

***Case No COMP/M.1735 -
SEITA / TABACALERA***

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

Article 6(1)(b) NON-OPPOSITION
Date: 03/12/1999

*Also available in the CELEX database
Document No 399M1735*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.12.1999 * SG (99)D/9818

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NOT TO BE PUBLISHED

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties.

Dear Sirs,

Subject: Case No COMP/M. 1735 - SEITA/TABACALERA

Notification of 4.11.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 4.11.1999, the Commission received a notification of a proposed concentration by which the Spanish undertaking Tabacalera, S.A. (Tabacalera) and the French undertaking Seita, S.A. (Seita) in accordance with the "Business Combination Agreement", enter into a merger, constituting a new undertaking named Altadis by way of a public bid of share exchange made by Tabacalera for Seita.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES AND THE OPERATION

3. Seita is a private French company that manufactures and sells cigarettes, cigars, roll your own ("RYO") tobacco and pipe tobacco, and smoking-related items. It carries out the wholesale distribution of its tobacco products and third party tobacco products to the tobacco retailers in France.
4. Tabacalera is a private Spanish company that manufactures and sells cigarettes, cigars, and smoking-related items. It carries out the wholesale distribution of its tobacco products and third party tobacco products to the tobacco retailers in Spain through its subsidiary Logista.
5. Seita and Tacalera are former national (legal) monopolies for the production and whole sale distribution of tobacco products. Although their legal exclusive rights have been abolished, they continue to have a strong position, respectively in France and in Spain.

Both tobacco groups realise a very high proportion of their sales in their home countries, with the exception of cigars.

6. The two parties, Seita and Tabacalera, have reached an agreement on the terms of a proposed merger of equals between the two groups. The concentration concerns the whole of each party. The enlarged group will be named Altadis. Therefore the transaction involves a merger between two independent undertakings within the meaning of Article 3(1)(a) of the Merger Regulation.

II. COMMUNITY DIMENSION

7. The undertakings Seita and Tabacalera have a combined aggregate worldwide turnover in excess of EUR 5,000 million¹ (Seita, EUR 2,949 million, and Tabacalera, EUR 2,472 million). Each of them has a Community-wide turnover in excess of EUR 250 million (Seita, EUR 2,788 million; and Tabacalera, EUR 2,309 million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension within the meaning of Article 1(2) of the Merger Regulation.

III. COMPETITIVE ASSESSMENT

Introduction

8. The tobacco industry exists on three levels: farming (leaf tobacco growing and curing), manufacturing and distribution (wholesale and retailer distribution). The main final manufactured products are manufactured cigarettes (91% of EU tobacco consumption), roll-your own tobacco (7% of EU tobacco consumption), cigars and cigarrillos (1%) and pipe tobacco (1%). Other forms of consumption include snuff and chewing tobacco, though consumption of these products is negligible.
9. In the cigarette sector, Altadis will be the sixth world-wide player with a combined market share of [below 5]%, behind the leader Philips Morris (PM) with a [20-30]%, Bat/Rothmans with a [20-30]%, Japon Tob./Reynolds Int. with a [10-15]%, Reemtsma with a [below 5]% and Reynolds USA with a [below 5]%. In the EU Altadis will be the third player with a combined market share of [10-15]%, behind Philips Morris with a [35-40]% and Bat/Rothmans with a [10-15]%.
10. In the cigar sector, Altadis will be the main player in the world and in the EU with a combined market share about [20-30]% and [15-20]% respectively.

A. Relevant product markets

11. While Seita is active on all the above tobacco products, Tabacalera does not realise material sales of RYO, pipe, chewing and snuff tobacco. The vast majority of the turnover of both parties comes from cigarette sales.

