EN

Case No COMP/M.4424 - JT / GALLAHER

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

<u>Subject</u>: Case No COMP/M.4424 - Japan Tobacco Inc./Gallaher Group Plc. Notification of 17 January 2007 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 17 January 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "EC Merger Regulation"), by which Japan Tobacco Inc. ("JT") intends to acquire sole control of Gallaher Group Plc. ("Gallaher") by way of purchase of shares.

I. THE PARTIES

2. JT is a Japanese tobacco company with a worldwide sales volume of 409.8 billion cigarettes in 2005. Its principal business is the manufacture and sale of cigarettes in Japan, where it enjoys exclusive rights to produce tobacco, and in other countries. Its brand portfolio in the EU/EEA includes *Camel, […], Salem* and *Winston*. JT also has interests in the food and pharmaceutical sectors. Partially privatised in 1985, JT remains 50% owned by the Japanese government.

3. Gallaher is a UK registered tobacco company with worldwide sales of approximately 175 billion cigarettes in 2005. Its brand portfolio includes *Benson & Hedges, Silk Cut,*

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[1] OJ L 24, 29.1.2004 p. 1.

Sovereign and *Mayfair*. Within the EEA it has cigarette manufacturing facilities in the UK, Poland, Austria and Spain (the Canary Islands). Although most of its sales are derived from so-called factory manufactured cigarettes[2] ('FMC') it also produces cigars, roll-your-own ('RYO') and make-your-own ('MYO') tobacco[3], pipe tobacco and snus[4]. Gallaher also has interests in the wholesale distribution of tobacco products in Austria, Estonia, Hungary and the Canary Islands. In Germany it is active both at the retail level as a vending machine operator and at the wholesale level through a non-controlling interest in a convenience wholesaler.

II. THE OPERATION

4. The boards of JT and Gallaher announced on 15 December 2006 they had reached agreement on the terms of a recommended cash offer to be made by JTI (UK) Management Ltd for the entire issued and to be issued share capital of Gallaher. The offer will be implemented by way of a court approved scheme of arrangement under Section 425 of the UK Companies Act 1985.

III. CONCENTRATION

5. Upon completion of the proposed transaction, JT will own 100% of Gallaher's share capital and thus exercise sole control over Gallaher within the meaning of Article 3(1)(b) of the EC Merger Regulation.

IV. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate worldwide turnover in excess of EUR 5 000 million. The aggregate Community–wide turnover of JT and Gallaher is more than EUR 250 million. The parties do not achieve more than two-thirds of their respective aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation.

V. COMPETITIVE ASSESSMENT

A. Relevant product markets

7. Within the tobacco industry, one can distinguish three principal levels: (i) farming (leaf tobacco growing and curing), (ii) manufacturing and (iii) distribution. Manufacturing means the processing and blending of the tobacco and the conversion of the tobacco into the final tobacco products. The operation under examination concerns the manufacturing and distribution levels.

8. Both parties are active in the manufacture and sale of FMC in most European markets. JT does not have any other tobacco-related activities in the EU/EEA with the exception

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[2] Factory-manufactured cigarettes are cigarettes that are sold in packages of various sizes and that are ready to be smoked.

[3] RYO tobacco is a fine-cut tobacco for cigarettes which consumers roll themselves using cigarette papers. RYO cigarettes are non-filtered. MYO tobacco can be used by consumers to produce both filtered and non-filtered cigarettes by use of a manual device.

[4] A tobacco taken orally (i.e. not smoked) which is characteristic of some Nordic markets.

of limited sales of RYO/MYO products. The parties have therefore submitted that the relevant product markets are:

- the FMC market; and
- the RYO/MYO market.

According to the notifying party's estimates, the various types of tobacco products represent the following proportions of tobacco consumption by weight in the European Union: FMC ([80-90%]); RYO/MYO ([0-10%]); cigars and cigarillos ([0-10%]); pipe tobacco ([0-10%]).

