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*Case No IV/M.382 -
PHILIPS / GRUNDIG*

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

Article 6(1)(b) NON-OPPOSITION
Date: 03.12.1993

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3 December 1993

PUBLIC VERSION

MERGER REGULATION -
ARTICLE 6(1)b DECISION

Registered with advice of delivery

To the notifying parties

Dear Sirs,

Re: Case No. IV/M.382 - PHILIPS/GRUNDIG
Notification of 29.10.1993 pursuant to Article 4 of Council Regulation No.
4064/89 (Merger Regulation)

I. THE OPERATION

On 29 October 1993 Philips Electronics N.V. notified its proposed acquisition of 60% of the shares in Grundig Verwaltungs GmbH (GVG) which controls Grundig AG. The shares in question are held by 3 banks and, with the acquisition, Philips - which presently owns 40% of GVG - will obtain sole control of GVG and thereby the controlling majority of the shares in Grundig AG.

II. THE PARTIES

Philips Electronics N.V. (Philips), established in 1891 and with headquarters in Eindhoven, The Netherlands, is one of the major electronic enterprises in the world. It is active in the areas of lighting, consumer electronics, components, semi-conductors, communication systems, medical systems, industrial electronics, personal care and small domestic appliances.

Grundig AG is a major European enterprise active in the field of consumer electronics, communication products, industrial electronics and office desk electronics.

The 3 banks:

- The Dresdner Bank AG, Frankfurt through its 100% subsidiary Süddeutsche Industriebeteiligungs GmbH, Frankfurt.
- Bayerische Vereinsbank AG, Munich, through its 100% subsidiary Bethmann Vermögensbeteiligungs GmbH, Nürnberg.
- Schweizerische Bankgesellschaft, Zurich, through its 100% subsidiary Thesaurus Continentale Effecten Gesellschaft, Zurich.

III. COMMUNITY DIMENSION

The worldwide turnover of the undertakings concerned exceeds 5,000 million ECU. The combined turnover of Philips/Grundig in 1992 was 25,783 million ECU.

With regard to the aggregate Community-wide turnover each of the two undertakings exceed the 250 million ECU threshold laid down in the Regulation. Philips has a Community-wide turnover on 12,077 million ECU and Grundig 1,589 million ECU. And none of the undertakings achieves two-thirds of its turnover within one and the same Member State.

IV. CONCENTRATION

A. Joint control prior to the acquisition

Since 1984 Grundig AG has been controlled by the limited partnership EMV & Co KG (EMV) which holds 76,5% of the total capital in Grundig. The limited partners of EMV are the Dr. Max Grundig Stiftung and Grundig Beteiligungs GmbH (the latter a 100% subsidiary of Philips).

The managing partner in EMV is Grundig Verwaltungs GmbH (GVG), which is a company formed by Philips and 3 banks. The field of activities of GVG is the assumption of liability and management - directly and indirectly - of EMV. Philips holds 40% of the share capital of GVG while the remaining 60% are held by (through subsidiaries) Dresdner Bank AG (22%), Bayerische Vereinsbank AG (19%) and Schweizerische Bankgesellschaft (19%).

Being the only managing partner, GVG exercises the voting rights attached to EMV's shares in Grundig AG(76,5%) and is able to give mandatory instructions to the management of Grundig AG. Since 1984 the management of Grundig AG has been controlled solely by GVG.

GVG has two managing directors who can only represent GVG jointly; it has always been the rule that one of the directors is appointed by the Banks and the other by Philips. The two managing directors need prior written approval of the general meeting of shareholders of GVG for exercising the rights attached to EMV's participation in Grundig AG.

There exists no formal agreements between the banks to pool their votes, but in all likelihood the three banks would come to a common view on financial matters central to the protection of the assets in Grundig.

Furthermore, the decision-making structures built in the shareholders agreement of GVG strongly favour and even imply agreement between the Banks. The Banks have to agree on the appointment of one of the two directors in GVG. It must be assumed that the Banks lacking managerial expertise in the field of producing and selling consumer electronics will act according to the advice of the managing director appointed by the three banks. The director can be seen as the Banks' common representative in GVG promoting a common understanding among the Banks.

The Banks can therefore be seen as acting as a unity - that is, as the one part of the joint venture- and it has always been necessary for Philips to consider the common position of the Banks on central financial matters.

In the shareholders meeting of GVG, Philips (according to the shareholders agreement) always has a right of veto, and the 3 banks together can veto a proposal from Philips.

