

***Case No COMP/M.3492 -  
EXEL / TIBBET &  
BRITTEN***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

---

Article 6(1)(b) NON-OPPOSITION  
Date: 03/08/2004

*Also available in the CELEX database  
Document No 32004M3492*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03/08/2004

SG-Greffe(2004) D/203382

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

**Subject: Case No COMP/M.3492 - Exel/Tibbett & Britten  
Notification of 30.6.2004 pursuant to Article 4 of Council Regulation No  
139/2004<sup>1</sup>**

1. On 30.6.2004, the Commission received a notification of a proposed concentration by which the undertaking Exel plc ("Exel", UK) acquires, within the meaning of Article 3(1)(b) of Council Regulation 139/2004, control of the whole of Tibbett & Britten Group plc ("Tibbett & Britten") by way of purchase of shares.

**I. THE PARTIES**

2. Exel is listed on the London Stock Exchange and is active over 120 countries worldwide. It was formed by the merger of Ocean Group plc and Exel plc in 2000, which was a concentration notified to the Commission. Its principal activities are contract logistics and freight management.
3. Tibbett & Britten is a UK-quoted provider of contract logistics services to manufacturers, retailers and distributors. It has logistics operations in Europe and North America, as well as parts of Africa, Asia and South America. It also has limited freight management operations.

---

<sup>1</sup> OJ L 24, 29.1.2004 p.1

## II. THE OPERATION

4. The public offer by Exel was announced on 16 June 2004 and it is recommended by the Board of Tibbett & Britten. If the offer is successful, it will result in Exel acquiring the entire issued share capital of Tibbett & Britten and it will thus acquire sole control over it. The notified operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation No 139/2004.

## III. COMMUNITY DIMENSION

5. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>2</sup>. Each of the parties to the concentration have a Community-wide turnover in excess of EUR 250 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.

## IV. COMPETITIVE ASSESSMENT

### *A. Relevant product market*

#### Contract logistics services

6. The main area of overlap between the parties is contract logistics services. Contract logistics involves helping manufacturers and retailers with the management of the flow of goods. Broadly speaking, it consists of the provision of warehousing and transportation services. Traditionally the logistics function has been performed by them in-house, but over the last 20 years manufacturers and retailers have started outsourcing some of this activity in order to benefit from specialist expertise.
7. The Commission has examined the contract logistics sector in a number of previous cases, such as Ocean Group/Exel<sup>3</sup> assessing that contract logistics services constitute a separate market which is distinct from express delivery and freight forwarding. The Commission also considered the possibility to segment the market further between cross-border and domestic logistics services and for example by reference to the type of goods handled or the industry sector serviced. However, further subdivision was concluded not to be appropriate because logistics service providers are generally able to serve all types of customers without distinguishing according to the type of goods transported, and that the ownership of particular assets is not necessary with the possible exception of logistics services for finished vehicles<sup>4</sup>.
8. The Commission's investigation concerning the notified transaction has supported this view showing that the same key elements and core business principles underpin the provision of most if not all logistics services, even though the nature of the service

---

<sup>2</sup> 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.

<sup>3</sup> Case COMP/M.1895

<sup>4</sup> See cases COMP/M.2411 Autologic/TNT/Wallenius/CAT JV and COMP/M.2722 Autologic/TNT/Wallenius/Wilhelmsen/CAT JV

varies between the industry sector and customer concerned. Most respondents to the Commission market investigation consider contract logistics services to belong to one product market, although certain industry sectors and customers demand differing levels of value added expertise by the service provider. Contract logistics are by nature regarded as more customer than sector-specific services which are tailored to meet the particular needs of the customer and the specifications that the customer has imposed, in whichever sector they operate.