9. As indicated above, Gallaher furthermore is active in the wholesale and retail distribution of tobacco products in several Member States. The notifying party submits that the markets for wholesale distribution and retail distribution of tobacco products constitute distinct relevant product markets.

1. FMC market

10. The notifying party submits that the methods of production, packaging and technology are largely similar for the various types of cigarette. Furthermore, it suggests that although there is no reason to further segment the FMC market, such markets are nevertheless highly differentiated in all countries with brands competing on the basis of many different characteristics such as price, tobacco blend (American, Virginia, Oriental and Dark), taste and flavour, pack size, cigarette length and packaging. In the notifying party's view, most of the aforementioned characteristics are combined in different ways in any given brand (or family of brands) of FMC with a view to meeting all types of consumer selection criteria.

11. The Commission has in previous decisions concluded that although FMC may indeed be segmented according to a number of different criteria, sub-division or segmentation of the FMC market into narrower product markets according to a particular criterion would in most cases be "*arbitrary and not meaningful*"[5].

12. In response to the Commission's market investigation, a majority of FMC producers confirmed that they too segmented the FMC market according to price as well as other characteristics most of which have been mentioned previously. However, it was evident that the precise nature of segmentation may vary not only between the various producers but also at the level of any one producer depending on particular circumstances such as the national market at issue. The results of the market investigation amongst customers were more mixed. Whereas a clear majority concurred with the view that market segmentation by price was reasonable, only half of respondents actually did so. A number of customers considered that segmentation was best done by the FMC manufacturers themselves and was not a relevant consideration for distributors and retailers.

13. However, for the purposes of the present case, the question can remain open whether further segmentation of the FMC market should be made, as on all alternative market

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5 Case M. 1415, BAT/Rothmans; Case M.2779, Imperial Tobacco/Reemtsma Cigarettenfabriken; Case M.3191, Philip Morris/Papastratos.

definitions the proposed concentration would not lead to a significant impediment to effective competition.

2. RYO/MYO market

14. The notifying party submits that RYO/MYO products belong to a separate product market that is distinct from the FMC market. In the *BAT/Rothmans* case, the Commission found that the physical and technical characteristics of RYO cigarettes are different from FMCs and that RYO cigarettes are generally taxed at a lower level than FMCs. It was also found that the degree of substitutability between the two products seems to be limited in most European countries. However, the question whether FMCs and RYO cigarettes constitute separate product markets was ultimately left open.

15. In *Imperial Tobacco /Reemtsma Cigarettenfabriken* the notifying parties argued that the market for FMCs and RYO tobacco constituted one single market of "*white sticks*". Whilst the Commission did not express a definitive opinion on this issue, it did highlight a number of distinctions between FMC and RYO from the customers' point of view. In particular, it was found that the price of an RYO cigarette was usually at the lower end of the price range of FMCs or even below and that the smokers of RYO cigarettes seem to form a distinct type of smoker separated from the mainstream of FMC smokers.

16. The market investigation in the present case has once again confirmed the distinctions between FMC and RYO/MYO products noted above. In this respect, all the notifying party's competitors, with one exception, perceive there to be a separate market for RYO/MYO products that is distinct from FMC. Even the one competitor that does not share the view of the majority acknowledges that arguments exist to suggest that FMC and RYO can form distinct product markets. In addition, the majority of customers in the market investigation also concurred with the view that FMC and RYO/MYO cigarettes constitute distinct product markets. Customers that did not consider it appropriate to make the distinction pointed to the relatively low demand for RYO/MYO products when compared to FMC and the competitive pressure exerted by RYO/MYO on the FMC market, especially at the lower price end of the FMC market, where consumer switching from FMC to RYO/MYO was said to occur.

17. However, for the purposes of the present case, this issue can again be left open as there are no indications that either alternative definition would lead to serious competition concerns.

