EUROPEAN COMMISSION
DG Competition

Case M.8006 - CANON / TOSHIBA MEDICAL SYSTEMS CORPORATION

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 19/09/2016

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Parts of this text have been edited to ensure that this confidential information is not disclosed; those parts have been blackened.

Brussels, 19.09.2016
C(2016) 6024 final

PUBLIC VERSION

To the notifying party:

Dear Sir/Madam,

Subject: **Case M.8006 - CANON / TOSHIBA MEDICAL SYSTEMS CORPORATION**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

(1) On 12 August 2016, the European Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004[3] by which the undertaking Canon Inc. Ōta, Tokyo, Japan, ("Canon") acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over Toshiba Medical Systems Corporation ("TMSC") from Toshiba Corporation ("Toshiba") by way of purchase of shares (the "Transaction")[4]. Canon and TMSC are collectively referred to as "Parties" and Canon is referred to as "the Notifying Party".

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 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

3 OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

4 Publication in the Official Journal of the European Union No C 304, 20.08.2016, p. 42.

Commission européenne, DG COMP MERGER REGISTRY, 1049 Bruxelles, BELGIQUE
Europese Commissie, DG COMP MERGER REGISTRY, 1049 Brussel, BELGIË

Tel: +32 229-91111. Fax: +32 229-64301. E-mail: COMP-MERGER-REGISTRY@ec.europa.eu.

1. THE PARTIES

(2) Canon is a Japanese multinational corporation specialized in the manufacture of imaging and optical products, including cameras, camcorders, photocopiers, steppers, computer printers and medical equipment.

(3) TMSC is active in the development, manufacture, sale and provision of technical services for medical equipment, including diagnostic x-ray systems, medical x-ray CT systems, magnetic resonance imaging systems (MRI), computed tomography (CT) diagnostic ultrasound systems, radiation therapy systems, diagnostic nuclear medicine systems, medical sample testing equipment, and information systems for medical equipment.

2. THE OPERATION AND THE CONCENTRATION

(4) Pre-Transaction, TMSC was a 100% subsidiary of Toshiba. In view of the Transaction, TMSC, with the consent of Toshiba, altered its existing shares and created new classes of shares (20 Class A shares and 1 Class B share) and share options (100 Share Options).

(5) As part of the Transaction, a special-purpose (vehicle) company ("SPC") MS Holding with three controlling shareholders holding each a 33.3% interest was established on 8 March 2016.

(6) On 17 March 2016, Canon and Toshiba entered into a Shares and Other Securities Transfer Agreement and Toshiba and MS Holding entered into a Share Transfer Agreement.

(7) On the basis of these agreements, the following structure was put in place: MS Holding acquired the totality of TMSC's Class A shares representing approximately 95% of TMSC's share capital for around EUR 800. At the same time, Canon acquired the Class B Share[5] and the 100 Share Options which give share acquisition rights for all TMSC's shares in the form of stock options against the payment of approximately EUR 5.28 billion.[6]

(8) Canon will be able to exercise the Share Options only once it obtains all necessary antitrust clearances in relation to the acquisition of TMSC. Upon exercise of the Share Options, Canon will obtain all TMSC's shares, TMSC being obliged to buy back the 20 Class A shares from MS Holding and the Class B share from Canon. As a result, Canon will become the only shareholder of TMSC.

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5 A prior resolution of Class B shareholders' meeting is required (unless Class B shareholders have provided written consent) for the following matters: "*matters set forth under Article 322(1) of the Companies Act*" and "*1. Determining matters concerning the issuance of shares for subscription and share options for subscription; 2. Giving the approval under Article 179-3(1) of the Companies Act; 3. Aquiring treasury shares; or 4. Undergoing a merger, company split, share exchange, share transfer or other organizational restructuring*" (TMSC's Article of Incorporation, Article 16.3(3)).

6 [redacted]

(9) Therefore, the Transaction constitutes an acquisition of sole control of Canon over TMSC pursuant to Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

(10) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[7] [turnover]. Each of them has an EU-wide turnover in excess of EUR 250 million [turnover], but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

(11) The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

4. ASSESSMENT

(12) The Parties are both active in the manufacture and sale of medical equipment. Specifically, the Parties' activities overlap in the field of diagnostic imaging systems and components, and in particular in digital radiography (x-ray diagnosis systems), flat panel detectors ("FPDs"), medical information technology, computer tomography and magnetic resonance imaging.

(13) In the EEA, the Transaction gives rise to an affected market only in the area of FPDs.

4.1. Market definition – Flat Panel Detectors

4.1.1. Product market definition

(14) FPDs are used in digital radiography and are important parts of an x-ray diagnosis system. X-ray diagnosis systems are used by medical professionals to take pictures of internal organs, structures, and tissues for the purposes of medical diagnosis. FPDs constitute one of the core components of the x-ray diagnosis system that captures the digital images.

