

***Case No COMP/M.5140 -
FOXCONN / SANMINA
SCI***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/06/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24-VI-2008

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No COMP/M.5140 – Foxconn/ Sanmina SCI
Notification of 20.05.2008. pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 20.05.2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Foxteq Holdings Inc. ("Foxconn", Taiwan) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of parts of the undertaking Sanmina SCI ("Sanmina SCI", USA, Mexico, Hungary, Australia) by way of purchase of assets. These acquired assets of certain Sanmina SCI entities are together referred to below as "the Target".
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I. THE PARTIES

3. **Foxconn** is a multinational provider of electronic manufacturing services ("EMS") to original equipment manufacturers ("OEMs") with operations situated across the Americas, Europe and Asia. Its main activities include the manufacture, processing and sales of connectors, cable, enclosures, wired/wireless communications products, optics products, power supply modules, assemblies for use in the IT, communications, automotive equipment, precision molding, automobile, and consumer electronics industries as well as provision of joint-design, joint-development, manufacturing,

¹ OJ L 24, 29.1.2004 p. 1.

assembly and after-sales services to global Computer, Communications and Consumer-electronics (3C) leaders.

4. **The Target** are assets and inventory belonging to certain Sanmina-SCI entities. It provides construction, configuration and assembly of personal computers and servers and the provision of related management, manufacturing, logistics and order fulfilment services to original equipment manufacturers ("OEMs").

II. THE OPERATION

5. Pursuant to the "Asset Purchase and Sale Agreement" of 17 February 2008 Foxconn,² via its wholly owned subsidiaries, will acquire certain facilities and inventory of Sanmina SCI used for the provision of EMS for or on behalf of [...] at the manufacturing facilities located in Szekesfehervar, Hungary and Guadalajara, Mexico.³
6. As the proposed transaction would provide Foxconn with sole control over the Target, it constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover for the year 2006 of more than EUR 5 billion⁴ (Foxconn: EUR [...] million, the Target: EUR [...] million). Each of Foxconn and the Target has a Community-wide turnover in excess of EUR 250 million (Foxconn: [...] EUR million, the Target: EUR [...]), without achieving more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.
8. Based on the above, the notified operation has a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation.

IV. THE RELEVANT MARKETS

9. The proposed transaction concerns the electronic manufacturing services (EMS) market where both Parties are active.
10. As EMS providers the Parties offer original equipment manufacturers ("OEMs") a whole range of services⁵ related to the production of electronic equipment. EMS can be conducted either in-house by original equipment manufacturers (OEMs) or outsourced to third party EMS providers such as Foxconn.

² Foxconn is 100% owned and controlled by Foxconn (Far East) Ltd, which is itself a 100% subsidiary of the Taiwanese Hon Hai Precision Industry Co., Ltd.

³ Foxconn will not acquire the EMS business provided for or on behalf of [...] at the facility located [...].

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, p.25).

⁵ These services include prototyping, the design/engineering of the product, component selection and procurement, product assurance, production, printed circuit board assembly, testing distribution and after-sales services.

A. Relevant product markets

11. In previous decisions,⁶ the Commission has considered that in-house EMS production by OEMs and EMS by third parties are not part of the same product market. The Commission has also considered the existence of certain specific electronic product segments divided according to the final product/service in which EMS are incorporated (i.e. the "end use destination"), such as for instance communications, computers or consumer goods. However, the exact product market definition and whether it comprises provision of all EMS to OEMs or whether the EMS should be subdivided into narrower segments was left open.
12. Foxconn submits that the relevant product market for purposes of this notification is electronic manufacturing services ("EMS") by and for original equipment manufacturers ("OEMs"), which includes both in-house and third-party EMS. As the main argument the notifying party presents the fact that over 75% of the manufacturing activities of OEMs are conducted in-house, and there would be significant spare in-house capacity for OEMs to switch back in house if EMS providers were to increase their price.
13. Foxconn considers that the sub-division of the EMS sector into specific product segments is not appropriate as the EMS providers are able to manufacture various types of electronic products for OEMs operating in different end users sectors.
14. However, in line with constant Commission practise that in-house production is not taken into account for the purpose of market definition, the notifying party has also provided data with respect to the narrower market for provision of EMS to OEMs by non-OEMs and with respect to market segments for EMS for PC and EMS for Server production.
15. Also the market investigation conducted by the Commission largely supported the existence of a separate product market for EMS by third parties, mainly due to significant costs which would occur if the OEMs wanted to switch back the outsourced production. However, a certain number of competitors to the Parties would still consider the wider market definition which is EMS provided by OEMs and by third parties.
16. The market investigation confirmed also the ability of EMS providers to easily switch production from one type of product to another in a short term and without incurring in significant costs.
17. However, for the purpose of this case the Commission can leave the exact product market definitions open as the proposed transaction does not lead to any competitive concerns under any market definition.

