

***Case No IV/M.1320 -
LGV / DORANA /
EMTEC***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 07/12/1998

*Also available in the CELEX database
Document No 398M1320*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.12.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

to the notifying party

Subject: Case No IV/M.1320 – LGV / DORANA / EMTEC

Notification of 4 November 1998 pursuant to Article 4 of Council Regulation No 4064/89

1. On 4 November 1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the Legal & General Group plc (“L&G Group”), through certain subsidiaries, acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of the German company KOHAP EMTEC Holding GmbH.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. The L&G Group provides life and pensions insurance, general insurance and investment management services. KOHAP EMTEC Holding GmbH is the holding company for the EMTEC business which comprises the development, production and distribution of magnetic tapes and other data storage products, including accessories (“EMTEC Group”). DORANA Einundfünfzigste Verwaltungsgesellschaft mbH (“DORANA”) holds all the shares in the EMTEC Group.
4. The operation is designed to finance a management buy-out by which the EMTEC Group is acquired from its previous majority owner, KOHAP Ltd, Seoul, Korea, using DORANA as an acquisition vehicle. After completion of the operation, ownership in DORANA, and ultimately in the EMTEC Group, will be as follows: LGV 1998 Private Equity US Limited Partnership (“Equity US”) – 47.58%; LGV 1998 Private Equity UK Limited Partnership

(“Equity UK”) – 34.82%; DAYTONIAN – 6.9%; Group Trust –3.7%; management and other individuals – 7%. Equity US and Equity UK are investment funds. DAYTONIAN is a subsidiary of the L&G Group. Group Trust is an investment trust company for which LGV, a subsidiary of the L&G Group, acts as discretionary manager.

5. The L&G Group’s position with respect to Equity US and Equity UK can be summarised as follows: Both funds are organised as limited partnerships under UK law. The partnerships have appointed Legal & General Ventures Partners Ltd (“LGVP”) as their general partner and Legal & General Ventures Ltd (“LGV”) as their manager with sole and discretionary responsibility to take investment decisions on behalf of the partnerships. In particular, LGV will exercise the partnerships’ voting rights in DORANA. The L&G Group wholly owns and controls both the general partner (LGVP) and the manager (LGV). The L&G Group also holds significant investments in Equity US and Equity UK through other subsidiaries, in particular through Legal and General Assurance Society (“LGAS”). The partnership agreements for both Equity US and Equity UK give LGAS the right to veto the termination of LGV’s contract as fund manager. All this taken together, it follows that the L&G Group, through its subsidiaries LGV, LGVP and LGAS, is in a position to determine Equity US’ and Equity UK’s investment decisions on a permanent basis.
6. The voting rights acquired by Equity US and Equity UK and exercised by LGV confer decisive influence over DORANA, in the absence of any veto rights by other shareholders. Therefore, on the basis of its position with respect to Equity US, Equity UK and LGV, the L&G Group will ultimately exercise sole control over DORANA and EMTEC Group.

II. COMMUNITY DIMENSION

7. The L&G Group and the EMTEC Group have a combined aggregate worldwide turnover in excess of ECU 5,000 million (L&G Group, ECU 9,183 million; and EMTEC Group, ECU 732 million). Each of them has a Community-wide turnover in excess of ECU 250 million (L&G Group, ECU 8,321 million; and EMTEC Group, ECU 474 million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

III. COMPETITIVE ASSESSMENT

8. The EMTEC Group’s economic activity is focused on audio and video tapes (including accessories), both for consumers and professionals, and data storage systems such as diskettes and data cartridges (data tapes) used for recording information in computers. The principal activity of the L&G Group pertains to the life and pensions insurance business, the general insurance business and the provision of investment management services. According to the notification, no member of the L&G Group and none of the acquirers of the EMTEC Group are active or in control of any company active in any of the markets in which the EMTEC Group is active, or in any upstream, downstream or neighbouring market. Therefore, the planned concentration will not lead to any addition of market shares. Moreover, there is no indication that the provision of new financial resources will strengthen the EMTEC Group’s competitive position in the recordable media markets. Consequently, the proposed concentration does not create or strengthen a dominant

position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

IV. CONCLUSION

9. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,