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*Case No IV/M.101 -
DRÄGER / IBM / HMP*

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

Article 6(1)(b) NON-OPPOSITION
Date: 28.06.1991

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

By registered letter with
advice of delivery

To: Notifying parties

Dear Sirs,

Subject: Case No. IV/M101 - DRÄGER/IBM/HMP
Your notification of 27.5.1991 pursuant to Article 4 of
Council Regulation No. 4064/89

1. Drägerwerk AG ("Dräger"), Compagnie IBM France SA ("IBM") and Human Microprocessing Inc. ("HMP") intend to set up a new joint venture, Hospitronics S.a.r.l. ("Hospitronics"), in which each will take a one-third shareholding.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No. 4064/89 (the Merger Regulation) and does not raise any serious doubts as to its compatibility with the common market.

I. COMMUNITY DIMENSION

3. The aggregate worldwide turnover of all the undertakings concerned was about 54,760 MECU in 1990, and Dräger and IBM each achieved a Community-wide turnover of more than 250 MECU. The parties did not achieve two-thirds or more of their Community-wide turnover in one and the same Member State. Thus, the operation has a Community dimension within the meaning of Article 1(2) of the Merger Regulation.

II. CONCENTRATION

4. According to the joint venture agreement, Dräger, IBM and HMP will each take a one-third equity interest in Hospitronics and have one-third of the voting rights in the shareholders meeting. Hospitronics will be run by three joint managers, of which the parties will each appoint one, who will report to a six-member supervisory board to which each of the parties will appoint two persons. The joint managers will be responsible for the daily management of Hospitronics. An "operating plan" will be worked out annually, containing detailed plans concerning projected volumes, revenues and profits, development and general administrative matters, etc. Certain actions can be taken only with the approval of either the supervisory board or the shareholders' meeting. Such actions include the changing of the objectives of Hospitronics, major capital investments or disposal of assets, etc. The "operating plan" must also be approved, and can be revised, by the shareholders' meeting. None of these actions can be approved unless all three parties agree. It can therefore be concluded that the joint venture will be jointly controlled by them.

5. Hospitronics is a full function joint venture the object of which is to develop and market computerised intensive health care and patient data management solutions for public and private hospitals. These solutions enable medical equipment to be linked and data to be centralised at integrated medical workstations. In particular, the solutions are designed to be used by anaesthetists during surgical procedures and by physicians and nurses in intensive care units. The principal aim of Hospitronics is to develop and market software which is compatible with or can be adapted to fit existing equipment (both medical and computer equipment) irrespective of manufacturer in the hospitals. It will therefore have to overcome the difficulties involved in interfacing within a single data system a number of different pieces of medical equipment. Although the solutions to be marketed by Hospitronics will mainly consist of software, they may include computer hardware.

6. All three parent companies of Hospitronics have in the past been active in the area of patient data management solutions. They will, however, no longer develop or sell intensive health care and patient data management solutions after the new company has been established.

7. HMP, which is a small software house with sales of less than 1 MECU, has developed the programs on which Hospitronics will base its solutions. It will transfer its activities to the joint venture, in particular its intellectual property rights and some personnel, which are related to patient data management.

8. Dräger will transfer to the joint venture the software products it has developed for patient data management, related intellectual property rights and some personnel. Dräger is a manufacturer of hospital equipment, including devices for the management of gases and blood in operating theatres and intensive care units and the monitoring of patients in hospitals. The company has recently acquired a software house which is developing data management solutions of the type the proposed joint venture will market. Dräger intends to terminate this subsidiary's operation and transfer its personnel and assets, insofar as it is possible, to Hospitronics. It will then have completely withdrawn from the area of activities of the joint venture.

9. In 1984 the IBM group of companies withdrew from manufacturing and marketing biomedical systems. This leading information systems manufacturer sells at present only software based solutions to handle general information systems within hospitals. Software houses in which the IBM group of companies holds an interest, mostly minority stakes, provide information systems for obtaining the most up-to-date application methods, administrative solutions for private clinics or computerised patient records and files. The IBM group of companies does not sell solutions of the type the proposed joint venture will offer, either itself or through software houses with which it is linked. IBM will transfer some personnel to Hospitronics.

10. It is unlikely that the three parent companies will re-enter the area of activity of their joint venture. IBM, in particular, may possess the technical, organisational and financial means to develop and sell its own computerised intensive health care and patient data management solutions. However, the company has not re-entered this field since it took the business decision seven years ago to completely withdraw from manufacturing and marketing biomedical systems. To re-enter the area of patient data management systems and in addition to the proposed joint venture with HMP and Dräger, would not in objective terms represent a commercially reasonable course. The substantial costs and risks in view of the nature of the service and the estimated size of the market make a market entry by IBM highly unlikely. The parties estimate that approximately [deleted] intensive care beds, induction rooms, operating theatres and recovery rooms in Western Europe will be equipped with patient data management programs. Since the price of the software product including its installation is expected to be about [deleted] ECU for each bed, the total market volume of the West European market amounts to approximately [deleted] MECU. These estimates demonstrate that in any event the market potential is relatively small having regard to the expected costs for developing IBM's own software product, its introduction and marketing as a customised solution would be substantial. Taking also into account that IBM can only be a late entrant because of its non-competition obligation (see below), the company cannot be certain that any additional independent entry will be a commercial success on a market of this relatively small size. The same applies to Dräger and HMP, being much smaller companies with less resources than IBM and which have transferred all their relevant assets necessary for market entry to Hospitronics.

