

***Case No COMP/M.3571 -
IBM / MAERSKDATA /
DMDATA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 18/11/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.11.2004

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3571 - IBM / Maersk Data / DMdata
Notification of 12 October 2004 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 12.10.2004, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking IBM Danmark A/S (“IBM Danmark”, Denmark), which belongs to the IBM group, acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of Maersk Data A/S (“Maersk Data”, Denmark) and of DMdata A/S (“DMdata”, Denmark) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EC) No 139/2004 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

¹ OJ L 24, 29.1.2004, p. 1.

I. THE PARTIES

3. International Business Machines Corporation (“IBM”) is active worldwide in the development, production, and marketing of a wide variety of IT solutions, comprising software and systems (personal computers, servers, storage systems). Through its Global Services business unit, IBM moreover provides a broad range of IT services including IT management and consulting services. IBM Danmark is the Danish subsidiary of IBM Nordic, a wholly owned subsidiary of IBM World Trade Corporation, which is in turn a wholly owned subsidiary of IBM.
4. Maersk Data is a wholly owned subsidiary of A.P. Møller-Maersk A/S (“A.P. Møller”), which is active worldwide in a variety of industry sectors, such as logistics and transportation. Maersk Data is active in supplying IT services mainly to A.P. Møller ([...] % of its sales) but also to third parties in a number of countries with the major part of its sales being achieved in the Nordic countries (Denmark, Finland, Norway and Sweden).
5. DMdata is a joint venture company owned by Maersk Data (45%), Danske Bank A/S (“Danske Bank”) (45%), and WM-Data (10%). DMdata became a joint venture entity when Maersk Data and Danske Bank merged their IT operations in 1997. DMdata provides IT management services. [...] % of its revenues stem from sales to its parent companies Danske Bank and Maersk Data.

II. THE CONCENTRATION

6. IBM Danmark acquires the sole control of Maersk Data by way of purchase of shares from A.P. Møller.² As part of the transaction Maersk Data will exercise an option to purchase WM-Data’s 10% shareholding in DMdata and then purchase Danske Bank’s 45% shareholding in DMdata.
7. The different parts of the transaction are linked by legal conditionality. The respective sale and purchase agreements contain provisions which make the above-mentioned parts of the transaction conditional upon each other. The signing of the different parts of the transaction occurred on the same day and the closing of the acquisition of Danske Bank’s 45% shareholding in DMdata will occur immediately following the closing of IBM Danmark’s purchase of Maersk Data. IBM Danmark’s consecutive acquisition of Maersk Data and DMdata can therefore be treated as a single concentration within the meaning of Article 3 of Council Regulation (EC) No 139/2004.³

² The business unit “Maersk Data Defense” is not part of the transaction and will therefore remain with A.P. Møller.

³ See recital 20.

III. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁴ (IBM: EUR 78,793.3 million, Maersk Data: EUR 347.9 million and DMdata: EUR 180.77 million in 2003). Two of the parties have a Community-wide turnover in excess of EUR 250 million (IBM: EUR [...] million, Maersk Data: EUR [...] million in 2003). Only Maersk Data and DMdata achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State (Denmark). The notified operation therefore has a Community dimension.

IV. COMPATIBILITY WITH THE COMMON MARKET

Relevant product markets

9. The parties consider that the relevant product market for the purpose of the proposed transaction comprises all IT services. In support of this contention, the parties argue that there would exist a high degree of supply side substitutability and that many suppliers are active across various service categories, industries or customers groups.
10. In previous decisions the Commission has considered the following alternative possible product market definitions.
11. First, the Commission has, as an alternative to considering an overall market for IT services, identified seven service categories.⁵ These comprise (i) hardware maintenance, (ii) software maintenance and support, (iii) consulting; (iv) development integration, (v) IT management services, (vi) business management services, and (vii) education and training.
12. Second, as an alternative to the seven service categories indicated above, previous decisions⁶ have considered the possibility of sub-dividing the IT services market on an industry basis (such as financial services, transport manufacturing, government etc.). The market investigation in the present case shows that while there are specific elements to some industries, there are also a number of common elements that may lead to some supply-side substitutability.
13. Another alternative market definition would be to distinguish between the supply of IT services to large corporations and to smaller organisations (i.e. small and medium-sized enterprises “SME”).⁷ This was supported by the results of market investigation in this case.
14. In any event, for the purposes of this case, it is not necessary to adopt a definitive definition of the relevant product market as the concentration would not significantly impede effective

⁴ Turnover calculated in accordance with Article 5(1) of the Regulation (EC) No 139/2004 and the Commission Notice on the calculation of turnover (OJ C 66, 2.3.1998, p. 25).

⁵ Case No COMP/M.2946 - IBM/PwC Consulting, Case No COMP/M.2609 - HP/Compaq, Case No COMP/M.1901 - Cap Gemini/Ernst & Young, Case No COMP/M.3555 - Hewlett-Packard/Synstar.

