



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.9.1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party

Subject: Case No IV/M.1649 - Gefco/KN ELAN

Notification of 30 August 1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 30 August 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 undertaking Gefco Deutschland GmbH (Gefco) ultimately controlled by Peugeot S.A., acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of KN ELAN GmbH & Co. KG and of KN ELAN Verwaltungs-GmbH (together: KN ELAN).
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 with the EEA Agreement.

I. The Parties and the Operation

3. Gefco is engaged in vehicle distribution, groupage and part and full load transport as well as automobile industrial logistics. The Gefco group belonging to the car manufacturing group PSA Peugeot Citroen operates subsidiaries in a number of European countries. In its transport activities, Gefco is exclusively active in freight forwarding, i.e. the provision of all services related to the transport of goods except the transportation service itself. KN ELAN operates a groupage and road transport network in Germany. Alike Gefco KN ELAN is freight forwarder and does not perform the transportation service itself nor does it own its own means of transportation.
4. Gefco will take over a 60% participation in KN ELAN from Kühne & Nagel (AG & Co.) (Kühne & Nagel) currently holding an 80.01% participation. Kühne & Nagel will acquire the remaining 19.99% participation in KN ELAN, at present held by DHL Holdings (Deutschland) GmbH. Thus, Gefco will have a 60% and Kühne & Nagel will have a 40% participation in KN ELAN after completion of the present transaction.

II. Concentration

5. Gefco will acquire 60% of the partnership interests/shares in KN ELAN. The remaining 40 % will be held by Kühne & Nagel.
6. The partners' meeting appoints the managing directors. Since decisions of the partners' meeting require simple majority, Gefco has the possibility to appoint the management of KN ELAN and hence the possibility to determine the commercial policy of the undertaking.
7. Furthermore, the decisions of the partners' meeting in general require simple majority according to the Partnership Agreement of KN ELAN KG as well as to the Shareholders' Agreement of KN ELAN GmbH. The Partnership and the Shareholders' Agreement provide that only some decisions require unanimous approval, thus granting Kühne & Nagel a veto right in these matters. These decisions comprise *inter alia* the approval of the annual accounts and the approval of investments exceeding 1 million DM in a particular case or exceeding 15 million DM within a year. These veto rights, however, do not allow an influence on strategic decisions on the business policy of KN ELAN. The veto right regarding the approval of the annual account is a veto right normally accorded to minority shareholders in order to protect their financial interests as investors in the joint venture. As regards the veto right regarding investments exceeding 1 million DM or 15 million DM respectively, this right does not confer the power of co-determination over the commercial policy of KN ELAN to Kühne & Nagel. KN ELAN is active as a freight forwarder and does not operate an own transportation fleet requiring a high level of investments. Since investments in the freight forwarding sector according to the parties do not play a significant role in the market behaviour of an undertaking, the veto right regarding investments over 1 million DM aims at the protection of Kühne & Nagel's interest as minority shareholder.
8. Therefore, Gefco will acquire within the meaning of Article 3 (1)(b) of the Merger Regulation sole control of KN ELAN.

III. Community Dimension

9. The combined aggregate worldwide turnover of the parties to the concentration exceeded EUR 5,000 million¹ in 1998 (Peugeot S.A.: EUR 33,758 million; KN ELAN: EUR 319 million) and each of the undertakings concerned had a Community-wide turnover of more than EUR 250 million (Peugeot S.A.: EUR 30,511 million; KN ELAN: EUR 319 million). The companies concerned both did not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. Hence, the proposed operation has a Community dimension.

IV. Relevant Markets

A. Relevant Product Markets

10. The parties to the concentration are active in national and international road-based freight forwarding. Gefco has furthermore activities in automobile industrial logistics. The Commission examined this sector in a number of past cases² primarily concerning express and parcel services, in which the Commission found a number of distinctions:
- between parcels and freight services, according to weight, format and the handling equipment needed (parcels services are to handle high volumes of items that must be of limited weight and standardised format, whereby handling and transport are standardised to achieve low unit costs);
 - between domestic and cross-border delivery, by reason of the national nature of the network infrastructure used for transport services (which leads to important differences as regards time of delivery and price), which still prevails on the internationalisation process led by large groups that are establishing their own networks throughout several countries/regions. In particular, several features distinguishing domestic from international services still persist, i.e. separate operational organisation of suppliers and customers, the presence of many local and national suppliers for domestic deliveries, and product differentiation by customers.
11. The present notification does not bring about any reason to reconsider these distinctions.
12. As regards freight forwarding and in particular land transport the Commission had found in previous decisions³ that international and domestic forwarding (transport) 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). An even further segmentation according to the mode of transport (*i.e.* rail, road) and, within road transport, according to

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 See in particular cases no. IV/M.1347 – Deutsche Post/Securicor and no. IV/M.1405 – TNT/Jet Service.

³ Case No. IV/M.1056 – Stinnes/BTL; Case No. IV/M.1170 – Dan Transport/Inter Forward; Case No. IV/M.1549 – Deutsche Post/ASG; Case No. IV/M.1585 – DFDS/FLS Industries/DAN Transport..

categories such as “less than truck load or groupage (LTL)”, “semi truck load or part load (STL)” and “full-truck-load (FTL)” had been suggested in the past.⁴

13. The exact market delimitation, however, can be left open, since no competition concerns arise on either of the possible relevant product markets.

B. Relevant geographic Markets

⁴ Case No. IV/M.1585 – DFDS/FLS Industries/DAN Transport; case No. IV/M.1549 – Deutsche Post/ASG.

14. The parties leave open the dimension of the geographic market in the present case. The Commission has found in its previous decisions regarding this sector that the markets for domestic and international freight were largely national in scope. This consideration was based on the following factors: i) the perception of customers of it as a local service, ii) the national nature of both pick-up and delivery, iii) different pricing levels (particularly due to difference in labour and fuel costs), iv) different marketing in different countries, v) variations in market share distribution of the main suppliers across the different member states, and vi) the different stages of product development from country to country. It further examined the necessity to delineate the markets according to routes or bundles of routes. Since effective competition would not be restricted on either of the possible geographic markets as a result of the present merger, the exact delimitation of the geographic markets can be left open.

V. Competitive Assessment

15. According to the parties, the present transaction is the first step to establish a European overland transport network. The present notification, however, only involves the establishment of a joint venture in Germany. Since KN ELAN is only active in Germany, the parties' activities overlap on the German market for national and international freight. Therefore the present assessment focuses on the German market.

16. A number of big freight forwarders as well as medium-sized companies are active on the German freight forwarding markets. According to a study analysing the transport sector in 1995⁵, companies such as Schenker AG, the Deutsche Post group, Dachser have a comparable position than KN ELAN on each of the possible product markets identified above (paragraph 12). This market position will only insignificantly be altered by means of the present merger. Gefco had a turnover in national and international freight in Germany in 1998 of together [< 20 million EUR]. Accordingly, the undertaking was not even named in the above-mentioned study ranking the Top 100 companies in the transport sector in 1995⁶. Gefco also has a comparable minor position on any of the possible narrower product markets.

17. Since the proposed transaction does not lead to any substantial change on any of the possible markets, the concentration will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or in a substantial part of it.

VI. 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.

⁵ "Die Top 100 der Logistik", eine GVB-Studie zu Marktsegmenten, Marktgrößen und Marktführern in der deutschen Logistik-Dienstleistungswirtschaft 1996, herausgegeben von der Gesellschaft für Verkehrsbetriebswirtschaft und Logistik (GVB) e.V., Nürnberg.

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For the Commission