

***Case No IV/M.560 -
EDS / LUFTHANSA***

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

Article 6(1)(b) NON-OPPOSITION
Date: 11/05/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.05.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.560 - EDS / LUFTHANSA

Notification of 3 April 1995 pursuant to Article 4 of Council Regulation
No. 4064/89

1. The above operation involves the acquisition by EDS Holding GmbH (EDS) from Deutsche Lufthansa Aktiengesellschaft (LH) of 25% of the shares of Lufthansa Systems GmbH, a newly created subsidiary of LH.
2. After examination of the notification the Commission has concluded that the proposed operation falls within the scope of Council Regulation No 4064/89 and does not give rise to serious doubts as to its compatibility with the common market and the EEA Agreement.

I THE PARTIES

3. EDS, which is a wholly owned indirect subsidiary of General Motors Corporation, provides IT services, ie systems management, systems integration, systems development and consulting services.
4. LH is an air transport company, registered in Germany.
5. Lufthansa Systems is currently responsible for LH's internal IT service and production capacities.

II THE OPERATION

6. The operation involves the acquisition by EDS from LH of 25% of the shares of Lufthansa Systems, a newly created subsidiary of LH. The joint venture will operate as a systems house providing IT services, which are specifically tailored to the needs of the air transport sector.

III CONCENTRATION

Joint Control

7. EDS will acquire 25% of the shares in Lufthansa Systems. The Shareholders Agreement provides that both parents are represented on the supervisory board (LH 3, EDS 1) and that in important decisions (including the annual budget and annual business plan) unanimity is required. [...] ⁽¹⁾
8. In light of the above, Lufthansa Systems is jointly controlled by EDS and LH.

Full Function

9. Lufthansa Systems will perform on a lasting basis all the functions of an autonomous economic entity and create a structural change in the market.
10. The joint venture will have adequate resources to carry out its business. The initial share capital amounts to DM 25 million. It has a full functioning IT division, contributed by LH. The current number of employees is 1,112; this figure is expected to rise with the increase of third party business. Lufthansa Systems will have the power to grant sublicences, to the extent that LH grants it software licences.
11. Lufthansa Systems will provide services for LH, LH subsidiaries and third parties. The fact that the joint venture will rely almost entirely on sales to LH for an initial start up period does not affect its full function character. Although initially Lufthansa business will account for a large proportion of the joint venture's work this will decrease and the parties intend that the joint venture will be geared to play an active role on the market. The substantial financial contribution made by EDS for its shareholding in the joint venture ([...] ⁽¹⁾ million DM) provides further evidence of this fact and serves to confirm that the joint venture cannot be considered a normal outsourcing operation. In addition competitors have confirmed that there is a substantial and growing market for IT in the air transport industry, and as can be seen below (para 21) although some airline companies operate their IT services in house, many others offer such services to third parties. Lufthansa Systems is likely to be a significant player in this field in the future. Furthermore the joint venture is expected to extend its services to the travel industry in general. Therefore even if LH remains the main customer of Lufthansa Systems in the medium term, the joint venture's dependence on its parent will only be temporary. In addition, the services provided to LH will be priced on an arm's length basis. Prices will be renegotiated every year and shall be determined primarily by a comparison with market conditions for comparable services.

(1) Deleted as a business secret. (In addition, the joint venture will have two managing directors, and the contractual arrangements between the parent companies provide for joint control with respect to the day-to-day management.)

(2) Deleted; business secret

12. In conclusion, Lufthansa Systems will perform on a long lasting basis all the functions of an autonomous economic entity.

Absence of Co-ordination

13. LH will no longer be active in the joint venture's market, having transferred all its external and substantially all of its internal IT service and production capacities to the joint venture. Therefore there is no scope for co-ordination of competitive behaviour as between the parents. This is equally true for the segment of computer reservation systems, where LH holds a minority stake in Amadeus. EDS has not been active in this segment. A joint venture between Amadeus, EDS and Continental Airlines for the marketing of Amadeus in North and Central America, which has been created most recently, relates to a different product market than the one involved in the present operation.

