EN

Case No COMP/M.3693 – TPV / PHILIPS (MONITORS)

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To notifying party

Dear Sir/Madam,

Subject: **Case No COMP/M.3693 – TPV/Philips (Monitors)**
Notification of 04/07/05 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On the 4 July 2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking TPV Technology Limited ("TPV", Hong Kong (PRC)) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking P-Harmony Monitors Hong Kong Holding Ltd. (hereinafter conventionally referred to as "Philips Monitors", Hong Kong (PRC)) by way of purchase of shares.

I. THE PARTIES

2. **TPV**, whose shares are listed on the Hong Kong and Singapore stock exchanges, is a provider of monitor display technology. The company designs and manufactures cathode ray tube ("CRT") and liquid crystal display ("LCD") monitors. Moreover, TPV has recently entered into the design and manufacture of LCD and plasma display panel ("PDP") flat screen televisions.

3. **Philips Monitors** is active in the field of computer monitors, both CRT and LCD, and flat screen televisions and related OEM sales. Koninklijke Philips Electronics NV ("Philips"), Netherlands, the seller of Philips Monitors, designs and manufactures colour television sets, monitors and other electronic products.

1 OJ L 24, 29.1.2004 p. 1.

II. CONCENTRATION

4. TPV will acquire sole control of Philips Monitors. In a first step, Philips will restructure internally its monitors and flat screen television business related to the sales of products to OEM customers into Philips Monitors. In a second step, TPV will acquire Philips Monitors. While at the end of these steps Philips will hold a 15.8% stake in TPV (and a convertible bond[2]) - both shares and the bond are issued by TPV to Philips as part of the consideration for the acquisition of Philips Monitors - the number of directors to be appointed by Philips in the board of TPV, namely two directors, will not give Philips any controlling interest in TPV. TPV's board of directors consists in fact of eight board members and a simple majority vote is needed on important business decisions. However, Philips has to give its approval by at least the vote of one of its directors on a number of reserved matters, mainly the sale of key assets involving Philips outsourced business to TPV. In case of disagreement on these reserved matters, TPV is entitled to redeem the convertible bond and Philips can convert the bond in shares; in any event, Philips voting rights will remain capped at 15% shares. Consequently, TPV will solely control Philips Monitors.

III. COMMUNITY DIMENSION

5. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2,500 million (EUR 3,005 million for TPV, EUR 1,648 million for Philips Monitors[3]). The combined aggregate turnover of the undertakings concerned exceeds EUR 100 million in three EU Member States (Germany – EUR [...] million for TPV, EUR [...] million for Philips Monitors; The Netherlands – EUR [...] million for TPV, EUR [...] million for Philips Monitors; and the United Kingdom – EUR [...] million for TPV, EUR [...] million for Philips Monitors). In addition, each of TPV and Philips Monitors achieved turnover of at least EUR 25 million in each of these jurisdictions and more than EUR 100 million in the EU (EUR [...] million for TPV, EUR [...] million for Philips Monitors). Neither TPV nor Philips Monitors have achieved more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

IV. COMPETITIVE ASSESSMENT

A. Relevant markets

Relevant Product Market

6. The parties submit that the merger gives rise to overlaps in the supply of computer monitors, both CRT monitors and LCD monitors, on an OEM basis, where the new entity Philips Monitors and TPV will be active. Both TPV and Philips have, moreover, some activities in branded sales of monitors. However, the present transaction will not give rise to any horizontal overlap as such in this respect since the supply of Philips-

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2 Further to the minority shareholding Philips will also have a convertible Bond whereby Philips shareholding in TPV could increase to 28% upon conversion. However, Philips will receive no further voting rights as compared to the 15% stake holding (i.e. its voting rights are capped at 15%). Consequently, these provisions of the convertible do not alter the assessment that TPV has sole control over Philips Monitors.

3 Figures relate to turnover achieved in the fiscal year 2004.

branded monitors is retained by Philips and is not transferred to the new entity Philips Monitors.

