

# COMMISSION

## COMMISSION DECISION

of 11 November 2003

**declaring a concentration compatible with the common market and the EEA Agreement**

**(Case COMP/M.2621 — SEB/Moulinex)**

*(notified under document number C(2003) 4157)*

**(Only the French text is authentic)**

**(Text with EEA relevance)**

(2005/408/EC)

On 11 November 2003 the Commission adopted a decision in a merger case pursuant to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings <sup>(1)</sup>, and in particular Article 8(2) of that Regulation. A non-confidential version of the full decision can be found in the authentic language of the case and in the working languages of the Commission on the website of the Directorate-General for Competition, at the following address: [http://europa.eu.int/comm/competition/index\\_en.html](http://europa.eu.int/comm/competition/index_en.html)

- (1) The case concerns the acquisition by the company SEB of control of certain assets of the company Moulinex (brands, some production plants and some marketing subsidiaries); the transaction was notified to the Commission pursuant to Article 4 of Regulation (EEC) No 4064/89 on 13 November 2001.
- (2) SEB and Moulinex are two French undertakings operating in the small electrical household appliances sector. Both operate worldwide in the sector. SEB markets its products mainly under two world brands, 'Tefal' and 'Rowenta' and Moulinex markets its products mainly under the international brands 'Moulinex' and 'Krupps'.
- (3) The acquisition of Moulinex's assets by SEB took place within the framework of receivership proceedings involving the Moulinex group. The Commission adopted two Decisions on the merger on 8 January 2002. In the first, the Commission referred examination of the effects of the merger on competition in France to the French competition authorities, pursuant to Article 9 of the merger Regulation. In the second, pursuant to Article 6(2) of the merger Regulation, it authorised the merger in the other countries subject to the licensing of the Moulinex trade mark to independent third parties in nine countries of the European Economic Area (Belgium, Norway, the Netherlands, Germany, Austria, Portugal, Sweden, Denmark and Greece). The Court of First Instance of the European Communities annulled the authorising Decision as regards the countries for which no commitments had been given, namely Spain, Finland, Ireland, Italy and the United Kingdom <sup>(2)</sup>. This new Decision re-examines the competitive impact of the transaction in those five countries.

<sup>(1)</sup> OJ L 395, 30.12.1989, p. 1. Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997, p. 1).

<sup>(2)</sup> Judgment of the Court of First Instance in Case T-114/02 *Babyliiss SA v Commission of the European Communities*.

- (4) On 3 November 2003, at its 120th meeting, the Advisory Committee on Concentrations unanimously delivered a favourable opinion on the Commission's draft authorising Decision.
- (5) In a report drawn up on 4 November 2003, the Hearing Officer concluded that the right of the parties to be heard had been complied with.

#### I. DEFINITION OF THE RELEVANT MARKETS

- (6) The Decision defines the product markets in terms of categories of small electrical household appliances corresponding to a specific use and a specific function. There are 13 product markets: deep fryers, mini ovens, toasters, sandwich makers and waffle makers, appliances for informal meals, electric barbecues and indoor grills, rice cookers and steam cookers, electric filter coffee makers, kettles, espresso machines, blenders and food preparation appliances, irons/ironing stations and personal care appliances.
- (7) The relevant geographic markets are national. However, market conditions in the United Kingdom and Ireland are uniform. Since brands and prices are identical in the two countries, suppliers cannot pursue an autonomous pricing policy in either country without seeing orders transferred to the other country. The two countries are therefore considered to form one and the same geographic market for the relevant products.

#### II. MARKET ANALYSIS

- (8) SEB's competitive position is examined in the following countries or areas: Spain, Finland, Italy and the United Kingdom/Ireland.

