

***Case No COMP/M.4392 -
DSGI / FR-INVEST / F-
GROUP JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 30/11/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30-11-2006

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.4392 - DSGI / FR-INVEST / F-GROUP JV
Notification of 24/10/2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 24/10/2006 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings Elkjøp Nordic AS (“Elkjøp”, Norway), belonging to the group DSG International plc (“DSGi”, United Kingdom), and FR Invest A/S (“FR Invest”, Denmark), acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking F Group A/S (“F Group”, Denmark) by way of purchase of shares.

II. THE PARTIES

2. DSGi is a UK based retailer of consumer electronics, personal computers, domestic appliances, communication products and related financial and after-sale services. Its business model is predominantly traditional off-line retail sales through well-know brands as “Dixons”, “Currys”, “PC World”, etc., in the UK². It also has operations in 13 other EEA countries (with retail brands as “PC City” (Es Fr, It, Se), “UniEuro” (It) and others). In Denmark, DSGi is active through its subsidiary Elkjøp, and ultimately Elgiganten A/S, trading under the retail brand “El Giganten”.

¹ OJ L 24, 29.1.2004 p. 1.

² Case M.4226 *DSGI/Fotovista* 29 June 2006

3. FR Invest is an investment vehicle with no other activities than the shares in the F-Group. The F Group is a Danish retailer of consumer electronics, including music and films, computers and communications. It also focuses on traditional off-line retailing through a chain of stores trading under the brand “Fona”. The F Group also operates an out of town concept under the warehouse brand “Electric City”. All the shops of the F-Group are located in Denmark. Elkjøp and FR Invest are together referred to as “the Parties”.

II. THE OPERATION AND THE CONCENTRATION

4. Pursuant to the terms of a Share Purchase Agreement (“SPA”) and the Shareholders’ Agreement (“SA”), both signed on 7 September 2006, Elkjøp will acquire a 40% shareholding in the F Group from FGH A/S, a currently non-controlling shareholder in the F Group. FR Invest will hold the remaining 60%. According to the Parties, the F Group will be subject to joint control by Elkjøp and FR Invest. The board of directors of the F Group will be comprised of four members, [..]
5. Elkjøp will however enjoy a veto right with regard to a number of key decisions as they require an affirmative vote by Elkjøp, [..³] The above elements are sufficient to conclude that the Parties will have joint control in the joint venture.
6. The operation therefore constitutes a concentration for the purposes of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁴. Each of them have a Community-wide turnover in excess of EUR 250 million, 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.

V. RELEVANT MARKETS

8. The Parties have identified the following activities where the transaction gives rise to horizontally affected markets: (i) electrical retailing and (ii) procurement of electrical goods.

Relevant product markets

(i) Market for Electrical Retailing

9. In the case *DSGI/Fotovista*⁵ the Commission recently considered segmenting the electrical retailing market into sub-markets for retail of brown goods (including audio and visual appliances), retail of large domestic appliances (including washing machines, freezers, etc.), retailing of small domestic appliances (including toasters,

³ [..]

⁴ 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).

⁵ Case COMP/M.4226 – *DSGI/Fotovista*, 29 June 2006

irons, etc.) and retail of computers and communication devices. The Commission further considered sub-markets for brown goods (divided in photographic products, audio, vision and games) and computers and communications (divided in PC hardware, PC software, communications and accessories/peripherals). The Commission also discussed whether internet and traditional retailing belong to separate product markets. However, in that case the precise definitions were ultimately left open since the Commission found that no competition concern arose under any plausible market definition.

10. In addition to the sub-divisions considered by the Commission in *DSGI/Fotovista*, the Parties argue that film and music should be included in the market for brown goods. According to the Parties, there is a relationship between the film and music content and the content players whereby consumers generally expect that they can purchase content where they purchase players and vice versa (cf games console hardware and software included in the category of brown goods and PC hardware and software included in the category for computer and communication). Similarly, it is argued that most Danish retailers offer film and music alongside other products included in the market for brown goods.
11. The Parties further submit that a distinction between sales channels is not relevant when determining the relevant product markets. According to the Parties, high street shops, hypermarkets, supermarkets, and other channels provide similar products and services and consumer focus on product prices rather than the sales channel. Similarly, the Parties consider that no delineation between internet sales and traditional high street or hypermarket sales is necessary due to the Parties limited on-line sales in Denmark.
12. There were indications from the market investigation that the overall market for electrical retailing could be viewed as segmented into sub-markets as described above. There were mixed views, however, as to whether or not to include films and music in the same overall market and respondent competitors were similarly divided as to whether customers distinguish between different sales outlets such as supermarkets, hypermarkets or high street stores. With respect to internet purchasing, a significant portion of respondents took the view that internet purchasing and traditional high street or hypermarket purchasing were part of the same market as, in many cases, customers browse on-line before purchasing in person.
13. For the purposes of the present case, the precise market definition may be left open as the proposed transaction does not give rise to competition concerns even when considering the narrowest conceivable market definition, i.e. separate markets for (i) brown goods (with a possible sub-delineation between photographic products, audio, vision, DVD and VHS products, film, games and music) and (ii) for computers and communication products (with a possible sub-delineation between PC hardware, PC software, communications and accessories/peripherals).