(15) More specifically, FPDs make radiation visible. They work by converting the x-rays that strike its surface into light and/or charge, and then turning the light into electronic data that a computer can display as a digital image. Their main technology consists in indirectly converting x-rays to light (using an x-ray scintillator) and have the same size as the picture they capture.

The Notifying Party's views

(16) According to the Notifying Party, FPDs can be divided into two categories:

(i) *FPDs for static images*, which replace the technology of using analogue film systems or CR (computed radiology) and are used in static image x-ray diagnosis systems. The product lifespan is approximately 8 to 10 years.

(ii) *FPDs for dynamic images*, which replace the technology of using image intensifier digital systems. They are generally based on the same technological principles as static FPDs but can be used in dynamic x-ray imaging devices

7 Turnover calculated in accordance with Article 5 of the Merger Regulation.

(fluoroscopy and angiography), as they are capable of detecting and processing information provided by x-ray streams over an extended period of time ("x-ray movies"). The product life is approximately 8 to 10 years.

The Commission's assessment

(17) In previous decisions,[8] the Commission made a distinction between (static) x-ray imaging (requiring static FPDs) and fluoroscopic x-ray imaging (requiring dynamic FPDs). In comparison to general radiography where a static x-ray picture is provided, fluoroscopy offers a dynamic x-ray movie, used for the imaging of the flow of contrast media in a variety of body parts and organs.

(18) The results of the Commission's market investigation in this case confirmed static FPDs and dynamic FPDs are generally not substitutable as they are used in different types of x-ray systems.[9] In this context one competitor explained that "*static image FPDs are used in static image x-ray systems, e.g. for radiographies of bones whereas dynamic image FPDs are used in dynamic x-ray systems, to record and display images in real time e.g. for the practitioners during surgery*."[10] Moreover, if dynamic FPDs can perform the same functions as static FPDs, the reverse is not true.[11] In addition, if a dynamic FPD is used in a static x-ray system, the picture would not be optimised and not as good as if a static FDP was used.[12]

(19) In any case, for the purposes of the present decision it can be left open whether there are separate markets for static and dynamic FPDs since, under any alternative product market definition, the Transaction does not raise serious doubts as to its compatibility with the internal market.

4.2. Geographic market definition

The Notifying Party's views

(20) In the Notifying Party's view, the geographic dimension of the market for FPDs is worldwide, or at least EEA-wide as the Parties have [details on production], transport costs do not play a significant role and price levels tend to be similar globally.[13]

(21) The Notifying Party also submitted that FPDs are usually not sold directly (as an end-product) to hospitals and surgeries but rather provided on an OEM-level to manufacturers of x-ray imaging equipment for assembly in their x-ray devices. In some cases FPDs are also used for the replacement of other FPDs and for upgrading ("retro fitting") x-ray devices which still use analogue imaging techniques. Therefore,

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8 Case COMP/M.3083 – *GE/Instrumentarium*, paragraph 35 and Case COMP/M.3304 - GE / Amersham, paragraph 9.

9 Minutes of conference calls with [COMPETITOR A] dated 19.08.2016, [COMPETITOR B] dated 25.08.2016, [COMPETITOR C] dated 26.08.2016 and [CUSTOMER A] dated 30.08.2016.

10 Minutes of conference calls with [COMPETITOR C] dated 26.08.2016.

11 Minutes of conference calls with [COMPETITOR B] dated 25.08.2016, and [COMPETITOR C] dated 26.08.2016.

12 Minutes of conference call with [COMPETITOR C] dated 26.08.2016.

13 Form CO, paragraphs 94 and following.The Notifying Party added that [Information on tariffs].

according to the Notifying Party, on the customer-side there are mainly large x-ray manufacturers purchasing on worldwide or at least EEA-wide markets.

The Commission's assessment

(22) The results of the Commission's market investigation revealed that competitors generally consider the geographic scope of the market for FPDs to be EEA wide, or even global due in particular to the presence of the same suppliers of FPDs all over the EEA and even globally and considering that manufacturers of x-ray systems generally purchase FPDs on an EEA or global level.[14]

(23) However, a few participants also mentioned some specificities at a country level in particular due to national regulations. One market participant indicated for instance that *"FPD suppliers have to adapt to each Member State's market, regulations and pricing. Each one of these parameters varies depending on the Member State"*.[15] This seems to be particularly true when FPD suppliers sell directly to hospitals.[16]

(24) In any case, for the purpose of the present decision, it can be left open whether the geographic market definition is national, EEA or worldwide since, under any alternative geographic market definition, Transaction does not raise serious doubts as to its compatibility with the internal market.