⁶ Case No COMP/M. 3555- Hewlett-Packard/Synstar , Case No COMP/M.3398 - Hewlett-Packard/Triaton.

⁷ A somehow similar approach has been taken by the Commission as regards application software in Case No COMP/M. 3216- Oracle/PeopleSoft, in which a distinction between the supply of high function software to large enterprises with complex functional needs and mid-market software products to others was made when defining the relevant markets.

competition, in particular as a result of creating or strengthening a dominant position, in any of the alternative market definitions considered.

Relevant geographic market

15. The notifying parties contend that the relevant geographic market is global or at least EEA wide.
16. In previous cases⁸ the Commission noted the continuing internationalisation of IT services. Nonetheless, the market investigation conducted in this case confirms that customers continue to value the supplier's ability to provide products and services tailored to local cultural, language and business particularities. Whilst certain IT services can be provided without geographic restrictions, customers consider a local presence as an important criterion when selecting an IT services provider. Therefore, the possibility of national or regional markets (i.e. a regional market comprising the Nordic countries: Denmark, Finland, Norway and Sweden) cannot be excluded.
17. In any case, for the purpose of the proposed transaction, the exact geographic market definition can be left open, since on any possible geographic market definition, the concentration does not raise competition concerns.

V. COMPETITIVE ASSESSMENT

18. The parties have submitted data for the year 2003 on the basis of their sales to third parties. Additionally, they have provided market data including Maersk Data's and DMdata's current sales to their parent companies (intra-group sales). These current intra-group sales will subsequently need to be computed into the calculation of market shares in order to adequately reflect the market position of IBM Danmark after the concentration. The market shares covering the relevant intra-group sales are referred to in brackets.

IT services segments

19. Considering the market of all IT services at the EEA-level, this concentration will add only [<1]% (<1 %) to IBM's current [0-10]% ([0-10]%) market share. When assessed for each of the seven service categories on an EEA level the concentration would lead to combined market shares below 15% in any of the categories with the only exception of IT management services for which the parties reach a combined market share of [10-20]% ([10-20]%) with Maersk Data/DMdata adding less than [0-10]% to IBM's share.
20. Appraised on a regional basis, that is to say on the basis of a market comprising the Nordic countries, only the market for IT management services would be affected. On this market the concentration would lead to a combined market share of [10-20]% ([20-30]%)⁹. Already before the merger IBM has the highest market share in this region displaying, however, only a very small distance to the next competitor (less than 3%). Even though this distance would

⁸ Case No COMP/M.3398 - Hewlett-Packard/Triaton, Case No COMP/M.3555 - Hewlett-Packard/Synstar.

⁹ IBM: [10-20]%; Maersk Data/DMdata: [0-10]% - Including Maersk Data's and DMdata's current intra-group sales: IBM: [10-20]%; Maersk Data/DMdata: [10-20]%

increase with the concentration, the market still exhibits a sufficient number of competitors who follow with market shares between [0-10] and [10-20]%. TietoEnator has a market share of [10-20]% ([10-20]%) and Fujitsu, EDS and KMD all range between [0-10] and [0-10]%, while the rest of the market is highly fragmented.

21. Based on national markets the concentration brings about affected markets in Denmark and Sweden with the following market shares:

IT services segments		Combined market shares in %	
		only external sales	incl. intra-group sales of Maersk Data/DMdata
Denmark	IT services	[10-20]	[20-30]
	IT management services	[20-30]	[40-50]
	IT consulting services	[20-30]	[20-30]
Sweden	IT management services	[20-30]	[20-30]

22. In Denmark the parties' combined market shares are [10-20]% ([20-30]%)¹⁰ for all IT services and [20-30]% ([40-50]%)¹¹ for IT management services. On both of these markets the parties are followed by the competitors KMD and CSC who exhibit market shares between [0-10] and [10-20]% on the market for IT services and between [10-20] and [10-20]% on the market for IT management services.
23. On the Danish market for IT consulting services the parties reach a combined market share of [20-30]% ([20-30]%)¹². CSC has a market share of around [10-20]% and Ementor around [0-10]%.
24. In Sweden the parties have a combined market share of [20-30]%¹³ on the market for IT management services. They are followed by EDS with [10-20]%, Telia Sonera with [0-10]% and Tieto Enator with [0-10]%.
25. IBM also exceeds market shares of 15% in IT services and IT management services in other EEA countries. However, Maersk Data/DMdata only have market shares of less than [<1]% in each of these countries. Due to these negligible increments these markets do not have to be considered any further.

¹⁰ IBM: [10-20]%, Maersk Data/DMdata: [0-10]% - Including Maersk Data's and DMdata's current intra-group sales: IBM: [10-20]%, