

EN

***Case No COMP/M.6982 -
ELIXIA HOLDING/ TRYGHEDSGRUPPEN/ HFN GROUP***

Only the English text is available and authentic.

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

Article 4(4)
Date: 23/10/2013



EUROPEAN COMMISSION

Brussels, 23.10.2013
C(2013) 7193 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**To the Finnish Competition and
Consumer Authority**

To the Norwegian Competition Authority

Dear Sirs,

**Subject: Case No COMP/M.6982 – ELIXIA HOLDING/ TRYGHEDSGRUPPEN/
HFN GROUP**
**Commission decision following a reasoned submission pursuant to Article
4(4) of Regulation No 139/2004¹ and Article 6(4) of Protocol 24 to the EEA
Agreement for referral of the case to Finland and Norway.**

Date of filing: 26.09.2013

Legal deadline for response of Member States: 22.10.2013

Legal deadline for the Commission decision under Article 4(4): 31.10.2013

I. INTRODUCTION

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.

1. On 26 September 2013, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation and Article 6(4) of Protocol 24 to the EEA Agreement with respect to the transaction cited above. The parties request the operation to be examined, as regards the Finnish part of the transaction by the competent authorities of Finland and as regards the Norwegian part of the transaction by the competent authorities of Norway.
2. According to Article 4(4) of the Merger Regulation and Article 6(4) of Protocol 24 to the EEA Agreement, 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 or EFTA-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 26 September 2013.
4. By letter of 1 October 2013, the Finnish Competition Authority as the competent authority of Finland informed the Commission that Finland agrees with the proposed referral.
5. By letter of 8 October 2013, the Norwegian Competition Authority, as the competent authority of Norway, informed the Commission that Norway agrees with the proposed referral.

II. THE PARTIES

6. **ELIXIA group** (of which ELIXIA Holding III – "ELIXIA III", Sweden – is part) is a Nordic fitness club operator having its main activities in Norway. ELIXIA operates in total 59 fitness clubs, mainly in Norway, with 42 clubs in Norway, 14 in Finland and 3 in Sweden.
7. **Health and Fitness Nordic** ("HFN", Sweden) is a fitness club operator active in Denmark, Finland, Norway and Sweden, and with its centre of gravity in Sweden. HFN operates through two main brands – SATS and Fresh Fitness, as well as the Metropolis brand in Stockholm. In total HFN operates 135 clubs: 63 clubs in Sweden, 51 in Norway, 10 in Finland and 11 in Denmark.
8. Altor Fund III (Norway), the ultimate parent company of ELIXIA III, and TryghedsGruppen ("TG", Sweden), the parent company of HFN, are referred to as "the Notifying Parties". ELIXIA III and HFN are referred to as "the Parties".

III. THE OPERATION AND CONCENTRATION

9. The proposed transaction consists of the acquisition by Altor Fund III and TG of joint control over HFN Group AS, a newly created company merging ELIXIA III and HFN.
10. In more details, the transaction in question involves the merger of ELIXIA III and HFN by way of exchange of shares and a contribution of shareholders loans of their respective parent companies ELIXIA Holding IV AS and TG to a newly created company, HFN Group AS. After the transaction, ELIXIA IV will receive 51% of the shares in HFN Group AS and TG will own the 49% remaining shares.

11. Pursuant to Section 7 of the Shareholders' Agreement between Altor Fund III and TG, the Board of Directors ("Board") of HFN Group AS will be composed of six members: each of Altor Fund III and TG will nominate two members and they will need to agree on the joint nomination of two independent Directors. No member of the Board will have a casting vote and the Board will vote at simple majority, provided that at least one Altor Director and one TG Director take part in the first meeting vote. No Board matters can be referred to the shareholders' meeting for decision. Therefore, Altor Fund III and TG will have joint control over the merged entity.
12. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. EU DIMENSION

13. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million² (Altor Fund III: EUR [...] million; TG: EUR [...] million). Each of them has a Union-wide turnover in excess of EUR 250 million (Altor Fund III: EUR [...] million; TG: EUR [...] million), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.
14. The notified operation therefore has an EU dimension within Article 1(2) of the Merger Regulation.

V. ASSESSMENT

A. Relevant product market

15. Both ELIXIA and HFN offer health and fitness services in Finland, Norway and Sweden.
16. The Notifying Parties submit that the relevant product market is the operation of local fitness clubs. In particular, the Notifying Parties argue that this market comprises both privately-owned clubs and, to a large extent, publicly-owned clubs and that no further distinctions are to be made within this market.
17. In previous decisions³, while ultimately leaving the exact product market definition open, the Commission indicated that publicly and privately-owned fitness clubs would form two distinct markets, mainly due to differences in price structure and facilities offered.

B. Relevant geographic market

18. In the present case, the Notifying Parties consider that the relevant geographic scope of the market would naturally be larger than the market definition used by the Commission in its precedent decisions, which is isochrones equalling a journey of 15 minutes walking distance around each fitness club. This would allegedly be due to increased mobility in general, but also because the Nordic countries are more sparsely

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

³ Case COMP/M.3169 – *Bridgepoint Capital/Permira/Holmes Place*, para. 14.

populated than continental Europe, making private cars a more important mode of transportation.

