

***Case No COMP/M.2747 -  
ONDEO - THAMES  
WATER / WATER  
PORTAL***

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: 26/06/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26/06/2002

SG (2002) D/230380

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties**

Dear Sir/Madam,

**Subject: Case No COMP/M.2747 – ONDEO/THAMES WATER/WATER PORTAL  
Notification of 28/05/2001 pursuant to Article 4 of Council Regulation  
No 4064/89<sup>1</sup>**

1. On 28.05.2002, the Commission received a notification of a proposed concentration by which the undertakings Ondeo (France) and Thames Water (UK) acquire joint control of a newly created company constituting a joint venture (“Water Portal”) by way of purchase of shares.

**I. THE PARTIES**

2. Ondeo is active in the fields of water services and wastewater treatment, water treatment process engineering and chemical treatment and associated services. Ondeo is a wholly owned subsidiary of the French Group Suez.
3. Thames Water is mainly present in the UK and is active in the fields of water and wastewater services. Thames Water constitutes the water division of the German Group RWE<sup>2</sup>.

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<sup>1</sup> OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

<sup>2</sup> Commission’s Decision M. 2181 of 27.10.2000.

## **II. THE OPERATION**

4. The transaction consists in the joint creation, by Ondeo and Thames Water, of a joint venture aimed at operating an electronic Business-to-Business (B2B) Portal in the water industry. The Water Portal will offer on-line services aimed at allowing electronic sourcing, procurement and purchases/sales of water-related goods and services. In addition it will provide a centralised source of information and intelligence relating to the water industry. The Water Portal will also offer secured areas to facilitate collaboration of companies in the context of a project (“e-collaboration”).
5. The business vision for the Water Portal is to develop a “one stop shop” for supply chain services and for general market information in the water industry. The parties argue that as the Water Portal will reduce supply chain costs for all participants in the water industry, the transaction will be pro-competitive. The target customers for the Water Portal as “Buying organisations” will be water companies, engineering companies and municipalities and the “Selling organisations” are the suppliers of water related products and services. The revenues of the joint venture will be generated through subscriptions of both buyers and sellers.
6. The market place module (i.e. the underlying technology for the portal) will be rented from an existing market place or service provider and will offer all necessary technical features to avoid any exchange or disclosure of confidential information between competitors. In addition, the Joint Venture will be internally organised to ensure that commercial data is protected. The Water Portal staff or management will not have any contractual or other obligation towards any of the parent companies or vice versa.
7. In fact, as revenues would be obtained through subscriptions, the parties argue that the success of the Portal requires that users are convinced that sensitive information relating to them is not made available to their competitors or to the Water Portal’s shareholders.

## **III. CONCENTRATION**

8. The joint venture will be jointly controlled by its parent companies, who will each hold 50% of the share capital and will have the right to appoint an equal number of directors on the Board. The Board will have to decide unanimously on all strategic matters relating to the business policy. The Water Portal will have all staff resources to allow it to act on the market independently from Ondeo and Thames Water. The business model is designed as to allow the joint venture to self-finance its activity, in complete independence of its parents.
9. The notified operation concerns then the establishment of a joint venture performing on a lasting basis the functions of an autonomous economic entity and jointly controlled by the undertakings concerned. The operation therefore constitutes a concentration within the meaning of Article 3(2) of the Merger Regulation.

## **IV. COMMUNITY DIMENSION**

10. The undertakings concerned have a combined aggregate world-wide turnover of more than Euro 5 billion<sup>3</sup> (Ondeo’s parent company Suez: Euro [...]; Thames Water’s parent

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<sup>3</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the

company RWE: Euro [...]). Each of them have a Community-wide turnover in excess of Euro 250 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.

## V. COMPETITIVE ASSESSMENT

### *Relevant product and geographic markets*

11. The parties consider that the proposed transaction concerns the sector of procurement of water-related products and services. The parties have argued that electronic transactions are fully substitutable for other means of transaction and therefore that the means through which the procurement is carried out is not relevant. It is estimated by the parties that within the water industry less than 1% of water-related transactions are made today through B2B electronic market places.
12. The parties submit that the relevant geographic market is at least EEA-wide, and possibly worldwide. In year one the United Kingdom and France will be the key targets, followed by Belgium, Spain and Germany. For year two the focus will expand to include Italy, the rest of Europe and North America whilst Latin America will be targeted in year three.
13. The precise definition of the relevant markets can, however, be left open since no competition concerns arise in any of the definitions chosen.

### *Assessment*

14. The Water Portal will be a new entrant in the market for the means of transaction of water-related products and services. The parties are not active, or to a very limited extent in this market. At European level, the Water Portal's targeted market share in year 5 is not expected to be significant, ranging between [0-5%] of the total number of transactions achieved in the water industry sector and within the narrower segment for the electronic means of transaction, it is estimated that the Water Portal's market share should be around [ $< 10\%$ ]. In the particular case of the UK, the only national market where Ondo and Thames Water overlap their activities to a significant extent, the approximate market share would be between [5-15%] of the segment for electronic transactions in the water sector.
15. The Water Portal will face competition mainly from traditional procurement methods (telephone, fax, customer visits, etc.). More specifically, it will face competition from water-related market places already active and water companies or water related suppliers' Internet sites. Non water-related places, focusing on other types of goods, appear also as a source of potential competition for the Water Portal.
16. As regards possible vertical effects of foreclosure to the new marketplace, no concern arises either from the creation of the Water Portal. On the purchasing side, the notifying parties will not purchase jointly through the Portal and it has to be taken into account that the majority of the upstream products and services concerned by the Water Portal

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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.

are not specific to the water industry. Even considering Thames Water and Ondeo's businesses together, their combined purchases are not sufficiently large for competition concerns to arise, either on the basis of water-specific purchases or the wider basis of non-water specific purchases.

17. On the narrowest possible geographic market downstream, there would be no overlap as Ondeo and Thames Water operate in different, non-contiguous regions of the UK. On a market covering England and Wales, the parties' aggregate share of purchases is below 5% in relation to the non-water specific products and services. As regards the water specific products and services, the aggregate share of purchases does not give rise to any concern as it ranges between [15-25%] for England and Wales. The figures would be lower for the UK and, as the only overlap between the parties is in the UK, the EU shares would be significantly lower.
18. Likewise, on the selling side, the notifying parties will not sell any services jointly through the Portal. In addition, full and open access of suppliers and buyers to the Portal will be guaranteed and there will be no provisions to impose the exclusive use of the exchange by the participants.
19. In view of the insignificance of the parties' share of the total purchases, the likelihood of co-ordination in the purchasing markets is excluded. No co-ordination issue should arise either in relation to the markets where water companies are active (water and wastewater sectors), since these markets are not affected by the Water Portal and, furthermore, the overlapping activities of the parties are not significant in this fields.

## **VI. CONCLUSION**

20. 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

Mario Monti  
Member of the Commission