Accordingly, since 1984 the Banks together had the possibility to block any actions Philips would have liked the Board of Management of Grundig AG to take. They were therefore in a position to exercise joint control of Grundig AG together with Philips.

B. Sole control of GVG after the acquisition

Philips will acquire from the Banks all their shares in GVG and by that it will be the only managing partner of EMV, which controls the majority of the shares in Grundig AG.

In conclusion, the acquisition by Philips of the shares of GVG corresponds to a transition from joint to sole control and is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

V. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product markets

According to the parties, the relevant product markets correspond primarily to television sets, videorecorders, camcorders, Hifi, audio systems as well as car radios. In addition, particular overlaps between the two undertakings exist concerning communication electronics and industrial electronics such as production automation, security technology, etc. It is likely that these markets can be subdivided further, but for the purposes of the present case, the question can be left open.

B. Geographic reference market

The parties point to the fact that the industry is global to support the view that markets are international. However, from the demand side point of view, eventual differences between national standards have to be taken into account. Within the Community, most standards have been or are being harmonised and it seems therefore, that the relevant geographic market is at least Community-wide. However, the merger does not alter substantially Grundig AG's and Philips presence on the market and therefore, does not create or strengthen a dominant position, even if the relevant market were considered national (see below).

C. Assessment of the transaction

The parties identified the markets related to consumer electronics as the main affected markets. The analysis will focus on colour television sets, videorecorders, audio systems and car radios.

Within the European Community, the undertakings concerned face competition by several big players, including Sony, Matsushita, Thomson and Nokia. The merged entity Philips and Grundig AG accounts for the most important market share value-based in the market of colour TV sets with [...]1(Philips: [...]2, Grundig: [...]3, while Thomson has [...]4 and Sony [...]5. Broken down by Member States, the undertakings concerned have [...]6 of the sales of colour TV in the Netherlands ([...])7, where Sony commands a market share of [...]8, while Thomson is ranked third with a share of [...]9. Philips/Grundig has a slightly less

1 Less than 30%
2 Less than 20%
3 Less than 15%
4 Less than 20%
5 More than 10%
6 Less than 50%
7 Less than 50%
8 Less than 15%
9 Less than 10%

important share of sales of colour TV in France ([...])¹⁰, but it is still the market leader before Thomson ([...])¹¹ and Sony ([...])¹². Furthermore, Philips/Grundig is also the market leader in Germany, Italy and Spain, where its sales of colour TV sets account for over a fourth of the markets ([...])¹³.

As for audio systems, the undertakings concerned have [...]14 (Philips: [...]15, Grundig: [...]16) of the Community market, where they rank behind the market leader Sony. In the videorecorder market, Philips and Grundig AG together have approximately the same market share as the Matsushita group, that is [...]17 (Philips: [...]18, Grundig [...]19) whereas the remaining important competitors have each less than 10%. The result of the analysis does not change significantly if the geographic reference market were considered national.

Finally, it should be noted that Grundig AG and Philips have together [...]20 of the market of car radios (Philips: [...]21, Grundig: [...]22), if the Community territory is taken as a reference market. The result of the analysis does not change significantly if the geographic reference market were considered national.

When considering the importance of the market shares involved, it has to be borne in mind, that Philips had joint control of GVG before the operation and indeed, assumed the industrial leadership of Grundig AG.

Philips' acquisition of all the shares in GVG has been motivated mainly by Philips' intention to assume full control of Grundig AG. The parties seek to obtain economies of scale, and the manufacturing of videocassette recorders and Grundig's activities in the field of cordless telephones have already been integrated with those of Philips. Therefore, it cannot be excluded that Philips will strengthen its presence on the market after it has become sole owner of GVG. But the change in the situation of Philips and Grundig AG is not of such importance as to raise any serious doubts under the Merger Regulation in the presence of the strength of the other market players and the considerable bargaining power of large distribution or buying groups.

10 Less than 45%
11 Less than 25%
12 Less than 15%
13 Between 25% and 30%
14 More than 15%
15 More than 10%
16 Less than 10%
17 Between 15% and 20%
18 Less than 12%
19 More than 5%
20 Less than 10%
21 Between 4% and 7%
22 Between 3% and 5%

VI. CONCLUSION

Based on the above findings, the proposed concentration does not raise serious doubts as to its compatibility with the common market.

The Commission has therefore decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of Council Regulation No. 4064/89.

For the Commission,