3. Wholesale and retail distribution of tobacco products

18. In line with previous decisions of the Commission and the case law of the CFI[6] the notifying party submits that the different levels of distribution of tobacco products (wholesale and retail level) constitute separate relevant product markets. However, as the assessment of the present transaction would be the same for both a combined retail and wholesale distribution market and two separate markets, the question whether retail and wholesale distribution form distinct markets can be left open in the present case.

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6 Case T-139/98 – AAMS vs. Commission, {2001] ECR II-3413

B. Relevant geographic markets

19. The notifying party submits that in line with the CFI's case law and the Commission's decisional practice, the markets for FMC and RYO/MYO as well as the markets for wholesale and resale distribution of tobacco products are national in scope. The notifying party has however highlighted the particular legal and fiscal conditions pertaining to the FMC market in the Canary Islands. In Seita/Tabacelera[7], the Commission did not identify a separate FMC market for the Canary Islands and assessed the impact of the concentration on the overall Spanish FMC market. However, in Gallaher/Cita Tabacos de Canaria/Tabacos La Nubia[8], the Spanish Competition Authority did assess the concentration on a Canary Islands market level.

20. In the present case, the assertion that the relevant market for FMC and RYO/MYO are national in scope has been endorsed by all competitors and an overwhelming majority of customers in the market investigation. The comments of competitors and customers active in the Canary Islands tend to support the view that the Canary Islands should be considered a separate market not only because of the particular legal and fiscal conditions mentioned above but also due to the presence of large numbers of foreign tourists with purchasing patterns influenced by their knowledge of FMC brands from their home country. However, for the purposes of the present case, the issue whether the Canary Islands should be considered a separate geographic market may be left open as there are no indications that the proposed concentration would have significant negative competitive effects under either definition.

C. Assessment

1. FMC – Horizontal and vertical issues

21. In the EEA, the parties to the proposed concentration face competition from various FMC manufacturers which can be categorised as follows: a) international companies such as Philip Morris International, British American Tobacco (BAT), Imperial Tobacco and Altadis; b) European, regional-based companies with a strong regional presence such as Skandinavisk Tobakskompagni and c) other tobacco companies such that are mainly active in one and the same Member State.

22. On an EEA-wide basis, JT and Gallaher have a combined [10-20%] share (by value) of total FMC sales across the various national FMC markets. This share is below that of Philip Morris International ([40-50%]), and slightly above that of BAT ([10-20%]), Imperial Tobacco ([10-20%]) and Altadis ([0-10%]). In volume terms, JT and Gallaher’s combined share is [10-20%]. This share is below that of Philip Morris International ([30-40%]) and BAT ([10-20%]) and slightly above that of Imperial Tobacco ([10-20%]) and Altadis ([10-20%]).

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7 Case No. COMP/M.1735, Setia/Tabacelera, Commission decision of 3 December 1999

8 Case N-05100, Gallaher/Cita Tabacos de Canaria/Tabacos La Nubia

23. The proposed concentration would result in a number of affected FMC markets[9] as shown in the following table.

Country	**Gallaher**	**JT**	**JT/Gallaher Combined**	**PMI***	**BAT***	**IMP***
Austria	[30-40%]	[0-10%]	**[35-45%]**	[30-40%]	[0-10%]	[0-10%]
Estonia	[10-20%]	[0-10%]	**[15-25%]**	[50-60%]	[10-20%]	[0-10%]
Ireland	[40-50%]	[0-10%]	**[45-55%]**	[0-10%]	[10-20%]	[20-30%]
Latvia	[0-10%]	[10-20%]	**[15-25%]**	[50-60%]	[10-20%]	[0-10%]
Lithuania	[0-10%]	[10-20%]	**[15-25%]**	[60-70%]	[10-20%]	[0-10%]
Spain – Canary Islands	[10-20%]	[10-20%]	**[30-40%]**	[50-60%]	[0-10%]	[0-10%]
Spain – mainland	[0-10%]	[10-20%]	**[15-25%]**	[40-50%]	[0-10%]	[0-10%]
Sweden	[30-40%]	[0-10%]	**[35-45%]**	[20-30%]	[0-10%]	[0-10%]
United Kingdom	[30-40%]	[0-10%]	**[35-45%]**	[10-20%]	[0-10%]	[40-50%]

