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Case No COMP/M.1895 - OCEAN GROUP / EXEL (NFC)

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 03/05/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03.05.2000

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Madam/Sir,

Subject:**Case No COMP/M.1895 Ocean Group/Exel**
Notification of 24 March 2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 24 March 2000, Ocean Group Plc ('Ocean') submitted a notification concerning the acquisition of the shares of the company Exel Plc ('Exel', formerly called NFC plc).

I THE PARTIES

2. Ocean is a company that is active mainly in the areas of contract logistics and freight forwarding, with operations in countries across Europe, the Americas and the Asian/Pacific region. These activities are carried out by the MSAS Global Logistics division ('MSAS'). Furthermore, Ocean has activities, through its Cory Environmental division, in environmental waste disposal services (e.g. landfill disposal of waste) in the United Kingdom.

3. Exel is active in the provision of contract logistics and so-called supply chain services in 16 countries principally across Europe, the Americas and to a limited extent Asia Pacific.

II CONCENTRATION

4. The notified transaction concerns a recommended offer involving an exchange of shares. It is proposed that on completion of the transaction Ocean shareholders and Exel shareholders will each hold approximately 50 percent of the issued share capital of the combined group. The operation accordingly constitutes a concentration within the meaning of article 3(1)(a) of the Merger Regulation.

III COMMUNITY DIMENSION

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5. The aggregate world-wide turnover of Ocean is EURO 1 913 million and that of Exel is EURO 2 664 million. The combined aggregate turnover of the parties therefore exceeds EURO 2 500 million. The combined aggregate turnover of the undertakings concerned is more than Euro 100 million in the UK, France, Germany the Netherlands and Spain. Also, the aggregate turnover of each Ocean and Exel exceeds EURO 25 million in those same countries. Further, the aggregate Community-wide turnover of each undertaking exceeds Euro 100 million. Finally, the parties do not both achieve more than two thirds of their aggregate Community-wide turnover within one and the same Member State. The operation therefore has a Community dimension within the meaning of Article 1(3) of the Merger Regulation.

IV COMPATIBILITY WITH THE COMMON MARKET AND THE FUNCTIONING OF THE EEA AGREEMENT

A. Relevant product markets

6. Ocean's and Exel's activities overlap in contract logistics services only. Accordingly the Commission has examined the competitive impact of the concentration in respect of these activities.

7. Contract logistics services (or 'contract logistics') may be defined as services that comprise the planning, implementation and control of the flow and storage of goods[1]. In previous decisions the Commission has made clear that logistic services concern a distinct service offering from, for instance, express parcel delivery services and freight forwarding[2]. As the Commission has pointed out in those earlier decisions, it is difficult to draw a clear line between the different transport related services, notably between contract logistics and freight forwarding. However, the investigation in the current case has confirmed that because the focal point in contract logistics is in the management of the flow of goods for customers, as opposed to bare transportation, freight forwarding or warehousing services, contract logistics ought to be regarded as a separate relevant product market. Moreover, contrary to freight forwarding services, logistic services are still generally "in-house activities", i.e. performed by the potential customers themselves. The decision to perform these activities in-house or to outsource them (and vice-versa) is linked to rationalisation considerations of the customer. In general, the contract logistics market is showing a steady growth and the trend towards outsourcing is the considered to be the main driver for the current market expansion.

8. In its investigation the Commission considered whether a further distinction as regards relevant product markets ought to be made. By analogy to freight forwarding services, a segregation between domestic and cross-border logistic services was contemplated, whereby domestic logistic services means the provision of services within one country and international logistic services means the provision of such services for goods being moved from one country to any other country. Such cross-border services, which are offered to clients with international, pan-European or even world-wide operations imply that the logistics provider possesses (or has access to) an international network of assets. Given the

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[1] See e.g. Commission Decisions in case IV/M.1405 TNT Post Group/Jet Services of 15.2.1999 and IV/M.1500 TPG/Technologista of 11.5.1999. The parties have submitted another definition drawn from the Datamonitor report (*European Logistics 1999*), which reads: "that part of the supply chain that plans, implements and controls the efficient effective flow and srtorage of goods, services and related information from the point of origin to the point of consumption in order to meet customer's requirements"

[2] See e.g. case COMP/M. 1794 Deutsche Post/AEI, decision of 7.2.2000

level of integration and access to assets required for such cross-border logistic services, it is possible that separate markets exist for purely domestic and for cross-border contract logistics services. However, the current investigation has shown that at the current stage of market development such a distinction may not be appropriate. Firstly, it appears that some 88% of logistic services relate to products being transferred on a domestic scale and only 12% to cross-border logistics. Secondly, most of the larger logistics providers operate both on a domestic and cross-border scale. Thirdly, according to competitors and clients that replied to the Commission's questionnaires, supply side considerations indicate that logistics providers that are predominantly active on a domestic level can become active on a cross-border scale as well in the absence of significant barriers to entry. In any event, the question of whether such separate product markets exist may be left open, given that the available data show that no competition concerns will arise, even on the basis of a definition of such separate markets.

