

***Case No COMP/M.3097 -
MAERSK DATA /
EUROGATE IT /
GLOBAL TRANSPORT
SOLUTIONS JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 12/03/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.03.2003

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

For the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.3097-MAERSK DATA/Eurogate IT/Global
Transportation Solutions
Notification of 11.02.2003 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 11 February 2003, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings MAERSK DATA (USA) Inc. and Eurogate IT Services GmbH (Germany) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking Global Transportation Solutions LLC (GTS) by way of purchase of shares.

I The Parties

2. MAERSK DATA USA Inc. ("MDU") is a subsidiary of the shipping company A.P. Møller Group which also has terminal operation activities. MDU builds and supports systems and applications for transportation networks which it supplies to the transportation and logistics industry.
3. Eurogate IT Services GmbH ("Eurogate") is controlled by Eurogate GmbH & Co. KgaA, KG, Germany. It is a newly established company that has not yet developed any business activity and its objective is to provide services of information technology for both companies in the Eurogate Group and for third parties. The Eurogate group is active in container terminal services and intermodal transport.

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).

4. GTS is an existing Delaware limited liability corporation that was established as a 100% subsidiary of MDU with the objective to operate in retail and integration of software for the operation of container terminals. GTS has been established in order to serve the technology requirements of port terminal operators and companies that manage inter-modal and marine businesses related to port terminal operations. Terminal operators manage the inter-modal flow of ocean containers when they are moved from container vessels through port yards and/or warehouse facilities onto rail cars or trucks destined for final delivery inland. Terminal operators and companies in related businesses have increasingly used IT technology (mainly in-house products) to improve their productivity. GTS will provide customer IT products and services designed to raise the business productivity of its customers. Consequently, GTS will target terminal operating companies and related businesses that currently use in-house systems or are inclined to replace installed third-party products.

II The operation and the concentration

5. Upon completion of the notified transaction MDU and Eurogate will each hold a 50% interest in GTS. The board will consist of 4 members equally appointed by the parties and the voting rights of each board member are in direct proportion with the shareholding of the shareholder responsible for their appointment. Therefore, MDU and Eurogate will control 50% each of the votes. Certain decisions such as the approval of the business plan will require agreement between the parties. Therefore, GTS will be jointly controlled by MDU and Eurogate.
6. GTS will operate on the market as an autonomous economic entity, performing all the functions normally carried out by undertakings operating on the same market. It will have its own management and staff dedicated to its day-to-day operations and access to financial and other necessary resources in order to conduct on a lasting basis its business activities. GTS will therefore be a full function joint venture within the meaning of Article 3 (2) if the Merger Regulation.

III Community dimension

7. The undertakings concerned have a combined aggregated turnover of more than EUR 5 billion². Each of them has a Community-wide turn-over in excess of EUR 250 million. Furthermore, the parties to the concentration do not achieve more than two thirds of their aggregated Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

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.

IV The relevant product and geographic markets

8. The parties suggest a specialised product market, comprising only the software applications designed for a particular use in the terminal/intermodal transport business. However, the precise market definition, particularly whether - due to supply side substitutability - more types of application software have to be included in the market, can be left open, since - in any event - the proposed transaction does not give rise to any competition concerns under the any alternative product market definition.
9. According to the parties the geographic market is world-wide. This has been confirmed by the outcome of the market enquiries, though individual service at the customers' premises is highly important. However, the market definition can be left open, since even on any alternative market (i.e., the EEA or specific ports and container terminals), the proposed transaction does not raise any serious doubts.

V Competitive Assessment

10. According to the parties the operation does not give rise to any horizontally affected markets as the parties will have less than 15% on all relevant markets. Competitive products - as has been confirmed by the market enquiries - are offered by established market players such as Navis, COSMOS, CMC and TSB. In addition, a high amount of the required software is produced by the potential customers in-house.
11. In reaction to the market investigation carried out by the Commission, competitors have expressed concerns that GTS would be able to offer its products at a much lower price given the financial strength of the parent companies which cannot be matched by the competitors. Competitors claim that in the long run they might have to exit the market. However, the creation of a dominant position, as suggested by some competitors, appears to be unlikely. Firstly, as potential customers of GTS will be competitors to the parties in the downstream market, it is likely that they will prefer an independent supplier. Secondly, potential clients have produced and will also in the future be able to produce the needed software in-house or to collaborate with a small software producer to satisfy their needs. The creation of a dominant position can therefore be excluded.

VI Conclusion

12. 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 Articles 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission

Mario MONTI
Member of the Commission