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***Case No COMP/M.3349 -
TOSHIBA / SAMSUNG /
JV***

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

Article 6(1)(b) NON-OPPOSITION
Date: 02/03/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02/03/2004

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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 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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:

**Subject: Case No COMP/M.3349 – Toshiba / Samsung / JV
Notification of 30 January 2004 pursuant to Article 4 of Council
Regulation No 4064/89¹**

Dear Sir/Madam,

1. On 30/1/2004 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, as last amended by Regulation (EC) No 1310/97, by which the undertakings Toshiba Corporation (“Toshiba”, Japan), and Samsung Electronics Co., Ltd. (“Samsung”, Korea), acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking Toshiba Samsung Storage Technology Corporation (“TSST”, Japan), a newly created company constituting a joint venture, by way of purchase of shares.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

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 and with the functioning of the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. Toshiba and Samsung both produce a wide range of electronics products, including computer systems, telecommunication equipment, consumer electronics and electronic components. TSST, will be involved in the development, design and marketing of Optical Disk drives (ODD), primarily for computers.

II. CONCENTRATION

4. Toshiba and Samsung will spin off their worldwide optical disk drive (“ODD”) businesses and transfer them to TSST, the joint venture to be established. The parent companies will subsequently withdraw from this business [...]. The joint venture (“JV”) will, as an autonomous economic entity, perform on a lasting basis all the functions of an ODD manufacturer, with its own management and sufficient resources. The JV will not be dependent on its parents for either sales or inputs (only a small portion of the components are purchased from the parent companies). As to R&D and IP rights, the JV will have all the necessary resources to compete in the ODD markets through a long-term IP license agreement. Although it is not foreseen that next-generation ODD technology will be transferred to the JV from the outset, such will not affect the long term viability of the JV as this technology is not yet marketable. The ODD manufacturing facilities will be kept outside the JV [...], with TSST subcontracting the manufacturing to the parent companies. Such does however not affect the full function character of the JV, since the outsourcing of manufacturing is generally a trend in the high-tech industries. The proposed transaction is therefore a full-function joint venture constituting a concentration within the meaning of Article 3 (2).

III. JOINT CONTROL

5. The JV will be jointly controlled by Toshiba and Samsung. Even though Toshiba will hold the majority of TSST’s shares (51%, with Samsung holding the remaining 49%), Samsung holds veto rights on strategic decisions, such as [...], as outlined in the [...] Agreement. It can therefore be considered that both parents jointly have the possibility to exercise decisive influence over the JV. If the parties cannot reach a consensus, Toshiba has a [...] which, however, can be exercised only after a series of stages of [...] and attempts of reconciliation and therefore does not impede joint control.

IV. COMMUNITY DIMENSION

6. The combined aggregate world wide turnover of the undertakings concerned exceeds € 5000 million² (Toshiba: € 47,889 million, Samsung € 125,725 million in 2002). The aggregate Community-wide turnover of the parties exceeds € 250 million (Toshiba: € [...] million, Samsung € [...] million in 2002). The parties do not achieve more than two-thirds of their aggregate Community-wide turnover in one and the same Member

² 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).

State. The notified operation, therefore, has a Community dimension according to Article 1(2) of the Merger Regulation.

V. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product markets

7. The JV's activities will involve the development, design and marketing of Optical Disk drives (ODD). ODD products comprise different versions of CD and DVD drives. These drives can have read or write functions or can carry out both. Combo drives combine the CD read/write functions with DVD read-only. According to the parties, separate product markets can be defined, due to different requirements and standards, distinguishing between ODDs for computers on the one hand and ODDs for living room equipment, such as DVD players and recorders as home entertainment systems, on the other hand. As both parties, and therefore the JV, produce almost exclusively ODD-drives for computers, living room ODDs will not be further discussed.
8. The ODD markets have already been assessed in a previous merger case³, but no final conclusion was reached on whether it is necessary to further delineate the ODD for computers market. The parties submit that, on the basis of limited demand substitutability, the computer ODD market could be further segmented into half-height ODDs, which are used in desktop computers, and slim ODDs for laptops. Whilst the limited demand-side substitutability has been confirmed, the market investigation has also pointed to a certain degree of supply-side substitutability, as suppliers can relatively easily increase or even start production in ODD segments where they currently have no presence.
9. In any event, for the present case it is not necessary to further define the relevant product market for computer ODDs, because in all alternative market definitions effective competition would not be significantly impeded in the EEA or any substantial part of it.

