

***Case No COMP/M.6520 -
CINVEN/ GEORGE
TOPCO***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 15/03/2012

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Brussels, 15.03.2012
C(2012)1868

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE

PUBLIC VERSION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.6520 - Cinven/ George Topco
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 9 February 2012, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Cinven Limited ("Cinven", UK) acquires, within the meaning of Article 3(1)(b) of the Merger Regulation, indirect control of the whole of George Topco Limited ("George Topco", Jersey) by way of acquisition of shares. Cinven and George Topco are designated hereinafter as the "parties".

(1) THE PARTIES

2. Cinven is a private equity business engaged in the provision of investment management advice and services to a number of investment funds (hereinafter "the notifying party").
3. George Topco is currently owned by Intermediate Capital Group Plc ("ICG") and other minority investors. It is ultimately controlled by funds advised and managed by ICG. George Topco indirectly controls Computer Patent Annuities Holdings and its subsidiaries (together "CPA").

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision. the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

4. CPA is active in the legal support services sector, more specifically in patent renewal and related services. As its core offering, CPA manages and undertakes on behalf of its clients the regular renewal of patents in relevant jurisdictions. Clients transfer details regarding their patent portfolios to CPA and CPA undertakes the necessary renewal formalities. CPA offers similar renewal services for trade marks, internet domain names and registered designs. In addition, CPA is active in a number of related ancillary business areas (data management, intellectual property outsourcing and software licensing). CPA is also active in legal service outsourcing, including document review, legal research, deposition summaries, drafting of documents and transaction support services.

(2) THE OPERATION AND THE CONCENTRATION

5. CPA's shareholding is currently spread between: (i) ICG; (ii) the key managers of George Topco; and (iii) certain other managers and employees of CPA.²
6. The concentration will be completed in two successive steps. First, the ICG Shares and the Other Shares will be acquired by "Redtop Acquisitions", a special purpose vehicle indirectly controlled by Cinven, by way of a scheme of arrangement.³ Second, the Managers Shares will be acquired by Redtop Acquisitions, pursuant to a sale and purchase agreement.
7. Following the concentration, Cinven, via Redtop Acquisitions, will therefore acquire sole control over CPA within the meaning of Article 3(1)(b) of the Merger Regulation.⁴

(3) EU DIMENSION

8. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 2 500 million⁵ (Cinven: EUR [...] million; CPA: EUR [...] million) and each has an EU-wide turnover in excess of EUR 100 million (Cinven: EUR [...] million; CPA: EUR [...] million). They also have a combined turnover of more than EUR 100 million in at least three Member States and an individual turnover of more than EUR 25 million in three of these Member States. Finally, they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
9. The notified operation therefore has an EU dimension pursuant to Article 1(3) of the Merger Regulation.

² ICG holds approximately 40% of the shares ("ICG Shares"), the key managers 20% ("Managers Shares") and the other managers and employees the remaining 40% ("Other Shares").

³ The scheme will work as follows: (i) on the effective date of the scheme, all ICG Shares and all Other Shares will be cancelled; and (ii) immediately afterwards, CPA will issue new ordinary shares to Redtop Acquisitions in such number as is equal to the aggregate of the cancelled ICG and Other shares.

⁴ A limited number of CPA shares (between 5 and 10%) will be distributed to key managers and employees. These shares will not allow the key managers and employees to exercise, either individually or jointly, control over CPA.

⁵ Turnover calculated in accordance with Article 5 of the Merger Regulation.

(4) RELEVANT MARKETS

A. Product market definition

a. Renewal services for intellectual property rights

10. CPA offers renewal services for different types of intellectual property rights ("IPRs"), of which patent renewal services are the most important.
11. Patents are IPRs granting a monopoly over the commercial exploitation of an invention. At present, it is not possible to obtain a unitary patent that is valid and enforceable throughout the EU. Instead, patents in the EU can be obtained either by filing a national application at each respective national patent office or by filing a single patent application at the European Patent Office ("EPO"). However, in the latter case, although only a single examination procedure will have to be undergone, national validation of the "European patent" granted by the EPO in each Member State where the patent owner wishes the patent to exist and to be enforceable will still be necessary.
12. While patents are usually granted for a period of 20 years, patent holders must, on a regular basis (annually in most jurisdictions), pay maintenance fees to the competent authorities in order to renew their patents and maintain their validity. If a renewal fee is not paid on time, a patent will, in most jurisdictions, expire. Patent holders therefore need to keep track of the renewal dates for each of their patents and comply with a variety of different legal requirements. Since this entails a significant administrative burden, companies, especially those with large patent portfolios, may choose to outsource the renewal process to companies such as CPA.
13. CPA provides patent renewal services directly to companies and also to law firms that are in charge of their clients' IP-related matters. The nature of CPA's services does not differ depending on the nature of the client or on the industry in which a client is active.
14. CPA monitors patent portfolios either in all countries in which a client holds patents, or only for some of these. CPA checks whether a patent is due for renewal, sends out reminders and attends to all formalities, including collecting the amount of the renewal fee that needs to be paid by and passing it on to the relevant authorities, including transactions in international currency.
15. On the basis of figures provided by the World Intellectual Property Organisation ("WIPO"), CPA estimates that, in 2010, there were approximately 7.3 million patents in force globally and that each year, approximately 5.6 million of these patents are renewed globally.
16. Trade marks are IPRs granting a monopoly over the exclusive use of a distinctive sign (e.g. words, names, designs, letters, numerals) in connection with certain goods or services. Trade marks are granted by national authorities on a country-by-country basis (although in the EU, it is possible to register a Community Trade mark valid in all

Member States). Trade marks are typically granted for a period of 10 years (although there are variations between different jurisdictions),⁶ after which the registration can be renewed for further periods, provided that relevant renewal fees are paid. If a renewal fee is not paid on time, in most jurisdictions, a trade mark will expire.

17. CPA mainly provides trade mark renewal services directly to trade mark owners and to law firms. CPA also provides solutions across the entire lifecycle of a trade mark, from the selection and adoption of trade marks, to the support of prosecution-driven tasks, through to enforcement and trade mark maintenance.
18. On the basis of figures provided by WIPO, CPA estimates that, in 2010, there were approximately 18 million trade marks in force globally and that each year, between 1.5 and 1.8 million trade marks are renewed globally.
19. Internet domain names are the user-friendly identification strings of internet addresses. They are administered by domain name registrars.
20. CPA's main activities consist of internet domain management, online brand protection (assisting companies in auditing, analysing and taking action against online infringements of their trade marks) and digital content-watching (assisting clients in protecting their businesses online by monitoring internet domain names).
21. CPA estimates that there are over 220 million registered internet domain names and that each year, approximately 170 million internet domain names are renewed.
22. Registered designs are IPRs that protect the visual design of non-purely utilitarian objects. Such rights have to be renewed approximately every five years (regimes vary between countries). CPA provides renewal services for registered designs. CPA estimates that there are approximately 144.000 registered designs on a worldwide basis.
23. To date, the Commission has not adopted any decision concerning the segmentation of the market for renewal services for IPRs as these activities are rather specific and only a limited number of companies provide such services.
24. The notifying party considers that trade mark and internet domain name renewal services are part of the same market since the legal aspects involved in the renewal of both IPRs are very similar. Although from a demand perspective, trade mark renewal services are distinct from internet domain name renewal services, the services are substitutable from a supply-side perspective since many providers of one type of service do, or could, supply the other. As regards registered design renewal services, the notifying party does not take any firm position.
25. In the course of the market investigation, a majority of respondents stated that patent renewal services constitute a separate product market due to the specificities attached to the renewal of patents. Contrary to other IPRs, patents have to be renewed every year, which requires more thorough monitoring and more frequent interaction with patent holders.

⁶ It can be up to 17 years in some countries.

