

*Case No COMP/M.2334 -
DMDATA /
KOMMUNEDATA / e-
BOKS JV*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 30/03/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 30.03.2001

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

Subject: Case No COMP/M. 2334-DMdata/Kommunedata/e-Boks JV
Notification of 01.03.2001 pursuant to Article 4 of Council Regulation No 4064/89¹

1. On 1 March 2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No. 4064/89², by which the undertakings DMdata A/S (DMdata) and Kommunedata A/S (Kommunedata) acquire joint control of the undertaking e-Boks A/S (e-Boks).
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 or with the functioning of the EEA Agreement.

I. THE PARTIES

3. DMdata³ is a Danish joint venture, which is equally owned and controlled by Mærsk Data, forming part of the A.P. Møller Group, and Danske Bank Aktieselskab (Danske Bank). Mærsk Data is one of Denmark's leading suppliers of information technology. Danske Bank is Denmark's leading bank in the Nordic region and it is an integrated provider of banking and other financial services covering the needs of retail as well as corporate, institutional and public customers.
4. Kommunedata is the result of the merger of information technology centres owned by local authorities in Denmark. Kommunedata is a limited company wholly owned and

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

² OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

³ Decision No. IV/M.1005 - Maersk Data/ Den Danske Bank - DM Data of 28 November 1997.

controlled by the National Association of Local Authorities (NAL) in Denmark. Kommunedata develops, distributes and centrally operates a wide variety of administrative systems used in the public sector.

II. THE OPERATION

5. The concentration consists of the acquisition by DMdata and Kommunedata of joint control by way of purchase of shares in e-Boks, a newly created joint venture to be incorporated in Denmark. e-Boks will provide a safe Internet based Business-to-Consumer mailing and storage infrastructure facility (i.e. an electronic mailbox) that will incorporate a variety of ancillary services for the exchange of digital information.

III. CONCENTRATION

6. e-Boks will be owned 50/50 by DMdata and Kommunedata. The Co-operation Agreement and the Shareholder's Agreement provide that the parties shall own e-Boks on an equal basis. The Board of Directors shall consist of between four and six members, two of whom shall be nominated by DMdata and Kommunedata respectively. The parties may, subject to unanimity, appoint two additional members of the board, none of whom may be representatives of any party. Simple majority shall adopt resolutions by the Board of Directors. In deadlock situations, the Chairman shall not have a casting vote and there are no other provisions providing for the resolution of such situations. The Articles of Association and the Shareholders Agreement identify a number of resolutions, the adoption of which requires unanimity. It may therefore be concluded that there is complete equality in voting rights between the parties in the joint venture. e-Boks will thus be jointly controlled by both parents.
7. The joint venture is being established for the purpose of entering a new market and none of the parents are or have been active in such a market. The joint venture will have adequate resources to carry out its businesses as assets in the form of equity will be transferred to the joint venture from the parties. The e-Boks application (including all industrial and intellectual property rights) will be acquired by the joint venture from Kommunedata. The joint venture will have its own staff and other resources necessary to carry out its business activities. However, for a transitional start-up period up to three years, certain facilities and services are to be acquired from the parents on an arm's length basis. Kommunedata will provide the e-Boks application and server capacity, software and human resources for the purpose of operating the e-Boks applications. DMdata will provide lease of office space, accounting and other facilities.
8. It can be concluded from the above that the joint venture will perform on a lasting basis all the functions of an autonomous economic entity and thus constitute a full function joint venture within the meaning of Article 3(2) of the Council Regulation Council Regulation (EEC) No. 4064/89.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁴ in 1999. Each of the undertakings concerned has a Community-wide turnover in excess of EUR 250 million, in 1999. At least two of the undertakings concerned did not achieve in 1999 more than two-thirds of their aggregate Community-

⁴ 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.

wide turnover within one and the same Member State. The notified operation therefore has a Community dimension. It does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

V. COMPETITIVE ASSESSMENT

Product market

10. The parties state that the economic sector directly concerned is the provision of Internet services. The narrowest possible product market would be the emerging market of electronic mailbox services, but the services of the joint venture will also compete against traditional printing and mail services.
11. e-Boks will allow its customers, i.e. private and public enterprises, the public administration and government, to send administrative mail electronically to private individuals in a safe, practical and cost-effective way. So far, administrative mail as statements of accounts, tax notes, invoices etc. is being sent as letters through the postal service.
12. However, it is not necessary to further delineate the relevant products market because, in all alternative market definitions, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Geographic market

13. The notifying parties state that the e-Boks application has been developed for the Danish market and that the geographic scope of the market would be at least national. An important element of the application is that it builds on the central national register of individuals, which is unique to Denmark. The parties envisage that the application may be adapted to apply in other countries where similar registers exist.
14. However, it is not necessary to further delineate the relevant geographic market because, in all alternative market definitions, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

