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***Case No COMP/M.4611
– BONNIER/ EGMONT
/ COMPANY***

Only the English text is available and authentic.

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

Article 4 (4)
Date: 01/08/2007



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01/08/2007
SG-Greffe(2007)204853

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 4(4) DECISION

To the notifying party:

To: Konkurransetilsynet (Norwegian Competition Authority)

Dear Sir/Madam,

Subject: Case No COMP/M.4611 – BONNIER / EGMONT / COMPANY
Reasoned submission pursuant to Article 4(4) of Regulation No 139/2004
for referral of the case to Denmark and Norway respectively.

Date of filing: 27 June 2007

Legal deadline for response of Member States: 18 July 2007

Legal deadline for the Commission decision under Article 4(4): 1 August 2007

I. INTRODUCTION

1. On 27 June 2007, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Council Regulation (EC) No 139/2004 ("EC Merger Regulation") with respect to the transaction cited above. The parties request the operation to be examined, as regards the Danish part of the transaction ("Danish transaction"), by the competent authorities of Denmark and, as regards the Norwegian part of the transaction ("Norwegian transaction"), by the competent authorities of Norway.
2. According to Article 4(4) of the EC Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which present all the characteristics of a distinct market.

3. A copy of this Reasoned Submission was transmitted to all Member States on 28 June 2007.
4. By letter of 5 July 2007, the Danish Competition Authority ("DCA"), as the competent authority of Denmark, informed the Commission that Denmark does not wish to accept the proposed referral.
5. By letter of 12 July 2007, the Norwegian Competition Authority ("NCA"), as the competent authority of Norway, informed the Commission that Norway agrees with the proposed referral.

II. THE PARTIES

6. Bonnier Cappelen Holding Norway AS is controlled by Bonnier AB ("Bonnier"), a media group which is active in the media sector, *inter alia* the publishing sector, e.g. books, daily newspapers, production and distribution of film, music, radio and TV. The company operates mainly in the northern region of Europe.
7. Egmont Holding A/S is controlled by the Egmont group ("Egmont") in Denmark, a group active in a variety of media channels, including the publishing sector, focusing on the Scandinavian region.

III. THE OPERATION AND CONCENTRATION

8. The operation involves two transactions: the creation of a full-function joint venture combining the parties' existing book activities in Norway, which is the Norwegian transaction, and the acquisition of control by Egmont of Bonnier's book publishing company in Denmark, which is the Danish transaction.
9. On the basis of the preliminary Heads of Agreements and the signed agreements submitted by the parties on 13 June 2007 prior to their filing of the Form CO, the transactions were legally inter-conditional as, on the basis of the clauses included in the agreements, none of them could proceed without the other. On 21 June 2007, the parties submitted amendment agreements in which they waived the inter-conditionality included in the final, signed agreements. Although the contracts are no longer inter-conditional *de jure*, the fact that these clauses were included in the original agreements and that they have been waived at a late stage in the proceedings gives sufficient indication that these transactions are nevertheless *de facto* inter-conditional. Furthermore, it can be noted that the Norwegian and the Danish transactions are still "closely linked" inasmuch as they have been negotiated in parallel and the agreements on both transactions have been signed simultaneously. Hence, it can be concluded that both transactions are inter-conditional on a *de facto* basis and, therefore, constitute one single operation.
10. The Norwegian transaction entails the creation of a full-function joint venture to which the parties will contribute all assets and personnel necessary for the business and which will perform on a lasting basis all the functions of an autonomous economic entity. The Danish transaction involves the acquisition of 100% of the shares of Bonnier Forlagene by Egmont Holding A/S. Both parts of the operation, therefore, constitute acquisitions of control within the meaning of Art. 3 of the EC Merger Regulation.

IV. COMMUNITY DIMENSION

11. The concentration has a Community dimension within the meaning of Article 1(3) of the EC Merger Regulation.

V. ASSESSMENT

12. As a preliminary remark, it has to be noted that, since the DCA has formally disagreed with the referral request, the Danish transaction will be assessed by the Commission. The following assessment, therefore, is only relative to the Norwegian transaction.

A. Relevant product markets

13. On the basis of the information submitted in the Reasoned Submission, the relevant markets in which the parties are active concern the markets for domestic publishing rights, the distribution of books, the sales of books to dealers and the sales of books to final consumers. The notifying parties also propose to delineate the overall book market according to different categories of books, which are *inter alia* general literature, further distinguished into large format and pocket format, children's books, factual prose, school books, reference works, research reports, electronic publications, strip cartoons¹. The proposed delineations are in line with a previous Commission's decision² and to a large extent with case law applied by the national competition authority in Norway.

B. Relevant geographic market

14. The geographic scope of the above markets is proposed to be national within all the book groups along the entire value chain. The parties submit that there is marginal cross-border demand for books in Norwegian and Danish. Furthermore, national regulatory regimes are in place with respect to pricing.

C. Assessment

15. On the basis of the information provided by the parties in the Reasoned Submission, the proposed transaction is an appropriate candidate for pre-filing referral from the Commission to the NCA as regards the Norwegian transaction in accordance with Article 4(4) of the EC Merger Regulation.
16. The transaction meets the legal requirements set out in Article 4(4) of the EC Merger Regulation. The transaction is a concentration within the meaning of Article 3 of the EC Merger Regulation, it has a Community dimension and it may significantly affect competition in distinct markets in Norway.
17. The relevant geographic markets present all the characteristics of distinct markets. As outlined above, the joint venture in Norway will be active within the country as regards its publishing activities.

¹ Further book categories exist, for instance, art books, guides and manuals, academic books, low price books. However, overlaps occur only in the above-mentioned categories.

² COMP/M.2978 – Lagardère/Natexis/VUP.

18. The data presented by the parties regarding their respective market shares in the different national sub-markets highlight that the parties' combined market shares post-merger would reach between 30% and over 50% for some book categories. The information provided in their Reasoned Submission suggests that the concentration might affect competition in at least few of the distinct Norwegian book sub-markets.

Additional factors

19. With respect to Norway, the NCA is well placed to examine the Norwegian transaction. The NCA has repeatedly dealt with the different book markets and it gained extensive knowledge of the publishing sector, also in relation with the recent deregulation of Norwegian book markets.

VI. REFERRAL

20. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the EC Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission notice on case referral in respect of concentrations³ (point 17) indicates that, in seeking a referral under Article 4(4), “*the requesting parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition on a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny*”, and that “*such indications may be no more than preliminary in nature [...]*”. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the concentration is liable to take place on distinct markets in Norway, and that the requested referral would be consistent with point 20 of the notice.

VII. CONCLUSION

22. For the above reasons and given that Norway expressed its agreement with respect to the Norwegian transaction, the Commission has decided to refer the Norwegian transaction to be examined by Norway. This decision is adopted in application of Article 4(4) of Council Regulation (EC) No 139/2004 and Article 6(1) of Protocol 24 to the EEA Agreement.

For the Commission,
Signed by
Humbert DRABBE
On behalf of
Philip LOWE
Director General

³ http://europa.eu.int/comm/competition/mergers/legislation/consultation/case_allocation_tru.pdf