



EUROPEAN COMMISSION

DG Competition

***Case M.7910 - KESKO / ONNINEN***

Only the English text is available and authentic.

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

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Article 4(4)

Date: 30/03/2016



## EUROPEAN COMMISSION

Brussels, 30.3.2016  
C(2016) 1971 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE

PUBLIC VERSION

**To the notifying party:**

**To the Finnish Competition and Consumer Authority:**

Dear Sirs,

**Subject: Case M.7910 – Kesko / Onninen**

**Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004<sup>1</sup> for a partial referral of the case to Finland**

### **I. INTRODUCTION**

- (1) On 9 March 2016, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the transaction cited above. The request concerns a partial referral of the case to Finland with respect to markets in Finland.
- (2) A copy of the Reasoned Submission was transmitted to all Member States on 9 March 2016.

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<sup>1</sup> 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.

- (3) By a letter of 14 March 2016, the Finnish Competition and Consumer Authority ('FCCA'), the competent Finnish authority, informed the Commission that the Republic of Finland agrees with the proposed referral.

## **II. THE PARTIES**

- (4) *Kesko Oyj* ('Kesko') is a Finnish listed company active primarily in the distribution of various different products, including the distribution of building, home improvement and installation products. Kesko's customers are primarily consumers but it makes some sales to professional customers as well.
- (5) *Onninen Oy* ('Onninen') is a Finnish company primarily active in the distribution of different installation products. It only sells to professional customers.
- (6) Kesko and Onninen together are hereinafter referred to as 'the Parties'.

## **III. THE OPERATION AND THE CONCENTRATION**

- (7) On 12 January 2016, Kesko and the present owner of Onninen signed a share purchase and sale agreement. According to the agreement, Kesko will acquire the whole share capital of Onninen. Kesko will thus acquire sole control of Onninen.
- (8) The operation therefore constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

## **IV. UNION DIMENSION**

- (9) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Kesko: EUR 9 071 million and Onninen EUR 1 523 million). Each of them as a Union-wide turnover in excess of EUR 250 million (Kesko: EUR 8 170 million and Onninen EUR 1 187 million). While Kesko achieves two-thirds of its Union-wide turnover in Finland, Onninen does not achieve two-thirds of its Union-wide turnover within any single Member State.
- (10) The operation therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

## **V. ASSESSMENT**

- (11) On the basis of the information submitted in the Reasoned Submission, the concentration will give rise to horizontally affected markets with respect to the sale of (i) building and home improvement products to professional customers in Finland, and (ii) installation products to professional customers in Finland, in particular the possible segment for heating, plumbing, sanitary, air conditioning and refrigeration products ('HEPAC' products) and some of its possible sub-segments.
- (12) The Commission also notes that, on the basis of the information provided in the Reasoned Submission, it cannot be excluded that the vertical link between Onninen's upstream activities in (i) the wholesale of installation products to retailers in Finland and (ii) the Parties' downstream activities in the retail distribution of installation products in Finland could give rise to affected markets.

## **A Relevant markets**

- (13) In previous cases, the Commission has considered that the markets for the distribution of building products in general can be divided into (i) wholesale to retailers, (ii) retail sale to professional customers and (iii) retail sale to consumers ('non-professional customers') primarily through do-it-yourself stores, but has ultimately left the possible product market definition open.<sup>2</sup>
- (14) For installation products in particular, the Commission has in previous cases considered a similar distinction between the sales channels into (i) wholesale to retailers, (ii) retail sale to professional customers and (iii) retail sale to non-professional customers, and further delineations according to the types of products distributed but has left those questions ultimately open as well.<sup>3</sup>
- (15) Kesko submits that building materials and home improvement products constitute a separate product market distinct from the distribution of HEPAC products. In addition, Kesko submits that HEPAC products can be further divided into (i) heating and plumbing products, (ii) sanitary products, (iii) ventilation products and (iv) refrigeration products, which all have a different purpose and use.
- (16) As to the relevant geographic markets, the Commission has in recent cases considered the markets to be national or potentially smaller than national.<sup>4</sup>
- (17) Kesko submits that the geographic scope of the markets is national for Finland.

## **B Assessment**

- (18) According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the undertakings concerned may request that their transaction be referred in whole or in part from the Commission to a Member State.

### *Legal requirements for Article 4(4) referral*

- (19) According to Article 4(4) of the Merger Regulation, a concentration may be referred to a Member State if it may significantly affect competition in a market (or markets) within a Member State and that market presents all the characteristics of a distinct market.

#### *(i) The transaction may significantly affect competition in a market*

- (20) The existence of an affected market is generally considered sufficient to meet the requirements set forth in Article 4(4) of the Merger Regulation. There is no need for

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<sup>2</sup> See, e.g. M.7703 – *PontMeyer / DBS*, paragraphs 11–12; M.3407 – *Saint Gobain / Dahl*, paragraphs 12 and 16; and M.3142 – *CVC / Danske Traelast*, paragraphs 11–13.

