EN

Case No COMP/M.6461 - TPV/ PHILIPS TV BUSINESS

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.6461- TPV/ PHILIPS TV BUSINESS
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

(1) On 20 January 2012, the European Commission received a notification of a proposed transaction pursuant to Article 4 of Council Regulation No 139/2004 by which the undertaking TPV Technology Limited, ("TPV", Bermuda) proposes to acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, control of the Philips' branded colour TV business ("Philips TV Business", the Netherlands) at worldwide level with the exception of a number of countries outside the EEA[2], by way of purchase of shares.

I. THE PARTIES

(2) TPV, a company incorporated in Bermuda and listed on the Hong Kong and Singapore stock exchange, is a display solution provider, active in the design and production of a full range of PC monitors and TVs both on a third party OEM

[1] OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

[2] The territories excluded from the transaction are the PRC, India, the United States of America, Canada, Mexico and South America (with the exception of Brazil, Uruguay, Paraguay, and Argentina, which will be included in the transaction).

(Original Equipment Manufacturers) basis for its distribution worldwide and under its own brands AOC.[3]

(3) TP Vision is the new holding company incorporated in the Netherlands, under which the Philips TV Business will be reorganized prior to the transaction, and which operates in the manufacturing, branding, and distribution of Philips branded colour TVs in the relevant territories falling within the transaction.[4]

II. THE OPERATION

(4) The transaction will see TPV acquiring 70% of the shares of TP Vision, while Philips will retain the remaining 30%, being only entitled to general customary rights granted to minority shareholders. As a result, TPV will acquire sole control of the Philips TV Business through its control over TP Vision.[5]

(5) The transaction also involves the conclusion of a trademark agreement. Under this agreement, TP Vision will pay Koninklijke Philips Electronics N.V. ("Philips") a royalty for a term of five years, automatically renewable for another five years, entitling TP Vision with the exclusive right to design, manufacture, source, sell, distribute, and market the products transferred to TP Vision under the Philips brand within the relevant territories. In addition, the parties will conclude an IP agreement, under which Philips grants TP Vision the use of certain patents, know-how, and software, on a non-exclusive, fully paid up, and royalty free basis. Finally, following the transaction, Philips will provide certain IT services to TP Vision on a transitional basis.

III. EU DIMENSION

(6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[6] (TPV EUR 18 114 million, Philips TV business EUR […]). Each of them has an EU-wide turnover in excess of EUR 250 million (TPV EUR […], Philips TV business EUR […]). The undertakings concerned do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.[7]

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3 On 26 March 2009, the Commission cleared under the EU Merger Regulation the proposed acquisition of the branded PC monitor and electronic displays (digital public signage) business of Philips by TPV. (M.5455 TPV/Philips branded monitors). On 9 November 2010, the Commission cleared under the EU Merger Regulation the proposed acquisition of the sale and distribution activities of branded colour TVs in China of Philips by TPV, a manufacturer of monitor displays and colour TVs based in Bermuda. (M.5964 TPV/Philips branded monitors and colour TVs). As TPV had acquired the sales and distribution business of Philips' branded PC monitors and public signage less than two years ago, the two transactions were treated under the EU Merger Regulation as one and the same concentration.

4 The business to be transferred comprises, amongst others, manufacturing plants, innovation and development sites, sales organizations in various countries, employees, inventory, certain patents, and other assets and liabilities.

5 TPV already acquired licensing rights to sell Philips' brand name PC monitors globally and TVs in China. See Decision of the European Commission, case No COMP/M.5964 – TPV/Philips branded monitors and colour TVs, 9 November, 2010.

6 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice of July 2007(OJ C95, 16.04.2008, p. 1).

7 The Chinese CEC Group owns 35.06% of TPV's shares and is the largest TPV's shareholder. The State-owned Assets Supervision and Administration Commission (SASAC) is an entity established directly under the supervision of the State Council of the People's Republic of China responsible for oversight and management of State Owned Enterprises. SASAC holds 100% of CEC's shares. The question may therefore arise of which turnover is attributable to TPV pursuant to recital 22 of the Merger Regulation,

IV. RELEVANT MARKETS

I. Relevant product market

(7) The notifying party submits that a substantial part of the colour TVs sold by the Philips TV business under the Philips trademark is manufactured and/or assembled on an OEM basis by third-party OEM producers, such as TPV, while the rest is developed and manufactured in-house by Philips. The Philips TV business does not manufacture or assemble colour TVs for third-parties. Conversely, TPV manufactures most of its colour TVs for third parties (including the Philips TV business) to brand and sell, although it does sell a limited number of the colour TVs it produces under its own brand, AOC.

(8) The transaction, therefore, concerns the market for the supply of OEM non-branded colour TVs and the market for the sale of branded colour TVs, the latter being downstream of the former.

Branded and non-branded OEM colour TVs

(9) In *Alba/Beko/Grundig*[8], the Commission considered a distinction between the supply of own-branded OEM colour TVs and the supply of non-branded OEM colour TVS. In *Foxconn/Sony Slovakia*[9], the Commission considered a distinction between the in-house production of colour TVs by OEMs and the production of colour TVS by third-party manufacturers. However, in these cases, the Commission eventually left the product market definition open.

(10) The precise market definition can be left open for the purpose of the present decision, as the transaction does not raise any competition concerns under any alternative product market definition.

Different Underlying Technologies

(11) The notifying party submits that the colour TVs market could also be segmented on the basis of the underlying display technology (Cathode Ray Tube - CRT, Liquid Cristal Display - LCD, and Plasma).

(12) TPV supplies and sells exclusively LCD colour TVs and does not have a TV product offering based on Plasma or CRT technologies. In addition, almost the entirety of the Philips TV business' 2010 sales relates mainly to LCD colour TVs and only to a very

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which provides that for public sector undertakings, calculation of the turnover of an undertaking concerned in a concentration needs to take account of undertakings making up an economic unit with an independent power of decision, irrespective of the way in which their capital is held or of the rules of administrative supervision applicable to them. In the present case, it is not necessary to conclude whether or not CEC enjoys independent power of decision over TPV in the sense of the Merger Regulation. The issue can be left open since the merging parties achieve the required turnover for EU jurisdiction to apply irrespective of this consideration. The notified operation accordingly has an EU dimension.

8 Decision of the European Commission, case No COMP/M.3381 – Alba/Beko/Grundig, 29 April 2004.

9 Decision of the European Commission, case No COMP/M.5870, Foxconn/Sony LCD TV Manufacturing Company in Slovakia, 25 June 2010

limited extent to CRT colour TVs.[10] The notifying party submits that therefore the present transaction concerns only LCD colour TVs.

(13) In past decisions, the Commission has considered, but ultimately left open, whether the colour TV market should be segmented on the basis of the underlying technology used.[11]

(14) The precise market definition can also be left open for the purpose of the present decision, as the transaction does not raise any competition concerns under any alternative product market definition.

New Technological Innovations

(15) Furthermore, the notifying party argues that, within the market for LCD colour TVs, a further segmentation on the basis of new technological innovations – such as LED backlit,[12] 3D technology,[13] and internet-enabled connectivity[14] – is not appropriate. According to the notifying party: i) all producers are able to and already do produce LED-backlit LCD colour TVs instead of CCFLs; ii) given that the cost of LEDs has significantly decreased in recent years, the general expectation is that by 2013, non-LED LCD colour TVs will not or hardly be sold anymore. Furthermore, according to the notifying party, 3D and internet connected TVs are not competing technologies, but rather complementary "adds-on" to LED. From a demand side perspective, these technical innovations are only one of the several technical features of an LCD colour TV that are taken into consideration by customers at the time of the purchase. Moreover, from a supply side perspective, all major LCD colour TV suppliers manufacture LCD colour TVs with either technology, or increasingly a combination of two or three of these technologies.

