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Case No COMP/M.2411 - AUTOLOGIC / TNT / WALLENIUS / CAT JV

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 27/06/2001

Also available in the CELEX database
Document No 301M2411

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27/06/2001

SG (2001) D/

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2411- Autologic / TNT / Wallenius / CAT (JV)
Notification of 21.05.2001 pursuant to Article 4 of Council Regulation Nr. 4064/89.

1. On 21.05.2001**,** the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which undertakings Autologic Holding Plc , TNT Holdings B.V., belonging to the TNT Post Groep N.V. , and Walleniusrederierna AB , belonging to the Rederi AB Soya Group, acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking Compagnie d'Affrètement et de Transport by way purchase of shares in a newly created company constituting a joint venture.

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 functioning of the EEA Agreement.

I. THE PARTIES

3. AutoLogic Holding Plc (*Autologic*), a UK based company, provides land transportation services for vehicles mainly in the UK and the Benelux countries, with some minor activities in France. Autologic also provides technical services for new and used vehicles, including handling, storage, pre-delivery inspection, rectifications and addition of accessories.

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4. TNT Holdings BV (*TNT*) is part of TNT Post Groep NV, a Netherlands quoted company, and provides general contract logistics services for a number of clients, as well as express freight forwarding and transportation services for goods (documents, parcels and so forth) in Europe and beyond.

5. Walleniusrederierna AB (*Wallenius*), is a company based in Sweden wholly owned by the Rederi AB Soya Group, and is active, through its joint ventures, in a number of business segments, including land transportation services for vehicles, technical services and deep and short sea transportation services.

6. Compagnie d'Affrètement et de Transport (*CAT*). The CAT Group is a French company presently wholly controlled by Renault SA. Created as a specialist logistics provider by Renault in 1957, CAT has three main areas of activities: Finished Vehicles Logistics Activities, General Contract Logistics Activities and some (minor) Freight Forwarding Activities.

II. THE OPERATION

7. On 26 March 2001, Renault, Autologic and TNT agreed that Renault would sell 100% of its subsidiary, CAT, to GAL, a French acquisition vehicle, which has been created for the purposes of the transaction. The operation, which will be carried out in several stages, will result in Autologic, TNT and Wallenius acquiring joint control of GAL, and therefore CAT, and Renault will take a non- controlling minority stake in GAL.

8. Through the transaction, Renault will out-source its present in-house Finished Vehicle Logistics operations. The main objective of the proposed transaction is to create the first independent so called fourth party logistics[1] provider for finished vehicles logistics in Europe and beyond. CAT will be the first European in-house provider in the automotive industry to become independent.

III. FULL FUNCTION JOINT VENTURE.

9. CAT is a fully functioning economic entity and will continue to operate on a long term basis in the logistics and freight forwarding sectors, when it ceases to be a 100% Renault subsidiary. It will continue to have the necessary financial resources, personnel and other assets. CAT will continue to operate its finished vehicles logistics activities, its general contract logistics division and freight forwarding operations independently.

10. Pursuant to the agreements, GAL will be jointly controlled by each of the Consortium members, Autologic, TNT and Wallenius, in the following manner: the board of GAL will consist of […] directors, with each Consortium member having […] representatives. The members of this board must decide unanimously on all strategic matters[2], thereby giving GAL directors a veto. Autologic will hold a […]% stake, with

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1 By this the parties mean a provider of logistics which does not own any of the commodity assets, but which subcontracts individual elements of the logistics package to individual commodity providers while maintaining overall management control. However, there may be some minor differences of the exact definition within the logistics industry.

2 For example, approval of or changes to the business plan, changes to board membership or key personnel and the like. The list of the Shareholders' Matters is set out at clause 4.4 of GAL Shareholders Agreement.

TNT and Wallenius Lines each holding […]% of the shares. Renault will take a minority shareholding of […]% in GAL, with […]. […] Renault […] will not exercise joint control.

IV. CONCENTRATION

11. Through the operation, Autologic, TNT and Wallenius will acquire joint control of CAT, which is an autonomous economic entity. The operation therefore constitutes a concentration within the meaning of article 3(1)b of the Council Regulation 4064/89, of 21 December 1989.

V. COMMUNITY DIMENSION

12. The Parties have a combined aggregate world-wide turnover in excess of € 5,000 million (Autologic, € 326 million; TNT Post Groep, € 9,936 million; Wallenius, € 1,904 million and CAT € 1,223 million). At least two of them has a Community-wide turnover in excess of € 250 million (Autologic, € […] million; TNT Postgroep, € […] million; Wallenius € […] million and CAT, € […] 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. It does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

VI. COMPETITIVE ASSESSMENT

13. The main sectors concerned by the proposed transaction are: general contract logistics services, transportation by land and by sea, finished vehicles logistics services and freight forwarding.