IV COMMUNITY DIMENSION

14. The operation has a Community dimension. The worldwide turnover of all undertakings concerned amounted in 1993 to more than 5,000 million Ecu (General Motors: 118.035 million Ecu; LH: 9.157 million Ecu). The Community wide turnover of both EDS and LH exceeded 250 million Ecu. Neither of the parties achieved more than two thirds of their aggregate Community wide turnover within one and the same Member State⁽¹⁾. Nor did they have a turnover exceeding Ecu 250 million in the territory of the EFTA States.

V COMPATIBILITY WITH THE COMMON MARKET

Product and geographic market

15. Lufthansa Systems will provide IT services tailored to the requirements of airlines, airports and related service providers e.g. travel agents, cargo handling. At a later stage, other travel and transport companies shall be targeted. The services include the development and maintenance of software applications, data processing centre services, network, services, decentralised data processing services and telecommunication services. In the field of air transport, IT services include for example customer-care-systems, crew management and business process management (seat reservation, departure control, etc.). The geographic scope of the joint venture is Europe, but may be extended later on.
16. The product market may be defined as the IT services market as a whole, or may be subdivided in several ways: services/software; systems software products/application software products. In previous cases, the Commission has recognised that there are different segments within the IT sector with characteristics such as capital investment requirements, role of brand image, development costs, switching costs etc⁽¹⁾. A major distinction has been made between IT services and IT software, the latter's product market being application software and system software. It may also be possible to identify a

⁽³⁾ Correction: Lufthansa does have more than two-thirds of its Community-wide turnover within Germany.

⁽⁴⁾ IV/M.112 - EDS/SD Scicon of 17.7.1991 and in particular, IV/M.336 - IBM France/CGI of 19.5.1993.

further submarket for IT services in the travel and transport industry or even in the airline industry. Nonetheless, there is a certain degree of substitutability, e.g. between systems software products, which are ready-made packages, and systems operations solutions which are individually tailored.

17. It is not necessary in the present case to decide if these segments constitute distinct product markets within the meaning of the Regulation, as even on the basis of the narrowest market definition the parties do not hold a significant share in the market.
18. With regard to geographic markets, the parties consider that the relevant market is at least European, except where the close relationship with customers requires local presence. As far as IT services for the airline industry are concerned, customers as well as service providers operate on an international basis. Although much work in Europe and the US is conducted by the airlines in house, there is a demand for IT services from airlines in the Middle and Far East and South America. However, the precise definition of geographic markets can be left open since the concentration is not likely to raise serious doubts as to its compatibility with the common market even on a national level.

Assessment

19. The IT services market appears to be highly fragmented. According to the parties no company achieved a share of more than 8% in 1993 on the general IT services market in Europe. LH's presence on the IT services market has been negligible. On the basis of INPUT, a source of market data for the IT industry used by the Commission in the above-mentioned previous cases, EDS's market share does not exceed 2% which would equally be true if Germany were the relevant geographic market. In Germany, IBM is the market leader followed by Siemens-Nixdorf, both these parties have market shares below 20%.
20. In the different segments and subsegments of the IT sector as set out above, the share of EDS would be distinctly below 5 %; only in systems management, which forms part of IT services, EDS would achieve 10 % in Europe. Market volume (about 82 billion US\$ according to INPUT) is expected to grow significantly until 1998, with an average annual growth rate of 10 % according to INPUT.
21. The IT market is characterised by large competitors such as IBM, Cap Gemini Sogeti, Debis. Some IT experts specialise in the air transport field selling IT services to third parties besides their in-house services; these include Air France, and Alitalia (through Alidata), SAS, British Airways (through Speed Wing). The latter competitor has a share of third party business of substantially more than 50% in this market, operating on all continents. There are also potential competitors on this market, including Siemens Nixdorf. IT services for the airline industry is considered by competitors to be a growth market.
22. For the above reasons, the concentration will not create or strengthen a dominant position in the EEA territory or a substantial part of it.

CONCLUSION

- 23 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