

***Case No IV/M.1585 -
DFDS / FLS
INDUSTRIES / DAN
TRANSPORT***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 14/07/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.7.1999

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Subject: Case No IV/M.1585 – DFDS/FLS Industries/Dan Transport

Notification of 11 June 1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 11 June 1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (Merger Regulation) by which the company DFDS A/S ("DFDS") (DK) intends to acquire sole control of the undertaking Dan Transport Holding a/s ("DAN") (DK).
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 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I. The Parties

3. DFDS is a provider of transport and related services, i.e. domestic and international transport and forwarding services, maritime passenger transportation and conference and vacation trips. DFDS is also involved in the travel agency business within a jointly controlled company, Maersk DFDS Travel. DFDS belongs to the Lauritzen Group, which operates within the shipping, transport, industrial and shipyard sector.
4. DAN is the parent company of a group of companies engaged in domestic and international transport and forwarding by road, rail, sea, and air. The group also operates a business travel agency and sightseeing business. DAN belongs to the Danish company FLS Industries A/S.

II. Concentration

5. DFDS intends to acquire sole control of DAN by purchasing 100% of the shares and voting rights in it from FLS Industries. The proposed transaction is a concentration within the meaning of Article 3 (1)(b) of the Merger Regulation.

III. Community Dimension

6. DFDS and DAN have a combined aggregate world-wide turnover in excess of EUR¹. 2 500 million. In each of three Member States, the combined aggregate turnover of the undertakings concerned is more than EUR 100 million ([.....]). In each of these three Member States the aggregate turnover of each of the undertakings concerned is more than EUR 25 million. The aggregate Community-wide turnover of each of the undertakings concerned is more than EUR 100 million, but they do not achieve more than two thirds of their aggregate Community-wide turnover within one and the same Member State.
7. The notified operation has therefore a Community dimension according to Article 1 (3) of the Merger Regulation. It does not constitute a co-operation case under the EEA Agreement pursuant to Article 57 and Article 2 in Protocol 24 of that Agreement.

IV. Relevant Markets

A. Relevant Product Markets

8. Both parties provide air, sea and land freight forwarding and travel agency services.
9. As regards land transport the Commission had found in previous decisions² that international and domestic freight forwarding services by land were separate relevant product markets, but did not find it necessary to decide upon any further segmentation (*e.g.* between road and rail transport). The market investigation in the present case as well as in recent case *Deutsche Post /ASG*³ suggested an even further segmentation according to the mode of transport (*i.e.* rail, road) and, within road transport, according to categories such as “less than truck load or groupage (LTL)”, “semi truck load or part load (STL)” and “full-truck-load (FTL)”.
10. The markets for intercontinental freight forwarding by air and sea were referred to by the Commission as brokering of freight services in *Stinnes/BTL*⁴, *i.e.* providers act as a broker between customers and airlines and ship operators respectively.

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

² Case No. IV/M.1056 – *Stinnes/BTL*; Case No. IV/M.1170 – *Dan Transport/Inter Forward*.

³ Case No. IV/M.1549

⁴ *Ibidem*

11. Finally, as regards the travel agency business, the Commission traditionally distinguished between leisure travel and business travel⁵. Both parties are mainly active on the business travel market.
12. For the purpose of the present decision it is not necessary to delineate the various markets referred to above, because even on the narrowest definition the concentration will not lead to the creation or strengthening of a dominant position.

B. Geographic Aspects

13. In domestic land based freight forwarding there is no basis for distinguishing separate markets in respect of routes. International land based forwarding services can be appropriately examined by considering routes or bundles of routes that are substitutable, *e.g.* routes between Sweden and Germany or even narrower areas such as Benelux ports and Southern Sweden. However, it is not necessary in this case to define precisely the markets concerned since on no plausible definition does the operation raise competition concerns.
14. The Commission has considered in past cases that the relevant geographic market in domestic land based freight forwarding still remains national. It is not necessary to define the scope of the relevant geographic market for international land based forwarding services precisely, since the operation does not raise competition concerns with regard to the different services concerned, whether assessed at a national, Scandinavian, European level.
15. As regards intercontinental sea and air freight forwarding, the parties contend that the market should be considered as global, and in any event larger than the EU and EEA. The exact scope of the market, whether national, EEA or larger, can however be left open in this case, as in any event the concentration will not give rise to competition concerns.
16. The supply of travel agency services is, according to the practice of the Commission⁶, essentially national in scope, although for business travel services it could be regarded as EEA-wide. Also this question can be left open for the purpose of the present decision, since even on the narrowest basis the concentration will not lead to the creation or strengthening of a dominant position.

V. Competitive Assessment

17. DFDS and DAN are amongst the few freight forwarders relying on a network extending to the whole Scandinavia and are considered as the third and fourth more important operators in the region, after BTL-Schenker and ASG.

⁵ see *e.g.* Cases No IV/M.229 – Thomas Cook/LTU/WestLB and IV/M. 988 Maersk DFDS Travel

⁶ see *e.g.* Cases No IV/M.229 – Thomas Cook/LTU/WestLB and IV/M. 988 Maersk DFDS Travel

18. According to the notification, the only market on which they would have a market share as high as [$<20\%$] is international road freight forwarding from [.....], either taken as including LTL, STL and FTL or split into the different segments. On all other markets for domestic and/or international road based freight forwarding services, the parties' combined shares would be lower.
19. The Commission has found no elements contradicting the market share estimates as submitted by the parties. Furthermore, it has found no indications that the combination of the parties' international freight forwarding services would on any routes or bundles of routes give rise to any competition concerns. In this respect it is noted that the parties' presence in countries outside the Nordic region is relatively minor.
20. Finally, a large number of competitors will remain in the market. Some of these competitors, such as BTL-Schenker and ASG, will continue to be bigger than the combined DFDS/DAN operations.
21. On intercontinental sea and air freight forwarding the parties are relatively small players, and their market shares do never exceed 15% at national level.
22. With regard to business travel services, the parties submit they will achieve a market share of [25-35%] in Denmark (DFDS [...]%, DAN [...]%). They will become the second largest player after Carlson Wagonlit (35%) and followed by Weco Travel (15%), DSB (12%), Bennett BTI (8%) and Nyman and Schultz ($<5\%$). The parties' position in leisure travels in Denmark as well as in leisure and business travel services in other EEA countries is far less significant.
23. The Commission found no indications against the market situation as submitted by the parties. Consequently, it can conclude that there are no serious doubts that the parties will become dominant on these markets.

VI. ANCILLARY RESTRAINTS

24. The parties submit that the two clauses in the acquisition agreement which restrict the vendor (FLS Industries) for two years after the closing from competing with DAN and from taking on certain key employees should be considered as ancillary to the concentration. The Commission considers this clause as necessary and directly related to the concentration.
25. The parties have furthermore agreed a clause providing that, in the period from signing and before closing the agreement, extraordinary decisions as regards DAN (not pertaining its daily business management) would have to be approved by DFDS, which in turn cannot withhold its approval of such decision unreasonably. The parties request that this provision should be regarded as ancillary to the concentration.
26. The Commission considers that this clause is necessary for the parties to ensure that the value of the acquired business is preserved until the concentration is implemented.

VII. CONCLUSION

27. 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.

For the Commission,