7. Both TPV and Philips are also active in the supply of flat screen television. However, Philips Monitors will not be engaged in the manufacture and sale of flat screen television on an OEM basis other than to the extent that it continues to supply Philips on an outsourcing basis. In addition, pre-merger TPV's OEM sales of flat screen televisions were very limited ([< 5%] worldwide and [< 1%] in the EU/EEA between 2002 and 2004) both as regards LCD and PDP flat screen televisions. At branded level, Philips will retain its branded flat screen television sales business and will only outsource to TPV/Philips Monitors the manufacture of flat screen televisions for sale in the USA, China and Asia-Pacific region. On this basis, the proposed transaction will not cause any change in competitive conditions in the EEA as regards flat screen televisions (either at the OEM or at the branded level). Therefore, the flat screen television market is not discussed further.

CRT vs. LCD monitors

8. CRT monitors are different in technology from LCD monitors. CRT monitors use Cathode Ray Tube display technology, whilst LCD monitors use Thin Film Transistor Liquid Crystal Display technology. LCD types are designed with a flat screen while present CRT monitors have a more voluminous shape.

9. In its previous decision on this market[4], the Commission noted certain differences between CRT and LCD monitors, without reaching a firm conclusion on the precise scope of the product market. The differences identified referred to the physical differences in shape between the two types of monitors and differences in price.

10. The parties submit that the price difference between the two types of monitors has eroded over the past years. Moreover, sales of CRT monitors have been in continuous decline for some years while LCD monitor sales substantially increased and they have overtaken sales figures in 2004[5]. The parties submit that these market trends strongly suggest increased substitutability between CRT monitors and LCD monitors.

11. The market investigation broadly endorsed the parties' view that CRT monitors and LCD monitors could be considered as being part of the same product market, or that at least LCD monitors exercise certain competitive constraints on CRT monitors. Due to technological developments and improvements over the last years, LCD monitors are more and more replacing CRT monitors. The application fields of both computer monitor types are the same. They are used for all types of office software applications as well as professional software applications.

12. However, even though the price difference between the two types of monitors has eroded, LCD monitors are still significantly more expensive than CRT monitors which would speak for the assumption of separate markets. The concrete delineation of the

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4 Case COMP/M.1883 NEC/Mitsubishi

5 IDC estimates sales development of LCD monitors about to be four-fold in 2008 compared to that of CRT monitors. IDC provides market data and analysis for and about the information technology sector. It is widely recognised and relied upon by the IT industry.

product market can, however be left open since on any alternative market definition the merger does not raise any competition concerns.

OEM sales vs. branded sales

13. Monitor manufacturers sell monitors with their own brand label or on an OEM basis. As regards OEM sales, the customers are typically large PC retailers (selling a package with a PC and a monitor), PC manufacturers (such as Dell, HP, etc.) or other retailers or distributors who purchase monitors from OEM manufacturers according to their own specifications and put their own branding label for resale downstream to end consumers (branded market). Some monitor manufacturers have a larger part of their output sold on an OEM basis rather than under their own brand label. Moreover, distribution of monitors at OEM level is largely through bi-lateral sales agreements of short term duration while branded sales require the setting up of own distribution channels to reach end consumers. It can, therefore, be concluded that OEM sales of monitors constitute a separate product market as opposed to the market for branded monitors which is downstream in respect of OEM sales.

Different monitor sizes

14. The parties submit that it is not appropriate to further segment the monitor market according to screen size. Unlike the television market where there is a broad range of screen sizes, with significant price difference between the small portable televisions and super large screen televisions (in the Case M. 3381 – Alba/Beko/Grundig, the Commission identified four screen size categories for the television market[6]), computer monitors fall within a much smaller range of sizes.

