

***Case No COMP/M.5870 -
FOXCONN / SONY LCD
TV MANUFACTURING
COMPANY IN
SLOVAKIA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/06/2010

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EUROPEAN COMMISSION

Brussels, 25.06.2010

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5870 – [FOXCONN / SONY SLOVAKIA]*
Notification of 21 May 2010 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 21 May 2010, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Hon Hai Precision Industry Co., Ltd ("Hon Hai group", Taiwan), the parent company of the Foxconn group ("Foxconn", Taiwan), acquires sole control over Sony Slovakia spol. s r.o. (the "Slovakian Target", Slovakia) by way of purchase of shares.
2. On 1 January 2010, prior to reaching an agreement to acquire the Slovakian Target, Foxconn had acquired sole control of Sony Baja California, S.A. de C.V (the "Mexican Target", Mexico) by way of purchase of shares and purchase of assets. This acquisition did not have an EU dimension. However, as it took place less than two years prior to the envisaged acquisition of the Slovakian Target and as it was a transaction between the same undertakings (Hon Hai group/Foxconn and Sony group), the two transactions are treated

* Should be read as FOXCONN / SONY LCD TV MANUFACTURING COMPANY IN SLOVAKIA

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.

together as one and the same concentration, by virtue of Article 5(2) of the Merger Regulation.

I. THE PARTIES

3. Hon Hai group/Foxconn (referred to below as "Foxconn") is a provider of third-party electronic manufacturing services ("EMS") to original equipment manufacturers ("OEM") of electronic products such as computers, mobile phones or televisions. Foxconn is headquartered in Taiwan and has operations across the Americas, Asia and Europe.
4. The Slovakian and the Mexican Targets are both active in the assembly of LCD televisions. They employ approximately 3 000 workers each.
5. Foxconn, the Slovakian Target and the Mexican Target together will be referred to below as "the parties" or the "merged entity".

II. THE OPERATION

6. The proposed transaction concerns the acquisition by Foxconn of sole control of the Slovakian and the Mexican Target. Foxconn has agreed to acquire 90.1% of the shares in the Slovakian Target. Sony will retain a 9.9% shareholding post-transaction. Foxconn had already acquired 90% of the shares in the Mexican Target as well as selected additional assets. Sony will retain a 10% shareholding.
7. Although Sony will retain minority stakes in the Targets and will hold certain rights pursuant to the Shareholder Agreements for the Slovakian and Mexican Targets, Sony will not have *de jure* joint control over the Targets.²
8. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

9. In 2009, the undertakings concerned had a combined aggregate worldwide turnover of more than EUR 5 000 million³ (Foxconn: EUR 42 457 million, Slovakian Target: EUR [...])

² Sony will have the right to appoint one member to the Supervisory Board of the Slovakian Target (out of at least three members) and the Mexican Target (out of at least five members). All other members will be appointed by Foxconn, and most decisions of the Supervisory Boards will be taken by majority. Although Sony will hold veto rights for certain decisions that will require unanimity, Sony's rights will not go beyond the normal protection of the rights of minority shareholders (see paragraphs 66-67 of the Consolidated Jurisdictional Notice). In particular, Sony will not enjoy veto rights concerning the Slovakian or the Mexican Target's budget, business plan, major investments or appointment of senior management. Furthermore, although the Shareholders Agreements provide that Foxconn and Sony " *shall fully cooperate in the voting of their Shares in order to act [...] in a joint manner*", this is subject to the proviso "*as much as possible*".

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation. The difference in revenues between the Slovakian Target and the Mexican Target is much more significant than their difference in economic size (for instance in terms of number of employees and acquisition price). This stems from different accounting methodologies: the Mexican Target only invoices a fee for assembly services to OEMs, as the raw material as well as finished goods remain the property of the OEM (that is to say another Sony entity prior to the proposed transaction) during the production process. The Slovakian Target on the contrary temporarily owns the raw materials and finished products during the

million, Mexican Target: EUR [...] million). In 2009 two of them had an aggregate EU-wide turnover in excess of EUR 250 million (Foxconn: EUR [...] million, Slovakian Target: EUR [...] million).⁴ Foxconn does not achieve more than two-thirds of its aggregate EU-wide turnover within one and the same Member State. The proposed transaction therefore has an EU dimension.

