

***Case No COMP/M.5547 -  
KONINKLIJKE PHILIPS  
ELECTRONICS /  
SAECO  
INTERNATIONAL  
GROUP***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 17/07/2009

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Brussels, 17.7.2009

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No COMP/M.5547 – Koninklijke Philips Electronics N.V./ Saeco International Groups S.p.A  
Notification of 12/06/2009 pursuant to Article 4 of Council Regulation No 139/2004<sup>1</sup>.  
Publication in the Official Journal of the European Union No. 2009/C 140/03, 20 June 2009 page 3.**

1. On 12 June 2009, 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 Koninklijke Philips Electronics N.V. ("Philips", Netherlands) acquire within the meaning of Article 3(1)(b) of the Council Regulation sole control of Saeco International Group S.p.A. ("SIG", Italy) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the EC Merger Regulation but does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

**I. THE PARTIES AND THE OPERATION**

3. Philips is active in the research, development, manufacture and sale of a wide range of electronic products, including consumer electronics, domestic appliances, lighting products and medical systems.

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

4. SIG manufactures and sells espresso machines for consumer and professional use and vending machines for food, hot and cold beverages. SIG's current controlling shareholder is PAI Partners S.A.S. ("PAI"), a private equity investor<sup>2</sup>.
5. On 23 May 2009, the parties entered into an Investment Agreement pursuant to which Philips will subscribe a capital increase of SIG subject to certain conditions.
6. As a result of the transaction, Philips intends to acquire 100% of SIG's capital. Therefore the transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## II. COMMUNITY DIMENSION

7. Philips has generated a worldwide turnover<sup>3</sup> of approximately EUR 26 349 million in 2008. SIG's global turnover was EUR 486 million in 2008. The Community turnover of Philips and SIG in 2008 has respectively been of EUR [...] million and EUR [...] million. The parties did not generate more than two thirds of their Community-wide turnover within one and the same Member State. Therefore, the proposed transaction has a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation.

## III. COMPATIBILITY WITH THE COMMON MARKET

### A. THE RELEVANT MARKETS

#### 1. Preliminary remarks

8. The parties' activities overlap only with respect to coffee machines for consumers. Philips is not active in any of the other markets on which SIG is present, namely espresso machines for professional use and vending machines.
9. A coffee machine is an appliance which is used to prepare coffee out of coffee beans or coffee ground. The coffee machines sector is characterized by a wide array of products with different technological characteristics, different prices and different coffee drinks as an end result.
10. Philips identified the following main groups of coffee makers for consumers where one or the other party is active:
  - Drip filter coffee machine: coffee is produced by infusion whereby water flows through the ground coffee. In the traditional drip filter coffee machines, coffee is put in a filter by the user and heated water passes through the filter into a container.

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<sup>2</sup> PAI manages and advises four dedicated private equity funds (PAI LBO Fund, PAI Europe III, PAI Europe IV and PAI Europe V) which, in turn, hold stakes in various companies, including SIG. SIG's shares are currently (indirectly) held by the fund PAI Europe III.

<sup>3</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

- Pad filter coffee machines use pads containing the coffee ground as opposed to the coffee ground having to be put in a filter by the user. The consumer can choose from a variety of pads with different types of coffee and flavours and the result has a more aromatic, thicker consistency than filter coffee.
- Espresso coffee machines: are equipped with a pressure pump and coffee is extracted through a process of pressurized brewing (i.e. through pressure involving water heat control with a consistent temperature between 92 and 96 centigrade). According to the notifying party, the following types of espresso coffee machines can be distinguished:

i) Manual espresso machines: are the traditional espresso machines equipped with a removable handle, which require the user to manually carry out the various steps of preparing one or two cups of espresso. This machine requires manual cleaning and some expertise to get a good espresso coffee. Some of these machines are equipped with a milk frothing system.

ii) Pump portioned (closed) espresso machines: are technologically different from manual espresso machines in that they include a mechanism to place a hermetically closed capsule containing the espresso coffee. This machine is also very easy to use and clean. The machine also requires the use of capsules, which are relatively expensive as compared to espresso coffee beans or ground. Additional features (such as a milk frothing system) allow some variety of beverages such as cappuccino, café latte etc. The quality of the espresso is generally considered to be good.

iii) Full automatic espresso machines: handle all steps "from beans to cup" in the preparation of an espresso. The user has merely to fill in the beans and press a button. The technology used is relatively complicated and requires explaining to consumers. The machine has a relatively large variety of sophisticated options (choice of pressure level, touch screen display, etc) and is therefore able to produce several different beverages (ristretto, espresso, caffè latte, cappuccino). The machine requires maintenance on a regular basis and has relatively large dimensions. The espresso is considered to be of high quality.

11. Philips sells drip filter coffee machines, pad filter coffee machines (marketed under the Senseo brand) and has minor activities in the field of full automatic espresso machines. [...].
12. SIG sells manual, pump portioned and full automatic espresso machines.

## ***2. Relevant product market***

13. Philips submits that the relevant product market concerned by the transaction is the market for consumer espresso machines (where both parties operate) that should be distinguished from pad and drip filter coffee machines (where only Philips is present).
14. Philips submits that consumer espresso machines belong to a separate relevant product market from a market comprising both drip filter and pad filter coffee machines for the following reasons:

15. Technological differences between the two categories of products. Pad and drip filter coffee machines do not use pressure for preparation of the beverage<sup>4</sup>. If pressure is used, as in Philips pad machine Senseo, it is at a very low level of less than 2 bar. Conversely, espresso machines are equipped with a pressure pump. The level of pressure is very high, and often more than 9 bar (usually up to 15 bar).
16. Price differences between the types of machines. Philips submits that the average price of a drip filter coffee machine is EUR 35 (EUR 80 on average for pad machines). Conversely, a consumer espresso machine has an average price of EUR 217 (between EUR 115 on average for manual espresso machines, EUR 150 on average for pump portioned espresso machines and EUR 570 on average for full automatic espresso machines). The costs per servings also varies to a significant extent: cost per serving for espresso coffee would, on average, range between 20 and 30 eurocents (ranging from 18 to 28 for manual espresso machines, 30 to 50 for pump portioned espresso machines and 12 to 25 for full automatic espresso machines). Conversely, the cost per serving of pad and drip filter coffee machine would range between 3 and 8 eurocents.
17. Differences in consumers' preferences between drip filter coffee and espresso coffee. Espresso coffee is mainly made of Arabica beans, while pad and drip filter coffee is mostly made of Robusta beans, which are considered of lower quality than Arabica beans. The level of espresso coffee extraction per quantity of water in an espresso machine is high, resulting in a density, which is six times higher than in coffee prepared in pad or drip filter coffee machines. The level of caffeine in espresso coffee is much higher than in a coffee from a pad and drip filter coffee machine. This leads to a distinctly different taste, and consumers would have a clear preference for either end result. Further, the typical size of an espresso is 50 ml, whereas the average size of a coffee serving from a pad or drip filter coffee machine is 120 ml.
18. According to the notifying party, pad drip filter machines most likely belong to the same relevant product market as traditional drip filter coffee machines<sup>5</sup>. The main reasons would be the following: i) pad filter machines and traditional drip filter coffee machines have similar price ranges (EUR 35 on average for drip filter coffee machines and EUR 80 on average for pad filter coffee machines) ii) the taste of the coffee is the same iii) the cost per serving is very similar (between 3 and 5 eurocents for a drip filter coffee machines and between 6 and 8 eurocents for pad filter coffee machines). As mentioned above in the notifying party's view the only difference between these two types of coffee machines is that pad drip filter coffee machines use pads instead of coffee ground introduced manually in a filter by the user. The material of a pad is similar to that of a paper filter used in a drip filter coffee machine.

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<sup>4</sup> Philips' submission of 29 June 2009, p. 2.

<sup>5</sup> Philips' submission of 29 June 2009, p.4.

19. In its previous decision in case M.2621 Seb/Moulinex<sup>6</sup>, the Commission considered that electric filter coffee makers (also called drip filter coffee machines) and espresso machines belong to separate product markets. The decision describes electric filter coffee makers as appliances designed to heat the water, which then flows down through the ground coffee contained in a filter<sup>7</sup>. Espresso coffee machines for consumers are considered to be appliances derived from professional machines for making strong coffee and sometimes fitted with a pump for providing pressure<sup>8</sup>. The Commission did not discuss pad filter machines, which were still in their infancy at that time. Moreover, the parties to that transaction were not manufacturing or selling pad filter coffee machines.
20. The results of the market investigation conducted by the Commission in this case were not conclusive with respect to the exact scope of the product market. Drip filter machines were generally regarded as belonging to a separate market from espresso machines whereas views differed more concerning pad machines.
21. Several competitors argued that the market would be wider than suggested by Philips and that includes pad coffee machines and all types of espresso machines. The main reasons mentioned were the following:
  22. According to the International Electrotechnical Commission ("IEC") International Standards<sup>9</sup>, a distinction can be made between "filter coffee makers" and "espresso coffee makers" based on the use of pressure. In the line with these definitions, pad coffee machines such as Philips Senseo would belong to the espresso coffee makers product category given that pad filter coffee machines also use some pressure.
  23. Even if the level of pressure is much higher in espresso coffee machines, consumers would not always be aware, or not sensitive, to such technological differences between the products.
  24. Moreover, some competitors put into question the difference in the quality of coffee made from pad and espresso machines. In any event, the end result would be more influenced by the choice of coffee beans than the type of the coffee machines.
  25. Furthermore, Philips Senseo pad filter coffee machines are marketed and advertised by Philips as espresso type machines and there are "espresso" Senseo coffee pads available for the end consumers. The design of both pad drip machines and espresso machines is becoming more and more similar.

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<sup>6</sup> See decisions COMP/M.2621 Seb/Moulinex of 8 January 2002 ("the first decision") and 11 November 2003 ("the second decision"). The CFI annulled on 3 April 2003 the first decision with regard to the analysis undertaken in the decision regarding Finland, the United Kingdom, Ireland, Italy and Spain (Babyliss v. Commission, T-114/02 [2003] II-1279. Product market definitions with respect to coffee machines contained in the first decision were not disputed before the CFI and thus were maintained in the second decision.

<sup>7</sup> See COMP/M.2621 Seb/Moulinex of 11 November 2003, paragraph 20(h).

<sup>8</sup> See COMP/M.2621 Seb/Moulinex of 11 November 2003, paragraph 20(j).

<sup>9</sup> The International Electrotechnical Commission is the leading global organization that prepares and publishes International Standards for all electrical, electronic and related technologies.

26. Several competitors also claim that the main characteristics of espresso coffee are present in the coffee produced with a pad machine as opposed to the coffee produced from drip filter machines. Pad machines would offer quick extraction of the coffee, as well as a cream layer similar to the cream layer in the coffee prepared with espresso machines. Furthermore, both types of coffee machines provide single or double portion and a small coffee quantity. Therefore, they both respond to consumers' increasing preference for single serving coffee makers as opposed to drip filter coffee machines where large quantity of coffee is extracted.
27. Competitors also argue that there are overlaps in the price ranges between pad filter coffee machines and espresso coffee machines, especially manual and pump espresso machines which can be priced cheaper than some high quality pad machines.
28. On the other hand, the majority of the customers of the espresso machine manufacturers – mainly retailers - that responded in the market investigation agree with the view of the notifying party that pad machines and espresso machines belong to separate product markets.
29. These customers underline the differences in taste stemming from the different technical characteristics (most importantly the pressure) of the different coffee machines types. Also the different types of machines, according to these retailers, appeal to different customer groups as the filter pad coffee machines is seen as a family and more traditional beverage vs. a younger and coffee amateur target group for espresso machines. They consider that a small non temporary price increase for filter pad coffee machines would not be sufficient to induce end consumers to buy an espresso instead of a filter pad machine.
30. Although the market investigation pointed to important differences between pad machines and espresso machines it did not bring a clear-cut result with some competitors strongly favouring a broader market definition including pad machines. Pad machines such as Senseo clearly appear as an improvement of the traditional drip filter machines. They share some similarities with espresso machines that blur the distinction between traditional drip machines and espresso machines. For the purpose of this decision the precise product market delineation concerning pad machines can be left open since the transaction does not raise serious doubts under either alternative product market definition, namely under a broad product market definition comprising pad and espresso machines or under a narrower delineation where the different categories of espresso machines constitute different product markets.

