

***Case No COMP/M.1875 -  
REUTERS / EQUANT -  
PROJECT PROTON***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 17/04/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.04.2000  
SG (2000) D/103253

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sirs,

**Subject: Case No COMP/M. 1875 Reuters / Equant – 'Project Proton'**

Notification of 16.03.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 16 March 2000, the Commission received the notification of a joint venture provisionally named Project Proton ("Proton"), set up by Reuters Group PLC ("Reuters") and Equant NV ("Equant").
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. Reuters, as well as being one of the world's largest media news agencies, is an important provider of information services and transaction systems to the financial markets. Its division Reuters Information provides real-time and historical price information along with associated analysis in relation to foreign exchange/money markets, commodities markets, fixed income markets and equities markets. Business news is a vital part of its activity. The division Reuters Trading Solutions provides transaction systems for the foreign exchange and money markets as well as software for the distribution of real-time information within customer organisations. Instinet, an

international electronic agency stockbroker, is an independently managed subsidiary of Reuters.

4. The principal activities of Equant are the provision of managed data and voice network services on the basis of a global data network as well as the provision of integration services and application services. The origin of Equant goes back to SITA, a co-operative formed by the world's airlines in 1949 to develop a telecommunications network to meet the needs of its member organisations. In the late 1980's, increasing deregulation of both the air transport and telecommunications industries prompted SITA to evaluate opportunities for developing the network's potential. In 1995, SITA formed the company that is nowadays called Equant. At the same time, a joint venture agreement was entered into, providing for joint ownership, operation and management of the network and giving each of SITA and Equant exclusive rights of access to the network.

## **II. THE OPERATION**

5. Reuters and Equant have entered into a Framework Agreement for the creation of the joint venture company, Proton, of which the principal business activity will be to provide Internet Protocol (IP) based extranet services<sup>1</sup> with a focus on users in the financial services sector. Immediately following completion of the Framework Agreement the issued share capital of Proton will be held by Reuters as to 51% and by Equant as to 49%.
6. Reuters will transfer around US\$130 million of its telecommunications network assets into the new company, along with approximately 400 staff. In addition to the transfer of network assets and staff, Reuters will also sell Reuters Connect Services ("RCS"), Reuters existing telecommunications business serving the financial community, to Proton for US\$25 million.
7. Equant will contribute approximately 100 staff and US\$230 million in cash to Proton. It will also provide US\$125 million of service credit and contribute an additional US\$25 million of annual contracted revenue from its existing financial services customers.

## **III. CONCENTRATION**

8. The joint venture company Proton to be formed pursuant to the Framework Agreement will constitute a concentration within the meaning of Article 3 of Council Regulation (EEC) No 4064/89.

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<sup>1</sup> An "extranet" is a private network that uses Internet Protocols and the public telecommunication system to communicate business information or operations with suppliers, vendors, partners, customers or other businesses. An extranet can be viewed as a private network that is extended to specified users outside the company.

### Joint control

9. Reuters and Equant will have joint control over Proton. Reuters and Equant will each appoint two directors on the Board of Proton. The first Chief Executive Officer ("CEO") will be appointed by Equant and the first Chairman will be appointed by Reuters. Thereafter such appointments will be made jointly. Although the shareholding in Proton will be a 51:49 split between Reuters and Equant, there will be certain matters that will require the unanimous approval of certain specified directors ("reserved matters"). The CEO and Chairman of Proton will not be entitled to vote on any of the reserved matters. This will give Reuters and Equant the power to block actions which determine the strategic commercial behaviour of Proton. The reserved matters include the adoption of the budget, any substantial amendment of the budget, the appointment and discharge of the CEO and any decision to make substantial investments or disinvestments.

