

***Case No COMP/M.1694 -  
EMC / DATA GENERAL***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 06/10/1999

*Also available in the CELEX database  
Document No 399M1694*



## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06.10.1999  
SG(99)D/7991

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying party**

Dear Sirs,

**Subject : Case No IV/M.1694-EMC/DATA GENERAL**

Notification of 3-09-1999 pursuant to Article 4 of Council Regulation No 4064/89.

1. On 3 September 1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>1</sup> by which EMC Corporation ("EMC"), USA, will acquire sole control of Data General Corporation ("Data General"), USA.
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**

3. EMC Corporation, based in the U.S.A, is active mainly in the design and manufacture of a wide range of information technology products, including hardware, software and related services.

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<sup>1</sup> OJ L 395, 30.12.1989, p.1; corrected version OJ L257 of 21.09.1990, p. 13; as last amended by Regulation (EC) No 1310/97, OJ L 180, 9.07.1997, corrigendum in OJ L 40, 13.2.1998, p.17.

4. Data General Corporation, based in the USA, is engaged in the design, manufacture and marketing of a group of computer systems, including servers and data storage products, and provides services.

## **II THE OPERATION**

5. The operation involves the acquisition of sole control of Data General by EMC by way of purchase of shares through a newly created and wholly owned company of EMC, Emerald Merger Corporation, which will disappear once the operation had been completed. After the acquisition Data General will become a subsidiary of EMC. The operation includes an agreed bid launched at the New York Stock Exchange Market.

## **III THE CONCENTRATION**

6. The acquisition of Data General by EMC constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation

## **IV COMMUNITY DIMENSION**

7. The notified operation does not qualify for the thresholds pursuant to Art.1(2) of the Merger Regulation, as the combined aggregate world-wide turnover of the parties is less than EUR 5 billion. However the thresholds set forth in Article 1(3) of the Merger Regulation are met. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2.500 million<sup>2</sup> (EMC: EUR [...] and Data General EUR [...]). Each of them has a Community-wide turnover in excess of EUR [...] ( EMC: EUR [...], Data General [...]). The individual turnover of each of the two undertakings concerned exceeds of EUR 25 million in [...], [...] and [...]. In each of these three Member States, the combined aggregate turnover of the undertakings concerned exceeds 100 million. And finally none of the undertakings concerned achieved more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension. It does not constitute a co-operation case under the EEA Agreement.

## **V COMPETITIVE ASSESSMENT**

8. The notifying party submits that the only markets where both parties are present are disk storage systems, information technology services (IT services) and servers.

### ***The Relevant Product Markets***

#### **Disk storage systems**

9. A disk storage system is a hardware product of which systems software is an integral part. A disk storage system stores and retrieves data from computing platforms (e.g., mainframes or servers) and stores the data on computer hard devices. Disk storage systems are normally composed of components that are considered as commodity

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<sup>2</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C 66, 2.03.1998, p.25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

products and are available on the open market (such as disk drives, boxes and controllers).

10. It is the parties' opinion that the disk storage systems have to be considered as a single product market irrespective of the different technologies or operating systems they use mainly because from the demand side users can choose among a variety of alternative storage solutions.
11. It might be possible to further subdivide this market into smaller segments. In this respect the narrowest conceivable segmentation would be that by operating systems.
12. The Commission opinion is to consider the disk storage systems market as a single product market. However it can be left open in this case whether the overall market has to be segmented into narrower markets as no serious competition concern will arise in any alternative market approach.

### **Information and Technology services ( IT services )**

13. Both parties provide IT services including both customer services to support their own hardware products ( identified in the notification as mainly installation and maintenance services) and other services aimed at responding to customers needs that are derived from or connected to their purchases of hardware products (identified in the notification as systems planning, implementation, support and business continuity/disaster management).
14. The parties submit that IT services should be treated as a single product market because in their opinion these services are provided to respond to the customers' needs which are typically linked to the customers' purchases or to the operation of the parties' hardware products.
15. However, according to the Commission's approach to the market in previous cases<sup>3</sup>, there are several basic segments constituting different product markets by themselves.
16. Accordingly the relevant markets to be considered in this case and where both parties are present are the following:
  - Hardware maintenance and support
  - Consulting services
  - Development and integration services
  - Education and training services
  - IT management services

For the purpose of this case, however, the exact product market definition for IT services can be left open, since, even on the narrower market definition, the proposed operation will not lead to the creation or strengthening of a dominant position.