11. The three parent companies will therefore not be actual or realistic potential competitors in the area of activity of Hospitronics after the proposed transaction has been completed. Furthermore, IBM, as an information systems manufacturer, and Dräger, as a producer of hospital equipment, are not competitors on any upstream, downstream or neighbouring market to data management solutions. The envisaged joint venture will thus not have as its object or effect the co-ordination of competitive behaviour of undertakings which remain independent. It will bring about a lasting change in the structure of the undertakings. The notified operation consequently constitutes a concentration within the meaning of Article 3 of the Merger Regulation and falls within the scope of application of the Regulation.

12. The parent companies of the joint venture have agreed that they will not compete with Hospitronics in patient data management solutions for a period of 18 months after all governmental filings and approvals for setting up the company have been made or obtained. It expresses the commitment of the parent companies to

their joint venture and constitutes an integral part of the concentration (see point 20 below).

III. COMPATIBILITY WITH THE COMMON MARKET

Relevant market

13. The proposed joint venture will provide computerised intensive health care and patient data management solutions for public and private hospitals. The solutions will perform the following functions:

- automatic data acquisition from medical apparatus such as monitors, anaesthesia machines, etc.;
- presentation of all data relevant to anaesthesia and intensive care units, as well as patient records, which today are prepared manually, on a computer screen or on print;
- storage of such data for (later) review; and
- communication between the various different departments and computer systems throughout the hospital, e.g. its administration, laboratory and pharmacy.

14. The parties submit that these patient data management solutions can be distinguished from existing software programs or information systems provided to hospitals and will ultimately create a market of its own.

15. The software based solutions the joint venture will provide are clearly differentiated from purely administrative programs for hospitals on the one side and from medical data processing programs used for hospital equipment, such as anaesthesia machines on the other side. The patient data management solutions of Hospitronics address the needs of intensive care units and operating theatres and therefore also appear to be different from software used in other areas of medical activity, such as computer tomography and nuclear magnetic resonance. However, whether it can be further distinguished from other patient data management solutions developed for intensive care units and operating theatres can be left open and need not be decided for the purposes of this decision.

16. The same applies for the exact delimitation of the geographical reference market. It is intended that the joint venture will provide its services first within the Community, starting in some of the larger Member States, and later on worldwide. The Commission does not consider it necessary to decide whether there is a Community-wide market or whether there are several regional or national markets for patient data management solutions, since the proposed concentration will not create or strengthen a dominant position, not even on the basis of the narrowest product market or geographical reference market.

Dominance

17. There are approximately 20 firms developing or marketing computerised patient data management solutions. Among these are software houses, producers of medical devices and information systems manufacturers. They are competing mainly with regard to technology and their ability to offer customised solutions.

18. Hospitronics will be a new entrant into this market. Although the company combines the assets and resources of HMP and Dräger with regard to patient data management solutions, it will not have a measurable market share because these firms have hardly begun to market their solutions. The joint venture will have good access to hospitals especially through its link with Dräger. Furthermore, it will profit from the technical, organisational and financial know-how of its parent companies. Competitors, however, match the new entrant in these respects. Among those are manufacturers of medical devices like PPG Hellige, producers of information systems like Hewlett Packard or of both like Siemens, or software houses like Spacelabs. It is therefore unlikely that the proposed joint venture will dominate the market for patient data management solutions. On the basis of information available, it does not appear that this will be the case, even if the software based solution of Hospitronics leads to the evolution of a new market. The companies currently active on this market would still be at least potential competitors of the proposed joint venture.

19. It is, furthermore, reasonable to conclude that a dominant position on any information systems market will not be created or strengthened through the proposed joint venture. The patient data management solutions the company will provide may include the sale of computer hardware manufactured by IBM. Any of these sales of mainly personal computers and workstations will not be on a scale such as to reinforce under prevailing market conditions the market positions of the IBM group of companies to an extent that a dominant position will be created or strengthened.

The Commission therefore has come to the conclusion that the proposed concentration does not raise serious doubts as to its compatibility with the common market.

Ancillary restrictions

20. The non-competition clause mentioned in point 12 is directly related and necessary to the implementation of the concentration. It is therefore covered by the present decision.

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For the above reasons, the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission,