

***Case No COMP/M.3589 -
KÖRBER / WINKLER +
DÜNNEBIER***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 30/11/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30/11/2004

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case COMP/M.3589 - KÖRBER / WINKLER + DÜNNEBIER
Notification of 22/10/2004 pursuant to Article 4(5) of Council Regulation
No 139/2004¹**

1. On 22.10.2004, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 by which Körber AG (“Körber”, Germany) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Winkler + Dünnebier AG (“W+D”, Germany) by way of public bid announced on 7 October 2004.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 139/2004 and does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

¹ OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES AND THE OPERATION

3. **Körber** is an international engineering technology group active in the production and marketing of cigarette, paper, tissue, hygiene and packaging production machines. **W+D** is active in the production and marketing of tissue and envelopes production machines. W+D is a Frankfurt stock exchange listed company and approximately half of its shares are in free float.
4. Körber and the Italian company FINAF S.p.A both hold a minority participation in W+D. Körber has submitted a public offer for the 50% free float shares which was published on 7/10/2004. Körber has also concluded an option agreement with FINAF in order to acquire all shares held by the latter. The operation will thus confer Körber sole control of W+D.

II. COMMUNITY DIMENSION

5. On 24 September 2004, the parties to the proposed operation informed the Commission that the concentration, capable of being reviewed under the national competition laws of more than three Member States, should be examined by the Commission pursuant to Article 4(5)². The Commission transmitted this submission to all Member States on the same day. None of the Member States competent to examine the concentration expressed their disagreement to the request of referral. The case is therefore deemed to have a Community dimension.

III. RELEVANT MARKETS

The relevant product market

6. This case concerns production machines for paper-, tissue-, and hygiene products (diapers, female hygiene and incontinence products). The parties consider that their combined activities can be grouped into (i) envelope and pocket machines, (ii) absorbent hygiene products machines and (iii) tissue fold machines and that each of these categories form a relevant market as the different machines are not interchangeable in meeting the customer's needs. This absence of demand-side substitutability was confirmed by the market investigation.
7. With regard to the tissue fold segment, the parties submit that a further segmentation could be considered on the basis of the folding complexity of the output, thereby identifying, by increasing folding complexity, (i) paper napkins machines, (ii) interfold paper ('Kleenex') machines and (iii) paper handkerchief machines. Apart from the folding complexity and the different production process, the parties submit that the different tissue fold products may require a different range of additional processes, such as printing and embossing. The market investigation has confirmed the distinctive characteristics of the different tissue fold categories which could justify identifying different product markets.

² This operation does not have Community dimension within the meaning of Article 1 of the new Merger Regulation, in view of, inter alia, W+D's Community-wide turnover of € [...] million, with sales under € 25 million in [...]. According to the parties, the operation is reviewable under the national merger control laws of five EU countries, namely Austria, Germany, Portugal, Slovakia and Spain.

Moreover, there are important price differences between these machines, with interfold and paper handkerchief machines representing a significantly higher investment than paper napkin machines. However, the market investigation has also pointed to a degree of supply-side substitutability as the underlying technology and design applied by all three tissue fold machine categories is to a certain degree comparable. In this respect, it is to be noted that some of the parties' main competitors for tissue fold machines produce a wide variety of machines. Also, all three categories of machines are sold to a common customer base.

8. In any case, for the purpose of this decision, the precise definition of the product market can be left open, since in no alternative product market definition will the proposed operation significantly impede effective competition in the common market or a substantial part of it in particular as a result of the creation or strengthening of a dominant position.

The relevant geographic market

9. With regard to the geographic scope of the markets, the parties submit that they are EEA-wide, if not world-wide, given the limited transport costs, the possibility to adjust the machines in order to meet different formats of envelopes and other output, and the world-wide sales operations of the parties and their competitors. The market investigation has confirmed this and has not identified significant barriers (such as regional or local after-sales services) for companies to compete effectively in these markets on a European or world-wide basis.
10. In any case, for the purpose of this decision the precise geographic scope of the product market can be left open, since neither on an EEA nor world-wide basis will the proposed operation significantly impede effective competition in the common market or a substantial part of it in particular as a result of the creation or strengthening of a dominant position.

IV. COMPETITIVE ASSESSMENT

11. There are no competitive overlaps for envelope and pocket machines, a market in which Körber is not active. In the market for absorbent hygiene products machines, the concentration will also not lead to competitive overlaps as W+D has recently (beginning of 2004) exited this market because of the low profitability of its product line. Whilst W+D accounted in the years 2000 – 2003 for approximately [20% - 30%] of EEA sales, less on a world-wide basis, the market investigation has confirmed that its exit from the market is irreversible. Körber is active in this market, but is considered as a minor player (around [10% - 20%] on an EEA level, less on a world-wide basis). Other than Körber, a number of Italian (Fameccanica, CCE and GDM) and German players (Bicam, Serv-o-tec) are present to meet the needs of a small number of global companies such as SCA Hygiene, Johnson & Johnson and Hakle-Kimberly.