(ii) *Market for Procurement of Electrical Goods*

14. The Parties are active in the direct procurement of electrical goods, whereby electrical retailers purchase directly from the manufacturers. In line with previous Commission decisions⁶, the Parties consider that there may be a separate market for this type of

⁶ Case COMP/M.4226 - *DSGI/Fotovista*, 29 June 2006; Case IV/M.1248 - *Kingfisher/BUT*, 21 August 1998.

procurement as well as the electrical wholesaling model, where retailers or distributors supply to other retailers rather than to end users.

15. Market investigation responses were mixed as to whether or not there is an overall procurement market for all electrical goods. Dissenting respondents took the view that it could be more accurate to group procurement into categories of products rather than into one overall single market. Indeed there were indications that a wholesale market also exists whereby manufacturers, for logistical reasons or because of volume levels use distributors to service certain retail outlets. The market investigation also revealed that retailers typically source their goods both directly from the manufacturers as well as from wholesalers⁷ and it appears that they have no favoured way of sourcing their goods from the various sources of supply. However, the exact market definition can be left open as under any plausible market definition, competition concerns do not arise.

Relevant Geographic markets

(i) Market for Electrical Retailing

16. In previous Commission decisions⁸ it has been suggested that the geographic market for electrical retailing (and associated services) is national in scope, although the possibility of a narrower scope, i.e. at a local level, has also been taken note of.
17. The Parties propose that all markets for the retail of electrical goods are national in scope and in the present case the relevant national market is that of Denmark. It is further submitted that markets are not narrower than national because prices are set at national level by retailers with little freedom for local store managers to deviate from the set price. Product ranges, after-sales service, quality control, marketing and advertisement also have a national orientation.
18. The market investigation supports the proposition that electrical retailing markets tend to be on a national scale although there is evidence of cross-border parallel imports. However, the scope of the geographic market can be left open as competition concerns in the market for electrical retailing do not arise by virtue of this transaction.

(ii) Market for Procurement of Electrical Goods

19. In previous Commission decisions, the Commission has taken the view that the market for the procurement of retail goods is at least national in scope⁹.
20. The Parties propose that the market for procurement of electrical goods in the present case is at least pan-Nordic in scope and may even be wider due to a European/global-wide procurement practise as well as parallel imports. According to the Parties, many international manufacturers have a pan-Nordic sales operation, including manufacturers

7 The market investigation painted a mixed picture of sourcing electrical goods. All respondents source their goods both directly from manufacturers and also from distributors, agents, importers, brandholders and brokers.

8 Case IV/M.300 - *Kingfisher/Darty*, 22 March 1993; Case COMP/M.2703 - *Merioni/GE/GDA JV*, 4 March 2002; Case IV/M.890 - *Blokker/Toys R Us*, 26 June 1997 and Case IV/M.784 - *Kesko/Tuko*, 20 Nov 1996.

9 Case IV/M.991 - *Promodes/Casino*, 30 Oct 1997; Case IV/M.1085 - *Promodes/Catteau*, 6 Feb 1998 and COMP/M.3464 - *KESKO/ICA/JV*, 16 Nov 2004.

of brown goods, small and large domestic appliances and computing and communication. Similarly, retailers organise their purchasing activities on a pan-Nordic level, including pan-Nordic purchasing co-operation between Nordic supermarkets.

21. Responses to the market investigation reveal that the supply to electrical retailers in the Nordic region, either through direct procurement or through wholesalers, takes place on a scale that appears to be wider than national, since higher purchase volumes of goods typically command lower prices. There is also evidence that some larger retailers procure on an EEA level. However, as the transaction does not give rise to competition concerns, a precise geographic market definition for procurement of or wholesale supply of electrical goods can be left open.

V. ASSESSMENT

22. The parties' activities overlap in the retail market for electrical goods in Denmark where the F Group trades under the brand names "Fona" and "Electric City" with 69 stores and where DSGi trades with 27 stores selling under the "El Giganten" name. The tables below show the competitors' market shares where their activities coincide with regard to electrical retailing of brown goods and of computers & communications equipment.¹⁰

(i) Market for Electrical Retailing

Table 1: Market Shares of Electrical Retailers – Brown Goods

| Companies | Electrical Retailing, Denmark; market shares (2005) by value (%) | | | | | | |
|--------------------|--|----------------|----------------|----------------|----------------|----------------|----------------|
| | All | Audio | Vision | DVD/VHS | Film | Games | Music |
| Elkjøb | [0-10] | [0-10] | [10-20] | [0-10] | [0-10] | [10-20] | [[0-10] |
| F Group | [10-20] | [10-20] | [10-20] | [0-10] | [10-20] | [10-20] | [20-30] |
| Combined | [20-30] | [20-30] | [20-30] | [10-20] | [10-20] | [20-30] | [20-30] |
| Merlin | [0-10] | [0-10] | [0-10] | [0-10] | [0-10] | [10-20] | [0-10] |
| Exper2Tal | [10-20] | [10-20] | [10-20] | [10-20] | [0-10] | - | [0-10] |
| EB Games | [0-10] | - | | - | - | [10-20] | - |
| TP Musik Marked | [0-10] | - | | - | [0-10] | - | [0-10] |
| Stereo Studio | [0-10] | - | | - | [0-10] | - | [10-20] |
| HI-FI Klubben | [0-10] | [0-10] | [0-10] | [0-10] | - | - | - |
| Bingo Foto | [0-10] | - | - | - | - | - | - |
| Dansk Supermarked | [0-10] | [0-10] | [0-10] | [10-20] | [0-10] | [0-10] | [0-10] |
| COOP Danmark | [0-10] | [0-10] | [0-10] | [0-10] | - | [0-10] | - |
| Aldi | [0-10] | - | - | - | - | [0-10] | - |
| Others | [20-30] | [20-30] | [10-20] | [20-30] | [50-60] | [30-40] | [30-40] |

¹⁰ According to the Parties, the total Danish market shares have been gathered using a combination of publicly available statistical data for these markets provided by the Danish trade organisations FEHA ("Foreningen af fabrikanter og importører af elektriske husholdningsapparater") and BFE ("Branchen ForbrugerElektronik"). [...]

Table 2: Market Shares of Electrical Retailers – Computers & Communication Equipment

| | Electrical Retailing, Denmark; market shares (2005) by value (%) | | | |
|-------------------|---|----------------|----------------|----------------|
| Companies | All | PC hardware | Communications | Accessories |
| Elkjøp | [0-10] | [0-10] | [0-10] | [0-10] |
| F Group | [10-20] | [0-10] | [0-10] | [20-30] |
| Combined | [10-20] | [10-20] | [10-20] | [20-30] |
| Merlin | [0-10] | [0-10] | [10-20] | [0-10] |
| Expert 2Tal | [0-10] | [0-10] | [0-10] | [0-10] |
| ComputerCity | [0-10] | [0-10] | - | [0-10] |
| Zitech Computer | [0-10] | [0-10] | - | [0-10] |
| EB Games | [0-10] | - | - | - |
| Dell | [0-10] | [10-20] | - | - |
| Stereo Studio | [0-10] | - | - | - |
| Dansk Supermarked | [0-10] | [0-10] | [0-10] | [0-10] |
| COOP Danmark | [0-10] | [0-10] | [0-10] | - |
| Others | [40-50] | [20-30] | [50-60] | [50-60] |