** PMI = Philip Morris International; BAT = British American Tobacco; IMP = Imperial Tobacco*

24. In addition to the horizontal aspects noted above, the proposed concentration also has vertical aspects resulting from Gallaher's wholesale distribution activities in Austria where it has a share of approximately [80-90%] of the wholesale market for the distribution of tobacco products, Estonia ([30-40%]) and the Canary Islands in Spain ([30-40%]).

a) Austria

(1) Horizontal aspects

25. In Austria, the new entity will have a combined market share of [35-45%]. The market share increment resulting from the concentration will be very limited as Japan Tobacco has only [0-10%] of the FMC market. The notifying party submits that, in addition to this minimal overlap, JT's and Gallaher's FMC brands in Austria are not close substitutes.

26. Indeed, as shown by the sales data for the Austrian FMC market, Gallaher's brands are mainly positioned in the value and popular price segments of the market whereas JT is active primarily in the premium and prestige segments with its international brands

[9] Source: JT own estimates for 2005 based on value. The estimates provided by other competitors in the market investigation vary slightly in certain cases from the notifying party's data. However, these variations are not such as to significantly alter the competitive landscape of the market and the position of the merged entity vis-à-vis these competitors.

[…]. The view that JT's and Gallaher's brands are not close substitutes has also been endorsed by competitors in the market investigation. The Commission further notes that, in addition, the presence of a powerful competitor such as Philip Morris International as well as a number of other players negates the possibility of the new entity achieving a dominant position post merger or achieving such a position as would enable it to significantly impede effective competition in the market. Therefore, the concentration is not expected to significantly impede effective competition in this market due to non-coordinated effects.

27. As regards the risk of coordinated effects caused by the merger, this can also be excluded as, in view of the very weak position of JT in the Austrian market for FMC, the merger would not bring about any significant change in the competitive landscape.

28. For all the foregoing reasons, the Commission considers that competition concerns due to the horizontal effects resulting from the merger are unlikely to arise on the market for FMC in Austria.

(2) Vertical aspects

29. As indicated above, Gallaher is active in the wholesale distribution of tobacco products in Austria through its wholly-owned subsidiary Tobaccoland Austria ('TL-A'). Gallaher acquired TL-A in 2001 as part of its acquisition of Austria Tabak, the former Austrian tobacco monopoly. At that time, Austria Tabak was the leading FMC manufacturer in Austria with TL-A acting as the distributor for almost all other FMC manufacturers in Austria. This situation remained largely unchanged after the liberalisation of the wholesale market in 1996 and the acquisition of Austria Tabak by Gallaher in 2001. Despite the entry of other licensed distributors into the market, TL-A still has a [80-90%] share of the wholesale distribution of tobacco products.

30. The distribution of tobacco products in Austria remains to a large extent regulated. The retail sale of tobacco products is regulated by the Tobacco Monopoly Act of 1996 (*Tabakmonopolgesetz 1996*, TMA). The monopoly is administered by a government body (*the Monopolverwaltung*), which has a number of administrative tasks including the selection of tobacconists and the publication of FMC retail selling prices on an official price list.

31. Against this background, the Commission also inquired into (i) the impact of the proposed transaction on TL-A's market position in the wholesale distribution of tobacco products in Austria, and in particular whether the proposed transaction would strengthen TL-A's dominant position on that market, and (ii) the impact of the proposed transaction on the merged entity's ability and incentive to actively foreclose competing suppliers of FMC in the Austrian market.

No strengthening of the dominant position of TL-A on the Austrian wholesale market

32. As indicated above, Gallaher – through its subsidiary TL-A – has a dominant position in the Austrian market holding a [80-90%] share of the wholesale distribution of tobacco products. Several Austrian distributors contacted in the course of the market investigation suggested that the concentration probably would have a negative competitive effect as it could reinforce the dominant position of TL-A in the distribution of tobacco products. The results of the Commission's market investigation, however, do not confirm this view.

