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Case No COMP/M.2374 - TELENOR / ERGOGROUP / DNB / ACCENTURE / JV

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 02/05/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2374 – Telenor/ErgoGroup/DNB/Accenture - JV
Notification of 26 March 2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 26 March 2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89[1] by which the undertakings Telenor Bedrift AS, ErgoGroup AS, Den norske Bank ASA and Accenture Technology Ventures B.V. acquire joint control of the undertaking Date A/S (Date).

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. Telenor Bedrift AS (Telenor) is a subsidiary of the incumbent telecom operator in Norway and provides among other thing services regarding system integration, Application Service Provider solutions. ErgoGroup AS (ErgoGroup) is a subsidiary of the incumbent postal operator in Norway and is an IT-service provider. Den norske Bank ASA (DnB) is Norway’s largest financial group and Accenture Technology Ventures B.V. (Accenture) is

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).

a Dutch holding company wholly owned by Accenture which is active within IT-services world-wide.

II. THE OPERATION

4. The concentration consists of the acquisition by Telenor, ErgoGroup, DnB and Accenture of joint control by way of purchase of shares in Date, a newly created joint venture to be incorporated in Norway. Date will establish and operate a marketplace for e-procurement of "non-strategic" products based on electronic infrastructure for business to business commerce. The term "non-strategic" procurement, covers procurement typically of stationary equipment and consumables, such as pencils, pens, paper, hardware, cell phones, office accessories and flowers as well as comparable services. After a start-up period, Date will also arrange supplementary services associated with its business such as payment, financing and shipment.

III. CONCENTRATION

5. Date will be owned 28.6 % by Telenor, 28.6 % by ErgoGroup, 28.6 % by DnB and 14.2 % by Accenture. The Board of Directors shall consist of […] elected by the shareholders. Telenor, ErgoGroup and DnB are entitled to nominate […] of the Board respectively. Accenture has the right to nominate […] of the Board. Telenor, ErgoGroup and DnB shall alternate in appointing the chairman of the Board for one-year terms of office. All the parties will, however, have the possibility to exercise decisive influence over Date, as all the parties have the power to block strategic decisions relating to its business, including its business plan, appointment of CEO, choice of sales channels et cetera.

6. The joint venture is being established for the purpose of operating a marketplace for e-procurement of "non-strategic" products based on electronic infrastructure for business to business commerce. 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 joint venture will also have its own staff and premises to carry out its business activities. However, for a transitional start-up period of two years, certain purchase obligations are undertaken by the parents, as well as certain, non-exclusive, distribution and supply functions are to be acquired from the parents on an arm's length basis. Furthermore, Date may, depending on its development, be introduced on the Norwegian Stock Exchange after its second year of trading.

7. 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 (EEC) No. 4064/89.

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate worldwide turnover in excess of EUR 5,000 million[2] (Telenor, EUR 4 332 million, DnB, EUR 2 642 million, Posten BA,

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[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.

EUR 1 579 million; and Accenture, EUR 8 387 million). Telenor and Accenture have a Community-wide turnover in excess of EUR 250 million (Telenor, EUR […] million; and Accenture, EUR […] 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, and constitutes a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

V. COMPETITIVE ASSESSMENT

A. Relevant market

9. The notifying parties state that the relevant product market is the procurement media or the procurement channels for "non-strategic" products such as stationary equipment and consumables to the corporate market. For the purpose of this notification the parties submit that the relevant geographical market is Norway and that the notified concentration can be assessed on this basis.

10. However, it is not necessary to further delineate the relevant product markets or the relevant geographical 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.

B. Assessment

Analysis under Article 2(3)

11. Date will initially set up a B2B marketplace for procurement of non-strategic office supplies. None of the parent companies have any activities in this market (except as buyers of such equipment).

12. Date will however also supply certain supplementary services such as payment, financing and shipment. It is to be noted that Date's parent companies, who will be its preferred suppliers of such supplementary services, each have strong positions in their respective areas of activity (which, however, do not overlap). However, Date shall only buy from its parents if the price, performance, quality and secured delivery of a service are the same or better than that offered by other suppliers. Furthermore, according to the Shareholders' Agreement, all agreements between Date and its parents, or with companies to which an individual parent belongs shall be done at arm's length basis.

13. In the business forecast of Date it is projected that the amount of Date's acquisition of goods and services from its parents as regards technical solutions, software, establishment of Date and consultant services, will amount to approximately […] % the first two years and decrease to […] % during the next three years. These amounts are, however, insignificant as regards the total turnover of the parents.

14. The proposed concentration 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 that area.

Analysis under Article 2(4)

15. According to the notification, the relevant services for the establishment of a B2B marketplace, in which two or more of the parents are active, are system integration services, application management and general consulting services. The services of relevance to the operation of a B2B marketplace are described as operation and surveillance services, e-identification services and payment services.

16. On the basis of the information submitted by the parties, their combined market share for all services with a relation to the establishment of a B2B marketplace would be below 25 %. This in combination with the limited size of Date's estimated purchase of such services compared to the total turnover of the parent companies within these services ([< 10] %) is enough to exclude any spill-over effects in the meaning of Article 2(4) of the Merger Regulation.

17. On the markets that are related to the operation of a B2B marketplace, the parent's combined market shares are higher. For operation and surveillance services, ErgoGroup is indicated as having a [10–20] % market share, while Telenor's share is [30–40] % (which, however is held by a separately listed company controlled by Telenor ASA). The estimated purchase volume of Date for the initial five years will only amount to merely [<10] % of its parent's total turnover relating to operation and surveillance. This will exclude any spill-over effects in the meaning of Article 2(4) of the Merger Regulation.

18. As for e-identification services, ErgoGroup is indicated as having a [30-40] % market share, while Telenor's share is [30–40] %. According to the notification, the two e-identification businesses are currently undergoing a separate merger control procedure at the Norwegian Competition Authority. In this context, it could be argued that the creation of Date would not as such create an incentive to co-ordinate.

19. In addition, there are indications that the parents have not intended to exploit Date as a launch pad for their e-identification services since Date shall be based on an open technical solution, which shall accept all kinds of e-identifications. Moreover, it is the customers of Date who will actually decide and purchase the technical solutions to be used for e-identification.

20. There are also some indications that the market for e-identification is and/or will become more competitive than can be appreciated by the high market shares of ErgoGroup and Telenor. Moreover, this is an emerging market with atleast one strong foreign player such as VeriSign, Inc.[3] and a national player such as the BankID (which is operated by the Norwegian Bank Association - BBS). Furthermore, several potential competitors are about to establish themselves on the Norwegian market such as for instance Tele Danmark, Sonera/Sonera Smart Trust and KPMG. In addition, Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures will standardize the standard to be used for electronic signatures and thus remove any remaining barriers to trade between Member States. This will further increase the possibility of entry of new foreign potential competitors.

3 VeriSign, Inc. is the world's largest provider of Internet trust services. VeriSign is marketed in Norway by Telia

21. For all the above reasons, any spill-over effects in the meaning of Article 2(4) of the Merger Regulation can be excluded. In addition, as already stated above, a full examination of the situation will be made by the Norwegian authorities and this issue can therefore be left open.

22. In addition to the above, the parent companies will also retain activities in several other B2B marketplaces (as well as in some business-to-consumer ("B2C") marketplaces). All of these activities, however, relate to areas without any relationship to Date's non-strategic office supplies (examples include oil and gas industry, seafood industry and different industrial and consumer products). The different characteristics of such exchanges and the limited turnover in such markets provide no incentives for co-ordination of market behaviour between the different exchanges. It can therefore be excluded that the joint venture would create an incentive to co-ordinate the behavior of its parents.

VI. CONCLUSION

23. 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