Flextronics/Alcatel (paragraph 15); M.3583 Flextronics/Nortel (paragraph 17).

¹⁷ M.2479 Flextronics/Alcatel (paragraph 15).

¹⁸ M.2629 Flextronics/Xerox (paragraph 13); M.4766 Flextronics/Solectron (paragraph 17); M.5140 Foxconn/Sanmina SCI (paragraph 13).

switch relatively easily EMS providers and that OEMs have a strong bargaining power vis-à-vis their EMS providers.¹⁹

37. Moreover, the findings of the market investigation in the present case support the existence of the following constraints:

Existence of numerous competitors

38. On the PCs market, Foxconn will continue to face numerous competitors for third-party EMS at the worldwide level and at the EEA level including Quanta Computer (worldwide: [20-30]%, EEA: [20-30]%), Wistron (worldwide: [20-30]%, EEA: [10-20]%), Pegatron Computer (worldwide: [10-20]%, EEA: [10-20]%). On the servers market, the following major competitors will remain post-transaction: Inventec (worldwide: [20-30]%, EEA: [30-40]%) and Jabil circuit (worldwide: [5-10]%, EEA: [0-5]%). There are smaller other competitors whose combined market share at the worldwide level and at the EEA level represent respectively [20-30]% and [20-30]%.^{20 21}

39. Most respondents to the market investigation confirm that the provision of EMS is a highly competitive market. In particular, most respondent customers (four out of six respondents) refer to the existence of several competitors with similar capabilities to Foxconn.

Absence of constraints on capacity

40. Furthermore, according to the notifying party, supply in the EMS market is characterised by flexible production capacity. In order to expand capacity, an EMS supplier requires additional plant space and additional production lines. Both of these are readily available in a short time frame and at relatively low cost. Relocation does not require significant preparation and can take as little as one to two weeks to complete. In the event that no suitable sites are available for lease, EMS providers have the option to build a new facility, which will generally take 8-12 months to complete.²² As far as the cost of expanding production lines is concerned, it is generally possible to expand capacity to assemble PCs by purchasing PCBs from another supplier and only expanding systems production lines. Expanding systems assembly only requires an additional conveyer belt, a diagnostic server (shared with several cells/lines), a PC station with a barcode scanner, workbenches and chairs. To expand PCB production, additional PCB assembly lines, which cost around USD 1 million, are required. Production can start within 2 to 3 months from the date the PCB assembly line is ordered.

41. The market investigation confirms that EMS providers have spare production capacity or could add capacity within a very short timeframe and at minimal costs. In addition, as already outlined in paragraph 20, the market investigation confirms to a large extent the capacity of EMS providers to switch between different end-products.

¹⁹ M.5870 Foxconn/Sony LCD TV manufacturing company in Slovakia (paragraph 37), decision of 25.06.2010.

²⁰ All market shares in value for 2009.

²¹ Source: Annual reports, Gartner and IDC industrial data releases, as provided by the notifying party.

²² The guidelines on the assessment of horizontal mergers give a two-year period as an indicative benchmark of timely entry.

Potential entrants

42. Furthermore, even assuming separate product markets, EMS suppliers are able to switch between production of laptops, desktops, servers and a range of similar sized products both relatively quickly and with little expense owing to the strong similarities between the core business processes and the relative simplicity of the equipment used to assemble both PCBs and systems.
43. Two competitors point to a number of new entrants, in particular with the established Original Design Manufacturers now pursuing EMS opportunities. In addition, all respondent competitors outline the possibility for providers of manufacturing services in other industries to enter the EMS market. All respondent competitors further indicate that the market is expected to grow at a steady pace in the coming years.