⁶ See Commission decisions in cases COMP/M.2479, Flextronics/Alcatel; COMP/M.2629, Flextronics/Xerox; COMP/M.3583, Flextronics/Nortel; COMP/M.4766, Flextronics/Solectron.

B. Relevant geographic markets

18. In the previous decisions the Commission indicated that the geographic market for provision of EMS is worldwide or at least EEA-wide. However, the precise scope of the geographic market was left open.⁷
19. Foxconn submits that the relevant geographic market for EMS is worldwide due to the global basis of the agreements signed with OEMs and low shipping costs - which in Foxconn's case represent no more than 1-2% of the selling price of the goods. Limited custom duties, provision of products and services from facilities located around the world and substantial trade flows to and from the EEA⁸ would back this statement.
20. In any event, also for the purpose of this case the exact geographic market definition can be left open as the proposed transaction does not lead to any competition concerns.

V. COMPETITIVE ASSESSMENT

21. Both Foxconn and the Target are mainly active on the global market for the provision of EMS to OEMs. The market for EMS sales to OEMs is fast growing, with forecast compound annual growth rates in excess of 10% over the next five years.
22. According to the notifying party, considering the entire global electronic assembly market including the in-house production activities of OEMs as well as third-party EMS companies (72.8% OEM in-house production and 27.2% outsourced to EMS providers), there would be no affected markets as the combined market share of the parties would be below 6% in 2007.
23. On the worldwide EMS market and in the EEA the parties' combined market share in 2007 without captive production by OEMs represent approximately [20-30%] ([20-30%] Foxconn and [0-5%] the Target) and [20-30%] (10-20% Foxconn and [0-5%] the Target) respectively. Their main competitors at the worldwide level (and EEA-level) are Flextronics [10-20%] ([10-20%] at EEA level), Quanta [5-10%] ([5-10%]), Jabil Circuit [5-10%], and Elcoteq ([5-10%]).
24. On the basis of narrower product markets based on different segments, post-merger, Foxconn increment, as concerns EMS for PCs, would be relatively small, from [20-30%] to [20-30%] worldwide, and from [20-30%] to [20-30%] EEA-wide in 2007. Its main competitors at the world-wide level (and EEA-wide) are Quanta [20-30%] ([20-30%]), Asustek [10-20%] ([0-5%]), and Wistron [5-10%] ([5-10%]). On a hypothetical server segment, post-merger, Foxconn worldwide market share would increase from [10-20%] to [20-30%] and EEA-wide from [10-20%] to [20-30%]. Its main competitors at the worldwide level (and EEA-wide) are Celestica [5-10%] and Jabil [5-10%] ([5-10%]).

⁷ See Commissions decisions in cases COMP/M.1120, Compaq/Digital, COMP/M.1841, Celestica/IBM (EMS), COMP/M.4766, Flextronics/Soletron.

⁸ The parties submit that the proportion of EMS goods sold by EMS providers in 2007 represents a 16.3% share of the total value EEA EMS market and an increase with respect to the share in 2006 and 2005;

25. In any event, regardless of how broadly or narrowly the product and geographic market are defined, the transaction does not give rise to any competition concerns. According to the notifying party there are numerous of non-OEM EMS providers around the world who are in competition for supply contracts, which are generally of short duration. Therefore, it seems that there can be significant variations of the market shares as gaining a large OEM as customer can represent a sharp change in the market condition of the supplier (the EEA-wide market share of Foxconn between 2005 and 2007 varied from [10-20%] to [10-20%] for EMS).
26. Furthermore, customers of EMS providers are generally large multinational OEMs (such as Sony, HP, Apple, Lenovo, IBM), who are sophisticated buyers with the ability to drive the demand and switch their suppliers (OEMs procure EMS from a variety of third-party EMS providers). It cannot also be excluded that to a certain extent the possibility for some OEMs of switching the production in-house represents a competitive constraint both at worldwide and EEA-wide level.
27. Finally, even though some entities within the Foxconn group are involved in the production components for PCs and Servers, the transaction does not give rise to any vertically affected markets.

VI. CONCLUSION

28. 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