33. First, it has to be noted that the vertical relationship between JT's FMC activities and Gallaher's distribution activities will not have a meaningful impact on competition on the market for wholesale distribution of tobacco products in Austria. TL-A already distributes all JT brands with the exception of the *More* brand. Even if the distribution of *More* were to be entrusted to TL-A, this brand's negligible share of the FMC market ([0-5%]) would not have an impact on TL-A's market position in the Austrian distribution market.

34. Second, the concentration will not alter the fact that other wholesale-distributors active in Austria remain able to win the distribution business of other FMC producers from TL-A. In this regard, it is to be noted that the market investigation revealed that TL-A has lost all, or substantially all, of the distribution business of two FMC producers (BAT and Skandinavisk Tobakskompagni) to competing distributors.

35. Based on these elements, the Commission concludes that the proposed transaction is not likely to significantly impede effective competition as a result of a strengthening of TL-A's dominant position in the Austrian market for wholesale distribution of tobacco products.

No significant impact on TL-A's ability and incentive to foreclose

36. Two of the merged entities competitors in the Austrian market for FMC argued in the course of the market investigation that TL-A post merger would most likely favour the distribution and promotion of the new entity's brands to the detriment of competitors. These competitors also expressed dissatisfaction at the manner in which TL-A had acted in the past vis-à-vis the distribution and promotion of their products. The Commission therefore thoroughly investigated whether and to which extent the proposed transaction would increase TL-A's ability and incentive to actively foreclose the merged entities competitors in the Austrian market for FMC. The Commission's analysis does not indicate that the fear expressed by these competitors is a likely outcome of the proposed transaction for the reasons outlined below.

37. First, as previously noted, the liberalisation of the wholesale market in 1996 has enabled a number of alternative wholesale distributors to establish a presence in the market. According to information published by the *Monopolverwaltung* there are presently sixteen operators licensed to distribute tobacco products in Austria. The market investigation has confirmed the existence of wholesale distributors that are able to offer FMC producers a viable alternative to TL-A. By way of example, the Commission's investigation revealed that one FMC manufacturer (BAT) was able to switch to an alternative distributor (Moosmayr) and thereafter increase its market share by several percentage points between 2005 and 2006. One other FMC manufacturer participating in the market investigation (Skandinavisk Tobakskompagni) also confirmed that it used another distributor (R&G Ges.m.b.H.) to distribute most of its products in Austria.

38. Second, the Commission's market investigation has shown that TL-A in the past has not given its parent company's own brands more favourable terms than those offered to competitors, thereby demonstrating its general interest in maintaining its level of distribution activity for other FMC manufacturers. Indeed, an analysis of the contract terms […].

39. Finally, and most importantly, due regard should be given to the relatively limited horizontal overlap of the parties' activities [0-10%] and the fact that, with the exception

of one brand, all JT's FMC are already distributed by TL-A. The brand that is not distributed by TL-A (*More*) is of negligible importance in terms of market share and in the turnover of the distributor concerned. Consequently, the proposed transaction is unlikely to have any significant impact on TL-A's ability and incentive to actively foreclose the merged entities competitors for FMC in the Austrian market.

Conclusion

40. For all the foregoing reasons, the Commission considers that competition concerns due to vertical effects resulting from the merger are unlikely to arise in Austria.

b) Estonia

(1) Horizontal aspects

41. In Estonia, the new entity will have a combined market share of [15-25%]. The market share increment resulting from the concentration will be [0-10%]. Although the Commission's market investigation suggested that some market participants consider the brands of JT and Gallaher to be close substitutes in certain segments, the new entity will continue to face strong competition from the clear market leader, Philip Morris International which has a market share of [50-60%]. The presence of a number of other competitors including BAT ([10-20%]) and Skandinavisk Tobakskompagni ([0-10%]) support the view that the concentration is not expected to result in any significant impediment to effective competition due to horizontal effects in this market.