Customer switching

44. Furthermore, OEM customers can switch between EMS providers without incurring significant costs and within a relatively short time-frame (a couple of months). Generally, EMS contracts are short-term and the switching costs incurred are limited to working hours involved in coordinating ordering and delivery processes and in establishing IT connections with the EMS provider.
45. According to one respondent customer, generally EMS supplier agreements constitute only a framework and allow flexibility on volumes while prices are negotiated for every new end-product. The practical difficulty to establish the necessary IT infrastructure is referred to by certain respondents to the market investigation. Whereas only certain respondent customers to the market investigation have recently switched from one EMS provider to another, all of them indicate that the switching from one EMS provider to another is possible and that there are no contractual provision preventing it. One customer respondent indicates that it is very easy to switch from EMS provider to another and that in fact it switches regularly.

Existence of buyer power

46. Lastly, the notifying party argues that OEM customers generally also have the ability to switch to in-house production. However, the market investigation is inconclusive on this point.
47. This question left apart, the Commission notes that OEM customers tend to be highly concentrated, with EMS suppliers generally supplying a relatively small number of OEMs. For example, in 2009, Flextronics' top ten customers represented about [...]% of their sales. Similarly, Jabil's top 10 customers represented [...]% of their net revenue for that year, and the top 50 customers about [...]%. Foxconn's five largest customers represent [...]% of its total sales. Moreover, the market investigation confirms to a large extent the existence of buyer power of OEMs vis-à-vis EMS providers.
48. In light of the above considerations, the proposed transaction does not give rise to any competition concerns stemming from horizontal overlaps between Foxconn and the Target in the provision of third-party EMS.

Non-horizontal effects

49. Foxconn is involved in the supply to third parties of certain components used in the production of PCs and Servers (cables, connectors, chassis and Printed Circuit Board Assemblies - PCBAs). At the same time Foxconn is active in the production of PCs and servers. The proposed transaction will affect this vertical relationship to the extent that the Target will add to Foxconn's presence on the downstream market for EMS for PCs and servers.
50. The notifying party takes the view that the markets for the supply of components are not upstream markets to the markets for the provision of EMS services. Although components are generally sold and delivered to EMS providers, suppliers of components such as Foxconn negotiate pricing and sales conditions directly with the OEMs who are in reality their customers. The OEMs issue EMS providers with an approved products list that spans the entire supply chain. Thus, whilst Foxconn does supply its competitors with components, the demand for its component products is not driven by its competitors but by the OEMs. This is illustrated by the fact that, despite annual motherboard production of approximately USD [...] million, Foxconn is nonetheless required to purchase motherboards from [...] in order to meet the specifications requested by its OEM customers. The Commission does not need to take a view on this issue, given the limited shares of the parties.
51. According to its own estimates, Foxconn's share of third-party sales of components ranges from less than [0-5]* for cables to [0-5]% for chassis in the EEA and from [0-5]% for cables to [5-10]% for connectors at the worldwide level.²³ The proposed transaction is therefore unlikely to lead to any input foreclosure concerns for competing downstream EMS providers for PCs and servers.
52. The Target also does not appear to add a critical share of demand for components. According to the notifying party, in the EEA the Target accounts for [0-5]% of the demand of PCBAs and of Chassis and for approximately [10-20]% of the demand of cables (respectively for [0-5]% and for [5-10] % at the worldwide level). The proposed transaction is therefore unlikely to lead to any customer foreclosure concerns for competing upstream component suppliers.
53. The proposed transaction does not therefore raise any competition concerns stemming from vertical effects.

* Should read "%"

²³ The fact that a large share in finished goods translates into a de minimis share of purchase and sale of components can be explained by in-house production.