15. In its earlier decision COMP/M.1883 NEC/Mitsubishi, the Commission has not distinguished between different sizes. OEM customers regularly purchase a range of screen sizes from a number of suppliers. The responses to the Commission investigation showed that, although some price differences exist between screen sizes, all sizes of monitors perform general business applications and, on the supply-side, vendors are able to cater for the entire range of screen sizes. In addition, no respondent raised concerns about possible adverse effects of the merger with regard to specific screen size segments. Given the above, the issue whether different screen sizes yield separate markets as regards computer monitors need not be decided upon, as the assessment of the effect of the transaction would not change regardless of the exact delineation of the product market.

Relevant Geographic Market

16. The parties submit that the relevant geographic scope for the OEM computer monitor market is at least EEA-wide and is likely to be worldwide. Most of the TPV's production is based in China. This is also the case in relation to most of the production facilities owned by Philips Monitors (although it still has a production line for LCD monitors in Hungary). In addition, many OEM customers are large international PC and monitor suppliers, which source their requirements on a global level from global suppliers.

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6 The mini segment (screen size 14''-19"), the midi segment (screen size 20"-21"), the large segment (screen size 25"-29") and the super large segment with screen size in excess of 32".

17. The investigation in this case has confirmed this view. Most of the market participants considered the market as world-wide. Both manufacturing and sales are highly globalised, and it is not uncommon that products manufactured in Asia are also sold in Europe as well as the USA.

18. In any event, for the present case it is not necessary to conclude whether the OEM market is global or EEA-wide because with both alternative market definitions no competition concerns arise. The branded (computer monitors) market is generally narrower than EEA and most probably national. In any event the issue needs not be decided upon, as the effects of the merger in the branded market do not raise any competition concerns.

B. Competition analysis

OEM market

19. The supply of computer monitors on an OEM basis constitutes an affected market both on an EEA-wide as well as on a global market. The table below gives an overview on market shares of the parties and that of their competitors with respect to OEM sales of CRT and LCD monitors for years 2003 and 2004 in the EEA[7] and world-wide.

	2003				**2004**			
	CRT		**LCD**		**CRT**		**LCD**	
	Europe	**worldwide**	**Europe**	**worldwide**	**Europe**	**worldwide**	**Europe**	**worldwide**
TPV	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[10-20]%	[20-30]%
Philips Monitors	[10-20]%	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[<5]%	[5-10]%	[<5]%
TPV+ Philips Monitors	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[20-30]%
Proview	[5-10]%	[5-10]%	[<5]%	[5-10]%	[5-10]%	[10-20]%	[<5]%	[<5]%
Lite-on	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%
Samsung	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[10-20]%	[<5]%	[<5]%
LGE	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[5-10]%	[5-10]%	[5-10]%	[10-20]%
BenQ	-	-	[10-20]%	[10-20]%	-	-	[5-10]%	[10-20]%
Others	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[20-40]%	[40-50]%	[30-40]%

Source: parties estimates based on consultancy advise

20. The market investigation has shown, that although the parties' combined market share is ahead of that of the competitors, TPV and Philips Monitors will continue to face strong competition post merger. In particular, Samsung, Lite-on, LGE or BenQ are significant players in the market especially as regards the growing segment of LCD monitors. Philips Monitors will increase its share of sales as regards the CRT segment. But this significant market share in CRT would appear to be at the same time the result of the main players focussing their efforts on LCDs between 2003 and 2004, in

7 The parties' figures on sales include the EEA and some neighbouring areas. However, the parties estimate that the latter represents only a small portion of sales.

the context of the decline of overall sales of CRT monitors in the EEA in the period in question. Against this background, rather than being an indication of market power, the new entity's significant market share in CRT appears to reflect the decreasing efforts undertaken by competitors in this segment (CRT) in the EEA and its shrinking market volume as opposed to the LCD segment.