### **Servers**

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<sup>3</sup> See for example the Commission's decision in case IV/M. 1561-Getronics/Wang

17. A server or host computer uses a general purpose operating system ( such as Unix or Windows NT) as well as applications to perform certain functions to serve one or more less powerful computers that access the server's computational resources over a network. Data General supplies servers to the market under the Aviiion label and EMC has a file server model which according to the parties' opinion cannot be considered as a proper server but rather as a data storage unit.
18. The parties consider , and the market investigation has confirmed, that EMC's "file server" is clearly distinguishable from a general purpose server given that it does not perform all the functions that a general purpose server does, notably it has not been designed to run an operating system.
19. Therefore no product overlap seems to exist in this market and consequently this market will not be treated further. In any event, if the EMC's "file server" had to be considered together with Data General servers their combined market shares would be negligible (less than [...])

### ***The Relevant Geographic Markets***

20. The notifying party states that the relevant geographic markets for all the relevant product markets above identified are at least European-wide and possible World-wide. The parties argue that transport costs are low if related to price, consumers have similar preferences and that product specifications and distribution patterns are similar throughout Europe and generally world-wide. The result of the investigation tends to confirm this analysis. Therefore the relevant geographic market appears to be at least EEA-wide.
21. However it is not necessary to further delineate the relevant geographic markets because in all alternative geographic market definitions above considered , effective competition would not be significantly impeded in the EEA or any substantial part of that area.

### ***Impact of the concentration***

#### **Disk storage systems**

22. The parties product lines are mainly complementary. EMC's products are supplied mainly at the high end of the market as they feature heterogeneous, simultaneous attachment to main-frames and servers with different operating systems. On the other hand Data General's disk storage systems are supplied predominantly at the medium to low end of the market primarily for smaller servers and they have homogeneous connectivity (i.e. they are designed to connect to servers using only one operating system at any time).
23. The data provided by the parties show that the combined market shares of EMC and Data General in Europe for disk storage systems as a single product market do not exceed 15 %, namely they will hold [10-15%] market share ( with a [<3%] increase from Data General). If a wider geographic market had to be considered the parties' combined global market share would be [10-15%] (with a [<3%] increase from Data General). For disk storage systems there is at least one larger competitor with more than 20 % market share in Europe: Compact/Digital/Tandem with [20-30%]. The next larger competitor is IBM with [10-20%]. The rest of the market is highly fragmented and competitive with a large number of small competitors both at the EEA and at a world-wide level.

24. Should an alternative market definition have to be considered the narrowest conceivable segmentation would be that by operating systems. According to the information provided by the parties which is based on IDC data, their market shares at the EEA level would be the following: In disk storage systems for networks running S/390 systems EMC is a major player with a [35-45%] market share. However Data General is not present in this segment. The only two systems where there is an overlap are UNIX and NT. In UNIX systems the parties combined market share would be [12-17%] ([12-17%] for EMC and [<3%] for Data General) and in NT systems it would be [2-7%] ([<4%] for EMC and [<3%] for Data General).
25. In view of the above the proposed concentration does not create nor 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.

### **IT services**

26. The parties declare that although both parties are active in IT services both are primarily suppliers of hardware and that also offer certain IT services to respond to customers needs that are typically linked to their purchases of the parties' product. Although the parties consider that IT services should be treated as a single product market they nevertheless have provided data for each of the categories of IT services as above identified. The combined market shares of the new entity, however, will result in a *de minimis* percentage ( less than [...]) in any of the categories concerned both at a European and at a world-wide level.

### **VI ANCILLARY RESTRAINTS**

27. The parties have requested two contractual provisions to be considered as ancillary to the concentration.
28. The first relates to the "status quo" covenants contained in the Agreement and Merger Plan by which Data General agrees to conduct its business in the ordinary way, to preserve intact its business organisation, to keep available the services of its current officers, employees and consultants as well as to preserve its present customers and suppliers and other people with which it has significant business relationships until the closing of the transaction. This provision can be considered as an integral part of the transaction.
29. The second provision relates to the covenants of the Agreement containing provisions imposed on Data General regarding the non-disclosure of non-public information received prior to the completion of the transaction as well as an engagement not to demand other third parties' acquisition offers. This provision can be considered directly related and necessary to the implementation of the concentration as it ensures that EMC gets full value of the assets acquired and is able to benefit from some protection against competitive acts of the vendor. Therefore it will also be covered by the present decision.

## **VII CONCLUSION**

30. 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.