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[1] Text with EEA relevance

(Continued overleaf)

EN

[1] Text with EEA relevance

II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COMMISSION

Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty

Cases where the Commission raises no objections

(Text with EEA relevance)

(2009/C 227/01)

Date of adoption of the decision	22.6.2009
Reference number of State Aid	N 258/09
Member State	Finland
Region	—
Title (and/or name of the beneficiary)	Short-term export-credit insurance
Legal basis	Act on the State's Export Credit Guarantees No 442/2001
Type of measure	Aid scheme
Objective	Export credits insurance
Form of aid	—
Budget	—
Intensity	—
Duration (period)	until 31.12.2010
Economic sectors	Financial intermediation
Name and address of the granting authority	Finnvera plc
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/community_law/state_aids/state_aids_texts_en.htm

Date of adoption of the decision	17.8.2009
Reference number of State Aid	N 415/09 & NN 46/09
Member State	Denmark
Region	—
Title (and/or name of the beneficiary)	Prolongation and amendment of the recapitalisation scheme and prolongation of the guarantee scheme
Legal basis	Act on State-Funded Capital Injections into Credit Institutions of 3 February 2009
Type of measure	Aid scheme
Objective	Aid to remedy serious disturbances in the economy
Form of aid	Other forms of equity intervention, Guarantee
Budget	Recapitalization: max DKK 100 000 million; New guarantee scheme: max DKK 600 000 million
Intensity	—
Duration (period)	8.2009-2.2010
Economic sectors	Financial intermediation
Name and address of the granting authority	Kingdom of Denmark
Other information	—

The authentic text(s) of the decision, from which all confidential information has been removed, can be found at:

http://ec.europa.eu/community_law/state_aids/state_aids_texts_en.htm

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COMMISSION

Euro exchange rates [1]

21 September 2009

(2009/C 227/02)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,4658	AUD	Australian dollar	1,7017
JPY	Japanese yen	135,46	CAD	Canadian dollar	1,5780
DKK	Danish krone	7,4413	HKD	Hong Kong dollar	11,3609
GBP	Pound sterling	0,90660	NZD	New Zealand dollar	2,0830
SEK	Swedish krona	10,1390	SGD	Singapore dollar	2,0788
CHF	Swiss franc	1,5182	KRW	South Korean won	1 766,41
ISK	Iceland króna		ZAR	South African rand	11,0155
NOK	Norwegian krone	8,6500	CNY	Chinese yuan renminbi	10,0098
BGN	Bulgarian lev	1,9558	HRK	Croatian kuna	7,2915
CZK	Czech koruna	25,167	IDR	Indonesian rupiah	14 218,74
EEK	Estonian kroon	15,6466	MYR	Malaysian ringgit	5,1010
HUF	Hungarian forint	272,37	PHP	Philippine peso	69,903
LTL	Lithuanian litas	3,4528	RUB	Russian rouble	44,5400
LVL	Latvian lats	0,7038	THB	Thai baht	49,434
PLN	Polish zloty	4,1590	BRL	Brazilian real	2,6625
RON	Romanian leu	4,2678	MXN	Mexican peso	19,5318
TRY	Turkish lira	2,1875	INR	Indian rupee	70,3730

[1] *Source*: reference exchange rate published by the ECB.

New national side of euro coins intended for circulation

(2009/C 227/03)

National side of the new commemorative 2-euro coin intended for circulation and issued by Finland

Euro coins intended for circulation have legal tender status throughout the euro area. The Commission publishes all new euro coin designs with a view to informing all parties required to handle coins in the course of their work as well as the public at large [1]. In accordance with the Council conclusions of 10 February 2009 [2], the Member States and countries that have concluded a monetary agreement with the Community providing for the issuing of euro coins are allowed to issue commemorative euro coins intended for circulation, provided that certain conditions are met, particularly that only the 2-euro denomination is used. These coins have the same technical characteristics as other 2-euro coins, but their national side features a commemorative design that is highly symbolic in national or European terms.

Issuing country: Finland

Subject of commemoration: 200th anniversary of the first Diet of Finland and the founding of Central Government Institutions in Finland

Description of the design: The inner part of the coin depicts the profile of the Porvoo Cathedral, which was the site of opening of the first Diet of Finland. The date 1809 appears on the top. The year mark 2009 is on the right hand side. The indication of the issuing country 'FI' and the mintmark are on the left hand side.

The coin's outer ring depicts the twelve stars of the European flag.

Number of coins to be issued: 1,6 million

Date of issue: October 2009

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[1] See OJ C 373, 28.12.2001, p. 1 for the national sides of all the coins issued in 2002.

[2] See the conclusions of the Economic and Financial Affairs Council of 10 February 2009 and the Commission Recommendation of 19 December 2008 on common guidelines for the national sides and the issuance of euro coins intended for circulation (OJ L 9, 14.1.2009, p. 52).

Opinion of the Advisory Committee on restrictive agreements and dominant positions given at its meeting of 28 April 2009 regarding a draft decision relating to Case COMP/C-3/37.990 — Intel (1)

Rapporteur: Spain

(2009/C 227/04)

1. The Advisory Committee agrees with the European Commission's definition of the relevant market, so it can be left open:

   — whether there is one relevant product market of x86 Central Processing Units (CPUs) for all computers (i.e. desktop computers, laptop computers and server computers), or

   — whether there are three separate relevant product markets of: (i) x86 CPUs for desktop computers; (ii) x86 CPUs for laptop computers; and (iii) x86 CPUs for server computers.

2. The Advisory Committee agrees with the Commission that the geographic scope of the relevant product market is worldwide.

3. The Advisory Committee agrees with the Commission that, at least between October 2002 and December 2007, Intel held a dominant position in the market.

4. The Advisory Committee agrees with the Commission that Intel abused its dominant position on the relevant market by awarding:

   — rebates to Dell, Hewlett-Packard (HP), NEC and Lenovo which were conditioned on exclusivity or quasi-exclusivity, as well as

   — payments to Media-Saturn Holding (MSH) which were conditioned on MSH selling exclusively desktop and laptop computers based on Intel CPUs.

5. The Advisory Committee agrees with the Commission that Intel abused its dominant position on the relevant market by granting rebates to HP, Acer and Lenovo subject to restrictive conditions concerning the commercialization of AMD-based products.

6. The Advisory Committee agrees with the Commission's assessment that the different abuses from part of a long-term comprehensive strategy aimed at foreclosing AMD from the market and constitute a single and continuous infringement.

7. The Advisory Committee agrees that Intel's abusive practices may affect trade between Member States within the meaning of Article 82 of the EC Treaty and may affect trade between the Contracting Parties to the EEA within the meaning of Article 82 of the EC Treaty and Article 54 of the EEA Agreement.

8. The Advisory Committee agrees with the Commission that a fine should be imposed on Intel.

9. The Advisory Committee agrees with the Commission that for the purposes of the calculation of the fine, the duration of Intel's infringement is 5 years and 3 months.

10. The Advisory Committee recommends the publication of its Opinion in the *Official Journal of the European Union*.

Opinion of the Advisory Committee on restrictive agreements and dominant positions given at its meeting of 8 May 2009 regarding a draft decision relating to Case COMP/C-3/37.990 — Intel (2)

Rapporteur: Spain

(2009/C 227/05)

1. The Advisory Committee agrees with the Commission on the basic amount of the fine.

   A minority abstains.

2. The Advisory Committee agrees with the Commission that there are no mitigating or aggravating circumstances to be taken into account.

3. The Advisory Committee agrees with the Commission on the final amount of the fine.

4. The Advisory Committee recommends the publication of its opinion in the *Official Journal of the European Union*.

Final report of the Hearing Officer in Case COMP/C-3/37.990 — Intel [1]

(2009/C 227/06)

The Intel case has been one of the most complex cases thus far with regard to procedural issues. The adversarial setting of the case between the complainant Advanced Micro Devices ('AMD') and Intel Corporation ('Intel') extends far beyond the European theatre. It has led to multiple procedural challenges by all parties and information providers concerned. A variety of procedural issues, many explicitly mentioned in the draft Decision, touched upon core competences of the Hearing Officer, requiring her to present an assessment in this final report.

Following the departure of the former Hearing Officer, Mr. Serge Durande, on 31 December 2007, the responsible Hearing Officer changed in this case.

The draft Decision gives rise to the following observations:

I. WRITTEN PROCEDURE

1. Statement of Objections

The Statement of Objections ('SO') was adopted by the Commission on 25 July 2007. Intel was given 10 weeks, until 11 October 2007, to reply to the SO. The Hearing Officer granted Intel upon reasoned request an extension of the deadline until 4 January 2008, later extended to 7 January 2009, mainly in view of unresolved access to file issues at that point in time and the fact that undertaking a full analysis of the relevant average avoidable costs of Intel's business was a legitimate defence vis-à-vis the use of complex assessments in economic models in the SO concerning the rebates [2]. The assessment made by the Hearing Officer was that, although showing in an economic assessment that the conditional rebates were capable of causing or likely to cause anticompetitive foreclosure was — according to the draft Decision — 'not indispensable' for finding an abuse in this case [3], the full exercise of the rights of defence had to be granted.

Intel replied to the SO in time.

2. Supplementary Statement of Objections

The Supplementary Statement of Objection ('SSO') was adopted by the Commission on 17 July 2008. At the same time the Commission joined the relevant findings of Case COMP/C-3/39.493 to the procedure followed under Case COMP/C-3/37.990 and continued the procedure under Case COMP/C-3/37.990.

