

EN

***Case No COMP/M.4045 -
DEUTSCHE BAHN /
BAX GLOBAL***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 22/12/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.2005

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

**Subject: Case No COMP/M.4045 - Deutsche Bahn / Bax Global
Notification of 22/11/2005 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 22/11/2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Deutsche Bahn AG ("DB", Germany) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking BAX Global Inc. ("BAX Global", USA) by way of purchase of shares.

I. THE PARTIES

2. **DB** is the state owned German based holding company of a multinational group of companies active in passenger transport, logistics, freight transport and freight forwarding. The freight forwarding and logistics services are mainly provided through its business unit Schenker.
3. **Bax Global** is a wholly owned subsidiary of the US based The Brinks Company. It is active worldwide in the area of freight forwarding and logistics services.

¹ OJ L 24, 29.1.2004 p. 1.

II. THE OPERATION

4. The concentration concerns the acquisition of the whole of Bax Global² by DB who will purchase all of the shares of Bax Global, from its parent company, under a stock purchase agreement.

III. COMMUNITY DIMENSION

5. The combined aggregate worldwide turnover of the undertakings concerned is more than €5 billion (DB €23.9 billion, Bax Global €1.9 billion). The aggregate Community-wide turnover of each of the undertakings concerned is more than € 250 million (DB €[...] million, Bax Global €[...] million). None of the undertakings concerned achieves more than two-thirds of its Community-wide turnover in one Member State. The operation therefore has a Community dimension.

IV. COMPETITIVE ASSESSMENT

6. The parties' activities overlap in relation to freight forwarding services and contract logistics services. The combined market shares of the parties at a national level for contract logistics would not exceed [0-10]% in each of the eight countries where both parties are present and as such will not be discussed further.

Product and Geographic Markets

Freight forwarding

7. In previous decisions the Commission has defined freight forwarding as: "the organisation of transportation of items (possibly including activities such as customs clearance, warehousing, ground services etc.) on behalf of customers according to their needs"³.
8. The freight forwarding market has been segmented by the Commission into domestic and international freight forwarding and freight forwarding by air, land and sea. The Commission has previously ruled out a further distinction between standard and express freight forwarding services in general⁴.
9. According to the parties, the geographic market for freight forwarding is no longer national, but at least EEA-wide. Although there are indications that the market for

² With the exception of one of Bax Global's subsidiaries (Air Transport International LLC, a US airline). This is because DB is owned by the Federal Republic of Germany which is prevented by US laws from acquiring an airline.

³ Cases No COMP/M.3603 UPS/Menlo, COMP/M.3496 TNT Forwarding Holding/Wilson Logistics, COMP/M.3155 Deutsche Post/Securicor, COMP/M.2908 Deutsche Post/DHL, COMP/M.1794 Deutsche Post/Air Express International.

⁴ Case No COMP/M. 3971 - Deutsche Post/ Exel.

freight forwarding services may be wider than national as discussed in previous Commission decisions⁵, the Commission has so far left the relevant geographic market definition open.

10. The previous findings of the Commission have also been confirmed in the current case. However, given that irrespective of market definition the proposed transaction would not lead to competition concerns, the definition of the relevant product and geographic market can be left open in this case.

Competitive Assessment

11. The horizontally affected markets in this case are: the International Air Freight Forwarding markets in Austria, the Czech Republic, Germany and Hungary; the International Sea Freight Forwarding markets in Austria and the Czech Republic; and the Domestic Land Freight Forwarding market in Sweden.

A. International Air Freight Forwarding services

12. In line with previous cases the parties have provided market share information in the air freight forwarding markets based on turnover figures collected by IATA⁶. When considering national markets for international air freight forwarding, the combined market shares of the parties in 2004 based on IATA data were 15% or above in Austria [10-20]% (DB [10-20]%, Bax Global [0-10]%), the Czech Republic [15-25]% (DB [15-25]%, Bax Global [0-10]%), Germany [10-20]% (DB [10-20]%, Bax Global [0-10]%) and Hungary [15-25]% (DB [5-15]%, Bax Global [5-15]%). On the basis of wider than national markets, the parties' market shares would be less than 15%.
13. The parties emphasise that the IATA data overstates their relative market position and therefore constitutes a “worst case scenario”. Not all air freight forwarders and carriers which are registered with IATA actually submit their turnover data. Further, in the new EU Member States there are many air freight forwarding companies which are not registered with IATA and therefore do not submit turnover data. Finally, the IATA data does not account for revenues relating to i) the ground transportation of the goods (to and from the airport) and related services (e.g. customs related services) and to ii) inbound shipments or from so-called cross-trade shipments where both the origin and destination of the shipment are different from the sender's location.
14. Using the “worst case scenario” IATA data, in all affected national markets the combined market shares would not exceed 20% which in itself is an indication that the proposed transaction would not give rise to competition concerns. In most countries the increment in market share is also limited. Further, the merged entity will continue to face strong competition from large competitors in these markets such as DHL, Kuhne & Nagel and Exel (Deutsche Post) and others. On that basis it can be concluded

⁵ Case No COMP/M. 1794 - Deutsche Post / Air Express International, Case No COMP/M.3971 . Deutsche Post/ Exel

⁶ The International Air Transport Association.

that the proposed transaction does not raise serious doubts that the proposed transaction would significantly impede effective competition in any international air freight forwarding market in the common market, irrespective of market definition used.

B. International Sea Freight Forwarding services

15. As for international air freight forwarding services, the parties submit that the market for International Sea Freight Forwarding services is at least EEA wide, but have provided market share data on a worst case scenario national basis, (calculations based on the country from which the goods are shipped and excluding shippers). Based on this data there are only two national markets where the combined market share would exceed 15%: Austria ([20-30]⁷) and the Czech Republic ([20-30]%). In both these countries the increment in market share resulting from the transaction would be less than [0-10]%. Further the parties are faced with a number of strong competitors such as Kuhne & Nagel DHL, Cechofracht and Maersk Logistics in the Czech Republic and Kuhne & Nagel, Thiel Logistik and DHL in Austria. On the basis of a wider than national market the parties market share will be less than 15%. Thus, it can be concluded that the proposed operation will not lead to a significant impediment to effective competition for the provision of international sea freight forwarding services, irrespective of market definition used.

C. Domestic Land Freight Forwarding services

16. The parties have confirmed that in one national market for Domestic Land Freight Forwarding services, the parties' combined market shares exceed 15%. This is in Sweden and the combined share is [15-25]%. Bax Global has limited activities in this market and in Sweden the increment in market share resulting from the transaction would be far less than [0-10]%. Further, as in other Member States, the parties are faced with a number of strong competitors such as DHL and DVS/DFDS and Posten (Swedish Post). . On the basis of a wider than national market the parties market share will be less than 15%. Thus, it can be concluded that the proposed operation will not lead to a significant impediment to effective competition also for this market.

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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission

⁷ The Parties submit that freight forwarders' volume account for 70% of the Austrian market. This has also been confirmed in recent Commission cases such as Deutsche Post/Excel.

Signed by Neelie KROES
Member of the Commission