EN

Case No COMP/M.5693 -
HAL HOLDING/
SAFILO GROUP

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 11/12/2009

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.5693 - HAL HOLDING/ SAFILO GROUP Notification of 9 November 2009 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 9/11/2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("EC Merger Regulation") by which the undertaking Hal Holding N.V. ('Hal', the Netherlands Antilles) acquires within the meaning of Article 3(1)(b) of the EC Merger Regulation control of the whole of the undertaking Safilo Group S.p.A. ('Safilo', Italy) by way of purchase of shares and securities.

I. THE PARTIES AND THE CONCENTRATION

2. HAL is an international investment group with stakes in companies operating worldwide, mainly in optical retailing. Through its indirect subsidiary HAL Investments B.V., HAL holds controlling stakes in a number of optical retailers active primarily in Europe, including Pearle Europe B.V. (a 98.7% subsidiary of HAL) and Grand Vision S.A. (a 99.8% subsidiary of HAL). Combined (including franchise stores), the optical retail activities of HAL comprise over 3,700 stores across Europe.

3. Safilo is a worldwide supplier of spectacles, sunglasses and fashion eyewear, with manufacturing and distribution activities in more than 130 countries. Safilo manufactures and distributes eyewear under both owned brands and licence contracts on behalf of major fashion brands.

1 OJ L 24, 29.1.2004 p. 1.

4. The transaction will result in HAL acquiring sole control over Safilo. Only3T[2] is currently the main shareholder of Safilo (39.9%). Based on the relative majority that Only3T has consistently obtained at Safilo's shareholders meetings, it has exercised *de facto* sole control over the latter in the last financial years. Following the transaction, HAL will hold a stake in Safilo ranging between 37.23% and 49.99% of the outstanding capital. HAL intends to acquire 60% of the Safilo's outstanding debt notes. Furthermore, there will be a two stage capital increase. Therefore, it will acquire *de facto* sole control over the company in the same fashion it has been exercised in the last years by Only3T.

5. Therefore, the operation constitutes a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.

II. COMMUNITY DIMENSION

6. The undertakings concerned have an aggregate worldwide turnover of more than EUR 2.5 billion[3] (HAL: EUR […] million; Safilo: EUR […] million). In each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million (Belgium, France, Germany, Italy, Netherlands, Spain, UK). In each of at least three Member States included for the purpose of the second point above, the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million (France, Germany, Italy, Spain, UK). The aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 100 million (HAL: EUR […] million; Safilo: EUR […] million) for 2008. None of the undertakings concerned achieve more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The notified transaction therefore has a Community dimension. The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

PRODUCT MARKET DEFINITION

7. The notifying parties submit that the relevant product markets are: (a) the wholesale supply of sunglasses, (b) the wholesale supply of prescription frames and c) the optical retailing of all types of eyewear for both eye protection (sunglasses) and eye correction (frames), as well other optical related products and services (e.g. contact lenses, cleansing liquids, etc.). Since a horizontal overlap and vertical relationship occur only in the markets for sunglasses and prescription frames, only the markets at wholesale and retail level will be analysed. However, the exact definition of the product markets can be left open as, under any alternative market definition, the proposed transaction would not raise serious doubts as to its compatibility with the internal market.

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[2] Only3T S.p.A.is the holding vehicle through which the Tabacchi Family currently owns 39.9 % of Safilo.

[3] Turnover calculated in accordance with Article 5(1) of the EC Merger Regulation.

GEOGRAPHIC MARKET DEFINITION

a) Wholesale supply of sunglasses and prescription frames

8. The parties submit that the geographic markets for supply of sunglasses and prescription frames are supra-national and possibly EEA-wide. Firstly, there are no significant differences in import/export patterns for both sunglasses and prescription frames, both being manufactured in Europe as well as in other extra-EU countries (China, etc.) and traded throughout the EEA. Secondly, transport costs are low compared to the value of the products. Thirdly, wholesale pricing is broadly homogeneous for each product category (i.e. sunglasses and prescription frames) throughout the EU Member States, particularly for branded products. In addition, brand licenses (which in the case of Safilo represent [70-80]% of its portfolio) are usually granted on a worldwide basis by each licensor to a single supplier.