IV. ASSESSMENT

A. MARKET DEFINITION

1. RELEVANT PRODUCT MARKET

10. According to the notifying party, the relevant product market is the overall market for electronic assembly.
11. In the notifying party's view it would not be appropriate to further delineate the market for electronic assembly based on (i) in-house vs. external (EMS) electronic assembly, (ii) end-use products (such as computers, televisions or mobile phones), or (iii) screen size in the case of LCD televisions.
12. The notifying party argues that there are several factors that support a relevant market including both 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 ratios. According to the notifying party, in the case of LCD televisions this is illustrated by the fact that some OEMs (such as Samsung and LG) produce almost all of their LCD televisions in-house while others (such as Philips and Vizio) outsource practically all of their production.
13. The notifying party furthermore considers that it is not necessary to distinguish between different end-use products, as EMS providers would be able to easily switch (in terms of time and cost) between assembly of different 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. In particular, as regards the production of LCD televisions, there are numerous common features in terms of process and components between the production of an LCD television and the production of other electronic products.
14. The notifying party illustrated this supply-side substitutability with the switch it undertook at minimal cost from the assembly of PCs to mobile phones. While the notifying party intends to dedicate the Targets' production capacity mainly to the assembly of LCD televisions, the

assembly process. The Slovakian Target therefore invoices the full value of the finished products to its OEM customer and thus achieves a substantially higher turnover.

⁴ The acquisition of the Slovakian Target alone meets the thresholds of the Merger Regulation and would therefore have to be notified in its own right.

Targets' production could be switched to producing game consoles and PCs within less than [...] weeks and at a cost below EUR [...] million.

15. As regards televisions, neither Foxconn nor the Target is active in EMS for televisions other than LCD televisions. If the Commission were to consider the manufacturing of LCD televisions as the relevant product market, the notifying party submits that a further segmentation based on screen size would not be appropriate and in any event would not lead to significantly different market shares.
16. 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 market⁵.
17. The Commission has also left open the question whether each end-use product may constitute a separate relevant product market⁶.
18. The Commission's market investigation⁷ generally supports the notifying party's views concerning the relevant product market.
19. Most of the OEM respondents contacted by the Commission confirm that they can and do switch between in-house production and EMS. However, it appears that for OEM that outsource most of their manufacturing, reverting to in-house production would require significant investments and time.
20. As regards supply-side substitutability between different end-use products EMS providers are generally able to offer their services for different end-use products. However, switching between assembly of different end-products by EMS providers may not be immediate and may require a certain level of investments and lead time.
21. In any event, the exact product market definition can be left open as the proposed transaction does not raise competition concerns under any of the alternative product market definitions.

2. RELEVANT GEOGRAPHIC MARKET

22. The notifying party submits that the relevant market is worldwide. First, EMS providers usually conclude EMS agreements with OEMs on a global basis. Second, transport cost and tariffs do not form a significant barrier to imports into the EEA. This is evidenced by the existence of significant imports of EMS-produced goods into the EEA (around 15-20% of the total of EMS-produced goods sold within the EEA). Third, from a third-party EMS provider's perspective, the geographic scope of product-related regulations and standards does not play a direct role in determining the characteristics of a product as the

⁵ See for example Commission decisions in M.5140 – Foxconn/Sanmina SCI (*paras. 11 and seq.*) ; M.4766 – Flextronics/Solectron (para. 8); M.3586 – Flextronics/Nortel (para. 7); M.2629 – Flextronics/Xerox (para. 8); M.2479 – Flextronics/Alcatel (para. 7); M.1841 – Celestica/IBM (EMS) (para. 8).

⁶ See for example Commission decisions in M.5140 – Foxconn/Sanmina SCI (para. 11); M.4766 – Flextronics/Solectron (paras. 9-10); M.3586 Flextronics/Nortel (paras. 9-11).

⁷ In line with Article 11(7) of the Merger Regulation, the Commission has carried out minuted conference calls with several OEM customers.

provider must in any event work to the OEM's specifications. Product-related regulations and standards mainly play a role at the level of the supply of the finished products by the OEM and, in any event, in Europe, such standards are EEA-wide.

23. In previous cases, the Commission has considered the provision of EMS as worldwide or at least EEA-wide, but has ultimately left the question open⁸.
24. The Commission's market investigation has confirmed that OEM negotiate and source EMS on a global basis. However, when deciding about the global sourcing strategy, it appears that OEM also take into account significant differences that exist between the different regions in the world in the provision of EMS, such as labour costs, transport costs, and even certain tariffs.
25. The relevant geographic product market is therefore at least EEA-wide. Whether it 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.

