

*Case No IV/M.057 -
DIGITAL / KIENZLE*

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

Article 6(1)(b) NON-OPPOSITION
Date: 22.02.1991

*Also available in the CELEX database
Document No 391M0057*



MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

PUBLIC VERSION

Registered letter with advice
of delivery

1. Notifying party

Dear Sirs,

Subject: Case No. IV/M057 - Digital/Kienzle
Notification of 22.1.1991 pursuant to Article 4 of
Council Regulation No. 4064/89

1. On the 19 of December 1990, Digital Equipment International (DEIL), a wholly owned subsidiary of Digital Equipment Corporation (DEC), entered into an agreement with Mannesmann Kienzle GmbH (MK), which is a subsidiary of Mannesmann AG. The parties agreed to establish a new limited partnership under German Law: Digital Kienzle Computersysteme GmbH & Co KG (Digital/Kienzle), which will be owned 65% by DEIL and 35% by MK. The new company will acquire the computer systems business as well as subsidiaries related to that business from MK. []¹⁾ The parties have agreed on a put and call option. [] MK and with it the Mannesmann AG Group will withdraw from the computer industry except for the manufacturing of printers (Mannesmann Tally GmbH). MK has agreed not to compete with Digital Kienzle as long as it remains a shareholder of the company and for the duration of [] after the sale of its stake.
2. The transaction was originally notified on January 3, 1991. The notification became materially complete on January 22, 1991, and therefore became effective on January 23, 1991.
3. After full examination of the notification, the Commission has come to the conclusion that the notified operation falls within the scope of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market.

¹⁾ Business secret; deleted.

I. COMMUNITY DIMENSION

- Worldwide and Community-wide turnover of the parties exceed Article 1(2) thresholds. DEC has a worldwide turnover of 10.583 mio ECU and a Community-wide turnover of 3.658 mio ECU. The turnover related to the computer systems business of MK amounts to []¹⁾ ECU. Only MK achieves more than two-thirds of its aggregate turnover in one Member State (Germany), and therefore the concentration has a Community dimension.

II. CONCENTRATION

- Upon completion of the proposed transaction DEIL will hold a 65% interest in the new limited partnership with majority voting rights at general meetings []. DEIL will therefore exercise sole control of Digital Kienzle, within the meaning of Article 3(1)(b).
- The non-competition clause is a restriction ancillary to the concentration within the meaning of the Regulation. Its binding effect on MK is limited in time. MK can free itself from the obligation [] and enter the market denovo [], if it wishes to do so.

III. COMPATIBILITY WITH THE COMMON MARKET

- DEC is one of the world's largest suppliers of networked computer systems, software and related services in terms of turnover. It takes third place among the world's top computer manufacturers behind IBM and Fujitsu. DEC offers a broad range of hardware, peripheral, software and communications products as well as related services in the computer industry. The line of products ranges from personal computers to mainframe systems, each supported by software languages and tools. The computer systems business of MK comprises also the design, manufacture, sale and service of computers, but in comparison with DEC it is much smaller. Its turnover amounts to approximately 4% of the turnover of DEC with almost three-quarters of its turnover generated in one Member State (Germany).

The relevant markets

- The main impact of the concentration on competition will be in relation to personal, small and medium size computers as well as workstations. DEC and MK also manufacture or sell peripherals (printers, terminals, storage devices, etc) and computer systems related services. Since MK's printer business is not part of the operation and since there are no indications that MK is a particularly strong vendor of other peripherals or other services, they have been excluded from further analysis.
- Personal, small and medium size computers as well as workstations are usually defined and differentiated from each other as follows:
- Personal computers (PCs) are general purpose, single user computer systems for professional or private use. Pure games systems are not normally included in this product group. Small and medium size computers are both general purpose computer systems as well. They support, however, more than two

¹⁾ Business secret; deleted.

terminals and are almost exclusively installed for professional use. Small and medium size computers are differentiated by price. One common distinction is that small computers cost up to US\$ 100,000, whereas medium size computers are priced within the range of US\$ 100,000 and US\$ 1,000,000. Workstations have emerged as a distinct product group out of PCs and small multi-user computers. They can be described as high performance PCs operating with industry standard software like Unix, VMS or Aegis and very often supporting more than one terminal. Workstations were originally designed for technical applications such as computer-aided draughting and complex calculations (technical workstations). Nowadays they are also designed for commercial applications in the distribution and utilities industries (retail workstations) as well as in banking and other financial services (financial workstations).

11. The differences between PC's and small and medium multi-user computers as well as workstations with respect to characteristics, price and intended use indicate the existence of distinct product markets for each of these computer systems. Even though it may be appropriate in certain cases to further break down these product groups with regard to distribution channels and/or special commercial and industrial market firms, it would not seem justified to do this for the purposes of the present case.
12. With regard to the definition of the geographical market it is not necessary to decide whether there exist distinct geographical markets below the Community level. Even on the German market, where MK is strongest, and the concentration has its main impact, it does not raise serious doubts as to its compatibility with the common market.

THE MARKET POSITION OF THE PARTIES

Personal computers, small and medium size computers

13. The aggregate market share of DEC and MK of PCs is below 10% on the German, as well as on the Community-wide market. This product market which is the largest in value terms of all four affected by this concentration is not very concentrated, with only a few firms with more than 10%, but less than a 25% market share, and a considerable number of firms significantly below a 10% market share.
14. The market for small multi-user computers is slightly more concentrated than the market for PCs with DEC among the leading firms. It ranks second on the German market as well as on the Community-market, with a share of approximately 12%.
15. DEC is also second in medium size computers behind Siemens Nixdorf in Germany and behind IBM in the Community. DEC's market share is about 15%.
16. The proposed concentration will not appreciably change the market position of DEC on these three product markets. MK's share of supply is only significant at German level, where it is above 5% on only one market (medium multi-user computers). DEC will remain a small supplier of PCs and continue to be the second largest supplier of small and medium size computers. A sufficient number of smaller, but resourceful and financially strong competitors will remain on the small and medium size computer markets.

17. There are no indications that this assessment is subject to change, if the three product groups are further broken down with regard to distribution channels and/or special commercial and industrial market focus.
18. Therefore, as regards the markets for PCs and, small and medium size computers the proposed concentration does not raise serious doubts as to its compatibility with the common market.

Workstations

19. The workstation market is the smallest among the four markets mainly affected, but shows the highest annual growth rate (more than 30%). It is also the most concentrated market with DEC, Hewlett Packard and Sun Microsystems holding an aggregate market share of about 80%. DEC's market share has been in the last three years on average 22%.
20. It is unlikely that the concentration will create or strengthen a dominant position because conditions of competition will not significantly change. The workstation market is a fairly new market which developed out of the PC and small computer market during the last ten years. High market shares on a new developing market are not extraordinary, and they do not necessarily indicate market power. In fact the development of the market shares of the three leading companies over a period of time shows the dynamic nature of this market. There has been constant change including a change of market leadership.
21. DEC acquires with MK only a relatively small vendor and one which is rather insignificant for the maintenance of competition on this market. The increase in market share will not be very significant because even on the German market MK has held in the last three years on average only a 4% market share. MK is mainly selling technical workstations and to a small extent financial workstations. DEC's range of workstations will only to a limited extent be reinforced. MK is currently in the process of shifting its product line which is based on a proprietary system design and operating system software to a design based on MIPS microprocessors and the UNIX operating system which is more in accordance with present demand trends. Other competitors are ahead of MK in this regard. Finally, barriers to entry are relatively low for other computer systems manufacturer, especially for those who sell PCs and small multi-user computers. Market entry seems to be feasible even for companies on adjacent markets. Sony and Matsushita are apparently potential, if not already actual, competitors on the workstation market.
22. Thus, also with regard to the workstation market the concentration does not raise serious doubts as to its compatibility with the common market.

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For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market. This decision is adopted in application of Article 6, paragraph 1(b), of Council Regulation No. 4064/89.

For the Commission,