#### **The competitive potential represented by Moulinex**

- (9) Moulinex's sales fell sharply in 2001 and 2002 compared with 2000 as a result of difficulties created by the insolvency of the group. The Commission examined whether the decline was structural or whether Moulinex had the capacity to recover its previous positions.
- (10) The market survey shows that Moulinex's capacity to recover its lost market shares will depend not only on the value of the brands brought in by the merger, but also on other factors such as the innovative, commercial and financial capacities of its new owner. The recovery potential to be taken into account in the competitive analysis is thus reduced by the impact of these other factors, since they do not involve any direct causal link with the merger.
- (11) Furthermore, the Commission takes the view that where the Moulinex brand is no longer being used, it is very unlikely to be able to recover the market shares it had in 2000. The same applies where its market shares have been taken by competitors who are already strong on the small electrical household appliances markets, such as Philips, Braun or DeLonghi, and/or where distributors do not consider Moulinex or Krups a must have brand.

### Methods of analysis

- (12) For each of the relevant markets, the Commission established market shares on the basis of the declared sales of most of the competitors operating on the market.
- (13) In each of the countries or areas examined, the Decision looks at the effects of the transaction both from the horizontal point of view (effects of the combined strength of the new entity market by market) and from the non-horizontal point of view (effect of the combined strength of the new entity in the small electrical household appliances sector as a whole, even where there is no overlap on a particular market).
- (14) For the combination of SEB and the Moulinex assets taken over to have harmful non-horizontal effects on competition, the following conditions must be met:
- the new entity must have a range of brands that gives it a significant competitive advantage in the small electrical household appliances sector as a whole,
  - the combined entity must have positions of strength on some markets that it could exploit to create or strengthen dominant positions on other markets. Such positions of strength might be created by the transaction itself, or might already be held by one or other party.
- (15) As regards examination of the horizontal effects, the Commission has structured its Decision as follows: (i) markets where the parties have a combined market share of less than 25 %; (ii) markets with non-significant overlaps, and (iii) markets with significant overlaps and a combined market share in excess of 25 %.
- (16) This approach gives the following table.

	Markets where the parties have a market share of less than 25 %	Markets with non-significant overlaps	Markets with a combined market share in excess of 25 %
Spain	Espressos machines, filter coffee makers, barbecues/grills, steam cookers, sandwich/waffle makers, deep fryers, irons/ironing stations, personal care appliances.	Food preparation appliances, informal meal appliances.	Toasters, kettles, mini ovens.
Finland	Irons/ironing stations, steam cookers, toasters, filter coffee makers, deep fryers, informal meal appliances, personal care appliances.	Espresso machines, barbecues/grills, food preparation appliances.	Mini ovens, kettles, sandwich/waffle makers.
Italy	Espresso machines, deep fryers, mini ovens, toasters, personal care appliances.		Kettles, informal meal appliances, sandwich/waffle makers, steam cookers, food preparation appliances, irons/ironing stations, filter coffee makers, barbecues/grills.
United Kingdom/Ireland	Toasters, kettles, mini ovens, filter coffee makers, sandwich/waffle makers, barbecues/grills, food preparation appliances, personal care appliances.	Espresso machines, irons/ironing stations.	Informal meal appliances, steam cookers, deep fryers.

- (17) For the purposes of this summary, only the markets belonging to the third category are commented on in detail. The Decision concludes that there is no risk of the creation or strengthening of a dominant position on the markets where the parties have a market share of less than 25 % and on the markets where the addition of market shares will not be significant.