12. Only for tissue fold machines there are overlapping activities, albeit with combined market shares below 15% in the EEA (Körber [0% - 10%], W+D [0% - 10%] in 2003). The parties' main competitors in the EEA are the German subsidiaries of the US based C.G. Bretting Manufacturing Company ([20% - 30%]) and the Italian companies OMET ([20% - 30%]), MTC ([0% - 10%]), TAU ([0% - 10%]) and OMT ([0% - 10%]).
13. On the basis of an alternative market definition, which segments the tissue fold machines into separate markets for handkerchief machines, napkin machines and interfold machines, no product overlaps between the parties would arise. W+D has mainly concentrated on the production of handkerchief machines for the major paper and tissue producers (such as [...]). For handkerchief machines W+D holds a very strong market position (in excess of [50%] in the EEA, slightly lower on a worldwide level), with direct competition in the EEA limited to the Italian company TAU Machines. Dong Yang Machinery, a Korean competitor that is according to the parties increasingly competing also on the European market only provides an alternative to W+D for lower speed and performance handkerchief machines. Körber (through its Perini subsidiary) holds a [0% - 10%] EEA market share for napkin machines, a market in which W+D is not present. Neither party is a strong player for Interfold machines (combined market share below [10% - 20%], a market where Bretting, Hobema, OMET and MTC are the major players. Hence, irrespective of the market definition retained, the merger does not lead to horizontal overlaps. The market investigation has not revealed vertically affected markets.
14. The investigation has confirmed that W+D's market share may have declined in some segments; however it holds market leading positions in envelopes and handkerchief machines. Körber, a large engineering conglomerate but with minor presence in the markets discussed, aims to diversify its activities in this industry through the acquisition of W+D. Some customers have welcomed the merger, pointing to the possibility of an improved and enlarged product offering by the new entity.
15. Several competitors to the new entity have however raised concerns about the new entity's enlarged product range. These companies have alleged that a combined Körber/ Winkler + Dünnebier, due to its wide portfolio of machines and diversified activities, would be able to "buy market share" through targeted offers in selected machine segments and, thereby, eliminate competitors with a less broad product range. In this respect, given that the same customers buy a wide range of tissue fold machines, these third parties have submitted that the new entity could leverage its near uncontested market position for handkerchief machines to gain market share for other tissue fold machine markets.
16. The Commission' market investigation has assessed this competitive scenario put forward by these competitors and has concluded that no significant impediment to effective competition would arise. Firstly, whilst it is correct that some (particularly large) customers buy machines from multiple product segments covered by the parties (for example, handkerchief machines and napkin machines), the possibility of foreclosure of competition through the leverage of pre-merger market power from one market to another through exclusionary practices, such as for instance commercial bundling and/or cross-subsidisation, requires a certain complementarity between the different product markets. Such anti-competitive

effects become less likely when the complementarity between the products is limited. In this case, the respective products of Körber and W+D cannot be viewed as complements, in the sense that customers would need to procure more than one of these machines in order to produce a specific tissue fold product. As described above, the different machine segments are not dependent on each other; they produce different tissue products and are not normally purchased simultaneously. Also, as previously stated, there is no demand-side substitutability between the different tissue fold machines. Secondly, even if the new entity could attract customers by proposing to them a bundle of machines from different segments at a lower price than the sum of the machines purchased on a stand-alone basis, such a proposal would be difficult to implement successfully as, due to their long lifecycles (fifteen to twenty years), these machines segments can have completely different procurement timelines³. Furthermore, apart from the fact that a low price offer would a priori benefit customers, buyers appear to have a strong preference for obtaining the machine that optimally meets their specific requirements in each segment and the various vendors' products seem to be highly differentiated in this respect, reducing the potential attractiveness of a bundled offer (relative to a mix-and-match purchasing strategy).

17. Thirdly, for commercial bundling to result in foreclosure of competition there must be a reasonable expectation that rivals will not be able to propose a competitive response, and that their resulting marginalisation will force them to exit the market on a lasting basis. Such cannot be concluded. The market investigation has revealed that there exist a number of viable and resourceful rivals in the overall tissue folding markets such as Bretting, OMET and MTC that have stronger or comparable overall market positions than the parties. These companies sometimes also have a stronger positions than the parties on the markets other than that for handkerchief machines and are active in more than one tissue fold machine market. The merged entity's rivals could respond to the merged entity's commercial bundling and / or cross-subsidisation strategies through various counter-strategies, such as for instance price reductions, similar bundles (f.i through teaming up) and technological leapfrogging as a result of innovation. Finally, for commercial bundling to result in the anti-competitive effects, it is also required that, post exit of its competitors, the merged entity would be able to raise prices on a lasting basis. However apart from the risk of competitors re-entering the markets, it needs to be considered that the parties' customers enjoy a certain degree of buyer power, with a few large customers accounting for a substantial part of demand.
18. Concluding from the above, the Commission's inquiry resulted in the finding that such commercial bundling or cross-subsidisation of different tissue fold machines is unlikely to materialise, and that for the reasons explained above, it would be unlikely to lead to any significant foreclosure of competition.

³ The observation that demand for tissue fold machines does not materialise in a way that would allow simultaneous procurement of these machines is illustrated by a comparison of the parties' 1999 to 2003 sales, whereby only 2 customers bought both napkin machines (from Körber) and handkerchief machines (from W+D) during that period (although not necessarily in the same year).

V. CONCLUSION

19. It can therefore be concluded that the concentration will not significantly impede effective competition in the common market or in a significant part of it, in particular as a result of the creation or strengthening of a dominant position.
20. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission,
(signed)
Neelie KROES
Member of the Commission