

***Case No COMP/M.1541 -
KINGFISHER / ASDA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 15/06/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.06.99

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sirs,

Subject: Case No IV/M.1541 –Kingfisher/ASDA

Notification of 07.05.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 07/05/1999 the Commission received notification of a proposed operation by which Kingfisher will enter into a full merger with the ASDA Group. This operation constitutes a concentration within the meaning of Article 3(1) (b) of Council Regulation (EEC) No 4064/89.
2. After the examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation (EEC) No 4064/89 but does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. Kingfisher is a broadly based retail group operating subsidiaries active in the specialised retail and/or wholesale of a variety of various products such as RMI¹, domestic electric appliances, toys, health and beauty products, recorded music and videos, etc. Kingfisher is mainly operating in the UK but also in other EU Member States.
4. ASDA is one of the major food retailers in the UK. Its main non-food activities are mainly in clothing, music and videos.
5. The merger will be effected by way of a recommended offer by Kingfisher for the entire issued and to be issued share capital of ASDA. In return, ASDA shareholders will receive new shares in the capital of Kingfisher. The concentration can be regarded as a concentration in the meaning of Article 3 (1) (a) of the Council Regulation No. 4064/89.

II. COMMUNITY DIMENSION

6. The combined aggregate worldwide turnover of the undertakings concerned exceeds 5 billion EUR (Kingfisher: 14,905 million EUR; ASDA: 11,324 million EUR). Both parties have a Community-wide turnover, which exceeds 250 million EUR (Kingfisher : [...] million EUR; ASDA: [...] million EUR). None of the parties to the merger achieves more than two thirds of its aggregate Community-wide turnover in one and the same Member State. Therefore, the operation has a Community dimension. It does not constitute a co-operation case under the EEA-Agreement, pursuant to Article 57 of that Agreement.

III. COMPATIBILITY WITH THE COMMON MARKET

Relevant product markets

7. The parties referring to the Commission's decision in KeskoTuko² do not consider themselves to be competitors because they operate in different product markets: Kingfisher through its various affiliates is active in specialised retailing whereas ASDA, by contrast, is a general supermarket retailer of daily consumer goods and non-food household consumables.
8. However, in Kesko/Tuko the relevant product market where the parties had overlaps, was a different one, namely the market of food- and non-food daily consumer goods. The Commission concluded that in Finland those products in general form part of a basket of daily consumer goods the consumer would expect in a supermarket environment. The Commission also concluded that in Finland competition for the retail of those products takes place between supermarkets and other stores offering a wide product selection.³

¹ Repair, maintenance and improvement

² Case No. IV/M.784

³ This conclusion was also drawn with respect to the Austrian retail market; see Case No. 1221-Rewe/Meinl; Decision of 3th February 1999

9. In the present case, by contrast, the products where the parties have overlaps almost exclusively concern the non-food sector, namely toys, music and videos, health and beauty products, childrenswear, non-food household consumables and durables, pharmaceuticals and electronic commerce and confectionery. It has to be considered to which extent general and specialist retailers in the UK compete in the retailing of those products.
10. The parties achieve combined market shares of over 15% only in the retail of toys, health and beauty products and video and recorded music in the UK. A number of competitors have confirmed that in these segments general supermarket retailers in the UK are increasingly competing with specialised chains given that the general supermarkets have started to offer an increased range of branded and top selling products, growing shelf space and additional services. For the purposes of the present case there is, however, no need to decide this question. Even if it is considered that general and specialist retailers in the UK are competitors in the retail of the three above-mentioned products, the merger does not result in the creation or strengthening of a dominant position.

Relevant geographical market

11. The parties' activities in the above-mentioned sectors only overlap in the UK where the parties as well as their competitors operate networks of stores on a national scale. In the UK, notwithstanding the local catchment areas of retail outlets, the important parameters of competition like for example pricing, product range, product quality and promotion are determined on a national basis. Therefore, the relevant geographical market is the UK.

IV. ASSESSMENT

Retail supply of toys

12. In the retail of toys in the UK Kingfisher/Woolworth's has [10-20 %] market share. ASDA's sales of this segment would only add [less than 5 %]. The combined group will continue to face significant competition from market leader Argos, who has [15-25%] and other international competitors like Toys'R'Us with [5-15%] or Early Learning Center who has [5-15 %] market share. Competition is also enhanced by the presence of a number of independent specialised retailers.