State aid for the Target

54. The Target has been the beneficiary of State aid granted by the Polish State since 2006²⁴. The aid comprises (i) a grant for initial investment of approximately EUR 24 million; (ii) a grant for job creation of approximately EUR 13.5 million; (iii) a reduction in the Łódź SEZ management fees payable by the Target in the period 2007-2017, amounting to approximately EUR 1.5 million; (iv) costs for the relocation of the energy supply line outside the plot of land belonging to the Target of approximately EUR 1.25 million; (v) an exemption from corporate income tax for the period 2008-2018, amounting to a maximum of approximately EUR 12 million; (vi) an exemption from property tax for the period 2008-2018, amounting to approximately EUR 2.4 million.
55. The purchase price to be paid by Foxconn is based on the net book value of the Target on the closing date. As regards the State aid that has already been paid, it is reflected in the Net Assets value of the Target and therefore in the price Foxconn is to pay to Dell. The notifying party submits that Dell had other potential buyers for the Target and that the acquisition price negotiated with Foxconn reflects a competitive price for the Target. Therefore, no State aid stemming from that part of the financial subsidy would be transferred to Foxconn.
56. The tax reliefs (items (v) and (vi)) to which the Target will remain entitled post-transaction, as well as any forthcoming payments under the investment and job creation aid (items (i) and (ii)), have not been taken into account for the calculation of the purchase price.²⁵ The aid together with the conditions attached to it, to the extent they relate to the Target, remain with the Target. To the extent the conditions relate to Dell, those will be transferred to Foxconn post-closing. Since those amounts have not been taken into account for the calculation of the purchase price, State aid would be transferred to Foxconn.
57. According to the notifying party, the tax reliefs for the corporate tax exemption and the property tax to which the Target will remain entitled post-transaction amount respectively to EUR [10-15] million and EUR [1-2] million.²⁶
58. The forthcoming payments for investment and job creation are estimated at a maximum of approximately EUR [15-25] million by 2012. However, according to notifying party, [taking into account the existing capacities, as well as current market tendencies, Foxconn is unlikely to draw on the entirety of the] investment- or employment-related cash grant entitlement during the remaining period until 2012.

²⁴ Aid granted under a Memorandum of Understanding for Job Creation and Development in Lodz, Poland signed between Dell and the Polish authorities on 19 September 2006. It consists of different types of ad hoc aid, notified to the Commission and declared compatible with the common market by Commission decision of 23 September 2009, under case C 46/08 (ex N775/07) (OJ L 29/8 of 2.2.2010), as well as aid under aid schemes (XR 98/07 and XR 164/07) exempted from the notification obligation under Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid. The present decision does not take any position on the compatibility of State aids granted by the Polish State under the EU State aid rules.

²⁵ The relocation of the energy supply line (item (iv)) has been completed.

²⁶ Calculation based on EUR/PLN ECB average exchange rate of 3.9899 for August 2010.

59. According to the RJB Mining judgement²⁷ and in line with previous Commission decisions²⁸, the Commission when assessing a merger must examine whether, and, if so, to what extent the State aid strengthens the financial capacity and ultimately the market power of the merged entity.
60. The notifying party has submitted an overview of a large range of financial indicators for Foxconn, the Target and five competitors for the years 2007 to 2009.²⁹ These indicators reveal that profit margins in the EMS industry are very low. Furthermore some Foxconn competitors have recently been loss-making (Jabil in 2009 and Flextronics in 2008 and 2009). However, on balance when assessing the entire range of companies and indicators provided and, in particular, bearing in mind the financial magnitude of the companies, the amount of the remaining aid for the Target appears relatively low.
61. The aid transferred does not seem to be of such proportion as to increase the ability of Foxconn to prevent the expansion of competitors or to eliminate competitors on the relevant market. In any case, in light of the assessment made in paragraphs 29 to 48, in particular given the significant buyer power of OEMs and the capacity of the competitors to remain in/enter the market, it seems clear that the market has the capacity to react.
62. Against that background, the impact of the State aid on Foxconn's competitive position and thus on competition can be considered as not significant.

V. CONCLUSION

63. 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 Commission,
(signed)
Joaquín ALMUNIA
Vice-President of the Commission

²⁷ Case T-156/98 RJB Mining plc/Commission [2001] ECR II-337.

²⁸ COMP/M.4956 STX/Aker Yards and COMP/M.5440 Lufthansa/Austrian airlines.

²⁹ The indicators the notifying party submitted and the Commission assessed were the following: Sales, Gross profit, EBITD, EBITD Margin, EBIT, EBIT Margin, Net profit, Liquidity ratio, Book value of equity, Total assets, Working capital, Cash and Equivalents, Interest-bearing long-term debt.