

***Case No COMP/M.2722 -
AUTOLOGIC / TNT /
WALLENIOUS /
WILHELMOSEN / CAT JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/02/2002

*Also available in the CELEX database
Document No 302M2722*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.02.2002

SG (2002) D/228645

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 COMP/M.2722 - Autologic / TNT / Wallenius/ Wilhelmsen/ CAT (JV)
Notification of 24.01.2002 pursuant to Article 4 of Council Regulation Nr. 4064/89.

1. On 24.01.2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings Autologic Holding Plc , TNT Holdings B.V., belonging to TPG NV (the former TNT Post Groep N.V.) , and Wallenius Wilhelmsen Lines AS, jointly controlled by Walleniusrederierna AB and Wilh. Wilhelmsen ASA, 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 of purchase of shares in an existing 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.

4. TNT Holdings BV (*TNT*) is part of TNT Post Groep NV, now re-named TPG 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. Wallenius Wilhelmsen Lines AS (WWL) is a pre-existing full function joint venture formed in 1999 by Walleniusrederierna AB (Wallenius), and Wilh. Wilhelmsen ASA ("Wilhelmsen"). It provides deep-sea transportation services for primarily non-containerised cargo (including vehicles) on a number of global trades, as well as transportation of very minor amounts of containerised cargo. WWL charters shipping capacity from its parent Wilhelmsen. It is also active in land transportation and related services for vehicles through its subsidiary, Richard Lawson Group. It is based in Oslo, Norway.
6. Compagnie d'Affrètement et de Transport (CAT). The CAT Group is a French company previously 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. This operation is a sequel to Case M. 2411- Autologic/ TNT/Wallenius/CAT-JV. On 26 March 2001, Renault, Autologic and TNT agreed that Renault would sell 100% of its subsidiary, CAT, to GAL, a French acquisition vehicle created for the purposes of the transaction. That operation, which was cleared by the Commission in Case COMP/M. 2411 by decision of 27.06.2001,¹ resulted in Autologic, TNT and Wallenius acquiring joint control of GAL (and therefore CAT), and Renault retaining a non- controlling minority stake in GAL.
8. Through that transaction, Renault out-sourced its former in-house Finished Vehicle Logistics operations. Its main objective was to create the first independent so called fourth party logistics² provider for finished vehicles logistics in Europe and beyond.
9. The only objective of the presently proposed transaction is to re-structure Wallenius' shareholding in CAT. Thus, the [...] % minority shareholding obtained in 2001 will be transferred by Wallenius to WWL, the joint venture that Wallenius controls together with Wilhelmsen. This transfer was the object of an option agreement forming part of the original shareholders agreements of March 2001, which option has now been exercised.

¹ Case COMP/M. 2411-Autologic/TNT/Wallenius/CAT (JV), Commission decision of 27.06.2001.

² 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.

III. CONCENTRATION

10. CAT is a fully functioning economic entity operating on a long term basis in the logistics and freight forwarding sectors, after it ceased to be a 100% Renault subsidiary. It has the necessary financial resources, personnel and other assets. CAT operates its finished vehicles logistics activities, its general contract logistics division and freight forwarding operations independently.
11. Pursuant to the agreements, GAL is jointly controlled by each of the Consortium members, Autologic, TNT and WWL, in the following manner: the board of GAL consists of [...] directors, with each Consortium member having [...] representatives. The members of this board must decide unanimously on all strategic matters³, thereby giving GAL directors a veto. Renault will not exercise joint control.
12. Through the operation, Autologic, TNT and WWL will acquire (through GAL) 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.

IV. COMMUNITY DIMENSION

13. The Parties have a combined aggregate world-wide turnover in excess of € 5,000 million (Autologic, € 378 million; TPG, € 9,946 million; WWL, € 1,387 million and CAT, € 1,209 million). At least two of them have a Community-wide turnover in excess of € 250 million (Autologic, € [...] million; TPG, € [...] million; WWL, € [...] 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.

V. COMPETITIVE ASSESSMENT

14. The main sectors concerned by the proposed transaction are: general contract logistics services, transportation by land and by sea, ship management and ship agency services, finished vehicles logistics services and freight forwarding. The present operation does not result in additional horizontal overlaps nor in additional vertically affected markets, compared to the concentration that was cleared in Case M. 2411 by Commission decision of 27.06.2001. Since that decision, no other significant changes to the markets assessed in that case have taken place.

A. *Relevant product markets*

15. The notifying Party distinguishes the following product markets: general contract logistics services, Finished Vehicle Logistics ("FVL") services, freight forwarding services, land transportation, short and deep sea shipping and ship management and agency services. It argues that the Finished Vehicle Logistics services market is a market separate from the general contracts logistics services market. Based on this market

³ 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.

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. Thus, 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.

16. 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. 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 management⁴. 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 decision⁵.

II. The market for FVL services.

17. 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. The notifying Party argues that FVL services should be distinguished from general logistics services as they cover the full range of logistics services all along the car supply chain (including very specialised and industry specific information technology systems). FVL services combine the four characteristics of the logistics area, namely implementation and control, inventory management, network design and planning. In contrast, general contract logistics providers can only provide a bundle of commodities, such as warehousing, transportation, shipping, time lined delivery, quality checking etc.
18. For the purpose of the present case however, it is 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 Commission⁶, the notifying party submits that, from a geographical point of view, the general contract logistics services market has to be considered national in scope.

⁴ See e.g. case COMP/M 1794 *Deutsche Post/AEI* of 07/02/2000.

⁵ Case COMP/M.1895-Ocean / EXEL of 30.05.2000

⁶ See e.g. cases IV/M. 1500 *TPG/Technologica* of 11/05/1999, IV/M. 1513 *Deutsche Post/Danzas/Nedlloyd* of 01/09/1999 and COMP/M. 1895 *Ocean Group/Exel* 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, 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 notification, 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. 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 notifying Party does not consider the logistics activities in the automotive sector as a stand alone product market but as part of the overall general contract logistics market. (See footnote 5 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 about [0-5]% for CAT).

The Italian market for general contract logistics services.

25. 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. Since the Commission Decision in Case M. 2411, TNT has recently made some very minor acquisitions, resulting in an additional market share of [0-5]%, the share of CAT remaining at about [0-5]%, resulting in an aggregate share of [20-25]% for the year 2000. (Parties' estimates).

26. In view of the very minor market share additions in Italy, under these circumstances, 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. None of the parents of CAT have market shares exceeding 25% on any market upstream or downstream from the markets where CAT is active, except for WWL having a share exceeding 25% on some deep sea shipping routes. One of WWL's parents, Wallenius, through its [...] % participation in a joint venture with Nippon Yusen K.K. (called UECC) has market shares exceeding 25% on some short sea transport shipping routes. However, the amount of cargo that these shippers carry for CAT is [not significant].

28. Thus, 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.

VI. CONCLUSION

29. 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