Retail supply of health and beauty products

13. According to the parties and their competitors the relevant market can be characterised as a basket of health and beauty products including in particular toiletries, cosmetics, baby products and OTC⁴ drugs.
14. Kingfisher/Superdrug currently has a market share of [5-15]%, ASDA would add [0-10]% combined shares would therefore amount to [10-20]%. Nevertheless, Boots would remain the leader of the segment with shares between [20-30 %].

⁴ over the counter

There is also some competition from multiple chemists' chains such as Lloyds and independent local chemists.

Retail supply of music

15. The parties consider that the supply of recorded music and videos from a retail perspective, may be considered as a single market because of an increasing convergence of retail sales of CDs, videos and other entertainment products such as video games, in the same outlets. Some competitors, however, are of the view that the retail of music and videos are different markets with regard to the differences in the supply chain and the method of supply to the customer (e.g. video rental). However, even if looking at the two segments as separate markets, the merger does not lead to the creation or strengthening of a dominant position. For the purposes of the present case the definition can therefore be left open.
16. Kingfisher is active in the retail supply of music through its subsidiaries Woolworth's and MVC⁵. Its market share is [10-20]%. ASDA's sales of the segment will add [0-10]%. Combined shares would therefore amount to [15-25]%. The enlarged group will continue to face competition from market leader Virgin who has [15-25 %] and other important players like HMV and Britannia, having [10-20 %] and [5-15 %] respectively. On the supply side there are big multinational companies active like for example Columbia Tristar, Universal or 20th Century Fox.

Retail supply of recorded videos

17. Kingfisher is market leader with [15-25]% market share and ASDA will add [0-10]%. The merged entity will therefore have around [<30]% market share. The next competitor WH Smith has [5-15 %], Virgin and HMV have under 10%. Future competitive pressure is also to be expected from the Internet Sector. Competitors confirm that with the growth of digital technology Internet sales are going to increase enabling customers to bypass retailers. The merger will to a certain extent enhance the parties' buying power with regard to other retail competitors, but the new entity will still face suppliers with significant bargaining power like Sony, Warner or EMI.
18. Through its subsidiaries EUK and VCI Kingfisher is also active as a wholesaler of recorded videos. VCI (like the larger studios) sells directly to major retailers. EUK, on the other hand, is a specialist distributor providing not only product delivery but also other services like category and stock management. ASDA is not involved in the wholesale of music and recorded videos.
19. In wholesale of recorded videos, Kingfisher has between [30-40]% market share. However, roughly half of this share represents captive sales to the Kingfisher subsidiaries Woolworth's and MCI. The non-captive part is around [15-25]%. In this market, however, wholesalers are increasingly bypassed by producers selling directly to retailers. Competitors estimate the share of those direct sales between 50-60%. Furthermore, in this market physical distribution specialists play an important role. Market leader Technicolor, for example, has [30-40]% market

⁵ Music & Video Club Ltd

share. In 1998, Warner Music moved up to the second place [10-20]% ahead of Polygram [10-20]%. Other important players are Sony [5-15]% and THE⁶ [5-15]%. After the merger with ASDA there will be a modest accretion in Kingfisher's access to the retail level. Also ASDA already sources around [the majority] of its recorded videos from EUK. Some competitors believe that the merger will lead major EUK customers to re-examine their supply chain since after the merger they will be supplied by the parent of their closest rival in the retail supply of recorded videos.

20. Considering the above-mentioned market situation in the retail segments of toys, health and beauty products and music and recorded videos the proposed concentration does not create or strengthen a dominant position of the parties. Regarding its overall business activities the merged entity will be of a similar scale to many of the leading European retailers but will still remain significantly smaller than other international counterparts like Walmart, Metro or Carrefour.

V. CONCLUSION

21. For all those foregoing reasons, the proposed concentration does not raise serious doubts as to its compatibility with the common market.
22. For the above reasons, the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6 (1) (b) of Council Regulation No.4064/89.

For the Commission,

⁶ Total Home Entertainment Ltd