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

12. The concentration affects the following relevant tobacco product markets:
- *Manufacturing and sale of cigarettes : dark and blond cigarettes*
13. A distinction can be made between blond tobacco cigarettes and dark tobacco cigarettes, because of substantial supply-side and demand-side differences between these two product groups. Blond tobacco cigarettes, as opposed to dark cigarettes, hold a significant and ever increasing part of the total sales of cigarettes in both countries (78.7% in France and 71.7% in Spain, for 1998, in volume). In France as in Spain a constant decline in the consummation of dark cigarettes in favour of an increasing in the consumption of blond cigarettes can be seen. In France dark tobacco cigarettes accounted for 69.8% of the total sales in 1980 compared with 21% in 1998. In Spain similar trends can be observed.
14. However, the relevant product market definition in respect of cigarettes can remain open because, in all alternative market definitions considered, effective competition would not be significantly impeded in the common market or any substantial part of it.
- *Manufacturing and sale of cigars*
15. Cigars and cigarettes are two different products with very distinct characteristics, in particular taste, price and image. It is unclear whether the cigar sector should not be further segmented, for instance, by size, weight, quality or image. However, the question can remain open, as there are no indications that the new entity would be dominant in any segment.
- *Distribution of manufactured tobacco products at wholesale level*
16. In France and in Spain, the distribution activities for all manufactured tobacco products are specifically regulated at both wholesale and retail levels, with a clear separation of the two activities.
17. In both countries, France as in Spain, tobacco product wholesalers must supply tobacco products to all national retailers irrespective of geographical location (more than 34.000 in France and more than 16.000 in Spain) in a neutral way. Wholesalers as such transport and deliver tobacco products and they are paid by way of a commission approved by the authorities. The administrative regulations impede wholesalers as such to promote the marketing of the products they manufacture.
18. It is up to each tobacco manufacturer to fix freely the retail price and it is up to retailers to order the tobacco products that they need from the wholesalers.
19. In France there are more than 32 authorised wholesalers operating mainly in cigars. In Spain the number of licences granted is very limited. A new legal regime (Law 13/1998 and Royal Decree 1199/1999) liberalises the manufactured tobacco and removes the monopoly on the manufacture, import and wholesale of tobacco products coming from third countries.
- Seita and Tabacalera have independent branches for their activities of distribution and their activities are organised on basis of non-exclusive agreements.
20. It results from the investigation carried out by the Commission, on the one side, that in France and in Spain there are a specific markets for distribution of manufactured tobacco

products at wholesale level due to the legal constraints, and, on the other side, that these wholesale markets include all the tobacco products.

B. Relevant geographic markets

21. The parties have submitted information at both national and European level. They consider that tobacco product markets (cigarettes and cigars) and the wholesale distribution markets are national because the strong national characteristics they have in France as well as in Spain concerning tax, public health protection, advertising and distribution matters. The presence of different competitors and/or the widely varying market shares shape distinct national areas. The Decision of the Commission in the Case No IV/M. 1415 - BAT / Rothmans confirms this approach.

C. Assessment

22. The markets where the parties operate are:
- a) Manufacture and sale of blond cigarettes in France and in Spain
 - b) Manufacture and sale of dark cigarettes in France and in Spain
 - c) Manufacture and sale of cigars in France and in Spain
23. The market shares of the parties in those product markets in France and in Spain are shown in the following table.

The market shares in France (in volume for 1998)

| | Blond Cigarettes | Dark cigarettes | Cigars |
|-------------------|------------------|-----------------|--------------|
| Seita brands | [10-20]% | [90-100]% | [20-30]% |
| Tabacalera brands | [below 2]% | [below 1]% | [below 0,5]% |

The market shares in Spain (in volume for 1998)

| | Blond Cigarettes | Dark cigarettes | Cigars |
|-------------------|------------------|-----------------|------------|
| Seita brands | [below 1]% | [below 0,5]% | [below 1]% |
| CITA brands | | [10-20]% | |
| Tabacalera brands | [30-40]% | [80-90]% | [30-40]% |

24. According to this table, in all these markets mentioned in the letters a), b) and c) there are *de minimis* overlaps. The activities of Tabacalera in France are minimal, as are the activities of Seita in Spain.
25. Concerning in particular the dark tobacco cigarettes both parties Seita and Tabacaleta, have a very strong position in their home markets according to their market shares. However, as it has been said, the overlaps in the Spanish and French markets between Tabacalera ([below 1]% market share in France) and Seita ([below 0.5]% market share in Spain) are very marginal.

To the extent that the parties are potential competitors, many other tobacco companies (mentioned in the paragraph 9 of this decision) producing and selling tobacco cigarettes in most European countries including France and Spain, are also potential competitors. Seita and Tabacalera are no better placed to develop their activities respectively in the Spanish and French markets, where their respective presence is minimal for all kind of activities, than others well established tobacco companies in Spain and in France as Philips Morris, BAT/Rothmans and Reynolds with a strong market shares in the blond cigarette in both countries.

d) Distribution of all tobacco products at wholesale level en France and in Spain

26. Seita in France and Tabacalera in Spain have a *de facto* near monopoly with a market share above 95%, in the wholesale distribution market of tobacco products. However they are not present in the neighbouring country for wholesale distribution and therefore no overlap exists between them in the two markets.

To the extent that the parties might be viewed as potential entrants into one another's geographic markets, other companies in particular those manufacturing and selling tobacco products are also potential new entrants in the wholesale distribution for tobacco products. Seita and Tabacalera are no better placed to enter respectively in the Spanish and French tobacco wholesale distribution markets than inter alia other well established companies selling tobacco products in Spain or in France.

27. In view of the reasons above, it appears that the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

IV. CONCLUSION

28. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,

Signed by R. Prodi