

***Case No COMP/M.3437 -
KKR / VENDEX***

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

Article 6(1)(b) NON-OPPOSITION
Date: 15/06/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.06.2004

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject: Case No COMP/M.3437 – KKR / Vendex KBB

Notification of 07.05.04 pursuant to Article 4 of Council Regulation No 4064/89

1. On 07/05/04, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ (“the Merger Regulation”) by which the undertaking VDXK Acquisition B.V. (“Bidco”, incorporated in The Netherlands), controlled by US investment firm Kohlberg Kravis Roberts & Co. L.P. (“KKR”) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the Dutch undertaking Koninklijke Vendex KBB N.V. (“Vendex”) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89² and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. **Bidco** is a specially created limited liability acquisition company. The company is funded by equity investment companies KKR [...], Change Capital Funds LP (“CCP”) [...] and AlpInvest [...].
4. **KKR** is an investment company that makes equity investments in management buyouts on behalf of itself and its investors.

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 Although the case was notified on 07/05/04, the agreement for the concentration was signed on 22/04/04 with the result that the case falls under Council Regulation (EEC) No 4064/89.

5. **Vendex** is a non-food retail trade company based in the Netherlands. It has a presence in seven Member States: The Netherlands, Belgium, Luxembourg, Denmark, Germany, France and Spain. The group has six major business units: **Hema** (a general merchandise retailer active in the Netherlands, Belgium and Germany), **V&D** (a mid-market department store active in the Netherlands), **Bijenkorf** (an up-market department store active in the Netherlands), **Do-It-Yourself** (DIY stores trading under the names of Keur, Praxis and Formido in the Netherlands and Brico in Belgium), **Fashion** (fashion stores trading under the names of M&S, Hunkemöller and Claudia Sträter in the Netherlands, Belgium, Luxembourg, France, Germany, Denmark and Spain), **Consumer Electronics** (consumer electronics stores trading under the names of Dixons, Dynabyte, It's, Modern Electronics and Prijstopper, all active in the Netherlands).
6. The proposed concentration will see the acquisition of all the shares in Vendex by the newly formed acquisition company Bidco, in a public bid. The shares in Bidco will be held by KKR [...], CCP [...] and AlpInvest [...]. The notifying party contends that the minority shareholders, CCP and AlpInvest, will have the veto rights normally attributable to minority shareholders in order to protect their financial interests and that as such KKR would acquire sole control over Bidco and Vendex. [...].
7. The operation therefore consists of the acquisition of sole control by KKR over Vendex.

II. COMMUNITY DIMENSION

8. KKR and Vendex have a combined worldwide turnover in excess of EUR 5 billion³ (Vendex, EUR 4.451 billion and KKR, [...]). Each of them has a Community-wide turnover in excess of EUR 250 million (Vendex, [...] and KKR, [...]), 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 but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

III. COMPETITIVE ASSESSMENT

A. Relevant markets

(i) Horizontal Relationships

9. Vendex is mainly active in the retail of a range of non-food product categories and each of these may be considered as a separate product market. Based on previous Commission decisions and a decision of the Dutch competition authority, the notifying party has identified 22 separate non food markets⁴. In line with previous Commission decisions⁵, the

³ 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.

⁴ The non-food retail markets in which Vendex is active are : women's wear, men's wear, baby care products, underwear, nightwear, swimming gear and socks, furniture, home textiles, repair, maintenance and improvement products for the house, electrical goods, footwear, health and beauty products, luxury products, bicycles, jewellery, optical goods, toys, photography, consumer books, music, games and multimedia products, office supplies, leather goods, sport and camping goods.

⁵ Commission decisions in cases M.1333 – Kingfisher/Castorama, M.2951 – A.S. Watson/Kruidvat, and M.1407 – Bertelsmann/Mondadori.

notifying party contends that these markets are national. Given that KKR and its portfolio companies are not engaged in the non-food retail business, it is not necessary to further delineate the relevant markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

10. Some of Vendex's business units (notably Hema) also carry some food retail activities. This activity is supplemental to the core activity of the retail outlets. In line with previous Commission decisions⁶, the notifying party contends that this market is at most national. Given that KKR and its portfolio companies are not engaged in the food retail business, it is not necessary to further delineate the relevant markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.
11. Finally, Vendex also has some minor non-life insurance activities. Vendex non-life insurance products include car insurance, resident insurance (including fire, theft, home, third party and legal expenses insurance) and travel insurance. These products are sold in the larger department stores of V&D and De Bijenkorf in the Netherlands only. In previous decisions, the Commission has stated that non-life insurance can be divided into as many product markets as there are types of insurance covering different types of risk⁷. In line with previous Commission decisions⁸, the notifying party contends that non-life insurance markets, especially non-life insurance for households and individuals, are national. KKR has some non-life insurance activities through its subsidiary Alea Group. However, Alea is not active in the Netherlands. It is therefore not necessary to further delineate the relevant markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