4.3. Competitive assessment

(25) Based on all alternative product and geographic market definitions, the Transaction gives rise to an affected market only for static FPDs in Hungary.[17]

Market shares

(26) At EEA level, the Notifying Party estimated that the Parties' combined market share for static FDPs in value was between 10 and 15%, and slightly below 20% in volume in 2015.

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14 Minutes of conference calls with [COMPETITOR A] dated 19.08.2016, and [COMPETITOR C] dated 26.08.2016.

15 Minutes of conference call with [COMPETITOR B] dated 25.08.2016.

16 Minutes of conference calls with [COMPETITOR B] dated 25.08.2016, and [COMPETITOR D] dated 26.08.2016.

17 In the EEA, the Parties' activities overlap only in relation to static FPDs, since TMSC does not sell dynamic FPDs in the EEA.

Table 1: Parties and main competitor's market shares for static FPDs at EEA level (2013-2015)

Company	2013		2014		2015	
	Value	**Volume**	**Value**	**Volume**	**Value**	**Volume**
Canon	[5-10]%	[5-10]%	[5-10]	[5-10]%	[5-10]%	[5-10]%
TMSC	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%
Combined	**[10-20]%**	**[10-20]%**	**[10-20]%**	**[10-20]%**	**[10-20]%**	**[10-20]%**
Trixell	[50-60]%	[40-50]%	[30-40] - [40-50]%	[30-40] %	[30-40]%	[30-40]%
Carestream	[5-10] – [10-20] %	[10-20]%	[0-5] – [10-20] %	[10-20]%	[5-10] – 10-20]%	[10-20]%
GE	[5-10] – [10-20]%	[10-20]%	[0-10]	[10-20]%	[5-10] – [10-20]%	[10-20]
Fujifilm	[0-5]%	[0-5]%	[0-10]%	[0-5]%	[0-10]%	[0-5]%

Source: Parties' estimates based on IHS Inc. data[18]

(27) At national level, the Parties are both active in static FPDs in [regional overlaps] and Hungary. Based on the Notifying Party's estimate, the Parties' combined market would be above 20% only in value in Hungary.

18 To estimate their market shares and the ones of their competitors, due to the lack of data available on the FPD markets, the Notifying Party used the most recent IHS report, the General Radiography and Fluoroscopy X-ray Equipment report dated 2015. In this report, data for x-ray imaging systems can be extracted but not for FPDs. The Notifying Party therefore [details of the methodology used].

Table 2: Parties and main competitor's market shares for static FPDs in Hungary (2013-2015)

Company	2013		2014		2015	
	Value	**Volume**	**Value**	**Volume**	**Value**	**Volume**
Canon	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
TMSC	[10-20]%	[5-10]%	[5-10]%	[0-5]%	[20-30]%	[10-20]%
Combined	**[10-20]%**	**[5-10]%**	**[5-10]%**	**[5-10]%**	**[20-30]%**	**[10-20]%**
Trixell	[30-40] – [40-50] %	[30-40]%	[20-30] - [40-50]%	[30-40]%	[30-40] - [40-50]%	[30-40]%
Carestream	[10-20]%	[10-20]%	[10-20] – [20-30]%	[10-20]%	[5-10] - [10-20]%	[10-20]%
GE	[5-10]%	[10-20]%	[10-20] - [20-30]%	[10-20]%	[5-10] - [10-20]%	[10-20]%
Varian	[5-10]%	[5-10]%	[5-10] - [10-20]%	[5-10]%	-	-

Source: Parties' estimates based on IHS Inc. data

The Notifying Party's view

(28) The Notifying Party considers that the concentration would not lead to any lessening of competition in the EEA and in Hungary in particular given that the Parties' market shares are limited and that strong competitors will remain.

(29) The Notifying Party further indicated that the relatively high market share for TMSC in Hungary in 2015 is related to a very exceptional one-off effect: the sales volume was 4.5 times higher than the previous year due to sales to [details on the one-off effect], which lead to a leap of market shares in the small Hungarian static FPD market.

The Commission's assessment

(30) Although market data for FPDs are not publicly available and the exact market shares of the Parties' could not be confirmed by market participants, the Commission's market investigation unanimously indicated that Canon and TMSC both have a limited market position at EEA level and in Hungary. The results of the Commission's market investigation also confirmed that strong competitors will remain post-Transaction in the EEA and in Hungary, including Trixell, Carestream and GE.[19]

19 Minutes of conference calls with [COMPETITOR A] dated 19.08.2016, [CUSTOMER A] dated 30.08.2016 and COMPETITOR C] dated 26.08.2016.

(31) Therefore, based on the results of the market investigation, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in the market for static FPDs at EEA level and in Hungary.

5. CONCLUSION

(32) 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 and Article 57 of the EEA Agreement.

For the Commission

(signed)
Věra JOUROVÁ
Member of the Commission