(16) The precise market definition can be left open for the purpose of the present decision, as the transaction does not raise any competition concerns under any alternative product market definition.

Different Screen Sizes

(17) In past decisions, the Commission has considered, but ultimately left open, whether the colour TV market should be further segmented according to screen sizes.[15] The notifying party submits that this question can also be left open in the current case as, regardless of the different screen sizes, the transaction does not raise any competition concerns.

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[10] In 2010, the Philips TV business sold approximately […] of branded CRT colour TVs worldwide (mainly in the Latin America and Asian Pacific regions), with an associated revenue of about USD […]. The Philips TV business did not report sales of CRT colour TVs in the EEA market.

[11] Decision of the European Commission, case No COMP/M.5964 – TPV/Philips branded monitors and colour TVs, 9 November 2010; Decision of the European Commission, case No COMP/M.3381 – Alba/Beko/Grundig, 29 April 2004.

[12] LED technology for backlighting is used on many LCD Colour TV models instead of the traditional cold-cathode fluorescent lighting (CCFL). LED backlights allow for LCD Colour TVs to have much a thinner profile and to reduce power consumption by 35% to 40%.

[13] 3D technology enables the viewer to watch contents in 3D (with or without 3D glasses).

[14] LCD Colour TVs may come with Internet-enabled connectivity for a direct connection with internet.

[15] Decision of the European Commission, case No COMP/M.5964 – TPV/Philips branded monitors and colour TVs, 9 November 2010; Decision of the European Commission, case No COMP/M.3381 – Alba/Beko/Grunding, 29 April 2004.

(18) For the purpose of the present decision, the possible further segmentation according to the screen size can be left open, since the transaction does not raise any competition concerns under any alternative product market definition.

II. Relevant geographic market

(19) The notifying party considers that the market for branded colour TVs (or product submarkets considered in this decision) is EEA-wide in scope. In particular, it submits that producers are globally active suppliers that sell their branded colour TVs to distributors who operate on an EEA basis. Moreover, it also considers that transport costs and tariffs do not form a significant barrier to trade within the EEA, and product related regulations and standards are EEA-wide. Finally, it highlights how most producers sell their products under the same brands throughout the EEA.

(20) In past decisions, the Commission left open whether the geographic scope of the market for non-branded and branded LCD colour TVs could be EEA-wide, or narrower than EEA wide.[16]

(21) For the purpose of the present decision, the precise geographic market definition of the market for branded colour TVs can be left open, as the transaction does not raise any competition concerns under any of the alternative geographic market definitions considered (EEA-wide or national).

V. COMPETITIVE ASSESSMENT

I. Horizontal Assessment

(22) TPV is active on the market for the sale of colour TVs with its own brand AOC, which creates a horizontal overlap with the Philips TV business to be acquired.

(23) When considering separate markets for colour TVs on the basis of different underlying technologies (CRT, LCD, and Plasma), it must be noted that the Philips TV business' sales relates almost entirely to branded LCD colour TVs, while only a limited percentage relates to branded CRT colour TVs and it does not report sales of CRT colour TVs in 2010 in the EEA.[17] TPV is active in the sale of LCD colour TVs only. Therefore the transaction does not give rise to any horizontal overlap in the market for CRT and Plasma colour TVs.

(24) If the relevant market were to be defined as the market for the sale of <u>all branded colour TVs on EEA-wide basis</u>, the merging parties' combined market shares would be [10-20]% (2010). In this market, the combined entity would face a number of competitors with higher market shares (Samsung [20-30]%, LGE [10-20]%, and Sony [10-20]%).[18]

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16 Decision of the European Commission, case No COMP/M.5964 – TPV/Philips branded monitors and colour TVs, 9 November 2010; Decision of the European Commission, case No COMP/M.5870, Foxconn/Sony LCD TV Manufacturing Company in Slovakia, 25 June 2010; Decision of the European Commission, case No COMP/M.3381 – Alba/Beko/Grundig, 29 April 2004.

17 In 2010, the Philips TV business sold approximately […] units of branded CRT colour TVs worldwide (mainly in the Latin America and Asian Pacific regions), with an associated revenue of about USD […]. The Philips TV business did not report sales of CRT colour TVs in the EEA market.

18 As mentioned in footnote 7, SASAC holds 100% of CEC's shares, which in turn owns 35.06% of TPV's shares. CEC is not active in the manufacturing of colour TVs, neither branded, nor on an OEM basis. The

(25) If the relevant market were to be defined as the market for the sale of branded LCD colour TVs on EEA-wide basis the merging parties’ combined market share in 2010 was [10-20]%. In the same market, a number of competitors have considerably higher market shares (Samsung [30-40]%, LGE [10-20]%, and Sony [10-20]%) exercising competitive pressure on the combined entity.[19]

(26) On the basis of national markets for the sale of branded LCD colour TVs, the merging parties' combined market shares in 2010 would remain below 15% with the exception of the following Member States:

	TPV 2010/ in % (value)	**Philips TV business 2010/ in % (value)**	**Combined Shares**
Austria	[0-5]%	[10-20]%	[10-20]%
Belgium	[0-5]%	[20-30]%	[20-30]%
Denmark	[0-5]%	[10-20]%	[10-20]%
Germany	[0-5]%	[10-20]%	[10-20]%
Ireland	[0-5]%	[30-40]%	[30-40]%
Netherlands	[0-5]%	[20-30]%	[20-30]%
Slovenia	[0-5]%	[20-30]%	[20-30]%

Source: Parties' Actual 2010 sales and Gfk Boutique Data Warehouse (2010).

(27) However, the proposed transaction will only give rise to a small increment in market shares. Moreover, the LCD colour TVs segment is characterized by a number of well established global suppliers (e.g. Samsung, LGE, Sony, Toshiba, and Panasonic). In Austria, the combined entity would face competition from Samsung ([20-30]%), Sony ([20-30]%), LGE ([10-20]%), Toshiba ([0-5]%) and several other players. In Belgium, the combined entity would face competition from Samsung ([30-40]%), Sony ([10-20]%), LGE ([5-10]%), Panasonic ([5-10]%), and several other players. Similarly, in Denmark Samsung ([30-40]%), Sony ([20-30]%), LGE ([5-10]%) and several other players are present in the market. In Germany, the combined entity would face competition from Samsung ([20-30]%), Sony ([10-20]%), LGE ([5-10]%), Panasonic ([5-10]%), Toshiba ([5-10]%), and several other players. In Ireland the combined entity is followed by Samsung ([20-30]%), Sony ([10-20]%), LGE ([5-10]%) and several other players. In the Netherlands, Samsung ([20-30]%), Sony ([10-20]%), and LGE ([10-20]%) as well as other players are present in the market. In Slovenia, LGE ([30-40]%), Sony ([10-20]%), Samsung ([5-10]%) and several other smaller players are active in the market. Finally, customers, including retail chains and mass purchasers, enjoy a certain degree of buyer power, which may constrain the competitive strategies of the parties.

(28) When considering a segmentation of branded LCD colour TVs on the basis of new technological innovations – LED backlights, 3D technology, and internet-enabled connectivity – and on the basis of an EEA market, it is to be noted that TPV is active on LED backlit technology only. Consequently, the merging parties’ combined market

only TV-related activities of the CEC group are those carried out through the TPV Group. If the sales and shares of the only company active in the EEA that, based on publicly available information, seems to be indirectly controlled by SASAC (regional or local), namely Hisense, were to be added, the combined entity’s 2010 EEA market share would increase to [5-10]% and [10-20]% (respectively by value and volume).

