

***Case No IV/M.1265 -  
CHS / VOBIS***

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 21/08/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21/08/1998

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

**Subject: Case No. IV/M.1265 - CHS / VOBIS  
Notification of 23 July 1998 pursuant to Article 4 of Commission  
Regulation No. 4064/1989**

1. On 23.7.1998, the U.S. company, CHS Electronics, Inc. ("CHS"), notified to the Commission its acquisition of sole control over the German company, Vobis Microcomputer, AG, ("Vobis"), a subsidiary of the German company, Metro, AG, through the acquisition of the entire capital stock of Vobis.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No. 4064/89, as last amended by Regulation (EC) No. 1310/97<sup>1</sup>, and does not raise any serious doubts as to its compatibility with the common market and the functioning of the EEA agreement.

**I. THE PARTIES**

3. CHS is active in the wholesale distribution of IT products (microcomputers, software and networking) and related services (after-sale support, training and financial services to customers), supplying value-added retailers, corporate resellers and retailers. CHS is among the leaders in these activities both worldwide and in the EU, where it is present in most Member States. It generates more than one third of its EU turnover in Germany.
4. Vobis is active in the distribution of IT products at wholesale and at retail level. In wholesale distribution Vobis generates practically all of its turnover in Germany,

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<sup>1</sup> OJ L 180, 9.7.1997, p.1; Corrigendum OJ L 40, 13.2.1998, p.17

where it has two wholly-owned subsidiaries, Maxdata, GmbH and Peacock, AG, which are also active in IT products at wholesale level. Vobis also has “built to order” production facilities, assembling PC’s to serve its own retail and wholesale businesses.

## **II. THE OPERATION**

5. Through the purchase of the entire capital stock of Vobis, CHS will acquire sole control over all the business activities of Vobis.

## **III. CONCENTRATION OF A COMMUNITY DIMENSION**

6. The operation constitutes a concentration within the meaning of Article, 3.1.(b) of the Merger Regulation.
7. The undertakings concerned have a combined aggregate worldwide turnover in excess of ECU 5,000 million [...]<sup>2</sup>. Each of them has a Community-wide turnover in excess of ECU 250 million [...]<sup>3</sup>, but they do not both achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation, therefore, has a Community dimension, and it does not constitute a co-operation case under the EEA agreement.

## **IV. COMPATIBILITY WITH THE COMMON MARKET**

### **A. The Relevant Product Market**

8. The activities concerned in the operation in which both CHS and Vobis are active consist of the wholesale distribution of a whole range of hardware and software computer products and the related services of after-sales support, training and financial services to customers.
9. In relation to these same activities, in previous decisions<sup>4</sup>, the Commission has identified a relevant product market consisting of the wholesale distribution of IT products characterised by three main features, i.e. broad product offering, fast delivery (“within a day”), and logistic capacities. As the activities concerned by the present operation, as described above, fall within this product market definition, it has been retained as the relevant market for the purposes of the competitive assessment in the present case also.

### **B. The Relevant Geographic Market**

10. The Commission in the above-mentioned previous decisions in this market has considered the geographic market for the wholesale distribution of IT products

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<sup>2</sup> Deleted for publication

<sup>3</sup> Deleted for publication

<sup>4</sup> Case No. IV/M.1179 – Tech Data/Computer 2000, Case No. IV/M.1192 – CHS Electronics/Metrologie International and Case No. IV/M.1232 – Ingram/Macrotron

(including related services) to be more national (or possibly regional/cross-border in some instances) in scope than European, although it did not find it necessary to arrive at a precise definition. The main elements considered significant by the Commission in this respect were i) the fast delivery (“within a day”) feature which is characteristic of this market and which constitutes a significant deterrent to cross border trade, with the possible exception of those borders which do not constitute language barriers, such as Belgium/France, Germany/Austria, ii) the “pick-up” nature of many of the purchases of these products, as yet another feature requiring a local presence at a national level on the part of the supplier, and iii) the need for a national presence for the provision of the related after-sales services of training and technical support. Moreover, the Commission considered the fact that both retailers and wholesalers of IT products tend to organize their activities on a national basis as still another element indicating a national scope for this market.

11. All the above-described national market characteristics are present in this case. However, given the lack of any competition concerns as a result of the present operation, the Commission can continue to leave the precise definition of the geographic scope of the market open.

## V. ASSESSMENT

### *Horizontal aspects*

12. The only Member State in which, through the overlap in the activities of CHS and Vobis in the wholesale of IT products, the operation results in any appreciable addition of market share, which leads to a combined market share of over 15%, is in Germany where CHS already has approximately [...] and where after the addition of Vobis’ share it will reach [...]. However, there are other strong players present in this market, i.e, the U.S. companies Tech Data Inc. and Ingram Micro, Inc., both market leaders, with in the region of [...] each, as well as several other players in what is largely a fractionated market. In the only other Member State in which CHS will have over 15%, i.e. Spain where it already had a share of [...], the share added by Vobis is negligible (i.e. 0.1%).

### *Vertical Aspects*

13. With regard to Vobis’ activities downstream in the retailing of IT products (CHS is only active at the wholesale level), Vobis, as an assembler of PC’s, has a strong position in Germany among the category of operators known as assembler/retailers. It operates superstores across Germany which carry a very broad range of IT products (e.g. peripherals, software and accessories) and a large number of brands, apart from PC’s of its own assembly. It also operates smaller shops with a narrower product range, which is the type of outlet operated also by Vobis’ franchisees. In Germany, apart from other PC assembler/retailers and specialized retail outlets, large

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<sup>5</sup> Business secret: between 5 % and 15 %

<sup>6</sup> Business secret: between 15 % and 25 %

<sup>7</sup> Business secret: between 5 % and 15 %

<sup>8</sup> Business secret: between 20 % and 30 %

supermarket chains, such as Aldi, and consumer electronic stores, such as Media Markt, are moving into the PC retail sector. In this overall PC retail sector, Vobis achieves its highest share in Germany where its turnover amounts to [...] <sup>9</sup> of the overall turnover, and where its franchisees have an additional [...] <sup>10</sup>.

### *Conclusion*

14. Given the above-described factors, the Commission considers that the operation does not give rise to any competition concerns either at a horizontal or vertical level and, consequently, it has concluded that the concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

## **VI. ANCILLARY RESTRICTIONS**

15. CHS has requested that certain provisions of the Agreement between CHS and Metro, AG, be considered as directly related and necessary to the concentration, within the meaning of Article 8.2. of the Merger Regulation.
16. The said provisions concern, on the one hand, a non-competition provision which prohibits the vendor, Metro, AG, from managing a business involved in the manufacturing of IT products or the wholesale distribution of such products and, on the other hand, a prohibition on Metro, AG, to solicit certain key personnel employed by the Vobis companies. Both provisions are only valid until 31.12.1999.
17. The Commission considers that the above-described provisions are not only directly related to the operation but also necessary to it, since they contribute to guaranteeing the transfer to the acquirer, CHS, of the full value of the Vobis business and know-how. Furthermore the period of their validity is considered acceptable

## **VII. CONCLUSION**

18. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6.1.(b) of Council Regulation (EEC) No. 4064/89 and Article 57 of the EEA Agreement.

For the Commission,

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<sup>9</sup> Business secret: between 0 % and 5 %

<sup>10</sup> Business secret: between 0 % and 5 %