### ***3. Relevant geographic market***

31. In its notification, Philips submits that the Commission can leave open the geographic scope of the market in the light of the marginal overlap between Philips and SIG under their proposed product market definition (i.e. in separate markets for drip (pad) filter machines and espresso machines). Philips also submits<sup>10</sup> that the geographic market of pad and drip filter machines as well as espresso machines is likely to be national or possibly broader including a group of countries with similar

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<sup>10</sup> Philips' submission of 18 June 2009, question 8, p.6.

coffee cultures. Philips refers to resale prices that typically differ among EEA countries and to consumer preferences that would differ between Northern and Southern Europe.

32. In Case M.2621 Seb/Moulinex<sup>11</sup>, the Commission considered the markets for small domestic appliances including espresso machines and drip filter machines as national in scope, in the light of strong differences between Member States in terms of the wholesale prices, consumer preferences, market shares of the main competitors and national distribution systems.
33. The market investigation showed that there are differences in national consumption patterns and established brands. For example, drip filter coffee is drunk more in Northern Europe and espresso coffee in Southern Europe. Furthermore, in German speaking countries customers have a strong preference for machines that can prepare milk added coffees. This is reflected in the significant differences in the relative importance of the different types of coffee makers across Member States. Consequently, different brands and suppliers are present to a different extent across Member States and the competitive situation between the Member States differs substantially.
34. Furthermore competitors and customers having responded to the market investigation perceive markets as national. Suppliers of coffee makers typically have local or national distribution and logistics structures. They typically provide after sales services nationally and the importance of the different types of distribution channels (e.g. buying groups, chains, hypermarkets, internet sales etc) vary significantly across Member States. The contracts between suppliers and customers are mainly of national scope. With respect to the largest customers present across different Member States, suppliers sometimes negotiate framework arrangements; however, commercial negotiations typically follow at national level.
35. Therefore for the purpose of the present decision markets will be analyzed on a national basis.

## **B. COMPETITIVE ASSESSMENT - UNILATERAL EFFECTS**

36. As mentioned above, SIG manufactures and sells all kinds of espresso machines (manual, pump portioned and full automatic) but no pad machines. Philips does not sell manual espresso machines or pump portioned espresso machines in the EEA. Therefore, the competitive assessment for espresso machine markets focuses on full automatic espresso machines, where the activities of the parties overlap.
37. At EEA level, the combined entity would hold a market share of [30-40]% (Philips: [0-5]%, Saeco: [20-30]%) in a market for full automatic espresso machines and [20-30]% (Philips: [10-20]%, Saeco: [10-20]%) in a market comprising pad drip machines and espresso machines. The parties would face competition from among others De Longhi ([20-30]% for full automatic machines and [10-20]% for pad and espresso machines), Seb ([5-10]% and [10-20]%) and Jura ([20-30]% and [10-20]%).
38. The proposed transaction will lead to affected markets for full automatic espresso machines in Austria, Germany, Denmark, Hungary, Latvia, Belgium and the

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<sup>11</sup> See COMP/M.2621 Seb/Moulinex of 8 January 2002, paragraph 30.



Netherlands. If a market encompassing filter pad machines and espresso machines is considered, France and the UK are affected.

## 1. Austria

39. Based on GFK<sup>12</sup> data submitted by Philips in the notification, the table below shows the parties' and their main competitors' shares on the Austrian market for full automatic espresso machines as well as shares on a market including pad machines and espresso machines in Austria.

<b><u>Austrian markets in value in 2008*</u></b>		
<b>Company</b>	<b>Full automatic espresso machines</b>	<b>Espresso machines + pad machines</b>
Philips	[0-5]%	[0-5]%
SIG	[40-50]%	[30-40]%
<b>Combined</b>	<b>[40-50]%</b>	<b>[30-40]%</b>
De Longhi	[20-30]%	[20-30]%
Jura	[20-30]%	[10-20]%
Seb		[0-5]%
Turmix		[10-20]%
AEG-Electrolux	[0-5]%	
Bosch Siemens		[0-5]%
Market size (000's €)	57,968	87,272

\* Source : GFK<sup>13</sup>.

40. Post merger, SIG would remain the market leader in the full automatic espresso market, with a market share of [40-50]%. However, the increment brought about by the present transaction is extremely low ([0-5]%) and the merger would therefore not substantially modify the supply structure of espresso machines in Austria.

41. In a market including pad and espresso machines, the combined entity would have a market share of [30-40]%. Under this scenario, the overlap between the parties' activities would be slightly more significant ([0-5]%). However, several significant competitors are active, in particular De Longhi ([20-30]%), Jura ([10-20]%), Turmix ([10-20]%), Seb and Bosch-Siemens ([0-5]% each). In addition, according to GFK data, De Longhi's market share has significantly increased between 2006 and 2008 from [10-20]% to [20-30]%.

<sup>12</sup> GFK ("Gesellschaft für KonsünerForschung") is one of the leading market research companies in the world. It provides data for the coffee and espresso machines markets which have been confirmed by market participants in the investigation.

<sup>13</sup> Total market size and market shares are measured by GFK on the basis of sales made to retailers to consumers at the retail prices. Given that there are no private label products for coffee machines, these market shares at retail level are a good proxy for market shares at wholesale level where suppliers sell coffee machines to retailers.

42. The large majority of respondents to the market investigation expressed no concerns as regards the competitive impact of the transaction in Austria. They submit that the closest competitor of SIG is De Longhi rather than Philips, whose presence in the espresso segment is limited. With respect to Philips, the market investigation showed that the closest competitor in Austria is Bosch-Siemens's Tassimo system.
43. In the light of the above, considering the insignificant change brought about by the proposed transaction and the fact that the parties cannot be considered the closest competitors, the transaction does not raise serious doubts as to its compatibility with the common market as regards the Austrian markets regardless of the precise product market definitions.

## 2. Germany

44. Based on GFK data submitted by Philips in the notification, the table below shows the parties' and their main competitors' shares on the German market for full automatic espresso machines as well as shares on a market including pad machines and espresso machines.

<b>German markets in value in 2008*</b>		
<b>Company</b>	<b>Full automatic espresso machines</b>	<b>Espresso machines + pad machines</b>
Philips	[0-5]%	[10-20]%
SIG	[20-30]%	[10-20]%
<b>Combined</b>	<b>[20-30]%</b>	<b>[30-40]%</b>
Jura	[30-40]%	[20-30]%
De Longhi	[20-30]%	[20-30]%
Bosch Siemens	[5-10]%	[5-10]%
AEG-Electrolux	[0-5]%	[0-5]%
Seb	[0-5]%	[5-10]%
Market size (000's €)	309,945	493,180

\* Source : GFK.

45. Philips is a small player in the espresso market in Germany with a market share in full automatic espresso machines of [0-5]%. SIG is currently number 3 with a share of [20-30]% facing competition from market leader Jura ([30-40]%) from Switzerland and De Longhi ([20-30]%) as well from as from smaller competitors with market shares below [10-20]% (Bosch-Siemens, AEG Electrolux and Seb). In view of Philip's limited market presence in that market, the transaction will not substantially change the market structure for espresso machines in Germany.
46. In a market including pad and espresso machines, Philips has a stronger position resulting from significant sales of the Senseo pad machine. By acquiring SIG, Philips will become the new market leader in Germany with a market share of [30-40]%. Jura ([20-30]%) and De Longhi hold market shares in the same range whilst Seb ([5-10]%) and Bosch-Siemens ([5-10]%) are smaller players.

47. Respondents in the market investigation have indicated that Philips and SIG are not close competitors in Germany, neither for full automatic espresso machines nor in a market including also pad machines. In Germany, Jura is considered by retailers as a must-have brand and the closest competitor of SIG in full automatic espresso machines. With respect to De Longhi, GFK data submitted by the parties showed that its market share has significantly increased between 2006 and 2008 (from [5-10] to [20-30]% in a market including pad and espresso machines).
48. This limited substitutability between pad drip and espresso machines in Germany is illustrated by a Philips' internal document regarding the German market<sup>14</sup> which states that: "Senseo coffee is positioned between coffee and espresso [...]". For full automatic machines [...] "the Full automatic is the Mercedes of the espresso machines".
49. Finally, the overwhelming majority of respondents to the market investigation did not express any concerns with respect to the impact of the transaction in Germany.
50. Therefore the transaction does not raise serious doubts as to its compatibility with the common market as regards the German markets regardless of the precise product market definitions.

### 3. Denmark

51. Based on GFK data submitted by Philips in the notification, the table below shows the parties' and their main competitors' shares on the Danish market for full automatic espresso machines as well as shares on a market including pad machines and espresso machines in Denmark.

<b>Danish markets in value in 2008*</b>		
<b>Company</b>	<b>Full automatic espresso machines</b>	<b>Espresso machines + pad machines</b>
Philips	<[0-5]%	[20-30]%
SIG	[20-30]%	[10-20]%
<b>Combined</b>	<b>&lt;[20-30]%</b>	<b>[40-50]%</b>
Bosch Siemens	[40-50]%	[20-30]%
Seb	[10-20]%	[10-20]%
De Longhi	[5-10]%	[0-5]%
Miele	[0-5]%	
C3	[0-5]%	
Market size (000's €)	1,403	4,418

\* Source : GFK.

52. The Danish market for full automatic espresso machines is particularly small and the transaction will not remove a significant competitor in this market. Bosch-Siemens is market leader with a share of [40-50]% and the new entity will face also strong competition from Seb ([10-20]%) and De Longhi ([5-10]%). Danish buyers of

<sup>14</sup> Philips'project "Espresso qualitative research", March 2005.

espresso machines having responded to the market investigation confirmed that the full automatic espresso market is nascent in Denmark but they expect significant growth and strong competition in the coming years.

53. In a market comprising pad and espresso machines, the new entity would have a significant market position ([40-50]%) far ahead of its closest competitors Bosch-Siemens ([20-30%]) and Seb ([10-20]%).
54. Despite this relatively significant market share, none of the respondents to the market investigation expressed concerns as regards the impact of the transaction in Denmark. Competitors and customers identified Bosch-Siemens or Seb as the closest competitors of the parties in the espresso markets. It also appears that Philips and SIG's products are not considered as must-carry products by Danish retailers.
55. Furthermore consumers in Denmark appear to favour "long coffee" over espresso coffee. Drip coffee machines still represent 85% of the sales of coffee makers in the wider sense (traditional drip, pad and espresso machines). Indeed, some brands such as Melitta, in drip filter coffee are considered as must have brands by retailers given that the overwhelming majority of coffee makers sold fall into this category. Furthermore, retailers do not seem to consider that Philips is competing closely with SIG's products given that they identify Melitta as the strongest competitor of Philips in the country.
56. As mentioned above, retailers expect the use of espresso machines to grow significantly among Danish consumers. This potential for growth should enable competitors to disrupt any attempt by the merged entity to exercise market power, through increase of their offer or introduction of new products (such as Bosch-Siemens's pad machines Tassimo which is already available in neighbouring Germany). None of the respondents to the market investigation expressed concerns with respect to the competitive impact of the transaction in Denmark.
57. Therefore the transaction does not raise serious doubts as to its compatibility with the common market as regards the Danish markets regardless of the precise product market definitions.

#### **4. Hungary**

58. Based on GFK data submitted by Philips in the notification, the table below shows the parties' and their main competitors' shares on the Hungarian market for full automatic espresso machines as well as shares on a market including pad machines and espresso machines in Hungary.

<b>Hungarian markets in value in 2008*</b>		
<b>Company</b>	<b>Full automatic espresso machines</b>	<b>Espresso machines + pad machines</b>
Philips	<[0-5]%	[10-20]%
SIG	[40-50]%	[20-30]%
<b>Combined</b>	<b>&lt;[40-50]%</b>	<b>[30-40]%</b>
De Longhi	[10-20]%	[10-20]%
Seb	[10-20]%	[5-10]%
Jura	[5-10]%	[0-5]%
AEG Electrolux	[0-5]%	
Szarvasi		[10-20]%
Market size (000's €)	2,367	7,662

\* Source : GFK.

59. In full automatic espresso machines, SIG holds already a strong position in Hungary but Philips' sales are negligible (€ [...] in 2008 at wholesale level, market share below [0-5]% at retail level). Therefore the transaction does not substantially change the market structure for full automatic espresso machines in Hungary where De Longhi and Seb also have significant and comparable market shares.
60. In a product market including pad and espresso machines, SIG would also be the market leader with a more limited share of [30-40]%. The new entity will face strong competition from De Longhi ([10-20]%), local player Szarvasi ([10-20]%) which supplies exclusively manual espresso machines and Seb ([5-10]%). None of the respondents to the market investigation expressed concerns with respect to the competitive impact of the transaction in Hungary.
61. Therefore the transaction does not raise serious doubts as to its compatibility with the common market as regards the Hungarian markets regardless of the precise product market definitions.

## **5. Latvia**

62. In Latvia, the parties' activities overlap only in the full automatic machines market since Philips does not sell Senseo pad machines in Latvia.
63. Based on a GFK report submitted by the parties after the notification<sup>15</sup>, Philips estimates that the market share of SIG for full automatic espresso machines in Latvia is at most [30-40]%. Data submitted in this report also shows that Philips's market share in Latvia would be negligible (below [0-5]%).
64. According to this report, the main player in full automatic espresso machines in Latvia is Jura which account for approximately [50-60]-[60-70]% of the market. De Longhi and AEG-Electrolux are also present with market shares, according to Philips, between [10-20] and [10-20]% and De Longhi has been identified by one Latvian

<sup>15</sup> See "GFK retail and technology, hot beverage makers, Latvia panel market" submitted by the parties on 6 July 2009.

customer as the closest competitor of SIG. Respondents to the market investigation did not express any concerns as regards the competitive impact of the transaction in Latvia.

65. In the light of the above, the transaction does not raise serious doubts as to its compatibility with the common market with respect to the full automatic espresso machines market in Latvia.

## 6. Belgium

66. Based on GFK data submitted by Philips in the notification, the table below shows the parties' and their main competitors' shares on the Belgian market for full automatic espresso machines as well as shares on a product market including pad machines and espresso machines in Belgium.

<b>Belgian markets in value in 2008*</b>		
<b>Company</b>	<b>Full automatic espresso machines</b>	<b>Espresso machines + pad machines</b>
Philips	[0-5]%	[50-60]%
SIG	[30-40]%	[5-10]%
<b>Combined</b>	<b>[40-50]%</b>	<b>[60-70]%</b>
De Longhi	[30-40]%	[10-20]%
Seb	[10-20]%	[10-20]%
Bosch Siemens	[0-5]%	[0-5]%
Magimix		[5-10]%
Inventum		[0-5]%
Market size (000's €)	9,468	37,938

\* Source: GFK.

67. In full automatic espresso machines, the new entity will remain the market leader in Belgium with a market share of [40-50]% but the increment brought about by the transaction is relatively small ([0-5]%). The parties are not considered by Belgian retailers as close competitors in the full automatic espresso machines market, given the strong presence of alternative suppliers such as De Longhi ([30-40]%) and Seb ([10-20]%) which enjoy strong brand recognition and wide availability in stores.
68. On the other hand, on a product market including espresso machines and pad machines, the parties would hold a very high market share ([60-70]%) far ahead of their nearest competitors De Longhi ([10-20]%), Seb ([10-20]%) and Magimix ([5-10]%).
69. The main reason for these higher market shares in a wider market lies in the fact that Philips' Senseo machines represent the overwhelming majority of all pad machines sold in Belgium and that in Belgium pad machines are very popular compared to espresso machines. For example, according to GFK data, Senseo machines account for 78% of all pad and espresso machines (including manual, pump portioned and full automatic) in volume sold in Belgium in 2008. Senseo appears to be a "must-carry"

product in Belgium and this is reflected in Philips' market share. Philips itself underlines that "40% of Belgian households use a Senseo system at home"<sup>16</sup>.

70. The market investigation highlighted that this new market structure triggers concerns from several competitors of the merging parties. These respondents considered that the transaction would eliminate a strong alternative to Philips in Belgium.
71. With respect to these competition concerns expressed by several respondents, it should first be noted that no Belgian buyer of coffee machines having responded in the market investigation considers that Senseo machines and espresso machines sold by SIG are in direct competition with each other. For example, one large Belgian retailer explained that in his view the coffee maker sector should be segmented in three markets: filter machines for price-driven consumers, portioned (either filter pad or espresso) machines for consumers interested in quality and price and full automatic machines for coffee lovers. In this retailers' view, Senseo machines (which belong to the first or the second category) and full automatic espresso machines do not cater to the same consumers' needs. Some retailers mentioned that Senseo machines compete more directly with portioned pump espresso machines, such as Nespresso machines manufactured by De Longhi, Seb and Magimix<sup>17</sup>.
72. This opinion about competitive pressure between different coffee machines is widely shared by the majority of Belgian retailers. They indicated that SIG's closest competitor with respect to espresso machines are De Longhi or Magimix as those companies produce similar types of espresso machines that have globally the same positioning. With respect to Philips' closest competitor, several respondents mentioned Seb with its brand Krups. Whilst several respondents acknowledge that Philips is a very strong brand, they do not consider that this applies to espresso machines but rather to traditional drip and pad machines.
73. The fact that Senseo machines and espresso machines are remote competitors is further documented by the price level differences of the most widely sold Philips and SIG products in Belgium. The three most widely sold Senseo machines in Belgium were priced on average [50-100]€ (HD [...], [...] % of Senseo sales), [50-100]€ (HD [...], [...] % of Senseo sales) and [50-100]€ (HD [...], [...] % of Senseo sales). Conversely, the three most sold SIG machines were priced on average [400-450]€ ([...], [...] % of SIG's sales), [800-850]€ ([...], [...] % of SIG's sales) and [600-650]€ ([...], [10-20] % of SIG's sales)<sup>18</sup>.
74. In the light of these price differences, it can therefore be expected that if Philips were to attempt to increase the price for SIG's espresso machines, customers would rather switch to competing espresso machines providers (such as De Longhi or Magimix), which are much closer substitutes in terms of price ranges and functionalities.

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<sup>16</sup> Philips' press release on Senseo, June 2008.