Intel was given eight weeks to submit its reply to the SSO. The Hearing Officer, by letter of 15 September 2008, granted Intel upon reasoned request an extension of the deadline until 17 October 2008, mainly in view of the complexity of the case now joined and the breadth of allegations dating back to 1997 and requiring additional investigations within Intel.

Intel did not reply to the SSO within the extended deadline. Instead, on 10 October 2008, Intel lodged with the Court of First Instance (CFI) an application seeking inter alia the annulment of the decision of the Hearing Officer of 15 September 2008 granting an extension of the time limit and further applied for interim measures [4].

By order of 27 January 2009, the President of the CFI rejected Intel's application for interim measures on the ground that Intel's main application was prima facie manifestly inadmissible. This rejection included the rejection of Intel's request for a further extension of the 17 October 2008 deadline to reply to the 17 July 2008 SSO.

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[1] Pursuant to Articles 15 and 16 of Commission Decision (2001/462/EC, ECSC) of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings (OJ L 162, 19.6.2001, p. 21) hereafter 'the mandate'.

[2] Cf. paragraphs 1045 to 1156 of the draft Decision discussing this analysis, e.g. paragraph 1066 et seq. on the regression analysis applied by Intel.

[3] As made explicit in the draft Decision paragraph 925, indicated in the SO paragraph 337 and mentioned in the SSO paragraph 260.

[4] Cf. for details paragraphs 18 and 22 of the draft Decision and Order of the President of the Court of First Instance of 27 January 2009 in Case T-457/08 *Intel Corp. v. Commission*, nyr.

3. **Letter of Facts**

On 19 December 2008, the Commission sent Intel a letter drawing Intel's attention to a certain number of specific items of evidence relating to the Commission's existing objections which the Commission indicated it might use in a potential final Decision (Letter of facts, 'LoF'). The Commission set Intel a deadline of 19 January 2009 to provide comments on these items. This deadline was extended by the Directorate General for Competition to 23 January 2009. The LoF did not materially alter the evidentiary basis on which the Commission's objections against Intel set out in the SO are based, nor the SSO. Intel requested an extension on the basis of an allegedly incomplete file (cf infra I.4. (d)) and its pending request for an oral hearing on certain documents (cf. infra II.2). By letter of 22 January 2009 the Hearing Officer rejected this request.

4. **Access to file**

(a) *Preparation of access to file: The Non-disclosure agreements*

The file in this case was extraordinarily voluminous. In preparation for access to file, various Original Equipment Manufacturers ('OEMs') concluded bilaterally Non-Disclosure Agreements ('NDAs') with Intel, which differ only on details. For specific cases, some NDAs call upon the Hearing Officer to decide in case of a disagreement between the parties. Separately, Intel partially waived vis-à-vis the Commission its right to access to file, in case the access it had received from the OEMs would limit its access rights under Commission Regulation (EC) No 773/2004 [1], while each OEM concerned waived its rights to the protection of business secrets and other confidential information with regard to the information exchanged bilaterally under the agreements with Intel. The Hearing Officer was involved in the setting up of these NDAs and supported their conclusion in this case.

(b) *The Dell-AMD Non-disclosure agreement*

Prior to the Oral Hearing on the SO, AMD informed the Hearing Officer that it had concluded an NDA with Dell, according to which it received access to the quotes by Dell which were used in the SO. Contrary to the NDAs concluded with Intel, such an agreement, concluded by a party that as such has no rights of defence or rights to access to file, was purely bilateral and did not create either rights or obligations for the Commission. Therefore, and contrary to misrepresentations by Intel, the Hearing Officer continued to regard all Dell quotes in the SO which have been accepted as confidential vis-à-vis the complainant AMD to remain confidential vis-à-vis AMD for the purpose of the entire administrative procedure, including the Oral Hearing.

(c) *Completeness of access to the file*

Despite the NDAs mentioned above (supra I.4.(a)) the complexity of the file and the manifold confidential information contained within triggered a multitude of requests by Intel for access to file. To grant Intel the most complete access to the file possible required a high number of personal inspections by the Hearing Officer of documents which Intel claimed it needed for an effective defence. Having considered the reasoning provided by Intel, several of these claims were granted.

Intel complained of lack of complete access to documents in relation to a meeting between the Commission and an OEM [2]. Following a reasoned request by Intel the Hearing Officer investigated whether any written document on the subject of this meeting existed. A 'Note to the file' dated 29 August 2006 was revealed by the Directorate General and put on the file after the Hearing Officer so decided on 7 May 2008. Simultaneously, the Hearing Officer decided that this note was internal in character under Article 27(2) Regulation (EC) No 1/2003 and Article 15(2) Regulation (EC) No 773/2004. Whether or not objective minutes or a proper transcript should have been established of this meeting is in principle a matter of good administration and hence not an issue to be examined in a final report by the Hearing Officer.

[1] OJ L 123, 27.4.2004, p. 18.
[2] For details cf. paragraph 39 et seq. of the draft Decision.

The Hearing Officer considers that Intel was granted complete access to file.

(d) *Access to documents not in the file*

As described in detail in the draft Decision ([1]), Intel asked the Commission by letter of 4 September 2008 to obtain from AMD and provide to Intel a list of 81 categories of documents relating to private litigation between Intel and AMD before the Federal District Court in Delaware in the United States of America, documents which according to Intel were likely to be exculpatory. Subsequently, on 25 September 2008, Intel requested the Commission that it 'should, at a minimum, request that AMD provide all internal documents relevant to the allegations in both the SO and the SSO'. By letters of 17 and 29 September 2008 Intel complained to the Hearing Officer that 'the file is manifestly incomplete' and that its rights of defence were therefore compromised.

The Hearing Officer replied by letter of 7 October 2008, referring to her prior letters of 22 August 2008 and 15 September 2008 on this issue, that the question whether or not the file as such is complete is different from the question whether complete access to an allegedly incomplete file is given. Accordingly, arguments relating to a file which is allegedly incomplete cannot establish the point that access to the file as it stands at a certain point in time is not complete.

Further, despite the responsibility of the Hearing Officer under recital 3 of the Mandate to contribute to the objectivity, transparency and efficiency of a proceeding, neither the current mandate nor the jurisprudence empower the Hearing Officer to order any investigation with a view to complete an allegedly incomplete file. Therefore, whether or not the documents concerned as of themselves might be relevant or not for the rights of defence, it is beyond the scope of her mandate to decide on the question whether certain categories of documents in another jurisdiction, even of a purportedly potential exculpatory nature, are described in a sufficiently specific and substantiated manner and/or should be investigated into or not. Intel's request had therefore to be considered ultra vires.

(e) *Non-confidential version of the SO and the SSO for the complainant AMD*

It follows from Article 6(1) of Regulation (EC) No 773/2004 that the complainant has a right to receive a non-confidential version of the SO and the SSO. This right would be severely undermined and the norm would become devoid of purpose if the version finally received would not be understandable for the recipient.

In respect of information provided by third parties and which shall be disclosed not only to the addressee of a SO but to a complainant, it is crucial to distinguish between information that cannot be considered confidential and information for which confidentiality has been claimed and justified but which shall be disclosed in order to render a non-confidential version understandable. Business secrets are not to be disclosed and, in principle, confidentiality claims against the complainant, if justified, are absolute. However, if disclosure of the relevant information is strictly unavoidable in order to understand the core allegation in the SO, relates to information necessary to prove an infringement, and is strictly necessary to associate the complainant to the procedure so that he can make informed comments on it, such disclosure of confidential information is possible depending on a balanced and reasoned appreciation by the Hearing Officer.

Both for the SO and the SSO the Hearing Officer rejected Intel's claims for almost complete confidentiality and had to evaluate an extraordinarily high number of reasoned and detailed confidentiality requests both by Intel and by information providers. This was achieved without any recourse to a decision under Article 9 of the Mandate (initiating the so called 'AKZO-procedure' ([2]) either by Intel or other concerned undertakings.

In October 2008 Intel disclosed the complete confidential version of the SO to AMD in the US proceedings. Intel claims that this has been inadvertent. Intel informed the Commission of this fact on 17 March 2009.

([1]) Para 71 et seq.
([2]) ECJ, Case 53/85, AKZO Chemie BV and AKZO Chemie UK Ltd v Commission, [1986] ECR, p. 1965.

(f) *Third parties*

Three companies requested formal admission to the proceedings as interested third parties. In response to these requests, the Hearing Officer admitted Silicon Graphics Inc. (25 September 2007), International Business Machines ('IBM'; 2 October 2007) and — just prior to the Oral Hearing — Hewlett Packard Company ('HP', 10 March 2008). Further, two consumer organisations were admitted as interested third parties after they provided sufficient justification as to their specific interest and status: the European Consumers Organisation Bureau Européen des Unions des Consommateurs ('BEUC'; 22 February 2008) and Union Fédérale des Consommateurs — Que Choisir, a French consumer organisation ('UFC'; 6 March 2008). All parties requested and received a non-confidential summary of the SO and of the SSO. None of the third parties provided written comments.

(g) *Requested additional SSO for objective justification*

Intel took the position in its reply to the SO ([1]) that an additional statement of objections would be required for the issue of objective justification. However, an additional SSO was not necessary for the sole issue of objective justification. Whilst the absence of an objective justification is a negative condition for finding an abuse ([2]), the burden of proof lies with the party claiming objective justification. In so far as Intel proffered any purported objective justifications for the various types of conduct alleged in the SO, those have been dealt with by the Commission. The right to be heard has therefore been respected in this respect.