(2) Vertical aspects

42. Gallaher is present on the Estonian tobacco wholesale distribution market through its wholly owned subsidiary Tobaccoland Estonia ('TE'). TE engages in the wholesale distribution of tobacco products and a range of non-tobacco products (such as pre-paid telephone cards, films and batteries). The company currently distributes Gallaher’s and JT’s brands and is estimated to have a [30-40%] share of the wholesale distribution market in Estonia.

43. The Commission's investigation confirmed that companies other than TE accounted for the major part of tobacco product distribution in Estonia. As JT already distributes its products through TE, the concentration is not expected to alter the manner in which it distributes its FMC products in Estonia. In addition, it will be in TE's economic interest to try and secure additional business from other FMC producers. Consequently, the concentration is not expected to result in any significant impediment to effective competition in this market due to vertical effects.

c) Spain – Canary Islands

44. As indicated above, Gallaher in addition is active in the wholesale distribution of tobacco products on the Canary Islands. Therefore, the Commission also inquired into the effects of the proposed transaction under the assumption that the Canary Islands would have to be considered as a separate geographic market distinct from the mainland of Spain.

(1) Horizontal aspects

45. On the market for FMC on the Canary Islands, the combined market share of the new entity will be [30-40%]. It will therefore be second in the market to Philip Morris International which has a market share of more than [50-60%]. The Commission's market investigation demonstrated that JT's and Gallaher's brands are not particularly close competitors in the FMC market with JT's brands primarily positioned in higher price categories whereas most of Gallaher's brands are positioned in lower price categories. The concentration is therefore not expected to result in any significant impediment to effective competition in this (potential) geographic market due to horizontal effects.

(2) Vertical aspects

46. Gallaher is active in the wholesale distribution of tobacco products in the Canary Islands through its subsidiary Emcadisa. Emcadisa has an approximate [30-40%] share in the wholesale distribution of FMCs in the Canary Islands.

47. As the Spanish Competition Authority emphasised when it cleared the merger between Gallaher and Cita Tabacos de Canaries and Tabacos La Nubia, the existence of alternatives for the distribution network of Emcadisa is exemplified by the fact that FMC manufacturers such as BAT and Imperial Tobacco used to distribute their FMC brands via Emcadisa, but have decided to terminate their contracts with Emcadisa and to use alternative distributors instead.

48. Under these circumstances, a possible decision by JT to switch the distribution of its FMC brands to Emcadisa instead of its current practice of direct selling to wholesalers and retailers is not expected to have an adverse impact on competition in the wholesale distribution market in the Canary Islands. Consequently, the concentration is not expected to result in any significant impediment to effective competition in this market due to any vertical effect.

d) Other affected markets

49. The proposed transaction in addition is not likely to raise any competition concerns in all the other national markets for FMC technically affected by the proposed transaction.

50. Gallaher is the clear market leader in **Ireland** with a market share of [40-50%]. However, as JT's activities in Ireland are not significant ([0-10%]), the market share increment resulting from the concentration will be limited. Although the notifying party acknowledges there to be a degree of overlap between its brands and those of Gallaher in the premium price segment, it draws attention to the presence of other FMC manufacturers in this segment. In addition, respondents in the market investigation were of the opinion that JT and Gallaher are not close competitors in this particular market. The new entity will continue to face competitive pressure from Imperial Tobacco ([20-30%]), BAT ([10-20%]) and Philip Morris International ([0-10%]). The concentration is therefore not expected to result in any significant impediment to effective competition in this market.