<sup>17</sup> Without taking into account the price of the coffee servings, which are on average three to five times higher for a Nespresso machine than for a Senseo machine.

<sup>18</sup> "BE/NL coffee makers by model", submitted by Philips in response to the Commission's request for information dated 3 July 2009.

75. Similarly, if post merger Philips were to attempt to increase the price of Senseo machines, these machines' potential customers would not in all likelihood migrate to full automatic espresso machines in the light of the already existing price differences.
76. Information received by the parties furthermore indicates that no espresso machines in Philip's or SIG's product range are comparable to pad drip machines such as Senseo. While manual espresso machines may be relatively close in terms of price to Senseo, they do not offer comparable ease of use as it is quite difficult and complicated to correctly operate a manual espresso machine. Conversely, while pump portion espresso machines may offer the same ease of use, they are generally priced at the much higher level and the price per cup is significantly higher than that of a Senseo machine<sup>19</sup>. Therefore it is not expected that customers would switch to these manual or pump portioned machines. In any event SIG's presence in the manual espresso machines is extremely limited (less than [0-5]% of all manual espresso machines sold in Belgium) and it holds an even smaller market share for pump portioned espresso machines.
77. In addition, new entry of a coffee machine is expected in the near future, as Seb is planning to launch in September 2009 a new pump portioned espresso machine, Dolce Gusto. In the countries where they are already available (France, Germany, Italy, UK Austria, the Netherlands, Spain, Portugal, Czech Republic, Slovakia and Poland) Dolce Gusto machines are priced at the lower segment of pump portioned espresso machines.
78. In conclusion, the market investigation showed that if Philip's pad filter machine Senseo already holds a significant market share and strong brand recognition in Belgium, the transaction would not remove the closest alternative to Senseo for retailers and end-consumers under a broad product market definition including pad and espresso machines or under a narrower delineation for full automatic espresso machines.
79. Based on the above it is concluded that the transaction does not raise serious doubts as to its compatibility with the common market as regards the Belgian markets regardless of the precise product market definitions.

## **7. The Netherlands**

80. Based on GFK data submitted by Philips in the notification, the table below shows the parties' and their main competitors' shares on the Dutch market for full automatic espresso machines as well as shares on a product market including pad machines and espresso machines in the Netherlands.

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<sup>19</sup> Philips' submission of 29 June 2009, p. 4.



<b>Dutch markets in value in 2008*</b>		
<b>Company</b>	<b>Full automatic espresso machines</b>	<b>Espresso machines + pad machines</b>
Philips	[0-5]%	[30-40]%
SIG	[20-30]%	[5-10]%
<b>Combined</b>	<b>[20-30]%</b>	<b>[40-50]%</b>
De Longhi	[20-30]%	[10-20]%
Bosch Siemens	[10-20]%	[10-20]%
Seb	[10-20]%	[10-20]%
Jura	[5-10]%	
Magimix		[5-10]%
Market size (000's €)	22,023	68,987

\* Source : GFK.

81. In full automatic espresso machines, the new entity will rank number 2 in the Netherlands with a market share of [20-30]% but the increment brought about by the transaction is relatively small ([0-5]%). The parties are not considered by Dutch retailers as close competitors in the full automatic espresso machines market, given the strong presence of alternative suppliers such as market leader De Longhi ([20-30]%), Bosch-Siemens ([10-20]%) and Seb ([10-20]%) which enjoy strong brand recognition and wide availability in stores.
82. On a market including espresso machines and pad machines, the parties would hold a high market share ([40-50]%) far ahead of their nearest competitors De Longhi ([10-20]%), Seb ([10-20]%) and Bosch-Siemens ([10-20]%).
83. Similarly to Belgium, the main reason for these higher market shares in a wider market lies in the fact that Philips' Senseo machines represent the overwhelming majority of all pad machines sold in the Netherlands and that in these countries pad machines are very popular compared to espresso machines. According to GFK data, Senseo machines account in volume for 61% of all pad and espresso machines (including manual, pump portioned and full automatic) sold in the Netherlands in 2008. Senseo appears to be a "must-carry" product in the Netherlands and this is reflected in Philips' market share. For example one retailer submitted that Philips enjoys a strong position in the Netherlands due to "*its unique Senseo system*"<sup>20</sup> whilst another dealer indicated that Philips "*dominates the pad filter group*"<sup>21</sup>.
84. Several competitors of the merging parties explained in the market investigation that the transaction would eliminate a strong alternative to Philips in the Netherlands.
85. However, similarly to Belgium, Dutch retailers submitted during the market investigation that SIG's closest competitor with respect to espresso machines are De Longhi, Seb or Bosch-Siemens which have a comparable position in full automatic espresso machines. With respect to Philips' closest competitor, several respondents

<sup>20</sup> Answer to Question 35 of the questionnaire sent to Dutch customers on 19 June 2009.

<sup>21</sup> Answer to Question 38 of the questionnaire sent to Dutch customers on 19 June 2009.

mentioned Melitta or Inventum which are filter pad suppliers. For these retailers, Senseo and espresso machines do not target the same consumers: Senseo system is still a "typical Dutch way of coffee making" while espresso machines appeal more to younger people who have travelled or are more active.

86. The fact that Senseo machines and espresso machines are distant competitors is further documented by the price level differences of the most widely sold Philips and SIG products in the Netherlands. The three most widely sold Senseo machines in the Netherlands were priced on average [50-100]€ (HD [...], [...] % of Senseo sales), [50-100]€ (HD [...], [...] % of Senseo sales) and [150-200]€ (HD [...], [...] % of Senseo sales) which is a new product launched in 2008. Conversely, the three most widely sold SIG machines were priced on average [250-300] € ([...], [...] % of SIG's sales), [350-400]€ ([...], [...] % of SIG's sales) and [550-600] € ([...], [...] % of SIG's sales)<sup>22</sup>.
87. In the light of these price differences and the different features of the coffee machines, it can therefore be expected that if Philips were to attempt to increase the price for SIG's espresso machines, customers would rather switch to competing espresso machines providers (such as De Longhi or Seb), which are much closer substitutes in terms of price ranges and functionalities.
88. Similarly to Belgium, if post merger Philips were to attempt to increase the price of its pad filter machine Senseo, these machines' potential customers would not in all likelihood migrate to full automatic espresso machines in the light of the already existing price differences. For the same reasons as in Belgium, customers would not switch to manual espresso machines (SIG sells a very few manual espresso machines in the Netherlands) or pump portioned espresso machines (where SIG is almost absent).
89. In conclusion, the market investigation showed that Senseo holds a significant market share and strong brand recognition in the Netherlands. However, several important competitors remain on the market and most importantly the transaction would not remove the closest alternative to Senseo for retailers and end-consumers under a broad product market definition including pad and espresso machines or under a narrower delineation for full automatic espresso machines.
90. Therefore the transaction does not raise serious doubts as to its compatibility with the common market as regards the Dutch markets regardless of the precise product market definitions.