II. **THE ORAL PROCEDURE**

1. **The Oral Hearing on the SO**

The Hearing on the SO took place on 11 and 12 March 2008. Beyond Intel and AMD, three interested third parties attended the Hearing and gave presentations: HP, UFC Que Choisir and BEUC. In addition to the representatives of the Member States, a representative of the Federal Trade Commission participated as an observer, following the administrative arrangements of 1999. Further, and beyond the arrangements with the US, the Hearing Officer admitted the Attorney General of the State of New York ([3]) to participate in the Hearing as an observer. Intel explicitly agreed to their participation. Prior to admission, the Attorney General agreed to explicit undertakings as to confidentiality and use of information.

The Oral Hearing, despite various in-camera sessions due to legitimate confidentiality requests, was highly valuable in giving Intel the opportunity to present its views on the allegations, the underlying reasoning ([4]), and the economic assessment. In this respect it is important to note that during the Hearing the Commission made it clear to Intel and Intel understood that the economic assessment was not a condition for a finding of abuse.

On this basis it is not necessary for the Hearing Officer to express a position on the economic assessment and the conclusion that the Intel payments are capable of having or likely to have anticompetitive foreclosure effects ([5]).

2. **The requested Oral Hearing on the SSO and the LoF**

Intel requested an oral hearing on (a) parts of the LoF and (b) the SSO.

(a) Following the LoF Intel requested by letter of 20 January 2009 an oral hearing concerning certain AMD documents submitted to the Commission on 28 May 2008 ('the AMD Delaware documents'). The

([1]) Paragraph 823.
([2]) ECJ, Case C-95/04 P British Airways v Commission [2007] ECR I-2331, paragraph 69; Joined Cases C-468/06 to C-478/06 Sot. Lélos kai Sia and Others [2008] nyr, paragraph 39, and most recently Case 52/07, Kanal 5 Ltd. [2008] nyr, judgment of 11 December 2009, paragraph 47.
([3]) Cf. paragraph 35 of the draft decision.
([4]) Cf. e.g. paragraph 281 et seq of the draft decision.
([5]) Paragraphs 1002-1578 of the draft Decision.

Hearing Officer recalled on 22 January 2009 that there is no right for Intel to demand, nor any obligation for the Commission to provide for an oral hearing in order to respect Intel's rights of defence in relation to a Letter of Facts.

Moreover, an oral hearing could not be granted on the sole subject matter of the AMD Delaware documents because those were given as part of the access to file procedure following the issue of the SSO, on which Intel had been given an opportunity to reply and request an oral hearing already, and because the subject matter of an oral hearing is defined by the allegations in the SO and/or SSO and not by the party. An oral hearing dedicated exclusively to present views on selected documents could not be granted.

(b) In its submission of 5 February 2009 and by letter of 10 February 2009 Intel requested an oral hearing on the SSO.

Decisions relating to oral hearings, including a decision granting or rejecting a request for an oral hearing submitted after the deadline to reply to a statement of objections, fall within the competence of the Hearing Officer under the mandate.

By letter of 17 February 2009, the Hearing Officer thus replied to Intel that a subjective right to have an oral hearing exists only until the end of the deadline to reply to the statement of objections. Failing to request an oral hearing within the deadline set did not automatically entail that a hearing can no longer take place in all cases. Article 10(2), read together with Article 12 of Regulation (EC) No 773/2004, does not necessarily preclude a party from requesting an oral hearing. Failing to meet that deadline implied that there is no longer a duty to grant such a hearing. The Hearing Officer is entitled and obliged to exercise her discretion once a belated and duly motivated request is submitted to her.

The deadline to reply to the SSO had not been extended. The Hearing Officer took note of the position of the Commission services as expressed in their letter to Intel of 2 February 2009 [1] according to which the proper conduct of the procedure did not necessitate the holding of an oral hearing. Equally, she took account of all arguments in favour of granting a hearing advanced by Intel, which mainly referred to its 'unlimited' right to be granted an oral hearing.

In exercising her discretion the Hearing Officer is under the obligation to take account inter alia of the need for effective application of the competition rules, an essential part of which is the obligation of the Commission to act within a reasonable time in adopting decisions. While time constraints inherent in the manner in which the competition procedure is organized cannot justify infringing the fundamental right to be heard, no such conflict arose in the present case. In this case, Intel was in no way prevented from preparing and submitting, in good time, its reply to the SSO on the basis of the information available to it, at least as a precaution, and that all the more so since the Hearing Officer had granted an extension of the deadline. Intel had been offered the time to request an oral hearing from the date the SSO has been served in July 2008 until the end of the — extended — deadline in October 2008. It would not have been impossible to grant a hearing even thereafter, if Intel had asked for it — which it did not. Nothing would have precluded the Hearing Officer from setting the hearing dates in a manner consistent with the ongoing request for interim measures and thus in full respect for the proceedings before the Court. So while Intel during the entire procedure until its filing of the appeal to the CFI had in general acted swiftly and within the deadlines set, making full use of its rights of defence, allowing Intel an oral hearing under the precise circumstances on 17 February 2009 would have severely jeopardized the timely progress of the procedure. Taking this and other reasons specific to the case into account, the request had to be rejected.

[1] See draft Decision paragraph 24.

The Hearing Officer has not been addressed by Intel on the issue of the status of the written submissions of 5 February 2009.

III. **CONCLUSIONS**

In the light of the above, I consider that the rights to be heard have been respected in the present case.

The draft Decision deals only with objections in respect of which Intel has been afforded the opportunity of making known its views.

Karen WILLIAMS

Summary of Commission Decision

of 13 May 2009

relating to a proceeding under Article 82 of the EC Treaty and Article 54 of the EEA Agreement

(Case COMP/C-3/37.990 — Intel)

(2009/C 227/07)

1. INTRODUCTION

(1) On 13 May 2009, the Commission adopted a decision relating to a proceeding under Article 82 of the EC Treaty and Article 54 of the EEA Agreement addressed to Intel Corporation. The Commission herewith publishes the summary of the Decision, having regard to the legitimate interest of undertakings in the protection of their business secrets. A non-confidential version of the decision will be available on the Competition Directorate general website.

2. CASE DESCRIPTION

2.1. Procedure

(2) On 18 October 2000, Advanced Micro Devices (AMD) submitted to the Commission a formal complaint under Article 3 of Regulation No 17/62 which was further supplemented with new facts and allegations in particular in November 2003.

(3) In May 2004, the Commission launched a round of investigations relating to elements in the supplementary complaint. Within the framework of that investigation, in July 2005, the Commission, assisted by several National Competition Authorities, carried out on-the-spot inspections under Article 20(4) of Regulation (EC) No 1/2003 at four Intel locations in the United Kingdom, Germany, Italy and Spain, as well as at the locations of several Intel customers in France, Germany, Italy, Spain and the United Kingdom.

(4) On 26 July 2007, the Commission issued a Statement of Objections (SO) concerning Intel's conduct vis-à-vis five major Original Equipment Manufacturers (OEMs) namely: Dell, HP, Acer, NEC and IBM. Intel replied to the 26 July 2007 SO on 8 January 2008, and an oral hearing was held on 11 and 12 March 2008.

(5) On 17 July 2006, AMD filed a complaint to the German National Competition Authority claiming that Intel had engaged in exclusionary marketing arrangements and other practices with Media-Saturn-Holding GmbH (MSH), a European retailer of microelectronic devices. The German National Competition Authority exchanged information with the Commission on this subject, in application of Article 12 of Regulation (EC) No 1/2003.

(6) The Commission undertook several investigative measures relating to the relevant AMD allegations, including on-the-spot inspections at the sites of several European PC retailers and of Intel in February 2008. In addition, several written requests for information were addressed to a number of major OEMs.

(7) On 17 July 2008, the Commission issued a supplementary Statement of Objections (SSO) concerning Intel's conduct vis-à-vis MSH. The 17 July 2008 SSO also covered Intel's conduct vis-à-vis Lenovo. It also included new evidence on the Intel conducts vis-à-vis some of the OEMs covered by the 26 July 2007 SO, which had been obtained by the Commission after 26 July 2007 SO.

(8) Intel did not reply to the 17 July 2008 SSO. Instead, Intel lodged with the Court of First Instance (CFI) an application asking the CFI inter alia to order the Commission to obtain several categories of additional documents from, amongst other sources, the file of the private litigation between Intel and AMD in the US State of Delaware. Intel further applied for interim measures to suspend the Commission's procedure pending a ruling of the CFI on its substantive application and to grant Intel 30 days from the date of the said judgment to reply to the 17 July 2008 SSO.

(9) On 19 December 2008, the Commission sent Intel a letter drawing Intel's attention to a number of specific items of evidence which the Commission intended to use in a potential final Decision. Intel failed to reply to this letter by the extended deadline of 23 January 2009.

(10) On 27 January 2009, the President of the CFI rejected Intel's application for interim measures and request for extension of the deadline to reply to the 17 July 2008 SSO.

(11) Following the Order by the President of the CFI, Intel served a substantive written submission including observations on the 17 July 2008 SSO on 5 February 2009. The Commission services examined the relevant arguments of Intel's belated submission despite the fact that Intel had had an ample opportunity to submit its reply to the 17 July 2008 SSO by the original deadline of 17 October 2008.

