

***Case No COMP/M.2024 -
INVENSYS / BAAN***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 07/07/2000

*Also available in the CELEX database
Document No 300M2024*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07.07.2000
SG(2000)D/104804

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sirs,

Subject: Case No COMP/M.2024-INVENSYS/BAAN

Notification of 05/06/2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 5 June 2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Invensys plc (UK) will acquire sole control of Baan Company N.V. (NL).
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

3. Invensys plc. ("Invensys") is a UK based group of companies operating world-wide in the electronics and engineering areas with products such as: automation solutions; factory automation products and equipment; power control products; controls and control systems for buildings. This group is the result of a previous merger between the companies Siebe plc. and BTR plc¹.

Baan Company N.V. ("Baan") is a Dutch company providing business-application software. The company is active world-wide in three sectors: corporate management (e.g. accounting management and order management); customer management (including products for sales, service and call centre activities); and operations management (e.g. resource planning, scheduling, manufacturing, delivery and logistics).

II. THE OPERATION

4. The operation concerns the acquisition of Baan by Invensys by means of a public bid announced on 13 June. After the acquisition Baan's activities will be integrated into Invensys under an internal software and system division.

III. CONCENTRATION

5. The acquisition of Baan by Invensys constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion². (€9,900 millions for Invensys and €596 million for Baan). Each of the undertakings concerned have a Community-wide turnover in excess of EUR 250 million (€[...] million for Invensys and €[...] million for Baan), 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. COMPETITIVE ASSESSMENT

The Relevant Product Markets

7. The notifying party submits that the only areas of product overlapping would be particular segments within the IT software and IT service sectors.
8. With reference to previous Commission decisions a further level of detail can be made of these broad categories for IT software and IT services. For IT software at least two large further areas have to be distinguished, namely applications and systems software.

¹ Decision in Case No Comp/M.1380-Siebe/BTR

² 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

In **IT applications software**, and based on previous Commission decisions³, different categories can in turn be identified, each of them corresponding to a specific product market. *Inter alia* the following sub-categories can be differentiated:

- Management & business software
- Standard applications (end users)
- Education & training
- Data warehousing
- Industrial automation.

IT software applications can be both standard and customised to customers needs.

9. The parties' activities overlap only in the sub-category of management & business software where Baan operates, while Invensys' activities in this segment are not significant.
10. In the sector of **IT services**, and based on previous Commission decisions⁴ other sub-categories can also be distinguished, *inter alia* the following:
 - IT consulting
 - Education & training
 - Software development
 - Maintenance.
11. Both parties are active in the maintenance, training and consulting sub-categories.
12. However, and for the purpose of this case, the exact product market definitions can be left open since, even on the narrower market definition, the proposed operation will not lead to the creation or strengthening of a dominant position in any of the product markets above identified.

The relevant geographic market

13. The notifying party has taken the view that both product markets identified above have a global dimension for different reasons. In previous decisions the Commission has taken the view that the markets for IT applications software have at least an European dimension because they can be sold in different countries with minimum particularities. On the other hand and based on previous decisions, IT services can have a national dimension for different reasons, for example there is a demand to communicate in the customers' own language and also a local presence is required.

³ For instance, see decisions in Cases No Comp/M. 1580-CAI/Platinum; IV/M.668-Philips/Origin; IV/M.620-thomson-CSF/Teneo/Indra; and IV/M.336-IBM France/CGI.

⁴ See for instance decisions in Cases No IV/M. 1561-Getronics/Wang and IV/M.1694-EMC/ata General

14. However, it is not necessary in the present case to define precisely the geographic scope of the product markets above identified because this transaction does not lead to creation or the strengthening of a dominant position as a result of which effective competition would be impeded in the EEA or any substantial part of this area

Competitive Assessment

15. The product portfolio of the parties is largely complementary. The overlapping activities in the market for application software is minimal as Invensys' activities in this sector through its subsidiary Marcam are not significant. According to the parties information, the combined market share both at a global and at the EEA level would be less than 5 % with Invensys' part being minimal (4 % for Baan and less than 1 % for Marcam). A number of significant players with much larger market shares is present in this market, such as SAP, Oracle, Edwards etc.
16. As regards IT services markets, namely maintenance and training & consulting, the market situation does not differ from the one in the software application market as the combined market share at national level will also remain below 5 %. Large players are also present in these markets.
17. Therefore, it can be concluded that the proposed operation would 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 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.

For the Commission,
Signed by Mario Monti
Member of the Commission