*A. The Spanish markets*

- (18) On the small electrical household appliances markets, the supply side comprises competitors with a strong international presence such as Philips ([15-20] % of sales on the small electrical household appliances markets), SEB [10-20] %\* (\*), Braun [15-20] %, BSH [0-5] % and DeLonghi [0-5] %. Local operators account for a more modest overall market share: these are Taurus [5-10] %, Jata, Solac and Fagor ([0-5] % each).
- (19) The demand side is fairly concentrated and stems from the following forms of distribution: hypermarkets (Carrefour, Auchan, Hipercor), department stores (El Corte Ingles), specialist stores (Media Markt) and traditional small traders, most of whom have organised themselves into purchasing groups (Densa, Gestesa, Segesa).
- (20) Moulinex's sales fell significantly across the board between 2000 and 2002. The fall amounted to at least 20 % of sales on each of the relevant markets. Even if the image of the Krups and Moulinex brands has hardly suffered in the eyes of the final consumer, their potential for recovery is limited by the success of the new entity's competitors in consolidating their positions on the markets.
- (21) The risk of creating or strengthening dominant positions may be dismissed on the following markets (where the combined market share is in excess of 25 % and there is a significant overlap): toasters, kettles and mini ovens.
- (22) On the markets in toasters and kettles, SEB will hold market shares of [20 to 30] %\*. The merger will not result in the combining of must-have brands (only Moulinex is a must-have brand for toasters, and only Tefal is a must-have brand for kettles). The merged entity of SEB and Moulinex will face competitors with sizeable market shares (between [15 and 20] % at most) and having reputable brands. Consequently, it is unlikely that Moulinex will recover the competitive potential it had in 2000. At all events, with a maximum combined market share of [25-35] %, in the absence of non-horizontal effects and owing to the presence of well established competitors, the risk that the merger might result in the creation or strengthening of a dominant position on these markets can be dismissed.
- (23) On the market in mini ovens, SEB's position is stronger. The figures show that the new entity would have a share of [30-40] % of the Spanish market. Its main competitors are DeLonghi [20-25] %, Jata [5-10] %, Ufesa and Severin ([5-10] % each). Although they have smaller market shares than the new entity, these operators none the less have must-have brands and a broad range covering all the capacities available on the market (10/12 litres, 18/20 litres, 26/28 litres). Moreover, prices are tending to fall on this market, there is regular innovation and entry barriers are low. Lastly, although not included in the relevant market, microwave ovens with grill pose a not inconsiderable competitive constraint, and the Moulinex brand has limited potential for recovering the position it held in 2000.

(\*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

(24) The merger will not allow the new entity to exploit non-horizontal effects. Its range of brands and its positions of strength on certain markets are not sufficient to give it any leverage, particularly in view of the position held by its competitors as regards these two aspects.

(25) In the light of the above, the notified operation is not likely to create or strengthen a dominant position as a result of which effective competition would be significantly impeded on the various markets in small electrical household appliances in Spain.

*B. The Finnish markets*

(26) Overall, SEB ([5-10] %\* of sales on the markets in small electrical household appliances) is only the third largest operator on the Finnish markets after Braun [10-15] %\* and in particular Philips [25-30] %\*. AEG ([5-10] %\*) holds comparable positions to that of the new entity. Severin, DeLonghi, BSH and national operators such as OBH/Nordica and Rommelsbacher are also present, but with smaller shares (between 0 and 5 % each) and have a significant presence on certain specific markets.

(27) Distribution in Finland is amongst the most concentrated in Europe: Kesko and E. Partners each account for around [20-25] %\* of sales to the final consumer. Stockman is also in a strong position with [15-20] %\*.

(28) Moulinex's sales fell dramatically between 2000 and 2002 (by at least 50 % on each of the relevant markets). Moulinex is unlikely to recover its lost market shares, given (i) the scale of the decline and (ii) the consolidation of market positions held by competitors with reputed brands.

(29) The risk of dominant positions being created or strengthened can be dismissed on the following markets (where the combined market share is in excess of 25 % and there is a significant overlap): mini ovens, kettles and sandwich/waffle makers.

(30) The markets in mini ovens and sandwich/waffle makers are included in this category because of the large market shares held by the combined entity in 2000 ([40-50] %\* and [20-30] %\* respectively). Since then, however, its positions have shrunk markedly, and in 2002 it had market shares of the order of [0-10] %\* on each of the two markets. Furthermore, Severin increased its market share in mini ovens from [30-35] % to [50-55] %, while many operators have must have brands on the market in sandwich/waffle makers. Furthermore, Moulinex has, for the time being, withdrawn from the market in mini ovens.