26. The views of the notifying party and the respondents to the market investigation do not allow the Commission to draw any clear conclusions regarding whether trade mark, internet domain name and design renewal services should be considered as constituting separate markets. Although they are clearly different from a demand-side perspective (as a trade mark is not substitutable with an internet domain name or a registered design right and vice versa), it seems that for most companies, their IP portfolio covers the full range of IPRs i.e. patents, trade mark, internet domain names and registered designs and they procure renewal services as a package, without distinguishing between the IPRs involved. At the same time, most renewal service providers have dedicated divisions for each of these four services. Consequently, the Commission cannot exclude that a segmentation on the basis of the nature of the IPR to be renewed could be relevant.
27. However, since the concentration does not give rise to horizontal overlaps and only to limited vertical relationships between the activities of the parties to the concentration on any plausible market, the precise market definition can be left open.

b. Ancillary services: data management, intellectual property outsourcing and software licensing

28. CPA provides three services which it considers ancillary to its core activity of IPR renewal services: data management, intellectual property outsourcing and software licensing.
29. Data management services encompass patent portfolio optimisation, the updating of the registered particulars of patents and the verification of patent data.
30. Intellectual property outsourcing ("IPO") involves two main types of services: registration support services (e.g. assisting rights holders with the preparation and filing of the documentation required to register and to renew their IPRs) and research services (e.g. identifying conflicting IPRs and monitoring of potential violations of IPRs).
31. Software licensing. CPA licenses software to clients, which can be described as a database holding the relevant patent data in order to support their patent portfolio management.
32. The notifying party submits that all these services are ancillary to CPA's IPR renewal services and therefore do not constitute separate markets. According to the notifying party, all these services relate to the validity and legal enforceability of IPRs, are supplied to the same customers, are interlinked and are usually provided in combination, since they require the same or similar expertise, use similar processes and can be provided by any provider in the market.
33. The Commission considers that the arguments put forward by the notifying party are not entirely convincing as even though these ancillary services are provided together with IPR renewal services, it appears that CPA also offers them on a stand-alone basis, i.e. not bundled with any IPR renewal service.
34. However, since the concentration does not give rise to horizontal overlaps and only to limited vertical relationships between the activities of the parties to the concentration on any plausible market, the precise market definition can be left open.

c. Legal process outsourcing services

35. CPA provides various legal process outsourcing services to law firms or in-house legal departments of companies undertaking tasks that would otherwise be done by paralegals or associates. Although these may be relatively simple or routine tasks such as document review, legal research, deposition summaries, drafting of documents or transaction support services, they still require the assistance of legal specialists.
36. The notifying party considers that legal process outsourcing services constitute a relevant market.
37. The Commission notes that in its previous decisions in *Ernst & Young/Andersen Germany*⁷ and *Ernst & Young/Andersen France*,⁸ it considered that there may exist a separate market for legal advice and that some features of that market could justify a definition of separate markets for: (i) services provided predominantly with regard to national legislation; and (ii) services with international dimension.
38. However, since the concentration does not give rise to horizontal overlaps and only to limited vertical relationships between the activities of the parties to the concentration on any plausible market, the precise market definition can be left open.

B. Geographic market definition

a. Renewal services for intellectual property rights

39. The notifying party submits that the geographic scope of the market for patent renewal services is worldwide as CPA's client base is international and CPA competes with international and domestic providers in various jurisdictions.
40. The notifying party further submits that the scope of the geographic markets for the other three IPR renewal services is also worldwide as these services are typically rendered to clients on a global basis and do not significantly differ, depending on where a client is based or in which country a renewal application is made.⁹
41. The views of the notifying party are supported by the respondents to the market investigation.
42. Since the concentration does not give rise to horizontal overlaps and only to limited vertical relationships between the activities of the parties to the concentration on any plausible market, it can be left open whether the geographic scope of the market for the renewal services for intellectual property rights is EEA-wide or worldwide.

⁷ Case COMP/M.2824, decision of 27 August 2002, paragraph 46.

⁸ Case COMP/M.2816, decision of 5 September 2002, paragraph 46.

⁹ Apart from the need to comply with national law in the application process, the services rendered (e.g. the research of potential conflicts with existing trade marks, compiling information on the trade mark) are the same.

b. Ancillary services: data management, intellectual property outsourcing and software licensing

43. The notifying party submits that the geographic scope of the market for services ancillary to renewal services for IPRs is worldwide as services are typically rendered to clients on a global basis and do not differ significantly, depending on where a client is based or in which country the application is made.
44. Since the concentration does not give rise to horizontal overlaps and only to limited vertical relationships between the activities of the parties to the concentration on any plausible market, it can be left open whether the geographic scope of the market for services ancillary to renewal services for IPRs is EEA-wide or worldwide.

c. Legal process outsourcing services

45. The notifying party submits that the geographic scope of the market for legal process outsourcing services can be left open as competitive concerns do not arise, regardless of the precise geographic scope of the market.
46. In previous decisions, the Commission noted that a market for legal advice with international dimension may show some national characteristics.¹⁰
47. However, since the merger does not give rise to horizontal overlaps and only to limited vertical relationships between the activities of the parties to the concentration on any plausible market, it can be left open whether the geographic scope of the market for legal process outsourcing services may be at least national.

(5) COMPETITIVE ASSESSMENT

1. No horizontal overlaps

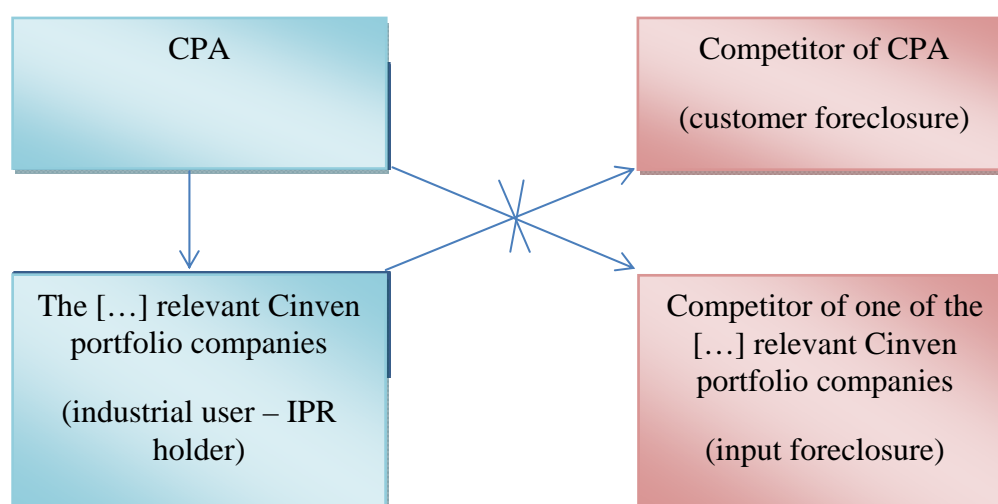
48. According to the notifying party, the concentration does not give rise to any horizontal overlaps between CPA and the activities of Cinven's portfolio companies.
49. This has been confirmed by the Commission's analysis of the activities of Cinven's portfolio companies, which has shown that none currently operate in the field of renewal services for IPRs.
50. The Commission therefore considers that the notified operation does not result in any horizontally affected markets.

2. Limited vertical overlaps

51. According to the notifying party, [...] of Cinven's portfolio companies own patents that periodically require renewal, and which thus could potentially use CPA's services: [...]

¹⁰ Cases COMP/M.2824 *Ernst & Young/Andersen Germany*, paragraph 49 and COMP/M.2816 *Ernst & Young/Andersen France*, decision of 5 September 2002, paragraph 49.