### Full-function and autonomous economic entity

10. Proton will be a full-function and autonomous undertaking. It will have all the necessary staff and assets with which to operate its business on a stand-alone basis. Proton will take up all business functions and will interface directly with its customers and suppliers on the market. It will undertake its own research, marketing, sales, network operation, customer service, purchasing and internal functions. The duration of the Proton joint venture is not limited in time. The fact that, at an initial stage, the links between Proton on the one hand and Reuters and Equant on the other remain fairly significant, does not put into question the full-functional or autonomous character of the joint venture.
11. As for the link between Proton and Reuters: at present, Reuters relies on its own proprietary data network to distribute its products and services to its customers. Proton will take over this network, bring it up-to-date with IP standards, and provide Reuters with various networking services for the next [...], under the Network Services Agreement ("NSA"). However, it is expected that the proportion of Proton's revenue accounted for by the Reuters contract will decline sharply [...]. In addition, this start-up contract appears necessary in order to establish the joint venture on the market.
12. As for the link between Proton and Equant: in providing IP based networking services, Proton can rely to a considerable extent on several underlying network services provided by Equant. Proton and Equant will enter into a purchase contract, the Partner Services Agreement ("PSA"). This purchase agreement, which has a duration of [...], distinguishes between three categories of services: core network services, other (network) services and non-core services<sup>2</sup>. For each of these categories, Proton will be in position to obtain third party supplies, albeit on differing conditions. It follows that Proton can rely on several network services provided by Equant, but that it is not fully dependent on it, let alone, that it will act as a sales agency for Equant.

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<sup>2</sup> In simple terms, the core services relate to the "backbone" network (layers 1 and 2) of national and international circuits linking Proton's points of presence; other network services relate to switched access linking Proton's points of presence with its customers' sites (layer 3). Non-core services refer to services such as tail circuits, CPE and satellite bandwidth but excluding core services and other services.

13. Most importantly, in the course of the market investigation it has become clear that the provision of IP based extranet services is a stage of activity in which substantial value is added. This is corroborated by the fact that substantial investments are envisaged by the Proton business plan, both to bring the network that Reuters will sell to Proton up to IP standards and to further develop Proton's networking capabilities. For the latter, a provision has been made by Proton for investment of a further US\$ [...] in network costs in the first 5 years of business. On the basis of the above elements, the Commission concludes that the Proton joint venture is a full-function and autonomous undertaking.

#### Absence of co-ordination

14. The Proton joint venture will not give rise to the risk of co-ordination between the parties. Proton's parents will retain no presence on the market on which Proton will be active. Also, the parties have entered into non-compete covenants in favour of Proton.

### **IV. COMMUNITY DIMENSION**

15. The combined aggregate world-wide turnover<sup>3</sup> in 1999 of the undertakings concerned exceeds EUR 5 billion (Reuters: [...]; Equant: [...]). Each of Reuters and Equant have a Community-wide turnover in excess of EUR 250 million, but they do not 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.

### **V. RELEVANT MARKETS**

#### Relevant product market

16. Proton will be active in the provision of IP based extranet services to the financial community. Until recently, the financial community has generally favoured the use of private telecommunications networks for their data communication needs, particularly for "mission critical functions" (e.g. making transactions on financial markets, obtaining essential information, etc.). The rapid development of the internet has meant that users are demanding solutions that are lower cost and have a greater reach than private networks. According to the parties, most of these users require higher security and reliability levels than currently provided by the public internet. Proton will fill this gap, by providing the mentioned services.
17. In view of the above mentioned demand side requirements, the parties do not consider that at present, the public Internet is a substitute for the IP based networking services that Proton will provide. For the same reason, the parties point out that general, non-mission-critical IP based networking services for the business community at large are not substitutes for IP based networking services to the financial community.
18. In the context of the present case, the precise definition of the relevant product market can be left open, since even on the narrowest market definition, IP based networking

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<sup>3</sup> 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.

services to the financial community, the concentration does not lead to the creation or strengthening of a dominant position.

#### Relevant geographic market

19. The parties consider that the geographic scope of the market in which Proton will be active is worldwide. Proton will have a global reach and its product offering in different countries will be as uniform as possible. Moreover, it is anticipated that potential customers of the joint venture will select or choose their IP based networking service providers on a worldwide basis. The global nature of the market is also reflected by the nature of the existing IP based networking service providers, which are large companies operating on an international basis, who are keen to supply their networking services on an international rather than country specific basis.
20. In the Commission's market investigation, most of the respondents have supported the parties' view. Still, it has also been pointed out that, while the provision of IP based extranet services certainly has strong international characteristics, the cost barriers or practical considerations might prevent a user in Europe from procuring extranet services from a provider in, e.g., the USA.
21. In the context of the present case, the precise definition of the relevant geographic market can be left open, however, since even on the basis of a narrow geographic market definition, an EU-wide market, the concentration does not lead to the creation or strengthening of a dominant position.

## **VI. COMPETITIVE ASSESSMENT**

#### IP based extranet services to the financial community

22. On the basis of Commission's market investigation, it has become clear that Proton will be providing its extranet services in a competitive and rapidly changing environment. The market for this type of extranet services is a new market which can be expected to grow significantly over the next years, which in all likelihood will prompt new competitors.
23. There are two main categories of actual or potential competitors in the market for the provision of IP based networking services to financial services companies. First, there are the financial network service providers, such as IXNet and Savvis. IXNet already provides a high performance global extranet exclusively for the financial community. Savvis, an internet service provider (ISP) connected to Bridge, has comparable activities, offering connection to private networks, value-added network services and extranet connectivity. Both IXNet and Savvis also deliver financial services-specific content for application and information providers.
24. The second main category is the large global telecommunications companies. Companies such as MCI WorldCom, Colt, Cable & Wireless and Concert, offer, or aim to offer, global "one stop shop" switched voice and data telecoms services. In addition, they offer value-added network services, such as security provision, IP address management, IP virtual private networks and extranet connectivity. Global telecommunications companies are beginning to offer value-added products directly to the financial services community and this is being facilitated by acquisitions of ISPs. It is likely that they will emerge as significant players in the foreseeable future.

25. As for the demand side, Proton's primary market focus will be on companies such as banks, broker companies, exchanges, mutual funds, pension funds, insurance companies and providers of trading systems, clearance systems, etc. These are highly sophisticated purchasers who are unlikely to accept non-competitive pricing or services from the part of Proton.

#### Vertical issues

26. Even if Reuters were in a dominant position in the markets in which it is active, the inclusion of Reuters as one of Proton's parent companies is not such as to give Proton a dominant position in the provision of IP based extranet services to the financial community.
27. The overall market scenario in the telecommunications sector is one of rapid change. In the domain of extranets in particular, the overall trend appears not be towards broad all-inclusive extranet solutions, but towards "best of breed" packages that can provide specific solutions that are easily customised and integrated with other products. These latter two requirements also hold for Proton's extranet services, as the customers of Proton will use these extranet services for many other purposes than just obtaining Reuters' products. In this context, the (future) presence of very strong alternative providers of IP based extranet services mentioned above will limit the extent to which Proton can exploit any advantage stemming from its links with Reuters. In particular, it is unlikely that Proton and Reuters will be able to impose any kind of standard on the extranet sector that would have the effect of putting Proton in a position where it would be able to behave independently of its competitors and, ultimately, its customers.
28. Furthermore, it should be recalled that Proton's future potential customer base consists of powerful, sophisticated entities that are unlikely to accept non-competitive pricing or services from the part of Proton.
29. According to the business plan submitted by the parties, Proton should obtain [...] of its revenues from users other than Reuters in [...]. It would seem that if Proton is to have any chance of achieving this goal, being an open network is indeed a prerequisite.
30. As for Reuters' position, the fact that Proton will not obtain a dominant position in the provision of IP based extranet services to the financial community, means that there is no scope for foreclosing access to these services as a result of the links between Reuters and Proton.
31. As for Equant, the joint venture is a substantial business opportunity, both directly (through its shareholding in Proton) and indirectly, as a (potential) customer for its underlying network services. It will enable Equant to better establish itself as a competitor in a market where strong competitors such as MCI WorldCom, Colt, Cable & Wireless and Concert are active.