B. COMPETITIVE ASSESSMENT

26. The Slovakian and Mexican Targets produce LCD televisions. Foxconn proposes to acquire the Slovakian and Mexican Targets and to enter into supply agreements with Sony and to also supply third parties. In essence, the proposed transaction consists in a vertical disintegration by Sony which will transfer to Foxconn the production and assembly of LCD televisions which are currently carried out in-house. Foxconn will enlarge the scope of its EMS activities.
27. The proposed transaction gives rise to a horizontal overlap between Foxconn and the Slovakian and Mexican Targets in the provision of third-party EMS . The proposed transaction also gives rise to a vertical relationship as Foxconn is active in the supply of components for LCD televisions.

1. HORIZONTAL ASSESSMENT

28. On a relatively broad definition of the relevant market, i.e. on the worldwide market for electronic assembly including both in-house production and third-party EMS, Foxconn's market share in value would be below [5-10]%.
29. The table below shows the parties' 2009 market shares in value for third-party EMS sales only, i.e. excluding in-house production⁹.

⁸ See for example M.5140 – Foxconn/Sanmina SCI (para. 18); M.2629 – Flextronics/Xerox (para. 10); M.2479 – Flextronics/Alcatel (para. 12).

⁹ 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 very different products such as plugs or cables vs. televisions or servers. The notifying party also provided Foxconn's market shares in volume for LCD televisions; these are [lower] than its market shares in value.

	Foxconn	Slovakian and Mexican Targets¹⁰	Foxconn post transaction
Worldwide market for third-party EMS	[20-30]%	[0-5]%	[20-30]%
Worldwide market for third-party EMS for LCD TVs	[0-5]%	[30-40]%	[30-40]%
EEA-wide market for third-party EMS	[20-30]%	[0-5]%	[30-40]%
EEA-wide market for third-party EMS for LCD TVs	0%	[40-50]%	[40-50]%

Source: Notifying party's estimates

30. 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 acquisition of the Slovakian and Mexican Targets would be relatively small (namely [0-5]%). This is also true on the market for EEA-wide third-party EMS.
31. If a narrower market definition of EMS for LCD televisions is retained, Foxconn's market share after the proposed transaction will be higher. However, prior to the transaction, Foxconn is only marginally active in the production of televisions and only outside the EEA. Foxconn has a worldwide market share of [0-5]% in EMS for (LCD) televisions. Consequently there is essentially no horizontal overlap on a relevant market defined as third-party EMS for LCD TVs both worldwide and at the EEA level as a result of the proposed transaction.
32. In any event, regardless of the exact market definition, the notifying party submits that the following competitive constraints will remain after the proposed transaction:
33. Foxconn will continue to face numerous competitors for third-party EMS at the worldwide level such as Quanta ([5-10]%), Flextronics ([5-10]%), Pegatron Computer ([0-5]%), Inventec ([0-5]%), Jabil circuit ([0-5]%). At the EEA level, the following competitors are present: Flextronics ([5-10]%), Quanta ([5-10]%), Jabil ([0-5]%), Celestica ([0-5]%) and Elcoteq ([0-5]%). Even on the narrower market for worldwide EMS for LCD televisions only, the following competitors will remain post transaction: TPV ([20-30]%), Amtran ([10-20]%), Compal ([10-20]%), Wistron ([5-10]%) and Innolux ([0-5%])¹¹.
34. EMS competitors also do not face any capacity constraints: the notifying party estimates the capacity utilisation of the main competitors within the EEA for EMS (Flextronics, Jabil and Celestica) at below 80%.
35. Furthermore, OEM customers can switch EMS provider without incurring significant costs and within a relatively short time-frame. Generally, EMS contracts are short-term and the switching costs incurred are generally limited to working hours involved in coordinating ordering and delivery processes and in establishing IT connections with the EMS provider.

¹⁰ The Mexican target achieved no turnover in the EEA in 2009.

¹¹ All market shares in value for 2009.

36. OEM customers generally also have the ability to switch to in-house production. Moreover, OEM customers generally consist of a small number of large, multinational and very sophisticated customers such as Apple, Dell, HP, Nokia, Sony and their competitors. These two aspects together would lead to significant buyer power of OEM vis-à-vis EMS providers.
37. The Commission's market investigation has confirmed that the EMS market is competitive. It has confirmed that EMS providers do not face any capacity constraints and would be able to increase their production relatively easily if necessary. All the respondents take the view that OEMs can switch relatively easily EMS providers. All the respondents have also confirmed that as OEMs they have a strong bargaining power vis-à-vis their EMS providers. OEMs customers generally have framework contracts in place with several EMS providers and effectively procure EMS through tenders. This is consistent with the findings of the Commission in previous market investigations. A number of Commission's decisions refer to the high degree of competition in the EMS market¹², to the fact that OEMs multisource for EMS¹³ and to the strong bargaining power of OEMs vis-à-vis EMS providers¹⁴.
38. In light of the above considerations, the proposed transaction does not give rise to any competition concerns stemming from horizontal overlaps in the provision of third-party EMS between Foxconn and the Slovakian and Mexican Targets.

