

EN

Case No
COMP/M. 6773 - CANON/ IRIS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 22(3)
Date: 26.11.2013



Brussels, 26.11.2012

C(2012) 8820

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 22(3) DECISION

Konkurrensverket

Director-general: Dan SJØBLOM

Torsgatan, 11

SE-103 85 Stockholm

Sweden

Dear Sir,

Subject: Case No COMP/M.6773 – Canon/I.R.I.S.

Request of 6 November 2012 by the Swedish Competition Authority to the Commission pursuant to Article 22(1) of Council Regulation (EC) No. 139/2004¹

Ref.: Letter by Mrs Maria Ulfvensjö Baltatzis, Merger Coordination, Swedish Competition Authority, of 6 November 2012 to Mr Piergiovanni, Case manager, European Commission, DG Competition

I. Introduction

- (1) With the above-mentioned letter your authority formally requests the application of Article 22(3) of Council Regulation (EC) No 139/2004 (the “Merger Regulation”) to the concentration whereby the company Canon Europa N.V. (“Canon”) proposes to acquire sole control of I.R.I.S. Group SA (“I.R.I.S”) by means of public bid.
- (2) Under Article 22(1) of the Merger Regulation, one or more Member States may request the Commission to examine any concentration as defined in Article 3 of the Merger Regulation that does not have an EU dimension within the meaning of

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.

Article 1 of the Regulation but affects trade between Member States and threatens to significantly affect competition within the territory of the Member State or States making the request. Such a request must be made within 15 working days of the date of the notification of the concentration.

- (3) Any other Member State shall have the right to join the initial request under Article 22(2) of the Merger Regulation within a period of 15 working days of being informed by the Commission of the initial request.
- (4) The proposed concentration was notified to the Belgian competition authority, the Conseil de la Concurrence, on 9 October 2012. On 12 October 2012, the Commission received a referral request under Article 22(1) of the Merger Regulation from the Belgian competition authority, which it forwarded to Member States on 16 October 2012. On 18 October 2012, Member States received the initial referral request. On 6 November 2012, thus within the time limit foreseen in Article 22(2) of the Merger Regulation, the Swedish Competition Authority joined the referral request.

II. The parties and the operation

- (5) Canon is active in the fields of professional and consumer imaging equipment and information systems. Its products can be divided into the following three product groups: business machines, cameras and optical and other products. The proposed transaction concerns its production and commercialisation of single-functional peripherals ("SFPs") and multi-functional peripherals ("MFPs"), as well as of so-called "capture software". While MFPs serve to carry out several document-related functions, such as scanning, copying and printing, SFPs only perform one of these functions. Canon's capture software is used in its document scanners. In 2011, Canon achieved a worldwide turnover of more than EUR 32 000 million and an EU wide turnover of more than [...]*
- (6) I.R.I.S. develops and commercialises a broad range of capture software for MFPs, which comprises software for: (i) "optical character recognition" ("OCR") used to scan documents, (ii) workflow automation, referred to as "intelligent document recognition" ("IDR"), and (iii) archiving of documents in searchable formats ("versioning"). Compared to Canon, I.R.I.S. offers the more sophisticated software solutions. In addition, I.R.I.S. sells a limited range of small SFPs, namely portable document scanners, business card scanners, wand scanners and pen scanners. In 2011, I.R.I.S. achieved a worldwide turnover of more than EUR 121 million, out of which more than [...]* were realised within the EU. However, I.R.I.S. did not have a turnover exceeding EUR 25 million in at least three Member States.
- (7) Currently, Canon holds a 17% non-controlling interest in I.R.I.S. and intends to acquire sole control by purchasing all outstanding shares through public bid. This operation qualifies as concentration within the meaning of Article 3 of the Merger Regulation but it does not have an EU dimension. On 18 September 2012, Canon and I.R.I.S. reached an agreement under which the Board of Directors of I.R.I.S. will support Canon's public bid.
- (8) Through the notified transaction, [...]*

III. Assessment of the referral request

- (9) In order for a request for referral made by a Member State(s) to the Commission pursuant to Article 22 to be admissible, two legal requirements must be fulfilled in addition to the transaction being a concentration without an EU dimension within the meaning of Articles 1 and 3 of the Merger Regulation: (i) the concentration must affect trade between Member States, and (ii) it must threaten to significantly affect competition within the territory of the Member State(s) making the request.
- (10) Moreover, the Commission has, in its relevant Notice on case referral in respect of concentrations, set out in a general manner its understanding regarding the appropriateness of particular cases or categories of cases for referral.²
- (11) In the following paragraphs the Commission will evaluate whether the referral request made by the Belgian competition authority should be accepted, examining first the legal requirements of Article 22 (3) of the Merger Regulation and then the appropriateness of the referral.