(12) On 10 February 2009, Intel wrote to the Hearing Officer and asked to be granted an oral hearing in relation to the 17 July 2008 SSO. The Hearing Officer replied by letter of 17 February 2009, rejecting Intel's request.

(13) The Advisory Committee on Restrictive Practices and Dominant Positions issued a unanimous favourable opinion on 28 April 2009 and 8 May 2009.

2.2. **The product concerned and the market**

(14) The products concerned by the Decision are Central Processing Units (CPU) of the x86 architecture. The CPU is a key component of any computer, both in terms of overall performance and cost of the system. It is often referred to as a computer's 'brain'. The manufacturing process of CPUs requires high-tech and expensive facilities.

(15) CPUs used in computers can be sub-divided into two categories: CPUs of the x86 architecture and CPUs of a non-x86 architecture. The x86 architecture is a standard designed by Intel for its CPUs. It can run both the Windows and Linux operating systems. Windows is primarily linked to the x86 instruction set. Prior to 2000, there were several manufacturers of x86 CPUs. However, most of these manufacturers have exited the market. Since 2000, Intel and AMD are essentially the only two companies still manufacturing x86 CPUs.

(16) The Commission's enquiry led to the conclusion that the relevant product market was not wider than the market of x86 CPUs. The Decision leaves open the question whether the relevant product market definition could be subdivided between x86 CPUs for desktop computers, notebook computers and servers since given Intel's market shares under either definition, there is no difference to the conclusion on dominance.

(17) The geographical market has been defined as worldwide.

(18) In the 10 year period covered by the Decision (1997-2007), Intel held consistently very high market shares in excess of or around 70 %.

(19) Furthermore, there are significant barriers to entry and expansion present in the x86 CPU market. They arise from the sunk investments in research and development, intellectual property and production facilities that are necessary to produce x86 CPUs. Intel's strong (must-stock) brand status and the resulting product differentiation also constitute a barrier to entry. The identified high barriers to entry and expansion are consistent with the observed market structure, where all competitors to Intel, except AMD, have exited the market or are left with an insignificant share.

(20) On the basis of Intel's market shares and the barriers to entry and expansion, the Decision concludes that at least in the period covered by the Decision (October 2002 to December 2007), Intel held a dominant position in the market.

2.3. **Summary of the infringement**

(21) The Decision describes two types of Intel conduct vis-à-vis its trading partners: conditional rebates and so-called naked restrictions.

2.3.1. *Conditional rebates*

2.3.1.1. Nature and operation of rebates

(22) Intel awarded major OEMs rebates which were conditioned on these OEMs purchasing all or almost all of their supply needs. This is the case for:

— Intel rebates to Dell during the period ranging from December 2002 to December 2005, which were conditioned on Dell purchasing exclusively Intel CPUs,

— Intel rebates to HP during the period ranging from November 2002 to May 2005, which were conditioned in particular on HP purchasing no less than 95 % of its CPU needs for its business desktop segment from Intel (the remaining 5 % that HP could purchase from AMD was then subject to further restrictive conditions set out in section 2.3.2 below),

— Intel rebates to NEC during the period ranging from October 2002 to November 2005, which were conditioned on NEC purchasing no less than 80 % of its CPU needs for its desktop and notebook segments from Intel,

— Intel rebates to Lenovo during year 2007, which were conditioned on Lenovo purchasing its CPU needs for its notebook segment exclusively from Intel.

(23) Similarly, Intel awarded payments to Media Saturn Holding (MSH), Europe's largest PC retailer, which were conditioned on MSH selling exclusively Intel-based PCs. These payments are equivalent in their effect to the conditional rebates to OEMs.

(24) The Court of Justice of the EC has consistently ruled that 'an undertaking which is in a dominant position on a market and ties purchasers — even if it does so at their request — by an obligation or promise on their part to obtain all or most of their requirements exclusively from the said undertaking abuses its dominant position within the meaning of article 82 EC, whether the obligation in question is stipulated without further qualification or whether it is undertaken in consideration of the grant of a rebate. The same applies if the said undertaking, without tying the purchasers by a formal obligation, applies, either under the terms of agreements concluded with these purchasers or unilaterally, a system of fidelity rebates, that is to say discounts conditional on the customer's obtaining all or most of its requirements — whether the quantity of its purchases be large or small — from the undertaking in a dominant position.' ([1])

(25) The Decision concludes that the conditional rebates granted by Intel constitute fidelity rebates which fulfil the conditions of the Hoffmann-La Roche case-law. With regard to Intel's conditional payments to MSH, the Decision establishes that the economic mechanism of these payments is equivalent to that of the conditional rebates to OEMs. The Decision therefore concludes that they also fulfil the conditions of the Hoffmann-La Roche case-law.

(26) It is also noteworthy that there was in general uncertainty as to the exact proportion of the rebates or payments that would be lost in case of (increased) sourcing from Intel's competitor, AMD. It was expected that the proportion would be significant and disproportionate to the number of units switched to AMD. Furthermore, there was also a possibility that the rebates withdrawn would be allocated by Intel to rival OEMs. As a result of the rebates therefore, the freedom of the OEMs in question and of MSH to source CPUs from AMD was restricted.

(27) Therebates and payments that Intel granted to major OEMs and MSH should also be seen in the context of the growing competitive threat that AMD represented. In this respect, the Decision shows that OEMs, IT managers and Intel considered that AMD products had a number of positive innovative attributes and were a viable alternative to those of Intel. Although the Decision makes no absolute judgment on the technical performance of the Intel and AMD products at stake, OEMs' submissions and contemporaneous documents show that OEMs considered that AMD x86 CPUs were suitable for at least a part of their respective supply needs.

2.3.1.2. As efficient competitor analysis

(28) On top of showing that the conditions of the case-law for finding an abuse are fulfilled, the Decision also conducts an economic analysis of the capability of the rebates to foreclose a competitor which would be as efficient as Intel, albeit not dominant. In essence, the test establishes at what price a competitor which is 'as efficient' as Intel would have to offer CPUs in order to compensate an OEM for the loss of any Intel rebate.

(29) This as efficient competitor analysis is a hypothetical exercise in the sense that it analyses whether a competitor which is as efficient as Intel but which seeks to offer a product that does not have as broad a sales base as that of Intel is foreclosed from entering. This analysis is in principle independent of whether or not AMD was actually able to enter.

(30) The analysis takes into consideration three factors: the contestable share (the amount of a customer's purchase requirements that can realistically be switched to a new competitor in any given period), a relevant time horizon (at most one year) and a relevant measure of viable cost (average avoidable costs). If Intel's rebate scheme means that given the contestable share, in order to compensate an OEM for the loss of the Intel rebate, an as efficient competitor has to offer its products below a viable measure of Intel's cost, then it means that the rebate was capable of foreclosing the as efficient competitor. This would thereby deprive final consumers of the choice between different products which the OEM would otherwise have chosen to offer were it to make its decision solely on the basis of the relative merit of the products and unit prices offered by Intel and its competitors.

(31) The same kind of analysis has been conducted for the Intel payments to MSH. The analysis of the capability of these payments to foreclose an as efficient competitor also takes account of the fact that these payments are made at another level of the supply chain, and that their effect is additional to that of conditional rebates to OEMs.

2.3.1.3. Strategic importance of the main OEMs

(32) The Decision also indicates that certain OEMs, and in particular Dell and HP, are strategically more important than other OEMs in their ability to provide a CPU manufacturer access to the market. They can be distinguished from other OEMs on the basis of three main criteria: (i) market share; (ii) strong presence in the more profitable part of the market; and (iii) ability to legitimise a new CPU in the market. As a consequence, smaller OEMs are not able to legitimise new CPUs in the same way as HP and Dell, in particular in the corporate segment, which is the most profitable.

([1]) Case 85/76 Hoffmann-La Roche, [1979] ECR 461, paragraph 89.

2.3.1.4. Harm to competition and consumers

(33) The evidence gathered by the Commission led to the conclusion that Intel's conditional rebates and payments induced the loyalty of key OEMs and of a major retailer, the effects of which were complementary in that they significantly diminished competitors' ability to compete on the merits of their x86 CPUs. Intel's anticompetitive conduct thereby resulted in a reduction of consumer choice and in lower incentives to innovate.

2.3.1.5. Lack of objective justification

(34) Intel submitted two different sets of arguments in order to attempt to justify its rebate schemes: (i) that by using a rebate, Intel has only responded to price competition from its rivals and thus met competition; and (ii) that the rebate system used vis-à-vis each individual OEM was necessary in order to achieve important efficiencies that are pertinent to the CPU industry. With respect to the latter, Intel argued that there were four different types of efficiencies that were attained by any exclusivity requirements of its rebates: lower prices, scale economies, other cost savings and production efficiencies and risk sharing and marketing efficiencies. Moreover, Intel claimed that conditions attached to the rebates were indispensable to attain these efficiencies and their impact on competition was minor since AMD grew during the investigation period.

(35) The Commission addressed these arguments and analysed how far Intel's conduct would be suitable to attain the efficiencies argued by Intel in a proportionate way. However, the Commission found that Intel's arguments relating to objective justification are flawed because they relate more generally to conduct to which the Commission did not object (i.e. discounting/provision of rebates), and not to conduct to which the Commission did object (i.e. conditions associated with the discounts/rebates) and none of the efficiency defences provide a relevant justification for the conduct in question.

2.3.1.6. Conclusion

(36) The Decision concludes that the conditional rebates granted by Intel to Dell, HP, NEC and MSH constitute an abuse of a dominant position under Article 82 of the Treaty and Article 54 of the EEA Agreement.

2.3.2. *Naked restrictions*

(37) Intel awarded major OEMs payments which were conditioned on these OEMs postponing or cancelling the launch of AMD-based products and/or putting restrictions on the distribution of AMD-based products. This is the case for:

— Intel payments to HP which were conditioned on HP selling AMD-based business desktops only to small and medium enterprises, only via direct distribution channels (as opposed to through distributors), and on HP postponing the launch of its first AMD-based business desktop in Europe by six months; the duration of this abuse is from November 2002 to May 2005,

— Intel payments to Acer which were conditioned on Acer postponing the launch of an AMD-based notebook from September 2003 to January 2004,

— Intel payments to Lenovo which were conditioned on Lenovo postponing the launch of AMD-based notebooks from June 2006 to the end of 2006.

(38) In Irish Sugar, the Court of First Instance concluded that a dominant undertaking agreeing 'with one wholesaler and one retailer to swap competing retail sugar products, i.e. Eurolux 1 kilogram packet sugar of Compagnie française de sucrerie, for its own product' constituted an abuse [1]. Through the swap arrangement in question, the dominant firm prevented the competitor's brand from being present on the market since the retailers no longer had a stock of 'Eurolux' branded sugar and instead replaced those volumes with the sugar of the dominant undertaking. In this regard, the CFI found that 'the applicant undermined the competition structure which the Irish retail sugar market might have acquired through the entry of a new product, sugar of the Eurolux brand, by carrying out an exchange of products, in the circumstances referred to above, on a market in which it held more than 80 % of the sales volume' [2].

(39) The Decision concludes that the Intel conducts directly harmed competition. A product which a supplier had been actively planning to release was delayed or constrained from reaching the market. Consumers therefore ended up with a lesser choice than they otherwise would have had. Intel's conduct does not constitute normal competition on the merits. Moreover, payments of Intel money to OEMs to delay, cancel or otherwise restrict the launch of an AMD-based product or restrict its distribution was not linked to any legitimate objective justification or efficiency.

2.3.3. *Single strategy*

(40) The Decision establishes that each of the Intel conducts vis-à-vis individual OEMs mentioned above and vis-à-vis

[1] Case T-228/97, Irish Sugar, [1999] ECR II-2969, paragraph 226.
[2] Idem, paragraph 233.

MSH constitutes an abuse of Article 82 of the EC Treaty, but that these individual abuses are also part of a single strategy aimed at foreclosing AMD, Intel's only significant competitor, from the market for x86 CPUs. The individual abuses are therefore part of a single infringement of Article 82 of the EC Treaty.

(41) The Decision adds that Intel's practices, which were applied cumulatively at two levels of the distribution chain (major OEMs and a major retailer), must be seen in the context of the growing competitive threat represented by AMD. The effects of Intel's conducts were complementary in that they foreclosed the access of competitors to the market thereby significantly diminishing their ability to compete on the merits of their CPUs. As a result, end-customers were artificially prevented from choosing non Intel-based computers on the merits (price and quality of CPUs).

(42) In that context, the Commission also recalls the case-law according to which 'where one or more undertakings in a dominant position actually implement a practice whose aim is to remove a competitor, the fact that the result sought is not achieved is not enough to avoid the practice being characterized as an abuse of a dominant position within the meaning of Article 86 (now Article 82) of the Treaty'. [1]

3. **DECISION**

(43) The Decision establishes that Intel has infringed Article 82 of the Treaty and Article 54 of the EEA Agreement by engaging in a single and continuous infringement of Article 82 of the Treaty and article 54 of the EEA Agreement from October 2002 until December 2007 by implementing a strategy aimed at foreclosing competitors from the x86 CPU market.

(44) A fine of EUR 1 060 000 000 has been imposed on Intel Corporation for the infringement.

(45) Intel Corporation shall immediately bring the infringement to an end to the extent that it is ongoing and shall refrain from any act or conduct having the same of equivalent object or effect.

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[1] Cases T-24/93, T-25/93, T-26/93 and T-28/93 Compagnie Maritime Belge v Commission, [1996] ECR II-1201, paragraph 149; see also case C-202/07 P France Telecom v Commission, not yet reported, paragraphs 107 to 113.

Commission communication in the framework of the implementation of the Council Directive 88/378/EEC on the approximation of the laws of the Member States concerning the safety of toys

(Text with EEA relevance)

(Publication of titles and references of harmonised standards under the directive)

(2009/C 227/08)

ESO [1]	Reference and title of the harmonised standard (and reference document)	First publication OJ	Reference of superseded standard	Date of cessation of presumption of conformity of superseded standard Note 1
CEN	EN 71-1:2005+A8:2009 Safety of toys — Part 1: Mechanical and physical properties	30.4.2009	EN 71-1:2005+A6:2008 Note 2.1	31.10.2009

Notice: 'In case of projectiles toys with suction cups with an impact area, the requirement laid down in clause 4.17.1(b), according to which the tension test is performed in accordance with clause 8.4.2.3, does not cover the risk of asphyxiation presented by these toys.' — Commission Decision 2007/224/EC of 4 April 2007 (OJ L 96, 11.4.2007, p. 18).

CEN	EN 71-2:2006+A1:2007 Safety of toys — Part 2: Flammability	16.9.2008	EN 71-2:2006 Note 2.1	Date expired (16.9.2008)
CEN	EN 71-3:1994 Safety of toys — Part 3: Migration of certain elements	12.10.1995	EN 71-3:1988 Note 2.1	Date expired (30.6.1995)
	EN 71-3:1994/A1:2000	14.9.2001	Note 3	Date expired (31.10.2000)
	EN 71-3:1994/A1:2000/AC:2000	8.8.2002		
	EN 71-3:1994/AC:2002	15.3.2003		
CEN	EN 71-4:1990 Safety of toys — Part 4: Experimental sets for chemistry and related activities	9.2.1991		
	EN 71-4:1990/A1:1998	5.9.1998	Note 3	Date expired (31.10.1998)
	EN 71-4:1990/A2:2003	9.12.2003	Note 3	Date expired (31.1.2004)
	EN 71-4:1990/A3:2007	4.10.2007	Note 3	Date expired (30.11.2007)
CEN	EN 71-5:1993 Safety of toys — Part 5: Chemical toys (sets) other than experimental sets	1.9.1993		
	EN 71-5:1993/A1:2006	31.5.2006	Note 3	Date expired (31.7.2006)
CEN	EN 71-7:2002 Safety of toys — Part 7: Finger paints — Requirements and test methods	15.3.2003		
CEN	EN 71-8:2003 Safety of toys — Part 8: Swings, slides and similar activity toys for indoor and outdoor family domestic use	9.12.2003		
	EN 71-8:2003/A1:2006	26.10.2006	Note 3	Date expired (30.11.2006)

ESO ([1])	Reference and title of the harmonised standard (and reference document)	First publication OJ	Reference of superseded standard	Date of cessation of presumption of conformity of superseded standard Note 1
CENELEC	EN 62115:2005 Electric toys — Safety IEC 62115:2003 (Modified) + A1:2004	8.3.2006	EN 50088:1996 + A1:1996 + A2:1997 + A3:2002 Note 2.1	Date expired (1.1.2008)

([1]) ESO: European Standards Organisation:
— CEN: Avenue Marnix 17, 1000 Brussels, BELGIUM. Tel. +32 25500811. Fax +32 25500819 (http://www.cen.eu),
— CENELEC: Avenue Marnix 17, 1000 Brussels, BELGIUM. Tel. +32 25196871. Fax +32 25196919 (http://www.cenelec.eu),
— ETSI: 650 route des Lucioles, 06921 Sophia Antipolis, FRANCE. Tel. +33 492944200. Fax +33 493654716 (http://www.etsi.eu).

Note 1: Generally the date of cessation of presumption of conformity will be the date of withdrawal ('dow'), set by the European Standardisation Organisation, but attention of users of these standards is drawn to the fact that in certain exceptional cases this can be otherwise.

Note 2.1: The new (or amended) standard has the same scope as the superseded standard. On the date stated, the superseded standard ceases to give presumption of conformity with the essential requirements of the directive.

Note 2.2: The new standard has a broader scope than the superseded standard. On the date stated the superseded standard ceases to give presumption of conformity with the essential requirements of the directive.

Note 2.3: The new standard has a narrower scope than the superseded standard. On the date stated the (partially) superseded standard ceases to give presumption of conformity with the essential requirements of the directive for those products that fall within the scope of the new standard. Presumption of conformity with the essential requirements of the directive for products that still fall within the scope of the (partially) superseded standard, but that do not fall within the scope of the new standard, is unaffected.

Note 3: In case of amendments, the referenced standard is EN CCCCC:YYYY, its previous amendments, if any, and the new, quoted amendment. The superseded standard (column 3) therefore consists of EN CCCCC:YYYY and its previous amendments, if any, but without the new quoted amendment. On the date stated, the superseded standard ceases to give presumption of conformity with the essential requirements of the directive.

NOTE:

— Any information concerning the availability of the standards can be obtained either from the European Standardisation Organisations or from the national standardisation bodies of which the list is annexed to the Directive 98/34/EC of the European Parliament and of the Council amended by the Directive 98/48/EC.

— Publication of the references in the *Official Journal of the European Union* does not imply that the standards are available in all the Community languages.