(31) On the market in kettles, the new entity remains the market leader with a market share of [30-40] %\* both in 2000 and in 2002. The stability in its market shares is due to the fact that the decline in Moulinex's sales was offset by an increase in SEB's sales. Philips with [20-25] % and, to a lesser extent, Braun and Severin are strong competitors with must-have brands, consolidated by Moulinex's difficulties and able to exercise a counterweight to the new entity. Furthermore, Moulinex is not generally cited as a must-have brand, which makes it unlikely that it can recover its competitive potential.

- (32) The merger does not allow the new entity to exploit non-horizontal effects. Its range of brands and its positions of strength on certain markets are not sufficient to give it any leverage, particularly in view of the position held by its competitors as regards these two aspects.
- (33) In the light of the above, the notified operation is not likely to create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part thereof on the various markets in small electrical household appliances in Finland.

*C. The Italian markets*

- (34) The leading supplier on the Italian markets in small electrical household appliances is DeLonghi ([20-30] %\* of sales on the markets in small electrical household appliances), closely followed by the new combined entity SEB/Moulinex ([15-25] %\*) and Braun and Philips ([5-15] %\* each). BSH has smaller market shares (less than 5 % overall). Domestic competitors have generally smaller market shares overall, but may nevertheless hold not insignificant positions on certain markets. This is the case with Imetec (food preparation appliances and sandwich/waffle makers), Polti (irons) and Saeco (70 % of the market in espresso machines).
- (35) The structure on the demand side is comparable to that on the supply side, but is less concentrated. Almost two thirds of distribution takes place via large chains, purchasing groups and specialised dealers.
- (36) Moulinex's sales fell between 2000 and 2002. Its potential for recovery appears severely restricted by the presence of competitors with must-have brands which have taken advantage of Moulinex's difficulties to enter or consolidate their positions on markets.
- (37) The risk of dominant positions being created or strengthened may be dismissed on all the markets where the market share is in excess of 25 % or with a significant overlap, namely: irons and ironing stations, kettles, informal meal appliances, sandwich/waffle makers, food preparation appliances, filter coffee makers, barbecues/grills and steam cookers.
- (38) It is in the market in irons and ironing stations that the new entity's position appears weakest amongst the eight markets cited above with [20-30] %\* of sales, which is comparable to that of DeLonghi. It should be noted that Moulinex is traditionally not strong here, both in 2000 and in 2002. Its products are not carried by any must-have brand. The new entity's position is subject to strong competition, given the situation of competitor groups: Philips, Imetec and Polti each hold [10-15] % of the market and all have must-have brands. The new entity cannot add any new must-have brand resulting from the merger to the existing must-have brands (Rowenta and, to a lesser extent, Tefal).

- (39) On the markets in kettles, informal meal appliances, sandwich/waffle makers, food preparation appliances, filter coffee makers and barbecues/grills, the new entity's market share is [25-35] %. It is the market leader here. On each of these markets, it will face competitors with sizeable market shares and reputable brands. The identity of its competitors varies from market to market, but is generally the traditional international suppliers (Philips in the case of kettles, sandwich/waffle makers and food preparation appliances; Braun in the case of kettles, sandwich/waffle makers, food preparation appliances and filter coffee makers; Severin in the case of informal meal appliances; DeLonghi in the case of sandwich/waffle makers, food preparation appliances and barbecues/grills) and local operators (Imetec in the case of sandwich/waffle makers). In general, the merger does not combine two must-have brands on these markets. On some markets, the Commission carried out a more detailed analysis (by price segment or by product type) in order to confirm its analysis on the overall market.
- (40) The market in steam cookers is the one on which the new entity has the strongest position with [35-45] % of sales. Its market share has increased by 20 % since 2000 thanks to the improvement in SEB's sales. A number of factors prompted the Commission to qualify this market position. Firstly, most of the new entity's sales were made through one distributor, Esselunga, via its fidelity catalogue. SEB is thus very dependent on this distributor. Secondly, Moulinex no longer markets products, its sales being attributable only to the running down of its stocks. It also appears that SEB does not plan to relaunch Moulinex products, Moulinex not being a must-have brand in Italy. Lastly, competitors have advanced, including Braun [10-15] % and Girmi [5-10] %, which tripled its sales in two years.
- (41) The merger does not allow the new entity to exploit non-horizontal effects. Its range of brands and its positions of strength on certain markets are not sufficient to give it any leverage, particularly in view of the position held by its competitors as regards these two aspects.
- (42) In the light of the above, the notified transaction is not likely to create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part thereof on the various markets in small electrical household appliances in Italy.