[19] If the sales and shares of the only company active in the EEA that, based on publicly available information, seems to be indirectly controlled by SASAC (regional or local), namely Hisense, were to be added, the combined entity’s 2010 EEA market share would increase to [10-20]% and [10-20]% (respectively by value and volume).

share would amount to [10-20]% (2010) in LED backlights.[20] However, the increment of market share is less than [0-5]%. Furthermore, the combined market share is likely to remain below 15% in 2011 (first three quarters).

(29) The competitive assessment does not change if national markets for the sale of branded LCD colour TVs on the basis of new technological innovations, and particularly for LCD LED colour TVs, were to be defined, as the combined entity's market shares would not be different from those concerning the sale of branded LCD colour TVs at national level.

(30) Finally, if the relevant product market were to be defined as a market for the sale of branded LCD colour TVs on the basis of different screen sizes on an EEA-wide basis, the 2010 combined parties' market shares would remain below 15% under all screen-sizes sub-segments. Again, in each screen-size sub-segment in which the parties are active, well established global players such as Samsung, LGE, Toshiba, Sony, and Sharp will continue exercising a strong competitive pressure. Furthermore, the competitive assessment would not change if national markets for the sale of branded LCD colour TVs on the basis of screen sizes were to be defined, as the merged entity's post-transaction market position is not materially different from their post-transaction market position for sales of LCD colour TVs overall (without distinction by screen size).

(31) For the above reasons, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to horizontal effects.

II. Vertical Assessment

(32) TPV is active in the upstream market for the supply of OEM non-branded LCD colour TVs (worldwide and in the EEA). This market is vertically linked to the Philips' TV business to be acquired, as the latter is active in the downstream market for the sale of branded LCD colour TVs.

(33) As regards a potential risk of input foreclosure, the notifying party submits that the combined entity's limited market share on the downstream market for the sale of branded LCD Colour TVs ([10-20]% at EEA level in 2010) together with the limited market shares on the upstream market for the supply of OEM non-branded LCD colour TVs ([5-10]% at EEA level in 2010) would not make it profitable for the merged entity to stop supplying other competitors on the downstream market for branded LCD Colour TVs.

(34) In addition, the merged entity would not have the ability to foreclose other competitors on the downstream market as, due to the usual duration of supply agreements (one year), together with the availability of well-established alternative upstream OEM manufacturers (including, amongst others, Foxconn/ChiMei, Innolux, Vestel, Amtran/Raken, Compal, Wistron, Grundig, Sharp), existing downstream customers could, and would continue, post-transaction, to be able to readily satisfy their requirements from other competing upstream OEM manufacturers.

[20] Source: Display Search, GfK, and internal Philips' estimates.

(35) As regards a potential risk of customer foreclosure, assuming that, post-merger, the combined entity will source its OEM non-branded LCD colour TVs requirements exclusively from TPV[21], the following has to be taken into account. The combined entity's market shares on the downstream market for the sale of branded LCD colour TVs at the EEA level account for only [10-20]%. Moreover, the Philips TV business sources already a limited portion of OEM non-branded LCD colour TVs from global OEM manufacturers other than TPV ([10-20]%). Consequently, the diversion of the residual demand to TPV (or to in-house production) would only result in a negligible share increment on the upstream market at EEA level and there remain a significant number of alternative downstream customers of OEM non-branded LCD colour TV to which OEMs could switch their supply.

(36) For the above reasons, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to vertical effects.

VI. CONCLUSION

(37) For the above reasons, the European 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 the Merger Regulation.

For the Commission
(signed)
Joaquín ALMUNIA
Vice-President

21 Philips sourced in 2010 OEM LCD colour TVs from TPV for approximately the [30-40]% of the total production volume of LCD colour TVs under the Philips trademark., the [40-50]% has been manufactured in house by Philips, the remaining has been sourced from Sharp ([5-10]%), TLC Corporation ([0-5]%), Amtran/Raken ([0-5]%) and Skyworth ([0-5]%).