19. As regards previous decisions⁴, while ultimately leaving the exact geographic market definition open, the Commission identified the narrowest possible geographic market to be catchment areas between fitness clubs equalling a journey of 15 minutes on foot.

C. Assessment

20. On the basis of the information provided by the Notifying Parties in the Reasoned Submission, the proposed transaction is an appropriate candidate for pre-filing referral from the Commission to the Finnish Competition Authority as regards the Finnish part of the transaction and to the Norwegian Competition Authority as regards the Norwegian part of the transaction in accordance with Article 4(4) of the Merger Regulation and Article 6(4) of Protocol 24 respectively.
21. The transaction meets the legal requirements set out in Article 4(4) of the Merger Regulation and in Article 6(4) of Protocol 24. The transaction is a concentration within the meaning of Article 3 of the Merger Regulation, it has an EU dimension and it may significantly affect competition in Finland and Norway.
22. On the basis of the information submitted in the Reasoned Submission and as regards the markets proposed for referral in Finland and Norway, the proposed concentration will lead to a number of affected markets in Norway and Finland that are local in scope. The Parties' activities overlap in the markets for the operation of fitness clubs and the sale of gym equipment and fitness apparel. Because of its limited size, the latter market is not an affected one⁵, thus only the operation of fitness clubs will be analysed.
23. As regards the relevant product market, in line with its previous decision⁶, the Commission considers that publicly-owned and privately-owned fitness clubs might form two distinct markets and, as regards the relevant geographic market, the narrowest possible geographic market to be isochrones around fitness clubs equalling a journey of 15 minutes on foot.
24. This market definition leads to a high number of local affected markets in Finland ([...] markets) and Norway ([...] markets).
25. In Finland, the combined market share of the Parties would exceed 40% in [...] markets with market shares ranging from [...]% to [...]%.

⁴ Case COMP/M.3169 – *Bridgepoint Capital/Permira/Holmes Place*, para. 17.

⁵ The Notifying Parties submit that their combined market shares in the market for the sale of gym equipment and fitness apparel is well below 15% in all the Nordic countries (i.e. Denmark, Finland, Norway and Sweden). The market of fitness education, where both Parties are active, has never been defined as a separate market from that of the operation of fitness clubs. In any case, the Notifying Parties submit that their combined market share on this hypothetical market would be well below 15% in all the Nordic Countries.

⁶ Case COMP/M.3169 - *Bridgepoint Capital/Permira/Holmes Place*.

26. In Norway, the combined market share of the Parties would exceed 40% in [...] markets with market shares ranging from [...]% to [...]%.
27. According to the Commission Notice on Case Referral in respect of concentrations ("the Commission Notice on Case Referral")⁷, whose guidance applies *mutatis mutandis* to the referral rules contained in the EEA Agreement, markets that have a national or narrower than national scope, and the effects of which are likely to be confined to, or have their main economic impact in, a single Member State or EFTA-State, are the most appropriate candidate cases for referral. The proposed concentration will give rise to numerous urban or sub-urban markets which will present no cross-border effects, will have local characteristics and will thus be restricted to the area of Finland and Norway.
28. In view of the foregoing, the principal effects of the Finnish part of the transaction and the Norwegian part of transaction would be restricted to Finland and Norway, respectively. The proposed transaction may significantly affect competition in one or several markets in Finland and Norway which present all the characteristics of a distinct market.

Additional factors

29. According to paragraph 22 of the Commission Notice on Case Referral, additional factors to be taken into consideration in the assessment of a candidate case for referral are the number of national markets likely to be significantly affected, the prospect of addressing any possible concerns by way of proportionate, non-conflicting remedies and the investigative efforts that the case may require.
30. In this case, the high number of the identified local markets ([...] in Finland and [...] in Norway) and the close scrutiny that the case will require in determining the local consumers' preferences, which may differ even within a country, indicate that the Finnish Competition Authority and Norwegian Competition Authority are well placed to examine the Finnish and the Norwegian markets respectively.
31. Therefore, in light of the principle of the most appropriate authority laid down in paragraph 9 of the Commission Notice on Case Referral, a partial referral to the Finnish Competition Authority and Norwegian Competition Authority is justified.

VI. REFERRAL

32. On the basis of the information provided by the Notifying Parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation and in Article 6(4) of Protocol 24 to the EEA Agreement 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 (point 17), which applies *mutatis mutandis* to Article 6(4) of Protocol 24 to the EEA Agreement, 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 in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny*", and that

⁷ OJ C 56, 5 March 2005, p.2

“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 Finland and Norway.

VII. CONCLUSION

33. For the above reasons, and given that Finland and Norway expressed their agreement with the proposed referral, the Commission has decided to refer the assessment of the effects of the proposed transaction on the relevant markets in Finland to be examined by the Finnish Competition Authority, and the assessment of the effects of the proposed transaction on the relevant markets in Norway to be examined by the Norwegian Competition Authority. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 6(4) read in conjunction with Article 6(1) of Protocol 24 to the EEA Agreement.

For the Commission

(signed)

Alexander ITALIANER

Director General