9. The Commission also considered whether a further segmentation of the above markets would be necessary, for example by the type of goods handled (e.g. logistic services related to perishable goods) or the industry sector serviced. As in previous cases, the market investigation has shown that although certain logistics services providers concentrate their activities on particular industry sectors and their expertise in a particular sector would help to gain customers and may give them a particular strength in the market, this should not lead to a definition of separate product markets within the sector of contract logistics services. The principal reason is that providers of logistics services are generally able to serve all type of customers, without distinguishing according to the types of goods transported. It has to be borne in mind that contract logistics are often awarded after a bidding process and competitors can easily adapt to the requirements of the tender before the contract is signed. Indeed, ownership of particular assets is not necessary to provide logistics services and assets to provide particular services (such as refrigerated trucks in case of perishable goods) appear to be sufficiently available from third parties.

B. Geographic aspects

10. In its decisional practice, the Commission has indicated that the market for contract logistics is largely national in scope[3]. The parties have indicated that in their view the geographic scope of the market is national, although they consider that it may be wider than national and might even be European (or the EEA - European Economic Area). Still, the parties do agree that although the customers may require services relating to cross-border shipments, generally they turn to a logistics supplier located in their own country. Customers who responded to the Commission' questionnaires in the present case generally confirmed that they turn to a logistics supplier located in their own country, although certain respondents stated that they see a trend towards services being provided on a pan-European or international level, whereby the location of the contract logistics services provider is less relevant. As regards the trend towards internationalisation, even though this evolution can indeed be observed (as recognised by the Commission in its decision IV/M.1500 TPG/Technologista), it remains the case that even logistics service providers that operate in various countries do so on the basis of a local presence in those countries. An additional reason for considering that markets are of a national dimension is that the identity of the players and their market shares vary considerably on a per country basis, as the parties have indicated. In any event, given that the operation does not lead to competition concerns if considered on the basis of national or

[3] See e.g. case IV/M.1500 TPG/Technologista of 11.5.1999.

European-wide markets, the exact definition of the relevant geographic market can be left open.

11. As regards the geographic scope of the market in the case of national markets, a further issue has been what would be the appropriate delineation of the market in the case of island of Ireland, i.e. whether for the purposes of assessing the current case, Northern Ireland should be regarded as part of a market for contract logistics which covers the whole island of Ireland. According to the parties, a number of contract logistics providers located in Northern Ireland in fact operate in the Republic of Ireland. However, as can be concluded from the assessment given below, the quantity and relative strength of competitors present in the UK (incl. Northern Ireland) and in the Republic of Ireland, indicates that no competition concerns arise from the merger in either of the two possibilities and therefore the question of the exact delineation of the geographic market regarding Ireland can be left open.

C Competitive assessment

12. In providing figures for the size of the market and the market shares of the parties and their main competitors, the parties have relied on a report provided by the organisation Datamonitor. According to the parties this constitutes the only independent information source, although the parties believe their share of the market to be overestimated, since market data of the smaller competitors have not been included in the overview. Also, the parties feel that certain distortions may have occurred in the Datamonitor figures since they allocate turnover not on the basis of where the customer is located but rather on where the (head office) of the logistics services provider is located. Therefore, although the Datamonitor figures, in the view of the parties, give a fair representation of the relative strength of the main competitors in each of the EEA countries, they have made certain adjustments to arrive at their own estimates of the market share of the new entity.

13. The data provided show that the only national markets which can be considered as 'affected markets' because of the horizontal overlap of the parties, i.e. where the combined market share of the parties would exceed 15%, would be the UK and the Republic of Ireland. In all other EEA countries where an overlap of activities occurs (Denmark, France, Germany, Netherlands, Portugal, Spain), the market share of the parties would remain well below 15%.

14. Regarding the UK, the 1999 market share would be 25.4% according to the Datamonitor figures. Even though the new entity would be market leader, at least three competitors with shares exceeding 10% would be active, some of them competitors with pan-European operations. Taking into account the particularities of the reporting by Datamonitor, the parties have recalculated their share of the overall UK market and arrive at an estimated market share of some [10-20%] (with the next three competitors just below 10%). This figure is in line with estimations made by competitors. Furthermore, the main competitors in the UK, such as P&O, Tibbet and Britten, Hays and Christian Salvesen are companies that are able to and do operate on an a cross-border scale as well, so that even if one were to consider a separate market for cross-border contract logistics, no competition concerns would arise.

15. For Ireland (data relate only to the Irish republic), specific market share figures are not available from Datamonitor, but based on the overall market volume, the parties have calculated that their share of the market would be around [10-20%]. The new entity would not be the largest operator, since the company Irish Express Cargo would be significantly larger (estimated share of 30%). Furthermore, according to the parties, at least one other

competitor with a share of more than 10% is present on the Irish market. The above figures show with a sufficient degree of certainty that even if one would consider Northern Ireland as part of an Irish market, the operation would not lead to the creation or strengthening of a dominant position. Regarding the Irish market, as for the UK, major competitors (and potential competitors that are currently not active in the Irish market) are able to operate on a cross-border scale, so that the merger does not raise competition concerns even if a separate market for cross-border contract logistics would be considered.

16. On an EEA scale, the parties have provided an estimate that their combined share of the market would be at around [5-10%]. Again, this figure is in line with figures provided by competitors.

    Given the above data, it is considered that the merger will not give rise to the creation or strengthening of a dominant position.

V CONCLUSION

17. 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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,
Mario Monti
Member of the Commission