9. The exact definition of the geographic market can be left open for the purposes of the present case as, under any alternative market definition, the proposed transaction would not raise serious doubts as to its compatibility with the internal market.

b) Retail of sunglasses and prescription frames

10. The parties submit that the market for retail distribution of sunglasses and frames for prescription glasses is national in scope. The existence in each country of optical franchises and chains results in a substantial nationwide uniformity within each franchise/chain in terms of brand diffusion, commercial initiatives, and promotions. In addition, reimbursement/insurance policies are regulated at a national level.

11. The Commission considers that the geographic market for retail of sunglasses and prescription frames can be national or wider. However, the exact definition of the geographic market can be left open for the purposes of the present case as, under any alternative market definition, the proposed transaction would not raise serious doubts as to its compatibility with the internal market.

HORIZONTAL OVERLAPS

12. The transaction gives rise to a limited horizontal overlap in the market for the retail of sunglasses and prescription frames in Spain. However, given that the market shares of HAL and Safilo in this geographic market are [0-5]% and [0-5]% respectively, the transaction does not raise serious doubts.

VERTICAL RELATIONSHIPS

13. The market for wholesale supply of sunglasses and prescription frames is concentrated. The first two players together have around [70-80]% market share in sunglasses and around [30-40]% in prescription frames EEA-wide. At EEA level, Safilo is the number two supplier, with [20-30]% in sunglasses and [10-20]% in prescription frames, well behind Luxottica, with around [50-60]% and around [10-20]% respectively.

14. The optical retail market is fragmented, HAL being the number one player, with around [10-20]% in the EEA area.

15. The activity of Safilo in wholesale supply of sunglasses and prescription frames is in a vertical relationship with the HAL's downstream activity of optical retailing. However, sunglasses and prescription frames only account for about [30-40]% of HAL's turnover in optical retailing. In both sunglasses and prescription frames, in all Member States, except Finland, HAL's market shares are below 25%.

Affected markets

16. In Finland, HAL has a [30-40]% market share in the retail market for prescription frames. Safilo's market share in wholesale supply of prescription frames both in Finland and EEA-wide is [10-20]%, while Luxottica has [5-20]% in Finland and [10-30]% EEA-wide.

17. Safilo's ability to foreclose HAL's competitors appears to be limited. Firstly, [70-80]% of Safilo's portfolio is constituted by branded licences. Brand licensors generally retain strong contractual power when it comes to deciding the marketing strategies of their licensed products, affecting the commercial policy of the licensees. Eyewear manufacturers pay royalties for the use of the licensed brand names, calculated as a percentage of the net sales. Secondly, the parties submit that licensing agreements tend to guarantee the largest reach possible for the licensed products at retail level. Accordingly, licensors often require licensees to sell at least a minimum percentage of merchandise to certain retailers which they consider strategic. If unsatisfied, brand owners could refuse to renew their contracts with Safilo.

18. With just [10-20]% market share, Safilo has little incentive to foreclose. Should Safilo decide to foreclose HAL's competitors, then it will be likely to face a termination or refusal to renew the brand licences by the brand owners looking for the largest reach of the prescription frames, since HAL's market share in Finland is only [30-40]%. Therefore, it appears that possible gains from HAL's additional sales would be outweighed by Safilo's loss both in the short term, as a result of a more limited distribution network and in the long term, as a result of loss of brand licences.

19. HAL's ability to foreclose Safilo's competitors would also be limited. Even though it is the number one player, HAL has only [30-40]% market share in Finland and competition is strong. Denying access to its shelves to Safilo's competitors would translate into a migration of the brands to HAL's competitors. In addition, [30-40]% of HAL's outlets are franchises which can also source their products from wholesalers.

20. HAL would be unlikely to have an interest in foreclosing Safilo's competitors since its business model demands that it offers as many choices as possible in order to attract clients and maximise revenue. Furthermore, any revenue gained by Safilo would be outweighed by the losses of HAL due to reduced sales. Even with a [30-40]% market share, HAL would have no incentive to foreclose. Therefore, a foreclosure strategy would not be profitable for the HAL-Safilo tandem.

21. Consequently, given that it is unlikely that any foreclosure could arise, the proposed transaction will not give raise to serious doubts as regards its compatibility with the internal market.

VI. CONCLUSION

22. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the internal 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