— This list replaces all the previous lists published in the *Official Journal of the European Union*. The Commission ensures the updating of this list.

More information about harmonised standards on the Internet at

http://ec.europa.eu/enterprise/newapproach/standardization/harmstds/

Opinion of the Advisory Committee on mergers given at its meeting of 8 December 2008 regarding a draft decision relating to Case COMP/M.5153 — Arsenal/DSP

Rapporteur: Czech Republic

(2009/C 227/09)

1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration of undertakings within the meaning of Article 3(1)(b) of the Council Regulation (EC) No 139/2004, on the control of concentrations between undertakings ('the Merger Regulation').

2. The Advisory Committee agrees with the Commission that the Commission's jurisdiction has been established by means of Article 22(3) decision of 16 May 2008 further to the requests for referral by the Competition Authorities of Spain and Germany under Article 22(1) of the Merger Regulation.

3. The Advisory Committee agrees with the Commission that for the purposes of assessing the present concentration the relevant product markets are:

   (a) solid technical grade benzoic acid;

   (b) sodium benzoate as a product market separate from sorbates while leaving open whether potassium benzoate and calcium benzoate are part of the same market;

   (c) di-benzoate plasticizers.

4. The Advisory Committee agrees with the Commission that for the purposes of assessing the present concentration:

   (a) the relevant geographic market for solid technical grade benzoic acid is EEA-wide in scope;

   (b) the relevant geographic market for sodium benzoate may be left open;

   (c) the relevant geographic market for di-benzoate plasticizers is EEA-wide in scope.

5. The Advisory Committee agrees with the Commission that the proposed concentration would lead to unilateral effects in the EEA-wide market for solid technical grade benzoic acid, as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

6. The Advisory Committee agrees with the Commission that the proposed concentration will not lead to unilateral effects in the market for sodium benzoate irrespective of its geographic definition, as a result of which effective competition would be significantly impeded in the common market or a substantial part of it.

7. The Advisory Committee agrees with the Commission that the proposed concentration will not lead to coordinated effects in the market for sodium benzoate, as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

8. The Advisory Committee agrees with the Commission that the merged entity will have limited ability and no incentive to foreclose the competitors in the EEA-wide downstream market for di-benzoate plasticizers and, as a result, the proposed concentration will have no adverse impact on this downstream market.

9. The Advisory Committee agrees with the Commission that the commitments submitted by the parties i.e. the divestment of the entire liquid benzoic acid as well as the two downstream products of solid benzoic acid and sodium benzoate are sufficient to remove competition concerns raised by the concentration in the EEA-wide market for solid technical grade benzoic acid.

A minority abstains.

10. The Advisory Committee agrees with the Commission that, subject to full compliance with the commitments submitted by the parties, the proposed transaction does not significantly impede effective competition in the Common Market or a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, within the meaning of Article 2(2), 8(2) and 10(2) of the Merger Regulation, and that the proposed concentration should therefore be declared compatible with the Common Market and with the EEA Agreement.

    A minority abstains.

11. The Advisory Committee recommends the publication of its opinion in the *Official Journal of the European Union*.

Final Report [1] in Case COMP/M.5153 — Arsenal/DSP

(2009/C 227/10)

The draft decision gives rise to the following observations:

INTRODUCTION

Following a referral pursuant to Article 22(1) of the Merger Regulation [2] from Spain and Germany, the Commission received, on 17 June 2008, a notification of a proposed concentration whereby Arsenal Capital Partners (Arsenal) acquires sole control over DSM Special Products B.V. (DSP) by way of purchase of shares.

On 6 August 2008 the Commission initiated proceedings on the basis that the concentration raised serious doubts as to its compatibility with the common market [3].

Subsequently, on 7 October 2008, a Statement of Objections was notified to Arsenal in which the Commission concluded that the concentration gives raise to horizontal competition concerns on the market for solid benzoic acid and sodium benzoate as well as vertical competition concerns on the market for benzoate plasticizers, which are produced from benzoic acid.

Arsenal replied to the Statement of Objections on 21 October 2008.

Access to file

The notifying party was granted access to the Commission's investigation file as it existed on the day of notification of the Statement of Objections on 8 and 9 October 2008. The remaining part of the file became accessible subsequently together with non-confidential information received after the notification of the Statement of Objections. Further access was thus granted 22 October as well as on 4 and 5 November 2008.

Oral Hearing

Upon request by the notifying party an Oral Hearing was held on 27 October 2008, which was attended by both Arsenal and DSP.

Post-hearing procedure

In view of the party's written and oral submissions the Commission re-assessed some of its preliminary findings in the Statement of Objections and narrowed the relevant product market for benzoate plasticizers to only cover di-benzoate plasticizers and, as a consequence thereof, adapted the objection based on vertical foreclosure effects.

Subsequently, on 4 November 2008, a Letter of Facts explaining the modified objection was sent to the notifying party, which was granted the opportunity to provide its comments on the new elements and conclusions put forward in that letter. Access to the information on which the Commission based its modified objection was given on 4 and 5 November 2008.

In my view the Letter of Facts was both necessary and sufficient in order to ensure that the notifying party's right to be heard was respected while providing it with the opportunity to propose adequate remedies to remove the modified competition concerns.

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[1] Pursuant to Articles 15 and 16 of Commission Decision 2001/462/EC, ECSC of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings (OJ L 162, 19.6.2001, p. 21).
[2] Council Regulation (EC) No 139/2004 of 20 January 2004 (OJ L 24, 29.1.2004, p. 1).
[3] Article 6(1)(c) of Regulation (EC) No 139/2004.

Commitments

In view of rendering the concentration compatible with the common market the notifying party submitted a proposal for remedies on 6 November 2008, which was market tested by the Commission.

The notifying party was granted access to non-confidential replies of the market test on 21 November 2008.

Following the market test the Commission considered that the remedies were insufficient to remove the identified competition concerns and, subsequently, on 3 December 2008, Arsenal provided an improved remedy proposal.

THE DRAFT DECISION

In the draft Decision, the Commission has abandoned its objection with regard to the market for sodium benzoate and benzoate plasticizers. It also concludes that the improved remedies are sufficient to remove the identified competition concerns with regard to the market for solid benzoic acid. Accordingly, the Commission finds that, subject to compliance with the remedies, the notified concentration is compatible with the common market pursuant to Article 8(2) of the Merger Regulation.

No queries or submissions have been made to me by the notifying party or any other third party. In view thereof and taking into account the observations mentioned above I consider that this case does not call for any particular comments with regard to the right to be heard.

Brussels, 12 December 2008.

Michael ALBERS

Summary of Commission Decision

of 9 January 2009

declaring a concentration compatible with the common market and the functioning of the EEA Agreement

(Case COMP/M.5153 — Arsenal/DSP)

(notified under document C(2008) 8439 final)

(Only the English text is authentic)

(Text with EEA relevance)

(2009/C 227/11)

On 9 January 2009 the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, and in particular Article 8(2) of that Regulation. A nonconfidential 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://ec.europa.eu/comm/competition/index_en.html

I. JURISDICTION

(1) This case concerns a notification of a proposed concentration received by the Commission on 17 June 2008 following a referral request pursuant to Article 22(1) of the Merger Regulation, by which the undertaking Arsenal Capital Partners ('Arsenal', US) acquires, within the meaning of Article 3(1)(b) of the Merger Regulation, control of the whole of the undertaking DSM Special Products B.V. ('DSP', the Netherlands), a subsidiary of Royal DSM N.V. ('DSM', the Netherlands), by way of a purchase of shares.

(2) The Commission's jurisdiction in this case is based on the referral request of 2 April 2008 submitted by the Spanish Competition Authority pursuant to Article 22(1) of the Merger Regulation. This request was joined on 28 April 2008 by the German Competition Authority. The Commission accepted the referral by decision of 16 May 2008, which was communicated to the notifying party on 29 May 2008.

II. THE PARTIES

(3) Arsenal is a private equity firm which controls, via its Arsenal Capital Partners QP fund, the undertaking Velsicol Chemical Corporation ('Velsicol', Estonia). Velsicol produces plasticisers, food additives and industrial intermediates. It is the only Arsenal business with activities in the sector affected by the transaction.

(4) DSP, a subsidiary of DSM, produces food additives and industrial intermediates.

(5) Both Velsicol and DSP are active in the manufacture and supply of benzoic acid and sodium benzoate. Velsicol also manufactures benzoate plasticisers, a downstream product to benzoic acid, in the EEA (Estonia), the United States and China. In China, Velsicol produces this product in a joint venture with Wuhan Youji Industries Company Limited ('Wuhan', China), the parties' largest Chinese competitor for the production of benzoic acid. In the United States, Velsicol purchases benzoic acid for the production of plasticisers from Emerald Kalama Chemical LLC ('Emerald', United States), the parties' only US competitor for the production of benzoic acid, sodium benzoate and benzoate plasticisers.

III. THE OPERATION

(6) The operation relates to the acquisition of control by Arsenal of DSP. DSP is a wholly owned subsidiary of DSM, the seller. The transaction, which concerns the manufacture of base chemicals, consists in the acquisition by Arsenal of 100 % of the shares of DSP.

(7) However, the VevoVitall trade mark will continue to be owned by DSM Nutritional Products ('DNP', the Netherlands), a subsidiary of the DSM group. Under a supply agreement signed between DNP and DSP on 5 February 2008, DSP will continue to manufacture and sell VevoVitall to DNP. VevoVitall is the trade mark given to high purity benzoic acid for use in animal feed, currently protected by a patent owned by DSP.

