



EUROPEAN COMMISSION

Competition DG

Policy and Strategy

Antitrust and Mergers – Policy and Scrutiny

OPINION

of the ADVISORY COMMITTEE on MERGERS

given at its meeting of 11 January 2010

regarding a preliminary draft decision relating to

CASE COMP/M.5529 – ORACLE / SUN MICROSYSTEMS

Rapporteur : ESTONIA

1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
2. The Advisory Committee agrees with the Commission that the notified concentration has a Community dimension pursuant to Article 1(2) of the Merger Regulation.
3. The Advisory Committee agrees with the Commission that for the purposes of assessing the notified concentration the relevant product markets concerned are:
 - a) Databases, comprising all relational database management systems;
 - b) Middleware, with a possible sub-segmentation, although the exact product market definition can be left open;
 - c) Licensing of Java IP rights connected to the Java development environment, although the exact product market definition can be left open.
4. The Advisory Committee agrees with the Commission that the scope of the relevant geographic market is:
 - a) Worldwide for databases;
 - b) Worldwide for middleware and the possible sub-segments;
 - c) Worldwide for the licensing of Java IP rights connected to the Java development environment.
5. The Advisory Committee agrees with the Commission that for the purposes of assessing the notified concentration the "IT stack" or "technology stack" encompasses the following layers:

- (i) Storage solutions,
- (ii) Servers,
- (iii) Operating systems,
- (iv) Databases,
- (v) Middleware,
- (vi) Enterprise Application Software (EAS).

6. The Advisory Committee agrees with the Commission's assessment that the notified concentration will not lead to a significant impediment to effective competition on the worldwide market for databases. A minority abstain.
 7. The Advisory Committee agrees with the Commission's assessment that the notified concentration will not lead to a significant impediment to effective competition on the worldwide market for middleware or any of its possible sub-segments.
 8. The Advisory Committee agrees with the Commission's assessment that since Oracle will have neither the ability nor the incentive to foreclose its downstream competitors in middleware or EAS, the notified concentration will not lead to a significant impediment to effective competition stemming from Oracle's ownership of the IP rights connected to the Java development environment.
 9. The Advisory Committee agrees with the Commission's assessment that the notified concentration will not lead to a significant impediment to effective competition stemming from the merged entity's presence in the IT stack.
 10. The Advisory Committee agrees with the Commission that the notified concentration should be declared compatible with the common market and the functioning of the EEA Agreement, in accordance with Articles 2(2) and 8(1) of the Merger Regulation and Article 57 of the EEA Agreement. A minority abstain.
-

<u>BELGIË/BELGIQUE</u>	<u>BULGARIA</u>	<u>ČESKÁ REPUBLIKA</u>	<u>DANMARK</u>	<u>DEUTSCHLAND</u>
Mr Carl WETTINCK				Dr. Andreas BARDONG

<u>EESTI</u>	<u>ÉIRE-IRELAND</u>	<u>ELLADA</u>	<u>ESPAÑA</u>	<u>FRANCE</u>
Ms. Külliki LUGENBERG	Dr. Stanley WONG			Ms Melissa CHIARANDINI
<u>ITALIA</u>	<u>KYPROS/ KIBRIS</u>	<u>LATVIJA</u>	<u>LIETUVA</u>	<u>LUXEMBOURG</u>
Mr Stefano MALINCONICO				

<u>MAGYARORSZÁG</u>	<u>MALTA</u>	<u>NEDERLAND</u>	<u>ÖSTERREICH</u>	<u>POLSKA</u>
		Mr Stefan HAASBEEK		Ms Lucyna KOLNIERZAK

<u>PORTUGAL</u>	<u>ROMANIA</u>	<u>SLOVENIJA</u>	<u>SLOVENSKO</u>	<u>SUOMI-FINLAND</u>
Mr Pedro MARQUES			Ms. Miriama SVETKOVSKA	Ms Juuli BROMS

<u>SVERIGE</u>	<u>UNITED KINGDOM</u>
Ms. Emma NORLER	Mr Tim GEER