21. The market investigation has shown that the merged entity cannot be expected to have the ability to raise its prices or act independently of customers and competitors, due to an increase in market power. OEM sales agreements are typically short term, non-exclusive supply agreements concluded after a bidding process. If the new entity attempted to increase prices, OEM customers could easily switch to another supplier. Switching costs appear to be relatively low and switching it is a relatively easy and quick to switch supplier. Moreover, usually the market participants do not enter into any exclusivity agreements in this area. On the contrary, large customers typically have a multi-supplier policy, i.e. they purchase their monitors from at least two or more different supply sources. In view of substantial excess capacity in both CRT and LCD at most manufacturers, switching suppliers would also appear to be feasible.

22. Even though the market structure is similar in both the CRT and the LCD monitor market, the current development in these businesses is rather different. Industry reports predict a further shift in demand for LCD monitors while CRT monitors appear to be a "phasing-out" product. These projections foresee that the increase of production capacity at some manufacturers - in order to meet LCD demand - will also result from conversion of CRT production lines towards production of LCD monitors in the future. Any increase in prices on the CRT market would therefore risk increasing the speed of this phasing out and shifting to LCD. On the other hand, due to the increase in capacity for LCD monitors, it appears to be unlikely that the parties increase prices of LCDs without being constrained by other market participants.

23. In the light of all the fore-going factors and given that the market investigation has not brought to light any serious concerns overall with regard to the competitive impact of the operation, the Commission considers that the proposed transaction will not significantly impede effective competition in the common market or in a substantial part of it as regards the OEM computer monitors market (and segments thereof), in particular as a result of the creation or strengthening of a dominant position.

Branded market

24. As stated above, this market (branded sales of monitors) is downstream to that of OEM computer monitors. Both TPV and Philips (the seller of Philips Monitors) have some activities as regards branded sales of monitors: Philips retains the branded monitor business (while it will outsource manufacture of monitors at the OEM level as seen above) and TPV (being a vertically integrated company) has a limited share of sales as regards branded monitors (through the "AOC" brand) in the EEA. However, the present transaction will not give rise to any horizontal overlap as such since the supply of branded monitors by Philips is not part of the business transferred to Philips Monitors.

Exclusive supply agreement between TPV and Philips

25. The transaction also involves that TPV and Philips (respectively the controlling company and the seller of the new entity Philips Monitors) have entered into [...] supply agreement by which TPV will design, manufacture and supply Philips with both CRT and LCD monitors to be sold under the Philips brand. The agreement also foresees the manufacture and supply by TPV to Philips of flat screen televisions to be sold under the Philips brand in China, the Asia-Pacific region and some models for the USA. This overall supply agreement is deemed necessary to provide TPV with an anchor customer in order to enable the progressive assimilation of the significant additional capacity that TPV (by virtue of its control on Philips Monitors) will have post-transaction and a smooth integration of Philips Monitors business into its own business.

26. The duration of the exclusive supply [...] is limited to [...]. After that period, the supply rate falls to [...] in the [...] year, and to [...] until the [...] year[8]. Furthermore, TPV has the right of first refusal as regards additional supply to Philips from the [...] year onwards. [...]. In any event, these restrictions will have no effect in the EEA. In respect of computer monitors, no such restrictions apply.

27. In view of the fact that exclusivity of the supply agreement will only be for [...] of the agreement, as regards OEM sales of computer monitors, TPV/Philips Monitors will add to its market share also the (previously captive) share of monitors that Philips was sourcing in-house. After [...], Philips would have the possibility to source a growing part of its demand from suppliers other than TPV/the new entity and hence no competition concerns would arise from the notified transaction even taking into account the effects of the exclusive supply agreement at issue. This assessment is without prejudice to the question whether the supply agreements between TPV and Philips can be considered to be restrictions directly related and necessary to the implementation of the concentration.

V. CONCLUSION

28. In the light of all the fore-going, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the common market, since it will not significantly impede effective competition in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position.

29. 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 CouncilRegulation (EC) No 139/2004.

For the Commission, signed,
Vladimir SPIDLA
Member of the Commission

[8] The [...] supply agreement will end after [...] years.