(8) As the transaction will give Arsenal sole control of DSP through the acquisition of its entire issued share capital, it constitutes a concentration as defined in Article 3(1)(b) of the Merger Regulation.

IV. EXPLANATORY MEMORANDUM

1. Relevant markets

(9) The transaction relates to the production of solid technical grade benzoic acid, sodium benzoate and benzoate plasticisers. These products are produced by using liquid benzoic acid as an input. The parties to the transaction are the only producers of liquid technical grade benzoic acid, solid technical grade benzoic acid and sodium benzoate in the EEA. Velsicol also produces benzoate plasticisers in the EEA.

(10) While both DSP and Velsicol produce liquid technical grade benzoic acid, solid technical grade benzoic acid and sodium benzoate in their respective plants in Rotterdam and Estonia, the activities of the parties to the transaction only overlap with regard to solid benzoic acid and sodium benzoate as Velsicol produces liquid benzoic acid only for captive use.

1.1. *Market for solid technical grade benzoic acid*

1.1.1. Product market

(11) In line with the notifying party's submission, the Commission concluded that technical grade benzoic acid constitutes a distinct product market from higher purity grade benzoic acids, i.e. ultra pure benzoic acid and animal feed benzoic acid, considering the limited demand and supply-side substitutability between these products. In addition, there is no overlap between the parties with regard to higher purity grade benzoic acid as only DSP produces this product.

(12) The Commission also confirmed the notifying party's submission that technical grade benzoic acid should be further sub-divided into liquid and solid benzoic acid considering the limited demand and supply-side substitutability. In particular, liquid technical grade benzoic acid can only be transported to a limited degree, because it requires specialised transportation technology in order to remain liquid. Solid technical grade benzoic acid is produced using a 'flaker' in which the liquid benzoic acid is solidified and packaged. The different forms of technical grade benzoic acid (liquid vs. solid) imply that customers need different on-site handling and processing facilities for these products, and thus switching from one product to the other is not instantaneous and requires process adjustment and equipment investments ([1]).

(13) Based on the above, the Commission concluded that solid technical grade benzoic acid (hereafter 'solid benzoic acid') constitutes a separate product market.

([1]) For example, a customer that uses solid benzoic acid requires a melting equipment that melts the benzoic acid before it can be further used in the production process.

1.1.2. Geographic market

(14) The notifying party submitted that the relevant geographic market for solid benzoic acid covers at least the EEA, the US and Asia, with these regions accounting for virtually all global production. This submission is based inter alia on the fact that significant trade flows take place between different areas in the world.

(15) The Commission's market investigation showed, unlike the notifying party's submissions, that the market for solid benzoic acid is EEA-wide for the following reasons: (i) the market for technical grade benzoic acid in the EEA is to a very large extent dominated by EEA-based producers, there are only marginal imports coming from China and the USA, and this trend has been constant at least for the last nine years; (ii) transport costs and a custom tariff of 6,5 % constitute important barriers to entry for non-European producers; (iii) the quality of Chinese benzoic acid is perceived by customers as low compared to the one produced by EEA-based producers; and (iv) prices in the different regions, i.e. the EEA, Asia and North America, are not moving closely together as would be expected if there was a wider global market. The Commission thus concluded that the relevant geographic market for solid benzoic acid is EEA-wide.

1.2. *Market for sodium benzoate*

1.2.1. Product market

(16) The notifying party submitted that the relevant product market for sodium benzoate should include potassium benzoate, calcium benzoate and sorbates. The investigation revealed that the transaction does not give rise to competition concerns on the narrowest possible market of sodium benzoate. The Commission thus leaves open the question whether calcium benzoate and potassium benzoate belong to the same product market as sodium benzoate. However, with regard to sorbates and in view of the results of the investigation, the Commission considers that sodium benzoate constitutes a separate market from sorbates.

1.2.2. Geographic market

(17) The notifying party considered that the relevant geographic market for sodium benzoate covers at least producers in the EEA, the US and Asia, which account for virtually all global production.

(18) The results of the Commission's market investigation are not conclusive: while there are some factors that point towards an EEA-wide market, there are also factors that are consistent with a market wider than the EEA. However, as the transaction does not give rise to any competition concerns even on the narrowest EEA-wide market, the Commission leaves open the question whether the geographic market is wider than the EEA.

1.3. *Market for benzoate plasticisers*

1.3.1. Product market

(19) The notifying party submitted that all plasticisers (including for instance phthalates, polymeric, trimellitates, epoxy or benzoate plasticisers) should be considered to constitute one single product market as most plasticisers could be substituted by another plasticiser falling in a different category. As the notifying party produces benzoate plasticisers, the Commission evaluated whether benzoate plasticisers are part of a wider plasticiser market or form a market of their own.

(20) The results of the Commission's investigation showed that benzoate plasticisers are not technically substitutable with all other plasticisers but only with a limited proportion thereof (the so-called phthalate plasticisers). However, given that phthalates are subject to new EU regulations due to their toxicity, there are only very few applications (such as PVC flooring) for which phthalates and benzoate plasticisers are substitutable. The Commission thus concluded that benzoate plasticisers form a product market of their own.

(21) Within benzoate plasticisers, there are various types of this product, such as mono-benzoates, di-benzoates, tri-benzoates, tetra-benzoates and various blends of benzoates. The majority of Velsicol's plasticiser products fall within the category of di-benzoate plasticisers.

1.3.2. Geographic market

(22) The geographic market for di-benzoate plasticisers is subject to the same constraints, such as transport costs and customs tariffs, as the markets for benzoic acid and sodium benzoate. Transport costs account for approximately 8-10 % of the cost of the product shipped between the US and Europe. Di-benzoate plasticisers entering the EEA are, like benzoic acid and sodium benzoate, subject to a 6,5 % customs tariff.

(23) In addition, the US producer Emerald is the only non-EEA competitor of Velsicol that exports di-benzoate plasticisers to the EEA and currently has a market share of [5-10] % [1]. There are no exports of this product from China to the EEA.

(24) The Commission thus concluded that the market for di-benzoate plasticisers is EEA-wide in scope, and that the competitive constraint exerted by the US producer Emerald is very limited.

2. **Competitive assessment**

2.1. *Market for solid technical grade benzoic acid*

(25) The main worldwide producers of solid benzoic acid are Velsicol, DSP, Emerald (US) and Wuhan (China). Several other smaller Chinese producers are also active. However, as illustrated below, Velsicol and DSP are the only credible suppliers of benzoic acid in the EEA. The market shares of the parties to the transaction and of their competitors in 2007 for supplies of solid benzoic acid within the EEA are as follows:

Benzoic acid — EEA-wide market shares in 2007 (merchant market)

	DSP	Velsicol	DSP + Velsicol	Emerald (US)	Wuhan (China)	Others
Solid BA	[45-55] %	[40-50] %	[90-100] %	[2-4] %	[0-3] %	[1-4] %

Source: Form CO and Commission analysis.

(26) Prior to the transaction, DSP and Velsicol are the only two EEA-based producers of solid benzoic acid with already very high market shares. Non-EEA based producers export only a very marginal volume of benzoic acid to the EEA and this has been constant during the last nine years.

(27) Post-transaction, the new entity would enjoy a near-monopoly position with a combined market share as high as 90-100 % in the EEA, whereas the other producers, such as Emerald (USA) and Wuhan (China), would only have a very marginal presence.

(28) The market investigation confirmed that the parties to the transaction are each other's closest competitors considering the quality concerns raised by customers as regards Chinese products and the very limited presence of Chinese or US producers in the EEA. Accordingly, the transaction would lead to the elimination of important competitive constraints that the parties to the transaction have previously exerted upon each other.

(29) In addition to the very high market shares, the Commission's market investigation showed that EEA producers are protected by important barriers to entry such as customs tariffs and transport costs that limit Chinese and US competitors' entry or expansion in the EEA. US and Chinese products bear additional transportation costs and tariffs that represent approximately 10-15 % of the price of solid benzoic acid.

(30) The Commission thus concluded that it is very unlikely that the US or Chinese producers of benzoic acid would substantially increase their sales in the EEA should the merged entity decide to increase prices or restrict output in the EEA.

[1] Benzoate plasticisers Velsicol's worldwide market share was [60-70] % in 2007, versus [10-20] % for Emerald. Source: Form CO.

(31) The lack of Wuhan's and Emerald's competitive pressure on the EEA producers is best illustrated by the fact that neither of these producers increased their sales into the EEA when the market conditions on the benzoic acid market were extremely tight in 2007 and in the beginning of 2008 due to the simultaneous and unusually long maintenance shut downs of the plants of the two EEA producers. Instead, Wuhan actually increased the prices of its benzoic acid. Accordingly, the competitive constraints exercised by competitors post-transaction seem to be very limited, and thus it is unlikely that the competitors of the merged entity could thwart any price increases in the EEA.

(32) Based on the foregoing, the Commission concluded that the proposed transaction would lead to a significant impediment of effective competition in the EEA market for solid benzoic acid.

2.2. *Market for sodium benzoate*

(33) The horizontal overlap between the parties' activities in the manufacture and supply of sodium benzoate would result in the merged entity becoming the sole producer of sodium benzoate in the EEA with a market share of [60-70] %, while around [30-40] % would be in the hands of Chinese producers.