51. The combined market share of the new entity in **Latvia** will be less than [25%] (Gallaher [0-10%], JT [10-20%]). The market share increment resulting from the concentration is marginal ([0-10%]). The notifying party submits that its brands and

those of Gallaher are not particularly close substitutes in this market. This view has been supported by other FMC manufactures in the Commission's market investigation. The combined entity will continue to face strong competitive pressure from the market leader, Philip Morris International ([50-60%]), and other FMC manufacturers such as Skandinavisk Tobakskompagni ([10-20%]). The concentration is therefore not expected to result in any significant impediment to effective competition in this market.

52. In **Lithuania,** the new entity will have a combined market share of [15-25%] (Gallaher [0-10%], JT [10-20%]). The market share increment resulting from the concentration is limited ([0-10%]). Although the notifying party submits that its brands and those of Gallaher are not particularly close substitutes in this market, it does acknowledge there to be some overlap in the mid-price and value market segments. In the market investigation, whilst FMC respondents agreed that the two parties were not close competitors, two customers that responded did consider there to be some overlap in the value end of the market. In this regard, it is to be noted that other competitors such as Philip Morris International and Skandinavisk Tobakskompagni also have strong market positions in these segments. Moreover, as submitted by the notifying party, its brands are of American heritage whereas Gallaher's *Saint George* brand is of Russian heritage. At a more general level, the combined entity will continue to face strong competitive pressure from the market leader, Philip Morris International ([60-70%]), and other FMC manufacturers. The concentration is therefore not expected to result in any significant impediment to effective competition in this market.

53. In **Spain (mainland)**, the combined market share of the new entity will be [15-25%] (Gallaher [0-10%], JT [10-20%]). It will continue to face strong competitive pressure from the market leader, Philip Morris International ([40-50%]), and other FMC manufacturers present on this market including Altadis ([30-40%]) and BAT ([0-10%]). Moreover, the notifying party submits that its brands, with their international image, are not particularly close substitutes to those of Gallaher which are primarily positioned in the lower price segments of the market. This view has been supported by other FMC competitors in the market investigation. The concentration is therefore not expected to result in any significant impediment to effective competition in this market.

54. Gallaher is the clear market leader in **Sweden** with a market share of [30-40%]. However, as JT's activities in Sweden are limited, the market share increment resulting from the concentration will be only [0-10%]. The market investigation confirmed the notifying party's claim that JT's and Gallaher's FMC brands in Sweden are not particularly close substitutes. At the same time, the new entity will continue to face competitive pressure from other FMC manufacturers such as Philip Morris International ([20-30%]) and Skandinavisk Tobakskompagni ([20-30%]). The concentration is therefore not expected to result in any significant impediment to effective competition in this market.

55. Gallaher is second to Imperial Tobacco in terms of market share in the **United Kingdom**. JT's activities in the United Kingdom are limited meaning that the market share increment resulting from the concentration will be negligible at less than [0-5%]. The new entity will continue to face competitive pressure from the market leader, Imperial Tobacco ([40-50%]), as well as other FMC manufactures present on the market including Philip Morris International ([10-20%]) and BAT ([0-10%]). The

concentration is therefore not expected to result in any significant impediment to effective competition in this market.

2. RYO/MYO

In the market for RYO/MYO cigarettes, Gallaher has a market share in excess of 25% in Austria ([30-40%]), Greece ([40-50%]) and the United Kingdom. JT does not have any RYO/MYO activities in any of these markets and does not have any plans to engage in such activities. Where the two parties do have RYO/MYO activities in the same geographical markets (Belgium and Luxembourg) their combined market shares remain between [10-20%]. For these reasons, the proposed transaction does not give rise to any affected markets or competition concerns.

3. A single market for FMC and RYO/MYO

56. In the event that a single market for FMC and RYO/MYO tobacco products is held to exist, the notifying party's limited RYO/MYO activities and the relative importance of FMC sales in comparison to RYO/MYO products are taken as factors to indicate that the assessment for a single market would not differ significantly from that made in respect of distinct product markets for FMC and RYO/MYO products. As such, the proposed concentration would not significantly alter the competitive landscape in any affected market or act as a significant impediment to effective competition.

VI. CONCLUSION

57. 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