*D. The markets in the United Kingdom and Ireland*

- (43) There are a large number of suppliers in these two countries with almost identical overall positions in each of them, at around 10 %. These are Braun, SEB, Philips, DeLonghi, Morphy Richards and Salton. Somewhat smaller market shares are held by BSH and Home Products International (around 5 %). A particular feature of the British market is the presence and reputation of local operators such as Morphy Richards, Salton and, to a lesser extent, Home Products International.
- (44) Distribution is highly concentrated, with Argos being by far the largest distributor ([30-35] %\* of sales). The five largest distributors account for half of sales.
- (45) Moulinex's sales fell substantially between 2000 and 2002, by at least 30 % on all markets and by more than 50 % on most markets. The new entity has little chance of recovering its 2002 positions because of the highly competitive situation on the British market. Moulinex is cited as a second-rank brand, while Krups's potential appears to be better, but its presence is limited to certain markets, including espresso machines.

- (46) The risk of dominant positions being created or strengthened can be dismissed on all the markets where there is a market share in excess of 25 % and a significant overlap, namely informal meal appliances, steam cookers and deep fryers.
- (47) On those three markets, Moulinex's positions declined considerably between 2000 and 2002. Its market shares fell from [5-15] %\* to less than 5 %, or indeed zero where Moulinex withdrew from the market (informal meal appliances). Consequently, although SEB has not inconsiderable market shares ([30-35] % in the case of steam cookers, [25-35] % in the case of deep fryers and [10-15] % in the case of informal meal appliances), these will not be strengthened by the merger. SEB is faced on each of these markets with competitors holding must-have brands, while the merger would not give it any additional must-have brands. New market entrants have also appeared on these markets, including the market in steam cookers: Russell Hobbs, Hinari and Magimix. These brands directly achieved sales in excess of Moulinex's sales in 2000. On the market in deep fryers, an analysis by price quartile confirmed the conclusions drawn on the overall market: on the lowest quartiles, the presence of distributors' own brands became firmer.
- (48) The merger will not allow the new entity to exploit non-horizontal effects. Its range of brands and its positions of strength on certain markets are not sufficient to give it any leverage, particularly in view of the position held by its competitors as regards these two aspects.
- (49) In the light of the above, the notified operation is not likely to create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part thereof on the various markets in small electrical household appliances in the United Kingdom and Ireland.

### III. CONCLUSION

- (50) For the reasons set out above, the Commission has decided not to oppose the notified merger and to declare it compatible with the common market and with the EEA Agreement, subject to the continued implementation of the commitments which were proposed during the first proceedings<sup>(1)</sup>. This Decision is taken on the basis of Article 8(2) of Council Regulation (EEC) No 4064/89 and Article 57 of the EEA Agreement.

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<sup>(1)</sup> Commitments to grant trade mark licences in nine countries of the European Economic Area (Belgium, Norway, the Netherlands, Germany, Austria, Portugal, Sweden, Denmark and Greece) were given as a condition for the authorisation of the transaction in those countries. The commitments were set out in the Commission's Decision of 8 January 2002 and provided in particular for the granting of an exclusive licence to sell household electrical appliances under the Moulinex trade mark for a period of five years covering the 13 categories of products mentioned in the Decision, and the commitment not to market products bearing the Moulinex trade mark in the countries concerned during the term of the licence and for a further period of three years following the expiry of the licence.