

*Case No IV/M.105 - ICL
/ Nokia Data*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 17.07.1991

*Also available in the CELEX database
Document No 391M0105*

VERSION FOR THE PUBLIC

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

By registered letter with
advice of delivery

To the notifying parties

Dear Sirs,

Subject: Case No. IV/M105 - ICL/Nokia Data
Your notification of 14.6.1991 pursuant to Article
4 of Council Regulation No. 4064/89

1. The proposed concentration consists of the acquisition by ICL PLC (ICL), a company which is controlled by Fujitsu Limited, of all of the shares of Nokia Data Holding B.V. (Nokia Data). Prior to the completion of the proposed concentration and following intra-group transfers, Nokia Data will become the holding company for all the interests of OY Nokia AB in the information systems sector. As consideration for the sale, ICL is paying OY Nokia AB in cash and preference shares in the capital of ICL, redeemable in 1998 or on flotation of ICL if earlier. On flotation, half of those preference shares will be convertible into a 5% ordinary shareholding in the capital of ICL. One OY Nokia AB director will sit on the board of ICL.

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

I. Community dimension

3. The operation has a Community dimension. The aggregate worldwide turnover of the parties in 1990 was 18,437 MECU. The Fujitsu group of companies had a Community turnover of 3,117 MECU and that of Nokia Data was 318 MECU. The two parties did not achieve two-thirds or more of their Community-wide turnover in one and the same Member State.

II. Concentration

4. Since following the completion of the transaction, Nokia Data will be a wholly owned subsidiary of ICL, the notified operation constitutes a concentration within the meaning of Article 3(1)b of the Merger Regulation.

5. OY Nokia AB agrees not to compete with Nokia Data in the area in which the company currently conducts its business until the later of the following events occurs: (a) the third anniversary of the closing date, or (b) OY Nokia AB no longer has a representative on ICL's board.

6. OY Nokia AB and ICL have furthermore agreed on a supply arrangement. Nokia Data and OY Nokia AB will make available to each other any supplies required in the conduct of their respective businesses for an initial period of one year.

III. Compatibility with the common market

7. The parties to the concentration are all information system manufacturers. ICL, the acquiring company, provides computer hardware, software and related services. It designs and manufactures computer main frames, mini-computers and personal computers as well as retail point of sale systems. The majority shareholder of ICL, Fujitsu Limited, also designs and manufactures computer hardware, software and related services. Fujitsu Limited is in fact the world's second largest information technology group. Its computer division accounts for 66% of Fujitsu's business, the remaining being telecommunications, semiconductors and consumer electronics. The Fujitsu group of companies achieves about 18% of its worldwide turnover within the Community, 52% of which is in the UK.

8. Nokia Data is only a small information systems vendor compared to the Fujitsu group. The company supplies almost all types of information systems, but manufactures itself mainly personal computers, small computers, retail point of sale systems and terminals. It is active throughout most of the Community. It achieves, however, two-thirds of its European turnover in Finland, Sweden and Norway.

9. Within the Community the activities of the Fujitsu group and Nokia Data overlap to a significant extent only with regard to personal computers and terminals.

Personal computers

10. Personal computers are general purpose, single user computer systems for professional or private use. Pure game systems are not included in this product group. Even though it may be justified in certain cases to further break down this product group with regard to distribution channels and special commercial or industrial market focus, it would not seem justified to do this for the purposes of this decision.

11. The same applies to geographic market definition. It is not necessary to determine whether there exist geographic reference markets below the Community level. Even on a national level the concentration does not create or strengthen a dominant position. The Fujitsu group and Nokia Data hold a combined market share of approximately 2% in the Community. Their share is higher in some Member States, but nowhere does it exceed 10%. The companies

belong therefore to the smaller suppliers of personal computers which cannot exercise appreciable market power.

Terminals

12. Both, the Fujitsu group and Nokia Data, manufacture terminals for incorporation in a computer system. Terminals consist of a screen, processor and a keyboard. They allow the user to enter data and retrieve information but without access to the function of the application. The Fujitsu group does not provide terminals individually. It sells terminals only as an integral part of their computer system. However, Nokia Data supplies terminals individually and offers a range of IBM 3270 compatible terminals and also an ASCII/ANSI terminal range.

13. The exact definition of the relevant market in product and geographic terms can, again, remain open for the purposes of this decision. Nokia Data is only a small vendor of terminals with a 6% market share Community-wide, which is higher in some Member States but does not surpass the 10% level. The company will not be reinforced through the concentration to an extent that a dominant position will be created or strengthened.

Other information systems

14. Nokia Data may decide, after completion of the notified concentration, to supply Community markets with information systems which at present it only sells outside the Community. There are, however, no indications that this market entry would result in the creation or strengthening of a dominant position of the Fujitsu group.

15. 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.

IV. Ancillary restrictions

16. The non-competition clause is a restriction ancillary to the concentration within the meaning of the Merger Regulation. Its binding effect on OY Nokia AB is limited in time. OY Nokia AB can free itself from the obligation by recalling its representative on the board of ICL at any time and enter the market denovo, if it wishes to do so.

The supply agreement is considered directly related and necessary to the implementation of the concentration. Both restraints are 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,