52. The proposed concentration therefore potentially gives rise to two risks of foreclosure: (i) foreclosure of CPA's competitors by restricting their access to a sufficient customer base (if the [...] relevant Cinven portfolio companies were to choose CPA as their exclusive provider of IPR renewal and other related services); and (ii) foreclosure of the competitors of the [...] relevant Cinven portfolio companies (if CPA were to stop providing these competitors with its services or degrade the quality of the services rendered).
53. The structure of the market and the possible foreclosure effects of the proposed concentration can be illustrated by the following diagram:



a. Foreclosure of CPA's competitors

54. In assessing whether a risk exists that CPA's competitors may be foreclosed (customer foreclosure), the Commission has examined the market shares of the parties in both the upstream and downstream markets, and their ability and incentives to engage in such foreclosure.
55. According to the Guidelines on the assessment of non-horizontal mergers, where a merged entity has a market share substantially below 30% in one of the two vertically-related markets, competition concerns are less likely to exist.¹¹
56. On the basis of the data provided by the notifying party, which was broadly supported by the respondents to the market investigation, although CPA holds around [40-50]% (based on value) of the markets for patent renewal and for registered design renewal services, the market share (under any possible market definition) represented by the services required by the [...] relevant Cinven portfolio companies is less than [0-5]%.

¹¹ OJ C265 of 18/10/2008, page 9, fn 3

TABLE 1 – Market shares on a worldwide basis

<u>Markets (global)</u>	<u>CPA</u>	<u>Cinven's [...] relevant portfolio companies</u>
	(notifying party's estimates)	(notifying party's estimates)
Patent renewal	[20-30]% (volume) – [40-50]% (value)	Less than [0-5]%
Trade mark renewal	[10-20]%	Far below [0-5]%
Domain names renewal	Less than [0-5]%	[0-5]%
Registered designs renewal	[20-30]% (volume) – [40-50]% (value)	Less than [0-5]%
Data management	[10-20]%	Less than [0-5]%
IP outsourcing services (IPO)	[0-5]%	Less than [0-5]%
Software licensing	[10-20]%	Far below [0-5]%

TABLE 2 - Market shares on an EEA-wide basis

<u>Markets (EEA wide)</u>	<u>CPA</u> (notifying party's estimates)	<u>Cinven's [...] relevant portfolio companies</u> (notifying party's estimates)
Patent renewal	[20-30]% (volume) – [40-50]% (value)	Less than [0-5]%
Trade mark renewal	[5-10]%	Far below [0-5]%
Domain names renewal	Less than [0-5]%	[0-5]%
Registered designs renewal	[20-30]% (volume) – [40-50]% (value)	Less than [0-5]%
Data management	[10-20]%	Less than [0-5]%
IP outsourcing services (IPO)	[0-5]%	Less than [0-5]%
Software licensing	[10-20]%	Less than [0-5]%

57. As for legal process outsourcing services, on the basis of the data provided by the notifying party, which was broadly supported by the respondents to the market investigation, CPA's market share, both worldwide and EEA-wide, is approximately [5-10]%, while Cinven's portfolio companies account for a share of worldwide and EEA purchases of less than [0-5]%. Similarly, at national level, CPA's highest market share, in the UK, is only approximately [5-10]%, while Cinven's portfolio companies account for a share of UK purchases of less than [0-5]%.¹²

58. Consequently, the Commission considers that even in relation to services for which CPA potentially enjoys a significant market share, the low market share represented by the services required by the [...] relevant Cinven portfolio companies excludes a

¹² CPA's market share for legal process outsourcing services in the UK as well as for the two possible segments, (i) legal services provided predominantly with regard to national legislation in the UK and (ii) legal services with international dimension in the UK, is around [5-10]%. The notifying party estimates that Cinven's shares of total purchases of legal process outsourcing services in the UK amounts to no more than [0-5]% under any of the two possible segmentations.

scenario whereby these portfolio companies could, by choosing CPA as their exclusive provider of patent renewal and other related services, restrict access by CPA's competitors to a sufficient customer base.

b. Foreclosure of the competitors of Cinven's [...] relevant portfolio companies

59. The Commission has examined whether the risk exists that CPA could foreclose the competitors of Cinven's [...] relevant portfolio companies by either ceasing to provide these competitors with its services (total input foreclosure) or by degrading the quality of the services rendered (partial input foreclosure).
60. According to the notifying party, CPA will not have the ability to foreclose the competitors of the Cinven [...] relevant portfolio companies (total input foreclosure). First, CPA's services can easily be provided by a number of alternative operators on the relevant markets.
61. Second, barriers to enter the markets for IPR renewal services are low.¹³
62. In addition, the notifying party claims that Cinven will not have any incentive to induce CPA to adopt such a strategy. While Cinven's portfolio companies have a negligible weight in CPA's business, Cinven, as a controlling entity of CPA, has a strong interest to grow CPA's business.
63. The respondents to the market investigation support the notifying party's view that CPA will have neither the ability nor the incentives to engage in such a foreclosure strategy. First, they point to the fact that CPA's services can easily be substituted by its competitors. Although competitors may provide a different mix of IPR renewal and ancillary services, all of them are able to provide the main services which are requested by the companies in the markets at issue.
64. Second, they indicate that there at least three companies which are seen by large customers of IPR renewal services (companies holding more than 1000 IPRs) as credible alternatives to CPA for the provision of patent renewal services.¹⁴
65. Third, they submit that barriers to enter the markets for the provision of IPR renewal services are low.
66. Fourth, they point to a number of recent new entrants in the markets for IPR renewal services such as IPAN, Patrafee and IP Pragmatics which they claim, constitute credible

¹³ A new entrant would only need to make a limited investment in order to enter, covering the acquisition of technical know-how necessary to keep up-to-date its knowledge on patent procedures, the licensing the technology necessary to monitor patent data, the creation of renewal events to ensure safe execution of renewals, and the joining of a network of associates in foreign jurisdictions to be able to make payments through these IP offices when required.

¹⁴ (i) Dennemeyer, an EU-based company, whose worldwide share of the patent renewal market is estimated to be 13%; (ii) Thomson Reuters, a US-based company, whose worldwide share of the patent renewal market is estimated to be 7%; and (iii) ComputerPackages Inc., a US-based company, whose worldwide share of the patent renewal market is estimated to be 7%.

alternatives to CPA. These new entrants, as well as smaller local companies, are able to effectively compete against CPA for international clients by concluding cooperation agreements between themselves.¹⁵

67. The Commission agrees with the position of the notifying party and the respondents to the market investigation. CPA's IPR renewal services are easily substitutable with those of its competitors, barriers to enter these markets are low and Cinven is unlikely to have any incentive to induce CPA to adopt such a strategy.
68. The Commission therefore concludes that CPA will have neither the ability nor the incentive to foreclose the competitors of Cinven's [...] relevant portfolio companies by ceasing to provide these competitors with its IPR renewal services.
69. As for the risk that CPA could foreclose the competitors of the [...] relevant Cinven portfolio companies by degrading the quality of the services rendered (partial input foreclosure), the notifying party has highlighted that CPA's customers can easily switch to other providers. Indeed, CPA's contracts with patent holders are made both on the basis of both long term (between 3 and 10 years) and short term agreements and according to CPA's standard terms and conditions, customers in long-term agreements can terminate their agreements by giving one year's notice and without incurring any financial penalties for such early termination.
70. In addition, if CPA were to degrade the quality of its renewal services, such a strategy would not be sustainable as the failure to renew a patent could expose CPA to substantial financial liabilities and reputational damage.
71. The respondents to the market investigation confirmed that such a strategy by CPA would not be viable in view of the high importance of reputation for all the players in the markets at issue.
72. The Commission agrees with the position of the notifying party and the respondents to the market investigation. CPA's customers can easily switch to other providers and if CPA were to degrade the quality of its renewal services, this could expose it to significant financial liabilities and reputational damage.
73. The Commission therefore concludes that CPA will have neither the ability nor the incentive to foreclose the competitors of Cinven's [...] relevant portfolio companies by degrading the quality of its services.

(6) CONCLUSION

74. For the above reasons, the European Commission considers that the notified operation does not raise serious doubts as to its compatibility with the internal market.

¹⁵ For example, in 2009, IP Pragmatics established a joint venture with Patrafee, the most important IP renewal agency in Scandinavia, in order to develop Patrafee's activities in the United Kingdom.

75. It has therefore decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission
(signed)
Joaquín ALMUNIA
Vice-President