1. Upstream service market related to the relevant market

15. The parties state, that the only overlap between the parties' activities is to be found in the related upstream market for data processing services. Both Kommunedata and DMdata are active in this field and supply data processing services for companies that choose to outsource these operations. According to the parties centralised (MVS mainframe) data processing services are used as an input in order to provide the e-Boks services. These services market forms in view of the parties part of the overall outsourcing market. In this market undertakings outsource to an external supplier the operational performance of computer assignments based on various platforms such as MVS (OS3 90) main frames⁵, Tandem, AS400 and NT/PC networks. Even though e-Boks will be based on MVS platforms it would according to the parties also be feasible to offer such services based on the other platforms.
16. According to the parties, the overall outsourcing market is defined as the market for data processing services regardless of which platforms are used for the data processing. Different platforms such as MVS mainframes (OS3 90), Tandem and decentralised platforms such as AS/400 networks are wholly or partially substitutable. Customers can therefore choose to outsource their data processing to a number of competing

⁵ MVS is one type of platform. MVS is short for Multiple Vertical Storage and is an incorporated part of OS/390 which is the operative system on a mainframe. MVS/OS 390 on a mainframe is similar to Windows on a PC.

outsourcing companies regardless of customers' platform(s). It may be concluded that there is a very high degree of demand side as well as supply side substitutability between the different types of platforms.

17. The Commission's investigation does not support this assertion as third parties claim the relevant data processing services cannot be done regardless of which platform is used for the data processing. Third parties suggest that data processing services based on MVS (OS3 90) main frames constitute the relevant product market.
18. However, it is not necessary to further delineate the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Geographic scope of the related upstream market

19. It is argued by the parties that due to the liberalisation of the European telecom sector, improved technologies and a rapidly growing demand for data transmission, in combination with the development of the Internet, e-mail communication and e-commerce, have created economies of scale and improved speed of transmission over the recent years. The relevant geographical market for the upstream product market may therefore be larger than national.
20. However, it has been stated in the Commission's previous case law⁶ that the relevant geographic markets may be national in view of the importance of being able to communicate in the customer's own language and the importance of local presence. Even though there could be a trend towards a market that is wider than national third parties still generally regard the geographic scope of the market in question to be national. Third parties are generally of the opinion that the geographic scope of the market for data processing services based on MVS (OS3 90) is still national. Third parties have mentioned that their customers often have a psychological barrier as they might find it acceptable to outsource the processing of their data nationally but are generally not all prepared to have this service done outside the national borders.
21. However, it is not necessary to further delineate the relevant geographic market because, in all alternative market definitions, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

2. Assessment

22. The joint venture is the first of its kind in a new business area. There is no horizontal overlap as none of the parents are presently active in provision of safe Internet based Business-to-Consumer mailing and storage infrastructure facilities.
23. With regard to the overall market for outsourcing of data processing services the parties have stated that it is relevant to base market shares on turnover (value). This view is essentially confirmed by third parties.
24. There are several suppliers present in Denmark and the Nordic region that offer centralised data processing services, e.g. Computer Science Corporation, IBM Global Services, Sema Group and WMDData and ICL. The parties combined market share based on value in Denmark would amount to [10-20]% (DMdata [5-15]%, Kommunedata [<10]%). According to the parties the market shares of their competitors would amount to the following: IBM ([15-25]%), CSC ([10-20]%), Sema Group ([0-10]%), WMDData ([5-15]%) and ICL ([5-15]%). In the Nordic region the

⁶ Case No. IV/M.798 – General Electric/Compunet

parties have submitted that their combined market share would amount to [0-10]% and in Western Europe less than [<10]%.

25. On the narrower market for MVS (OS3 90) mainframe neither the parties nor third parties are in a position to provide market share databased on turnover. They stress that the MVS (OS3 90) mainframe capacity available to a player would be an adequate indicator of the competitive position, which, however cannot be directly translated into market shares.
26. The parties combined share of capacity would on a world-wide market amount to [0-10]%, and in Scandinavia [5-15]% (DMdata [5-15]%, Kommunedata [0-10]%) and on a national market to a range of [30-45]%. According to the parties the shares based on capacity of their competitors would amount to the following: IBM ([15-25]%), WMDdata ([10-20]%), CSC ([10-20]%), BEC ([<10]%) and Bankdata ([<10]%).
27. By virtue of the presence on the market of these various competitors, the position of the parties on the upstream market for centralised (MVS mainframe) data processing services does not have any foreclosure effect with regard to the downstream market where the joint venture will be active.
28. The proposed concentration thus 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 this area.

Co-ordination between the parents (Article 2(4))

29. The parents of e-Boks are both active in the upstream market for centralized data processing services. This could raise a question of co-ordination as referred to in Article 2.4 of the ECMR. However, the parents are serving different customer groups. Due to the fact that Kommunedata is the result of the merger of information technology centres owned by local authorities in Denmark its main customer group is the local authorities. Therefore the public sector and these customers generated [...] % of its total turnover in 2000. When DMdata was established it mainly supplied its parents companies with centralized electronic data processing services but its supplies to third parties has increased significantly. However, the company's principal customers are generally private customers. It can therefore be excluded that the joint venture would create an incentive to co-ordinate the behavior of its parents.

VI. CONCLUSION

30. 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
Franz FISCHLER
Member of the Commission