A. Relevant product markets

14. The Parties distinguish the following product markets: general contract logistics services, Finished Vehicle Logistics ("FVL") services, freight forwarding services, land transportation and short and deep sea shipping. They argue that Finished Vehicle Logistics services is a market separate from the general contracts logistics services market. Based on this market definition, the only horizontal overlaps in activities between the Parents and JV would be those in general contract logistics, where both TNT and CAT are active and the only horizontally affected market resulting from the concentration would be the market for general contract logistics.

I. The market for general contract logistics services.

15. General contract logistics services can be defined as the part of the supply chain process that plans, implements and controls the efficient, effective flow and storage of goods, services and related information from the point of origin to the point of consumption in order to meet customers' requirements. These services comprise diverse activities as parts supply, inventory control, product tracking, order picking, management, time lined delivery, quality checking, information technology and account management, as well as value-added services such as assembly and installation upon delivery, repair returns (reverse logistics) and sequencing. The Commission has taken the view that it constitutes a relevant market of its own and, in particular, is distinct from express parcel

delivery services and financial management[3]. In principle, a general contract logistics provider focusing on one industry can re-deploy the skills and know-how acquired in this area, to other industries, as set out in the *Ocean/Exel* decision[4].

II. The market for FVL services.

16. These services as performed by CAT pertain to newly manufactured, wholly assembled passenger and light commercial vehicles, excluding services related to trucks and other heavy commercial vehicles, which require different services than passenger and light commercial vehicles and excluding used vehicles. According to the Parties, FVL services providers should be distinguished from general logistics providers as they can offer the full range of logistics services all along the car supply chain (including very specialized and industry specific information technology systems), whereas general contract logistics providers can only provide a bundle of commodities, such as warehousing, transportation, shipping, time lined delivery, quality checking etc. FVL services combine the four characteristics of the logistics area, namely implementation and control, inventory management, network design and planning.

17. In the automotive sector, a large number of general contract logistics services providers are involved in the automotive inbound and spare parts services as they require the same skills, management of assets and information technology systems as in other industries. The Parties submit that the skills and technologies used in the Finished Vehicles sector are very specific. Thus in the Parties' view general contract logistics services (including automotive inbound and spare parts services) should be distinguished from finished vehicles logistics services. If this market definition were applied, there would be no overlap between the activities of CAT and those of the Parents on the market for FVL services.

18. For the purpose of the present case it is, however, not necessary to distinguish between the market of general contract logistics services and FVL services as relevant product markets because, on the basis of any alternative market definition, the 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.

B. The relevant geographic markets

(1) General Contract Logistics services.

19. Following the decisional practice of the Commission[5], the notifying parties submit that, from a geographical point of view, the general contract logistics services market has to be considered national in scope.

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3 See *e.g.* case COMP/M 1794 *Deutsche Post/AEI* of 07/02/2000.

4 Case IV/M.1895-Ocean / EXEL of 30.05.2000

5 See *e.g.* cases IV/M 1500 *TPG/Technologistica* of 11/05/1999, IV/M 1513 *Deutsche Post/Danzas/Nedlloyd* of 01/09/1999 and IV/M 1895 *Ocean Group/Excel* of 03/05/2000.

(2) FVL services.

20. In the current state of the market, customers turn to FVL services providers located in their own country for reasons of local experience, knowledge on localised markets, local asset ownership and network infrastructure. For these reasons and also because their sales may vary from one country to the other, car manufacturers organise distribution at Member States' level. Thus, according to the Parties, the market would be national in scope.

21. However, for the purpose of the present case, the geographic market need not be decided because on the basis of the assessment set out below, even on the narrowest market definition, the 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.

C. Assessment.

I. The markets for FVL services and general contract logistics services.

22. If one were to define the market for FVL services as a market distinct from the market for general contract logistics services (including automotive in-bound and spare parts services), there would be no overlap in FVL, since only CAT is active in FVL services. Thus, using the market definition as proposed by the Parties, there would be an overlap only between TNT and CAT on the market for general contract logistics services. However, whichever market definition is chosen, the 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.

II. The market for general contract logistics services.

23. TNT is active in the market of general contract logistics services rendered to a wide spectrum of industrial sectors. Both TNT and CAT are active in logistic services rendered to the automobile sector namely for automotive components. Automotive parts comprise parts, such as body parts, engine parts, tyres, etc. for cars, commercial vehicles, trucks and motorbikes, customers being car and motorbike manufacturers. In this segment, TNT is involved in general contract logistics, among other, for automotive components, i.e. "in-bound" parts, being parts that need to be picked up from original equipment manufacturers and distributed to a car manufacturer's production plant, and spare parts. CAT is involved in logistics for automotive spare parts and certain minor logistic services for automotive in-bound parts for essentially Renault, in several Member States. It also performs services related to (spare) parts for other industries.

24. The Parties do not consider their logistics activities in the automotive sector as a stand alone product market but as part of the overall general contract logistics market. (See footnote 4 above). Applying this market definition, the aggregate market shares of the Parties EU wide would be far below 15%, i.e. [0-10]% ([0-5]% for TNT and [0-5]% for CAT).

On a national basis, the only market where the combined market share would exceed 15% would be the market for general contract services in Italy, where for 1999 the share of TNT is [15-20]% and the share of CAT is [0-5]%, resulting in an aggregate share of [15-20]%. (Parties' estimates).