9. Some providers might be stronger in some sectors than others, but all major competitors in contract logistics services serve a range of different sectors and in several countries. Contracts are often awarded after a bidding process and competitors can easily adapt to the requirements of the tender before the contract is signed. In general, assets and systems needed for logistics services might differ between industry sectors, but it has been confirmed that their ownership is not necessary in order to provide logistics services because such resources are mostly outsourced as they are generally owned by the customer or can be leased from third parties. For example the underlying information technology systems are broadly similar regardless of the industry. The logistics supplier basically only provides know how and a management team to run the service.
10. It may furthermore be concluded that there are no significant differences in the essential characteristics of offering logistics services within or across national boundaries. There are no differences in the applied technology for domestic and cross border services.
11. In particular, the market investigation has not indicated that contract logistics services in the food retail sector should be considered as a separate market or that there would be a further distinction between the national multiples and smaller supermarkets as logistics customers. It is considered that services required by food retailers are relatively basic and standardised, the types of service is common to many industry sectors and do not require any sector-specific skills, and, finally, assets are generally owned by the customers and only a management team is required to run the service.
12. The Commission has also inquired whether a trend might exist to segment the market into two tiers. The first tier would include the so called lead logistic providers (“LLPs”) that are able to manage the full supply chain with an European or global infrastructure to meet their international customers’ needs, as opposed to the second tier, traditional logistics service providers (“3PLs”).
13. However, according to the results of the market investigation a clearly distinct class of first tier suppliers would not seem to exist. There might be a growing distinction between those operators who are able and choose to operate globally and those who choose not to, but this does not necessarily take away their ability to act as a first tier supplier. With the help of subcontracting, it is possible also for the smaller providers to compete with the larger providers even regarding more complex customer requirements. Domestically both large and smaller operators compete in the same market, without a need to subcontract. Furthermore, there does not seem to be any consensus on what companies could be regarded as lead logistics providers.
14. However, for the purposes of this decision the precise scope of the product market can be left open as on the basis of all alternative market definitions considered the proposed concentration will not significantly impede effective competition in the common market or substantial part of it.

### Freight forwarding

15. There is also a minimal overlap between the parties' activities in international air freight forwarding. The Commission has previously<sup>5</sup> drawn a distinction between a) international and domestic freight forwarding, b) land, air and sea freight forwarding, and c) express and standard freight forwarding. Exel is active in all of these product areas to some extent, but Tibbett & Britten only has a limited presence in the EEA through very small operations in the UK. Given the absence of competition concerns in freight forwarding, the relevant product market definition may be left open.

### *B. Relevant geographic market*

#### Contract logistics

16. The Commission has previously<sup>6</sup> concluded the relevant geographic market for contract logistics services to be national in scope. It has been considered that logistics service providers have a local presence in the countries in which they operate, the identity of the players and their market shares vary according to the country and that customers generally turn to a logistics supplier located in their own country.
17. The parties have followed the precedent of the previous cases even though their view is that the market for contract logistics is increasingly international, because customers are becoming more international and more often seek logistics solutions for several countries. The Commission market investigation confirms that the market for contract logistics services is probably still national. There is demand for cross-border logistics services, but it is generally the case that a customer turns to a provider located in their own country. On the other hand, there is probably increasing demand for logistics services on a pan-European or international where the location of the provider is less relevant. It seems that the larger providers who operate in a number of countries do so on the basis of a local presence. However, the definition may be left open for the purposes of this case as no competition concerns would arise from the concentration whichever way the geographic market is delineated.

### Freight forwarding

18. In case Deutsche Post/AEI the Commission left open whether the relevant geographic market for freight forwarding was national or EU-wide. Data has therefore been examined on both a national and EEA-wide basis. The definition may be left open for the purposes of this case as no competition concerns would arise from the merger whichever way the geographic market is delineated.

### *C. Assessment*

19. On the basis of the above described product and geographic market definitions the only horizontally affected market is the supply of contract logistics services in the UK. The parties do have overlapping activities in contract logistics in certain other Member States but their combined market share does not exceed 15%. In freight management the

---

<sup>5</sup> Case COMP/M.1794 Deutsche Post/AEI

<sup>6</sup> Cases IV/M.1500 TPG/Technogista and M.1895 Ocean Group Exel

parties' combined share exceeds 15% in air freight forwarding in the UK but the increment is less than 0.1%.

20. As regards vertical markets, the only vertical relationship arises as a result of Exel's freight forwarding business which might be considered upstream of contract logistics, by virtue of the fact that contract logistics companies may sometimes procure freight forwarding services for their customers. However, its' market share does not exceed 25 % on any basis in any upstream freight forwarding market, except for Sweden (market share around [25-30]%) where Tibbett & Britten is not active in contract logistics.

#### Contract logistics in the UK

21. According to the parties' submissions, industry reports and the information received during the Commission market investigation, the merged firm's market share, calculated on the basis of revenues, in contract logistics services in the UK has been estimated to be approximately [25-30] %. The parties' total market share on an EEA level is estimated to be around [5-10]%.
  22. As already said, there are not sufficient elements to further subdivide the market depending on the various sectors. However, if the UK market was subdivided, the merged firm's market shares would be in line with its' overall share in contract logistics services: approximately [25-30]% in the outsourced *food retail* logistics market, [20-25]% in the outsourced *non-food retail* logistics market, [25-30]% in the outsourced *consumer goods* logistics market and [5-10]% in the outsourced *Hi Tech* logistics market.
  23. There are a number of other significant contract logistics providers active in the UK market, such as Wincanton, Christian Salvesen, Hays Logistics, TNT Logistics and TDG. These suppliers are considered to be large, sophisticated companies which would remain strong and credible competitors also post-merger. The market investigation confirms a significant presence of them also in all the sub-markets considered in the UK.
  24. Wincanton, which is currently the second largest UK supplier with a market share of [10-15]% is also one of the top 3 European logistics suppliers. Christian Salvesen and Hays Logistics, which also operate in several other EEA countries, have an estimated market share of [5-10]% in the UK. TNT Logistics, which is considered to be the largest European logistics company and a world leading provider of logistics services, has an estimated market share of [5-10]%. Also TDG has a similar market share. In addition to the main competitors, several other known logistics service providers are estimated to have market shares up to 3.8% in the UK market.
  25. Many contract logistics customers in the UK are large, sophisticated purchasers who actively seek to multi-source and therefore there is a considerable risk that the merged firm might lose some of its business as a result of customers reviewing their multi-sourcing arrangements post-merger. Moreover, contracts are typically awarded following a competitive tendering process and they are also generally of short duration (majority have a duration of only one year).
  26. The market investigation has further confirmed that the majority of the customers retain a significant part of in house logistic services, which will maintain a continuous competitive pressure on third companies that offer logistic services. The ultimate competitor is the in-house operator and unless the logistics contractor can add value to the customer they will not win the contract.

27. Price pressure comes from customers more than competing service providers. The highly competitive nature of the supply of contract logistics services is borne out by the pressure on margins. [...].
28. Customers, especially food retail customers in the UK are large, sophisticated purchasers who actively seek to multi-source and play their suppliers off against each other. Although food retail is one of the sectors where outsourced logistics is most developed, the majority of food retail distribution (approximately 60%) is still undertaken in-house and outsourcing has not been estimated to increase significantly. Some of them perform all their logistics operations in-house. In those cases where logistics services are outsourced, the customer clearly drives the process and also owns the assets.
29. In general it has been confirmed that there are considerable opportunities for new entry and expansion in contract logistics services. Barriers to entry and expansion are low. Even if a competitor currently has only a small presence in a particular contract logistics sub-market, it could readily scale up its operations if it were awarded the contract to provide services to other customers. Switching is relatively straight forward considering that the contract logistics activity is overall of the same nature and since assets are usually owned by the customers or leased from third parties. Contracts are generally of short duration with provision for termination on change of control. There is an increasing trend towards open-book contracts where all costs are transparent to the customer and the supplier is simply paid a management fee. This gives the customer more information on the suppliers' costs and thus the opportunity to squeeze performance.
30. It is therefore unlikely that, considering the market position of the merging companies and the competition dynamics of the UK contract logistic market the merger would have a significant impact on the UK market of general contract logistics services as a whole. On the basis of the above explained arguments, competition problems would not be raised regarding any alternative sub-market either.

## V. CONCLUSION

31. 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 (EC) No 139/2004.

For the Commission

*signed*  
Frits BOLKESTEIN  
Member of the Commission