## VI. ANCILLARY RESTRAINTS

### The non-compete clauses

32. The Framework Agreement contains some non-compete and non-solicitation clauses. Both Reuters and Equant have agreed that they will not be engaged in a business that competes with that of Proton. Neither will they entice away employees of Proton. These restrictions are directly related and necessary to the concentration as they express the reality of Reuters and Equant's withdrawal from the market assigned to Proton. They are limited to the business of Proton and are co-terminous with the duration of Proton.

### The Network Services Agreement ("NSA")

33. Under the NSA, Reuters has agreed to procure [...] from Proton. Where such services are not included on Proton's list of then current products and services, third parties have the right to tender for such services, but Proton has the right to match the terms offered by those third parties. Over [...] of Reuters requirements are likely to be within Proton's list of current products and services. For other network services, Reuters can search third party offers. A [...] to Proton in respect of the services provided under the NSA, has been agreed upon. The agreement is for a period of [...] at the end of which Reuters is entitled to terminate it unilaterally.
34. The parties do not consider that these clauses are restrictions. In view of the share of Reuters' requirements to be provided by Proton, the Commission cannot agree with this opinion. Nonetheless, the NSA provides a degree of assured output for Proton which is necessary to establish the autonomy and viability of the new business which will have very substantial expenditure commitments in the start-up period and (even with the benefit of the NSA) is likely to be loss-making for two years. The commitments by Reuters are for a limited period, proportionate to the risk Proton bears and the restrictions are reduced over time. In the circumstances, therefore, the Commission considers the NSA as directly related and necessary to the implementation of the concentration, for its full duration of [...].

### Partner Services Agreement ("PSA")

35. Under the PSA, Proton commits to procure various network services from Equant. This agreement distinguishes between three categories of services: core network services, other (network) services and non-core services. For each of these categories, Proton will be in position to obtain third party supplies, but in differing degrees. For core services, Proton commits to procure from Equant, unless benchmarking shows that Equant is broadly too expensive. These services make up [...] of all required services; for other network services, Equant will be entitled to match any third party offers (making up [...]); for non-core services, Equant will have the right to bid only. Subject to these rights to partial termination, the agreement is for a period of [...]. The parties consider that insofar as the PSA contains restrictions, such restrictions are ancillary to the concentration.
36. It is the Commission's opinion that the duration, the relative proportion of inputs covered and the character of the conditions of the PSA are such that the PSA must be considered as constituting restrictions. Furthermore, the Commission does not consider



the agreement in all its aspects to be directly related and necessary to the implementation of the concentration.

37. The Commission recognizes that it is important that Proton is given the ability to ensure that it can obtain network services of the required quality at competitive prices. However, the conditions and the duration of the purchase agreement must be limited to the extent necessary for the replacement of the relationship of dependency by autonomy in the market. In this respect, the arrangement that the parent (Equant) is allowed to make offers to Proton under privileged conditions for core services and other network services is not necessary to the implementation of the joint venture. Furthermore, in view of the very rapid developments that are taking place in the telecommunications sector, the contract duration of [...] is disproportionate to the necessity to establish Proton's autonomy in the market. A more realistic necessary duration is three years, as it allows Proton to enter into contracts with its clients of a duration that is not uncommon in the financial sector.
38. The Commission, therefore, can only consider the clauses in the PSA relating to the non-core services as directly related and necessary to the implementation of the concentration, for a duration of three years.

## **VII. CONCLUSION**

39. 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,

Mario MONTI  
Member of the Commission