## **8. France**

91. With respect to France, the activities of the parties overlap only if a relevant product market including pad and espresso machines is considered since Philips does not sell espresso machines in France.
92. On this potential market, the combined estimated market share of the parties in France would be [30-40]% (Philips [30-40]%, SIG [0-5]%). The increment brought about by the present transaction is limited and the new entity would face strong

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<sup>22</sup> "BE/NL coffee makers by model", submitted by Philips in response to the Commission's request for information dated 3 July 2009.

competition from Seb ([20-30]%), Magimix ([10-20]%), Bosch-Siemens ([10-20]%) and De Longhi ([5-10]%). No respondents to the market investigation expressed concerns with respect to the competitive impact of the transaction in France.

93. In the light of the above, the transaction does not raise serious doubts as to its compatibility with the common market with respect to a broad market including full automatic espresso machines and pad machines in France.

## **9. United Kingdom**

94. Similarly to France, the activities of the parties overlap in the UK only if a relevant product market including pad and espresso machines is considered since Philips does not sell espresso machines in the UK.

95. On this potential market, the combined market share of the parties in the UK would be [40-50]% (Philips [20-30]%, SIG : [20-30]%). All the main players in the coffee machines market (De Longhi, Seb, Bosch-Siemens) are active in this country.

96. In the UK market, SIG does not sell full automatic espresso machines but (mainly) manual espresso machines. As indicated above these are closer to pad machines in terms of price ranges but more difficult to use and have to be cleaned on a regular basis. For those reasons, customers do not normally consider manual and pad machines as alternatives and Philips and SIG cannot be considered as close competitors in the UK.

97. Furthermore, the UK market for pad and espresso machines is very small (€ 7.8 million), comparable in size to the Hungarian or Slovakian markets. Consumption of fresh ground coffee is still much lower in the UK than in the rest of Europe which indicates there is still plenty of potential growth in the market. According to Euromonitor, sales of coffee machines are expected to grow at an average annual rate of 16%.<sup>23</sup> This potential for growth should enable competitors to disrupt any attempt by the merged entity to exercise market power, through increase of their offer or introduction of new products.

98. In the light of the above, the transaction does not raise serious doubts as to its compatibility with the common market with respect to a broad market including full automatic espresso machines and pad machines in the United Kingdom.

## **C. COMPETITIVE ASSESSMENT - CONGLOMERATE EFFECTS**

99. Some competitors have raised concerns that the transaction could lead to conglomerate/portfolio effects. According to previous Commission decisions, conglomerate concerns may arise from the parties' significant portfolio of brands and the fact that the parties have large market shares in numerous product markets where their activities do not overlap<sup>24</sup>.

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<sup>23</sup> See "*Coffee market; the rich flavour*" dated 9 November 2007 available here: [http://www.independentelectricalretailer.co.uk/news/fullstory.php/aid/296/Coffee\\_makers:\\_The\\_rich\\_flavour.html](http://www.independentelectricalretailer.co.uk/news/fullstory.php/aid/296/Coffee_makers:_The_rich_flavour.html).

<sup>24</sup> See for example decision COMP/M.3732 Procter & Gamble/Gillette of 15 July 2005.

100. The main potential anticompetitive effect in the context of a conglomerate merger is that of foreclosure. The combination of products in related markets may confer the merged entity the ability to leverage a strong market position from one market to another by means of tying or bundling or other exclusionary practices. Tying and bundling as such are common practices which often do not lead to anticompetitive consequences. Nevertheless in certain circumstances, these practices may lead to a reduction in actual or potential rivals' incentive or ability to compete<sup>25</sup>.
101. While the overwhelming majority of retailers having responded to the market investigation have not raised any objections to the merger, some competitors have expressed concerns with respect to possible anticompetitive effects related to an increased portfolio of the parties and their strong presence on a number of markets of domestic appliances. They argue that a recent reorganization within Philips whereby its Consumer Lifestyle division incorporated a greater range of products namely Domestic Appliances, Personal Care and Consumer Electronics would have been carried out with the underlying objective to offer key retailers a coordinated offer for Philips' range of products, thereby creating commercial synergies between, for example, brown goods (televisions, DVD players) and kitchen appliances such as coffee machines.
102. In addition, these competitors have also argued that in the coffee machines market the merged entity would be able to leverage its strong position in pad machines (with its brand Senseo) particularly in Belgium and the Netherlands to increase the sales of SIG espresso machines. Given the limited shelf space allocated to these machines, such practices would according to these respondents lead to the marginalization of the merged entity's espresso machines competitors. Competitors claimed that the merged entity will be able to offer a range of coffee machines that cannot be matched by its competitors. According to these respondents, this would especially be true given that Philips has been selected as a "category captain"<sup>26</sup> in the coffee machines sector by several retailers including [...].
103. The Commission has analyzed the submissions of these competitors and assessed whether (1) the positions of the parties in other neighboring markets notably in Belgium and the Netherlands could lead to anticompetitive effects in the coffee machines sector and whether (2) Philips' strong share in the pad machines notably in Belgium and the Netherlands could lead to the marginalization of rivals in espresso machines through bundling or tying or other exclusionary practices.

## **1. Risks related to the presence of Philips in a number of neighboring markets**

104. The market investigation did not provide any evidence that Philips' presence in neighbouring markets is likely to lead to anticompetitive effects.

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<sup>25</sup> "Guidelines on the assessment of non-horizontal mergers under the Council Regulation of the control of concentrations between undertakings", OJ C 265/2008, paragraph 93.

<sup>26</sup> In practice, the task of a category manager or category captain is to provide retailers with information on product and shopper habits in relation to a specific category as defined by the retailer. A category captain will provide a detailed study called "plan-o-gram" on how to place and assort the products on the shelves. This will be done regularly upon request of the retailers.

105. At the request of the Commission the notifying party submitted market shares based on GFK data for its consumer products in the Member States where its market presence is the strongest (Belgium, the Netherlands) as well as in Italy<sup>27</sup>.
106. Philips' share of sales exceeds [50-60]% only with respect to drip filter coffee and men shavers in Belgium and the Netherlands and only with respect to men shavers in Italy. In all other product markets in Belgium its market share does not exceed [30-40]% except for female depilation appliances (where Braun is the strongest supplier) and male grooming appliances. The same is true for Italy. In the Netherlands, there are only three markets where Philips' share exceeds [30-40]%, namely female depilation products (where Braun has a higher share), garment products (where Seb has a comparable share) and male grooming appliances. This suggests that Philips does not own must have brands in Belgium, Netherlands and Italy across a significant range of markets. Considering all the consumer lifestyle products, Philip's share of sales in Belgium is [30-40]%, in the Netherlands [20-30]% and in Italy [10-20]%.
107. Not only does this suggest that Philips does not own must have brands in Belgium, Netherlands and Italy across a significant range of markets, but this also shows that there are clear alternatives to Philips' products. Thus, the portfolio of products that Philips has to offer can be replicated by the retailers with purchases of products from other producers. Examples of producers that have important (albeit more limited) ranges of products include Bosch-Siemens, SEB, AEG Electrolux and De Longhi.
108. Concerning bundling rebates, the parties submit information about their rebate policy, which is not related to the purchase of a given mix or portfolio of products. [...].
109. No evidence in the market investigation suggests that Philips attempted in the past to use its portfolio of products so that it would foreclose its rivals. The parties also explain that the internal reorganization of Philips will not affect the distribution strategy of Philips. Internally different categories [...] are not connected to [...] other categories.
110. Furthermore, the addition of SIG's turnover to the total turnover of Philips in Belgium and the Netherlands is very small and therefore it seems unlikely that the transaction will change the ability of the merged entity to engage in a foreclosure strategy. Indeed, SIG's sales in Belgium and the Netherlands are approximately € [0-100] million and € [0-100] million respectively whereas Philips' turnover in these countries is € [above 400] million and € [above 1000] million respectively<sup>28</sup>.

## **2. Risks related to the strong presence of Philips in the pad machines sector**

111. The Commission has also carefully examined whether the merger would enable the parties to adopt a foreclosure strategy using bundling/tying practices within the coffee machine markets. Indeed during the market investigation some retailers suggested that Philips Senseo pad coffee machines is a must have product, especially in Belgium and the Netherlands.

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<sup>27</sup> Philips' submission of 8 July 2009.

<sup>28</sup> Form CO, annexes 3.3A and 3.3B.

112. Regarding pure bundling, anticompetitive conglomerate effects are unlikely to arise if products are not bought simultaneously or by the same customers. In this respect it should be noted that Philips already has minor activities in full automatic espresso machines. Philips submits that there is a significant pool of retailers that do not buy Senseo and full automatic espresso machines. Philips claims that a [20-40]% of Philips Senseo sales are made through retailers that do not sell espresso machines. Also, there are specialty stores which only sell espresso machines; these stores represent 15% of sales of espresso machines in the Netherlands and 5-10% in Belgium.
113. Moreover, internet sales (i.e. sales directly to the end consumers who would typically not purchase both products at the same time) amount to approximately 15% of full automatic sales in the Belgium and the Netherlands.
114. Furthermore, during the market investigation, retailers have stated that they would be unwilling to rely solely on one supplier for their coffee machines and they would instead offer, post merger, a choice out of a variety and range of different products from different suppliers. They claim that they would not limit their assortment based on other considerations than customer choice and plan to keep offering an assortment which represents the market. A significant share of these retailers also mentioned some competitors of the parties as being must have brands in the field of coffee espresso machines such as Jura or De Longhi.
115. It also seems unlikely that Philips would find it profitable to extend its market power from a low end product such as Senseo to a high end product such as full automatic espresso machines when goods are substitutable for the end consumer and differentiated in terms of quality. In addition, such bundling strategy can only take place with respect to customers that purchase both types of coffee machines, which as indicated above is restricted.
116. With respect to the rebates policy, as mentioned above, Philips's rebate policy is not related to the purchase of a given mix or portfolio of products. [...].
117. Furthermore, Philips submit that [...] in its internal organisation. [...] following the transaction, SIG's espresso machines will be a separate category from Senseo ([...]) machines [...].
118. With respect to the shelf space, the fact that there is inevitably limited shelf space is not in itself an element which would lead to the marginalization of competitors. The allocation of shelf space is a tool used by retailers to provide in the shelves the products that offer the higher value for the end consumers. Furthermore, as some retailers suggested, if the margins they would enjoy in coffee and espresso machines increase they would be willing to extend their coffee and espresso machine shelf space to the detriment of other product categories. In other words, not only that the different coffee machines compete with each other for shelf space but they also compete with other unrelated products that may replace the space for coffee machines in case their contributions to the retailers' margins are more valuable, which further limits the scope for any price increases.
119. With respect to category management in retail shops, the category "captain" does not intervene in the shelves to physically place its or its competitors' products. It is the retailer, [...], that decides how to organize its shelves after receiving Philips' proposal. Therefore the retailer is able to exert effective control over Philips'

recommendations. Besides, retailers have indicated that they will be willing in the future to maintain several suppliers for their coffee and espresso machine requirements and that their multi-sourcing strategy will not be altered as the result of the merger.

120. In the light of the above, there is no evidence to suggest that the merger would provide the ability and incentive to the parties to engage in anticompetitive foreclosure to the detriment of consumers through tying or bundling practices. Therefore it can be concluded that the transaction does not raise serious doubts as regards conglomerate effects, either related to the presence of Philips in neighboring markets for Consumer Lifestyle or in the pad machine market.

#### **IV. CONCLUSION**

121. 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