B. Relevant geographical market

10. The parties argue that the market is world-wide or at least EEA-wide in scope. This is due to low transportation cost, low trade barriers, high trade volumes, global products standards and globally active suppliers and customers. Such geographical market definition is also in line with previous IT equipment cases where the Commission has defined the geographical market as being EEA-wide in scope⁴. In any event, for the present case it is not necessary to conclude whether the computer ODD markets are EEA or worldwide in scope, because in all alternative market definitions effective competition would not be significantly impeded in the EEA or any substantial part of it.

³ Case No. COMP/M.2260 – Hitachi/LG Electronics/JV of 14 September 2001.

⁴ See, inter alia, Case No COMP/M.2609 - HP / COMPAQ.

VI. ASSESSMENT

11. On the basis of the parties market share information as provided under form CO, the JV will have a combined market share of [10-20%] by volume (Toshiba [0-10%]; Samsung [10-20%]) in an EU-wide computer ODD market. Market leadership remains with the recently formed Hitachi/LG joint venture ([20-30%]), followed by Lite-On ([15-25%]) and a number of competitors with much smaller market shares. These market shares are almost identical when calculated on a world-wide basis.
12. Defining the product market as limited to half-height ODDs for computers, the JV will represent a market share of [10-20%] in the EU, ranging behind Hitachi/LG ([25-35%]) and Lite-On ([20-30%]). In the market for slim ODDs, the JV will have a combined market share of [10-20%], again behind the larger Hitachi/LG joint venture, which accounts for [20-30%] of the market. Considering the market to be worldwide in scope, the market shares would be in line with those on an EEA basis with the exception of the possible market for slim computer ODDs, where the JV would take the lead with [20-30%], followed by Panasonic ([15-25%]) and TEAC ([10-20%]).
13. The most narrow market definition would identify 10 different versions of CD or DVD drive families. According to the parties, significant overlap only exists for three product families in the EEA market: DVD-ROM drives for desktops (combined market share: [30-40%]), Combo drives for desktops (combined market share: [30-40%]) and Combo drives for laptops (combined market share: [10-20%]). Quite apart from the fact that the existing degree of supply-substitutability would not support such narrow product definitions, the concentration would not lead to dominant positions as Hitachi/LG is as a strong competitor and in most of the markets it even remains the market leader. Market shares on a world-wide basis are lower.
14. The ODD markets are dynamic and innovative, and market shares change significantly between the different players over time. In these markets, the innovators capture high market shares in the beginning of the product cycle and gradually lose market share as volumes increase and low cost structure manufacturers reproduce and market the product at increasingly lower prices. The steady price decreases for all ODDs underlines the intensity of competition in these markets. Particularly for those companies that are already producing related products, market entry is relatively easy.
15. For all alternative market definitions, and on the basis of the above market shares, it can be concluded that it is unlikely that the concentration would lead to the creation or strengthening of single dominance. Apart from the existence of strong competitors, demand is concentrated and any attempt of the JV to act independently of its customers and competitors would be quickly defeated by the buyer power of customers such as HP, Dell and IBM. ODD customers have indicated that they multi-source their demand and switching to a new supplier can be done within weeks. Overall, the market investigation has underlined the competitive nature of the IT hardware components markets in general and the ODD markets in particular.
16. Collective dominance does not appear plausible either, although the transaction will further reduce the number of major ODD producers from five to four accounting for more than 80 % of the overall ODD market. Indeed, the markets are dynamic, non-transparent and show strong downward price fluctuations. These present market conditions are not expected to change significantly due to the merger and consequently do not support that collective dominance issues would arise.

17. In contrast with some of its competitors, the JV's parent companies are vertically integrated (downstream into computers and upstream into ODD components). However, as the parties' market positions in these markets are well below 25% and alternatives exist, the joint venture would not be in a position to foreclose its competitors in any of the markets concerned.
18. In view of the foregoing, it can be concluded that the proposed operation would not, in any of the markets considered, create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

VII. CONCLUSION

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

For the Commission
Signed
Neil Kinnock
Member of the Commission