(ii) Vertical Relationships

12. The operation also brings about a vertically affected market as a result of the activities of one of the portfolio companies of KKR, Wincor Nixdorf⁹. This company is involved in the market for retail and banking systems. Retail systems consist of Electronic Point Of Sale ("EPOS") equipment (ranging from single-site electronic cash registers to complex networks of registers) and its related peripherals (printers, card payment terminals, scanners, touch-screens, etc.) and application software. Banking systems include the financial workstation business for the banking sector, e.g. automated teller machines, automatic teller safes, information/statement printers.
13. Vendex is an enterprise involved in the retail business and as such its outlets are potential customers of those products of Wincor Nixdorf designed for the retail industry. Vendex is not a purchaser of the other category of products manufactured by Wincor Nixdorf, i.e. banking systems.

⁶ Commission decision in case M.1612 – Wal-Mart/ASDA.

⁷ Commission decision in case N° M759 Sun Alliance/ Royal Insurance.

⁸ Commission decisions in cases M.862 - AXA/UAP, M.1033 - AXA-UAP/AXA AURORA and M.1627 – CU Italia/Banca Delle Marche.

⁹ KKR have recently launched an Initial Public Offering of shares in Wincor Nixdorf which will reduce its holding to between 28.8% and 34.6%, depending on the extent to which the option is fully exercised. It is assumed that this offer will not change the situation regarding the control of the company.

14. In a previous decision¹⁰, the Commission left open the question as to whether there should be a distinction between retail and banking systems. The geographic scope of these markets was also left open, although in a former decision¹¹ the relevant geographic market for retail and banking systems was found to be Community-wide. The notifying party suggests that a distinction should be made between retail and banking systems and considers the geographic scope of the market for retail systems to be Community-wide. It cannot be excluded that this market is national rather than Community-wide as the notifying party explains that EPOS systems have to be substantially adapted to meet national statutes and specifications. However, it is not necessary to further delineate the relevant markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

B. Assessment

15. As explained above, the transaction will not involve any horizontal overlap of activities as regards the non food retail markets, the food retail market and the non life insurance markets.
16. The transaction brings about a vertical overlap of activities in relation to one of KKR's subsidiary companies, Wincor Nixdorf, which provides retail systems, and the retail activities of Vendex. However, there is no risk that it will result in such a strengthening of Wincor Nixdorf's position, be it at European or at national level, that competition could be seriously impeded.
17. Indeed, if the market for retail systems is taken to be Community-wide, Wincor Nixdorf would hold a market share in the range of [25-35%] (other strong competitors include IBM, market share in the range of [25-35%] and NCR, market share in the range of [0-10%]). The value of purchases attributable to Vendex is marginal since it represents only [0-10%] of the Community-wide market [...]¹²). Therefore, even assuming that Wincor Nixdorf would become Vendex's exclusive supplier of retail systems following the transaction, there is no risk that the notified operation will result in a strengthening of that company such that effective competition would be impeded at the EU level.
18. If the market for retail systems is taken to be national, the analysis of the effects of the transaction has to focus on the Netherlands, given that Vendex is mainly active in that country where its purchases of retail systems are concentrated¹³. In that Member State, however, Wincor Nixdorf only held a share of [10-20%] of the market for retail systems in 2003. It should be noted that, in 2003, approximately [25-35%] of Vendex's purchases of such systems were supplied by Wincor Nixdorf and therefore are already taken into account in Wincor Nixdorf's share of the Dutch market.
19. The value of purchases of retail systems attributable to each customer on a yearly basis is not informative given the variable purchasing patterns for such systems (see footnote 11).

¹⁰ Commission decision in case M. 1765 KKR Associates/Siemens Nixdorf Retail and Banking Systems.

¹¹ Commission decision in case M.50 – AT&T/NCR.

¹² [...].

¹³ In 2003, Vendex' global purchases of retail systems amounted to EUR [...] out of which [...] were made in the Netherlands. The proportion is roughly similar for the years 2002 and 2001.

As far as Vendex is concerned, it accounted for [25-35%] of the total value of the Dutch market for retail systems in 2003 [...], but only represented [0-10%] in 2002 and [0-10%] in 2001. On that basis, it can be safely assumed that Vendex accounts only for a relatively small percentage of the total purchases of such systems in the Netherlands on a period of several years.

20. Therefore, even assuming that Wincor Nixdorf became Vendex's exclusive supplier of retail systems following the transaction, it will not result in competition being significantly impeded in the Dutch market for retail systems.
21. In light of the foregoing, the Commission concludes that the present transaction is unlikely to create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the common market or in a substantial part thereof.

IV. CONCLUSION

22. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with 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
Mario MONTI
Member of the Commission