<sup>3</sup> See, e.g. M.7457 – *CVC / Paroc*, paragraphs 23–25; M.4050 – *Goldman Sachs / Cinven / Ahlsell*, paragraphs 8–13 and 16; and *Wolseley / Pinault Bois & Matériaux*, paragraph 12–17.

<sup>4</sup> See, e.g. M.7703 – *PontMeyer / DBS*, paragraphs 21–22; and M.7457 – *CVC / Paroc*, paragraphs 27–28. See also *Cordes & Graefe / Pompac / Comafranc* where the markets for plumbing, heating and air conditioning products were considered at national level for Belgium and Luxembourg but where potential local markets were considered in addition to a national level for France and Germany, M.7107 – *Cordes & Graefe / Pompac / Comafranc*, paragraphs 19–20.

the undertakings concerned to demonstrate that the effects of the concentration would be detrimental to competition.<sup>5</sup>

- (21) In the case at hand, the proposed transaction will give rise to a number of affected markets in Finland.
- (22) At the national level, the Parties' activities overlap and their combined market shares exceed 20% in the retail sale of building and home improvement products to professional customers ([20-30]%), retail sale of HEPAC products to professional customers ([30-40]%) including its possible sub-segments heating and plumbing products ([30-40]%), sanitary products ([20-30]%), ventilation products ([30-40]%).<sup>6</sup>
- (23) The Parties have in total over 180 outlets in Finland. While local market shares have not been provided in the Reasoned Submission, given the national market shares, it cannot be excluded that the Parties' market shares would exceed 20% in some of the local areas within Finland as well. For the purposes of this decision, it is nonetheless not necessary to conclude on that question.
- (24) Kesko has submitted that the concentration does not give rise to any vertically affected markets. However, the Commission notes that, on the basis of the information provided in the Reasoned Submission, it cannot be excluded that the vertical link between Onninen's upstream activities in (i) the wholesale of installation products to retailers and (ii) the Parties' downstream activities in the retail distribution of installation products in Finland could give rise to affected markets as well. For the purposes of this decision, it is nonetheless not necessary to conclude on that question.
- (25) In light of the above, the first requirement set forth by Article 4(4) of the Merger Regulation is met.

*(ii) Competition is affected within a Member State in a market that presents all the characteristics of a distinct market*

- (26) The Commission's findings in previous cases and Kesko's submission in the present case support the view that the markets in question are limited to Finland or distinct local markets within Finland.
- (27) Therefore, the second legal requirement set forth by Article 4(4) of the Merger Regulation is met.

*(iii) Conclusion on the legal requirements*

- (28) In view of the foregoing, the legal requirements for a partial referral of the case to Finland with respect to the markets in Finland are met.

#### *Additional factors*

- (29) Kesko submits that the FCCA would be the best placed authority to assess the concentration with respect to Finland, in particular since the FCCA has recent experience in assessing transactions in the same markets.

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<sup>5</sup> Commission Notice on Case Referral in respect of concentrations, OJ C 56, 5.3.2005, p. 2, paragraph 17, including footnotes 20 and 21.

<sup>6</sup> The market shares are the Parties' best estimates for 2015.

- (30) The Commission notes that the FCCA has recently assessed transactions that have concerned at least partially the same markets that are concerned by the Reasoned Submission. The FCCA has also previously assessed transactions involving either of the Parties. The Commission therefore concludes that the FCCA is the best placed authority to review the concentration with respect to markets in Finland.
- (31) The Commission further notes that the focus of the transaction is in Finland and that, even if there may be affected markets outside of Finland, unconnected to the Finnish markets, the principal effects of the concentration would be confined to Finland. A partial referral to Finland would not therefore unduly jeopardise the principle of one-stop-shop in the present case.

## **VI. REFERRAL**

- (32) On the basis of the information provided in the Reasoned Submission, the legal requirements set out in Article 4(4) of the Merger Regulation are met. Furthermore, on the basis of the information submitted in the Reasoned Submission, a referral of the Finnish markets to Finland is appropriate in the present case.

## **VII. CONCLUSION**

- (33) For the above reasons, and given that the Republic of Finland has expressed its agreement, the Commission has decided to refer the concentration partially to the Republic of Finland to be examined by its competent authorities.
- (34) The referral concerns the markets in Finland. The Commission will retain its jurisdiction with respect to markets outside of Finland.
- (35) This decision is addressed to the Republic of Finland and Kesko Oyj. It is adopted in application of Article 4(4) of the Merger Regulation.

*For the Commission*

*(Signed)*  
*Johannes LAITENBERGER*  
*Director-General*