Legal criteria

- (12) Regarding the first criterion, the Swedish competition authority agrees with the Belgian competition authority that the markets that are potentially affected by the proposed transaction are wider than national, if not EEA-wide. Thus, the likely locus of any impact on competition resulting from the merger would be the whole of the EEA.
- (13) In more detail, according to the preliminary assessment of the Belgian competition authority, the proposed transaction would affect at least the market for portable document scanners, which, based on the Commission's past decisional practice, may constitute a relevant product market and where the activities of Canon and I.R.I.S. overlap. Given the low transportation cost, the absence of region-specific technical requirements and similar market conditions, including the presence of the same suppliers in the entire EEA, the Belgian competition authority (as well as the notifying party) considers this market to be EEA-wide in scope. This is supported by the Commission's decision in Canon/Océ, where the Commission concluded that:

"in spite of the fact that current sourcing patterns are usually at national level, there are clear indications that the market for office equipment is wider than national if not EEA-wide."

- (14) In light of the foregoing, the Commission is satisfied that the referral request showed to the requisite legal standard that the notified transaction affects trade between Member States.
- (15) Regarding the second criterion, the request from the Swedish competition authority also agrees with the Belgian competition authority that the proposed transaction threatens to significantly affect competition in the market for portable document scanners within the entire EEA, and in particular in specific Member

² Commission Notice on Case Referral in respect of concentrations, OJ [2005] C 56/2.

States such as Sweden where the transaction would lead to high post-merger market shares of the merged entity.

- (16) While acknowledging that the market for portable document scanners, which is a sub segment of the market for SFPs, is a niche market with a possible size of around EUR 10 to 20 million in 2011 at the EEA level, the original referral request by the Belgian competition authority highlights that the proposed transaction would lead to a high post-merger market share of the merged entity and further increase the concentration in an already oligopolistic market. The combined share of the parties amounts to more than [50-60]*% in both value and volume in the EEA and exceeds [80-90]*% in both value and volume in Sweden. The increment in market share would be over [0-5]*% in Sweden and around [10-20]*% in the EEA in both value and volume.
- (17) Moreover, according to the calculations of the Belgian competition authority, the proposed transaction would lead to a post-merger HHI, which would significantly exceed the safe harbours provided for by the Commission's Horizontal Merger Guidelines. Post transaction HHI levels would be of nearly [...] at the EEA level and in excess of [...] in Sweden, with HHI deltas of respectively, more than [...] in the EEA and more than [...] in Sweden.
- (18) The parties submit that market data used by the Belgian competition authority does not accurately reflect the size of the market for portable document scanners, since the sales of a significant number of competitors would not be included. While there may be some merit to this argument put forward by the parties, a market investigation would be necessary to exclude the existence of a threat to competition on the market for portable document scanners resulting from the *prima facie* evidence presented by the Belgian competition authority.
- (19) In addition, based on a comparison of the characteristics and prices of their respective product range, the Belgian competition authority considers Canon and I.R.I.S to be each other's closest competitor as regards portable document scanners with automatic feeders. It is also pointed out that the most important remaining competitor Fujitsu is not competitive in this submarket.
- (20) The Belgian Article 22 request further explains that the proposed transaction may raise additional competition concerns given the fact the parties are active in vertically related or neighbouring markets, namely the markets for MFPs and capture software. However, the possible impact on these markets was not fully assessed by the Belgian competition authority in its referral request.
- (21) On the basis of the *prima facie* analysis submitted by Belgium, to which Sweden refers, the Commission considers, without prejudice to the outcome of its investigation that the concentration threatens to significantly affect competition within the territory of Sweden.

Appropriateness of the referral

- (22) Pursuant to paragraph 45 of the Referral Notice, referrals of concentrations already notified should normally be limited to those cases which appear to present a real risk of negative effects on competition and trade between Member States and where it appears that these would be best addressed at the EU level.
- (23) One of the categories of cases normally most appropriate for referral under Article 22 of the Merger Regulation are cases giving rise to serious competition concerns in one or more market(s) wider than national, or where some of the potentially affected markets to which the main economic impact of the concentration is connected are wider than national. In the present case, the markets concerned by the concentration appear to be broader than national, if not EEA-wide. Based on a *prima facie* assessment, the concentration may give rise to serious competition concerns for the supply of portable document scanners within the EEA. Hence, the present concentration falls under one of the categories of cases referred to in paragraph 45 of the Referral Notice.
- (24) Therefore, the present concentration is an appropriate one for referral to the Commission pursuant to Article 22 of the Merger Regulation.

IV. Conclusion

- (25) After examination of the above-mentioned, the Commission considers that the request by the Swedish competition authority to join the initial referral request made by the Belgian competition authority for the application of Article 22(3) is admissible as it meets the requirements laid down in Article 22(2) and 22(3) of the Merger Regulation. The Commission therefore has decided to examine the proposed concentration under the Merger Regulation.

For the Commission
(signed)
Joaquin ALMUNIA
Vice-President