(34) The market share held by Chinese producers appears to be a significant constraint that would discipline the combined entity post-transaction should it intend to increase prices above competitive levels. This is best documented by the development of the percentage gross margins of both of the parties to the transaction in the EEA (that can be thought of as the measure of the degree of competition in the market) that have been steadily decreasing over time as the Chinese exports of sodium benzoate have been increasing.

(35) Finally, the spare capacities of Chinese producers and Wuhan in particular indicate that Wuhan would have the ability to supply more output to the EEA if the merged entity increased prices of sodium benzoate above a competitive level.

(36) In view of the foregoing, the Commission considered that the ability and incentive of the combined entity to unilaterally increase prices post-merger in the EEA above a competitive level would be largely constrained by imports of sodium benzoate from China as well as by the threat of an increase of imports from China. Thus, the Commission concluded that the proposed transaction would not lead to a significant impediment of effective competition on the market for sodium benzoate, irrespective of whether the geographic scope of this market is EEA-wide or worldwide.

(37) The Commission also examined whether the proposed transaction would create or strengthen a collective dominant position on the market for sodium benzoate and found that it is unlikely that the transaction would lead to such an outcome. This is because the Chinese producers have increased their sales in the EEA by over 400 % from 1999 to 2007 and currently account for around [25-45] % of the EEA market. Any coordination scheme would thus require the participation of the Chinese producers, as if only the merged entity and the US producer engaged in a coordination scheme of any kind, it is likely that this would result in further increases of Chinese exports to the EEA given that the Chinese exporters managed to increase their market share to 35 % in the last nine years.

(38) The question thus remains whether the Chinese producers would find it profitable to enter into a coordination scheme. As the Chinese producers managed to increase exports to the EEA by 400 % in the last nine years, it is unlikely that their behaviour would change post-transaction. Moreover, it is important to note that there are four Chinese producers, and thus any coordination scheme would require participation of most of them (if not all) as there appear to be large spare capacities in China.

(39) The Commission thus ultimately concluded that the acquisition of DSP by Velsicol would not create nor increase any incentive for the producers of sodium benzoate to coordinate their activities.

2.3. *Market for benzoate plasticisers*

2.3.1. Ability to foreclose

(40) Benzoic acid is the core component used to produce di-benzoate plasticisers, as 0,75 of a ton of benzoic acid is necessary to produce one ton of di-benzoate plasticisers. There are no substitutes for benzoic acid, and the merged entity would be the sole producer of liquid benzoic acid in the EEA and would have [90-100] % of the solid benzoic acid market. All producers of plasticisers currently have long-term contracts for the supply of liquid benzoic acid, with one of the four producers (Ferro) having been recently offered a new long-term contract for the supply of liquid benzoic acid.

(41) The Commission concluded that, while the merged entity would have market power vis-à-vis its downstream competitors with regard to the supply of benzoic acid, its ability to foreclose the downstream competitors would be limited due to the existence of long-term contracts.

2.3.2. Incentive to foreclose

(42) Pre-transaction, DSP is not in competition with the producers of benzoate plasticisers and has an incentive to supply these producers with benzoic acid at a price which is sufficiently competitive to enable them to profitably remain on the market. The acquisition of DSP by Velsicol changes the incentive of DSP as the latter would then be part of a vertically integrated company supplying benzoic acid but also producing di-benzoate plasticisers. DSP/Velsicol's incentive to foreclose its downstream competitors would thus depend on the profitability of such a foreclosure strategy.

(43) The Commission's analysis showed that the merged entity would have no incentive to foreclose any of the four benzoate plasticiser companies (Caffaro, Ferro, Evonik and Exxon Mobil), as the gains that it would make on the downstream market for benzoate plasticisers would be more than outweighed by the losses on the upstream market for liquid benzoic acid.

2.3.3. Impact on customers

(44) As Velsicol/DSP would have limited ability to foreclose and in any case no incentive to foreclose any of its competitors in the EEA, the transaction would have no impact on the downstream market.

3. **Remedies**

3.1. *First set of remedies*

(45) On 6 November 2008 the notifying party proposed remedies to address the Commission's concerns regarding the market for solid benzoic acid. The notifying party offered as remedies the divestment of all the solid benzoic acid and sodium benzoate capacity production in the Estonian plant as well as the worldwide customer lists for benzoic acid and sodium benzoate. As regards liquid benzoic acid, the main input for the production of solid benzoic acid and sodium benzoate, the notifying party proposed the creation of a Joint Venture ('JV') in the same Estonian plant. Each partner to the JV would be allocated 50 % of the current production capacity of liquid benzoic acid. While the JV would be jointly controlled by the two partners, the notifying party would own 51 % of the shareholding and the remaining share would be owned by the purchaser.

(46) The vast majority of the respondents (12 out of 15) to the Commission's market test on the remedies proposed considered that the latter would not ensure the viability of the divestment business and would not restore competition on the market for solid benzoic acid.

(47) The main opposition to the commitments related to the JV for liquid benzoic acid. In particular, respondents emphasised that the notifying party, by having joint control over liquid benzoic acid, which is the main input for the production of solid benzoic acid, would continue to have influence over the production of solid benzoic acid. In a duopoly market, such a structural link between the purchaser of the divestment business and the merged entity, the only two producers of solid benzoic acid in the EEA, would be likely to impede effective competition. Some respondents also expressed concerns that (i) the principle of common decision-making would jeopardise the everyday running of the business; and (ii) the JV would increase transparency in the market for solid benzoic acid as the notifying party would be aware of the cost structure of its only competitor in the EEA.

(48) Moreover, some respondents submitted that the notifying party would not have an interest to undertake capacity extension in the Estonian plant (jointly with the purchaser) but rather at the Rotterdam site. Accordingly, the purchaser would have to invest unilaterally in increasing the production capacity in Estonia and thus bear all related costs for the increased capacity, which according to the notifying party would have to be for at least 20 Ktpa. The respondents considered that the purchaser would not undertake such an investment unless it obtained in return the majority in the shareholding of the JV and the control of the JV.

(49) In light of the above, it was concluded that the first set of remedies submitted by the notifying party had been rejected by the market. The JV structure was not considered of a kind to ensure the viability of the divested business, and there was a consensus on the market to consider that the notifying party would keep a de facto control of the production of solid benzoic acid. The first remedy proposal, while removing some of the competition concerns raised by the transaction, did not fully remove them. The Commission thus concluded that the first set of remedies could not be accepted.

3.2. *Second set of remedies*

(50) On 3 December 2008 Arsenal submitted an amended set of remedies consisting in the divestment of the upstream liquid benzoic acid plant at the Estonian site and the divestment of the two downstream solid benzoic acid and sodium benzoate plants at the Estonian site along with the transfer of Arsenal's worldwide customers for solid benzoic acid and sodium benzoate.

(51) The third remaining downstream plant at the Estonian site for the production of benzoate plasticisers would remain in Arsenal's ownership, and its requirements for liquid benzoic acid would be served by an evergreen long-term contract with the purchaser of the divested business. Through this long-term supply contract, Arsenal would

be entitled to 50 % of the liquid benzoic acid capacity of the plant. The price of the liquid benzoic acid under the supply agreement would be determined on the basis of current costs and a pricing formula index.

(52) This second remedies proposal would overcome the concerns reflected on the remedies market test, in particular the most significant concerning the JV to be created by the purchaser and Arsenal under the first set of commitments. Under the new set of remedies, the structural link between the divestment business and Arsenal (via the upstream liquid benzoic acid JV) would disappear. The new remedies would also resolve the concern revealed by the market test that the purchaser of the divested assets would be unlikely to undertake any capacity expansion in Estonia in the framework of a JV in which it only had a minority shareholding.

V. **CONCLUSION**

(53) In the light of the second set of commitments submitted by Arsenal, the decision concludes that the proposed concentration will not significantly impede effective competition in the Common Market or a substantial part of it.

(54) Consequently, the decision declares the concentration compatible with the Common Market and the functioning of the EEA Agreement, in accordance with Article 2(2) and Article 8(2) of the EC Merger Regulation and Article 57 of the EEA Agreement.

V

(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION POLICY

COMMISSION

Prior notification of a concentration

(Case COMP/M.5557 — SNCF-P/CDPQ/Keolis/Effia)

(Text with EEA relevance)

(2009/C 227/12)

1. On 15 September 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 [1] by which the undertaking SNCF-Participations (France), belonging to the SNCF group, and the Caisse de Dépôt et de Placement du Québec (CDPQ — Quebec) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the whole of Keolis and Effia.

2. The business activities of the undertakings concerned are:

— SNCF group: passenger rail transport, distribution, marketing and derived services, mainly in France,

— CDPQ: management of pension and insurance funds, mainly in Quebec,

— Keolis: private operator which provides public transport services and is engaged in other transport-related activities,

— Effia: services designed to facilitate passenger mobility and encourage the intermodality of public transport.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of Regulation (EC) No 139/2004. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301 or 22967244) or by post, under reference number COMP/M.5557 — SNCF-P/CDPQ/Keolis/Effia, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

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[1] OJ L 24, 29.1.2004, p. 1.

Withdrawal of notification of a concentration

(Case COMP/M.5601 — RREEF FUND, UFG/SAGGAS)

(Text with EEA relevance)

(2009/C 227/13)

(Council Regulation (EC) No 139/2004)

On 26 August 2009, the Commission of the European Communities received notification of a proposed concentration between RREEF FUND, UFG and SAGGAS. On 16 September 2009, the notifying parties informed the Commission that they withdrew their notification.

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