The Italian market for general contract logistics services.

25. The Italian market for general contract logistics is growing fast and developing more and more from a largely in-house service market to an out-sourced (non-captive) market. Where the Parties point at rather unreliable information on market figures, they mention an annual market growth rate of over 10% over recent years. Their aggregate shares are estimated to be around [25-30]% at the maximum for year 2000, with the nearest 5 competitors having around [0-5]% shares. These competitors, however, are viable international operators like Danzas, Saima Avandero, SM Logistics, Zust Ambrosetti, Fercam and Sogema. The Parties' customer base does not overlap and some of the customers are large international companies like […] and […].

26. In view of the very minor market share addition in Italy of [0-5]% for CAT, under these circumstances and even allowing for market shares somewhat higher than estimated by the Parties, it cannot be concluded that on the Italian market for general contract logistics the concentration creates or strengthens a dominant position as a result of which effective competition would be significantly impeded.

D. Vertical relationships.

27. According to the Parties, none of the parents directly and on their own have market shares exceeding 25% on any market upstream or downstream from the markets where CAT is active. Wallenius has activities in sea transport through two joint venture companies jointly controlled with third parties. The sectors where market shares of these joint venture companies exceed 25% on some shipping routes are short sea transport (through a joint venture with Nippon Yusen K.K., called UECC) and deep sea transport (through a joint venture with Wilh. Wilhelmsen ASA, called Wallenius Wilhelmsen Lines).

28. However, even if these market shares, which relate to routes within the EU (short sea) and routes departing from the EU (deep sea) were wholly attributed to Wallenius, none of these joint ventures carries a significant amount of cargo for CAT and thus none of these activities would have any foreclosure effects in the sectors of deep and short sea transport.

29. In addition, where Autologic and Wallenius, the latter through a subsidiary of the above mentioned joint venture Wallenius Wilhelmsen Lines (Richard Lawson), are active in the land transport of vehicles, according to the Parties none of them has a market share in any Member State in excess of 25%. This remains valid even after Autologic's acquisition of the land transportation activities of UK-based Axial, which is currently in process and even if the market share of a joint venture in which Autologic is involved (ANSA) is counted.

30. Thus, even if in any of the above sectors the market shares held by the respective joint ventures would be aggregated to the shares held by the individual parties, the concentration would not appear to create or strengthen a dominant position on any market upstream or downstream from the market on which CAT is active.

VII. ANCILLARY RESTRICTIONS.

31. The notifying Parties have requested the Commission to consider the following restrictions of competition to be ancillary to the concentration:

(a). transitional services agreements, providing for Renault to supply on a non-exclusive basis for a period of […] years from completion of the transaction a number of facilities and services required by CAT to continue its operation without interruption.

(b). a non-sollicitation clause, keeping Renault from hiring, soliciting or endeavouring to entice away from CAT specifically listed key employees within […] years of completion.

These clauses under sub a) and b) above may be considered to aim at transferring to the buyers the full value of CAT and may thus be considered to be ancillary to the concentration.

(c). Exclusive supply agreements. CAT and Renault have agreed that Renault will continue to purchase a range of logistics services from CAT on an exclusive basis for [….] years post-Completion, estimating that a start-up period would last for approximately […] years. These services relate to FVL services within the EU, general contract logistics services for out-bound spare parts and accessories, freight forwarding services for completely knocked down vehicles destined for assembly elsewhere and FVL services outside the EU. However, in view of the geographic extent and the duration of these agreements, and the fact that The Parties have not provided specific justification for their duration, they do not appear to be restrictions directly related and necessary to the implementation of the concentration.

(d). Preference Clauses in the exclusive supply contracts. Under these clauses, prior to each renewal date for the Contract, Renault shall invite CAT for tenders for all or part of the contract in question. Renault will only accept the bid made by CAT in priority if CAT has properly performed the whole of its obligations under the concerned contract since its enforcement date, and if the conditions of quality, costs and delays under CAT's bid are, on the whole, at least as good as those of the best offer from competitors.

This clause aims at extending even the […] years' duration of the supply agreements which is already longer than necessary to provide CAT with a viable customer base for a transitional period and thus appears to be anti-competitive and not directly related to nor necessary to the implementation of the concentration.

(e). Non Compete clause. According to the non-compete provision contained in the agreements, the Renault Group (excluding the CAT Group) shall not carry on or acquire a controlling interest in any competing business (*i.e.* a business that consists in the provision of vehicle transportation and automotive integrated logistics services) during a period of […] years after the completion date. This clause does not specify the territory for which it applies. In view of this, it does not appear to be directly related and necessary to the implementation of the concentration.

32. In view of the above, the restrictions mentioned under c) through e) herein above cannot be considered to be directly related and necessary to the implementation of the concentration insofar as they have an effect on competition in the EU or the EEA.

VIII. CONCLUSION

33. 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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) N° 4064/89.

For the Commission

Mario MONTI
Member of the Commission