23. In an overall market for brown goods, post-merger, the indications are that the merged entity would have a combined market share of [20-30]% (Elkjøp [0-10]%; F Group [10-20]%), [...] Expert2Tal ([10-20]%). On a product-by-product basis, as presented by the Parties, their level of market share would vary according to the sub-segment. With regard to the retail of audio, vision, games and music, the merged entity would have a combined market share of [20-30]% (Elkjøp [0-10]%; F Group [10-20]%), [20-30]% (Elkjøp [10-20]%; F Group [10-20]%), [20-30]% (Elkjøp [10-20]%; F Group [10-20]%) and [20-30]% (Elkjøp [0-10]%; F Group [20-30]%) respectively. Post-merger, the Parties would have a combined market share of [10-20]% (Elkjøp [0-10]%; F Group [10-20]%) in the sub-segment for film and in the segment for DVD and VHS products they would have a combined market share of [10-20]% (Elkjøp [0-10]%; F Group [0-10]%) [...] Expert2Tal ([10-20]%), [...] Dansk Supermarked ([10-20]%) and COOP Danmark ([0-10]%). Even without including the categories Film and Music, the combined market share would amount to approximately [20-30]%.
24. In an overall market for computers and communication, post-merger, the merged entity would have a combined market share of [10-20]% (Elkjøp [0-10]%; F Group [10-20]%). On a product-by-product basis, as presented by the Parties, their position would be largely the same in sales of PC hardware and communications with combined market shares of [10-20]% (Elkjøp [0-10]%; F Group [0-10]%) and [10-20]% (Elkjøp [0-10]%; F Group [0-10]%), respectively, and for the sales of accessories they would have a combined market share of [20-30]% (Elkjøp [0-10]%; F Group [20-30]%). However, the Parties submit that accessories are sold in a fragmented market where, for example, such products are sold not only by electronic retailers but also by many other retailers including petrol stations.
25. From the market investigation, it appears that many retailers of varying sizes that are present in that market reflect the market's fragmented character. Furthermore, due to

significant price competition among these retailers¹¹, customers appear to have negligible or even no retailer loyalty. Hence, post-merger, there will still be an adequate consumer choice among competing retailers of electronic goods in Denmark, as widely confirmed by competitor responses. It can therefore be concluded that the proposed transaction will not give rise to a significant impediment to competition.

(ii) Market for Procurement of Electrical Goods

26. In a pan-Nordic market for the procurement of brown goods¹², post-merger, the Parties estimate that their combined market share would amount to between [10-20] and [10-20]% (Elkjøp [10-20]%; F Group [0-10]%)¹³. On a product-by-product basis, as presented by the Parties, their market share would largely be the same in the procurement of photographic products and vision with combined market shares of between [10-20]% (Elkjøp [10-20]%; F Group [0-10]%) and [10-20]% (Elkjøp [10-20]%; F Group [0-10]%), respectively, and [...] in the procurement of DVD and VHS products with a combined market share of between [0-10]-[10-20]% (Elkjøp [0-10]%; F Group [0-10]%).
27. In view of the lack of publicly available data about the procurement market and of the retailing competitors' limited perspective regarding sufficient market data, an alternative way of assessing the procurement market by the Commission was to analyse to whom the main manufacturers sell their products. From the market investigation, respondent suppliers indicated that they supply between 10 and 250 different retailer outlets in Denmark. Furthermore, from the market investigation, the Commission found that neither party to the transaction represented such proportion of the suppliers' revenues in Denmark as would give reasons for competition concerns. In terms of revenues, many of the other retailers represent similar proportions of magnitude.
28. According to the Parties, post-merger, there will remain a number of competing retailers of electronic goods active in the procurement market of electrical goods in Denmark. They further claim that the companies from which the Parties procure the products are in general very large suppliers of electrical goods that are not dependent on anyone or on a few purchasers and that, in spite of often maintaining a pan-Nordic sales representation, they are also active on a global scale.
29. The Commission found that due to the fragmented retailing structure, the Parties represent only a fraction of demand in the procurement market. As other retailers represent a similar level of demand, the Parties would be unlikely to exercise buyer power vis-à-vis the suppliers. Suppliers will still have a number of alternative distribution channels, i.e. mainly to other retailers, that would represent a sufficient

¹¹ Competitors who responded to the market investigation largely confirmed that price competition is robust due to the price sensitivity of consumers.

¹² In each of the other segments of the overall market, i.e. large domestic appliances, small domestic appliance and computers & communications, the Parties' market shares were found to be below 15% and were therefore not dealt with in this assessment.

¹³ According to the Parties, they are unable to provide exact data regarding the pan-Nordic market segment for procurement of brown goods because they only have knowledge about their own procurement figures. The data is based on national retail market share data which, according to the Parties, must represent to a certain extent the pan-Nordic procurement market share of the retailers. In the light of this, suppliers were asked to estimate the percentage of their business that the merging parties represented in Denmark.

competitive constraint on the merged entities. Therefore, the procurement market will not give rise to competition concerns.

VI. CONCLUSION

30. 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 (EC) No 139/2004.

For the Commission
Signed
Neelie KROES
Member of the Commission