2. VERTICAL ASSESSMENT

39. Foxconn is currently active in the supply to third parties of certain components used in the production of LCD televisions, namely cables and connectors. At the same time Foxconn is active, to a marginal extent¹⁵, in the production of LCD televisions. The proposed transaction will affect this vertical relationship to the extent that the Slovakian and Mexican Targets will add to Foxconn's (currently marginal) presence on the downstream market for third-party EMS for LCD televisions.
40. According to its own estimates, Foxconn's share of third-party sales of cables and connectors is below [5-10]% worldwide. The proposed transaction is therefore unlikely to lead to any risk of input foreclosure for competing downstream EMS providers for LCD televisions.
41. The Slovakian and Mexican Targets also do not add a critical share of demand for components. According to the notifying party, in the EEA the Slovakian Target accounts for less than [5-10]% of the demand for cables and less than [10-20]% of the demand for connectors. Although on a worldwide market the Mexican Target's share of demand would have to be added, the combined share of the Targets would be diluted and even smaller than in the EEA. The proposed transaction does therefore not lead to any risk of customer foreclosure for competing upstream component suppliers.

¹² M.2479 – Flextronics/Alcatel (para. 15); M.3583 – Flextronics/Nortel (para. 17).

¹³ M.2479 – Flextronics/Alcatel (para. 15).

¹⁴ M.2629 – Flextronics/Xerox (para. 13) ; M.4766 – Flextronics/Solectron (para. 17); M.5140 – Foxconn/Sanmina SCI (para. 13).

¹⁵ Foxconn's current worldwide share in the manufacturing of LCD Televisions is estimated at [0-5]%.

42. The proposed transaction does therefore not raise any competition concerns stemming from vertical effects.

3. STATE AID FOR THE SLOVAKIAN TARGET

43. The Slovakian Target has been the beneficiary of State aid granted by the Slovakian State since 2006¹⁶. The aid comprises (i) a financial subsidy in the amount of SKK 760.2 million (approximately EUR 25.2 million) and (ii) a tax relief on income tax up to SKK 408.6 million (approximately EUR 13.6 million) to be asserted for no more than ten fiscal years.
44. According to the RJB Mining judgement¹⁷, the Commission when assessing a merger must examine whether, and if so, to what extent, the financial capacity of the merged entity was strengthened by a State aid.
45. The financial subsidy to procure fixed assets has already been fully paid between 2007 and 2009. It is reflected in the net book value of the Slovakian Target and therefore in the acquisition price Foxconn is to pay Sony. The notifying party submits that Sony had other potential buyers for the Slovakian Target and that the acquisition price negotiated with Foxconn reflects the market price for the Slovakian Target. In that case, no State aid stemming from the financial subsidy would be transferred to Foxconn.
46. As regards the tax relief, the Slovakian Target began to assert the tax relief from its financial year 2007 and the remaining available relief amounts to SKK [...] million (approximately EUR [...] million).
47. The latter amount was not taken into account in the calculation of the purchase price. Therefore, the remaining State aid stemming from the tax relief would be transferred to Foxconn as a result of the proposed transaction.
48. The notifying party has submitted an overview of a large range of financial indicators¹⁸ for Foxconn, the Slovakian Target and five competitors for the years 2007 to 2009.
49. Against the background of the financial size of Foxconn and its competitors as revealed by the financial data for the years 2007 to 2009, the amount of the remaining tax relief for the Slovakian Target appears very low. Hence, the impact of the tax relief on competition can be considered as insignificant.

V. CONCLUSION

¹⁶ This aid was granted by the Slovakian State under Ministry of Economy decision No 34-2006 of 22 December 2006. It falls within the Slovakian regional aid scheme for large enterprises approved by the European Commission by decision of 8 November 2006 under Case No. N659/2006 (cf. OJ 2007 C80, p. 1). The present decision does not take any position on the compatibility of State aids granted by the Slovak State under the EU State aid rules.

¹⁷ Case T-156/98, RJB Mining plc/Commission.

¹⁸ 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.

50. 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)
Štefan FÜLE
Member of the Commission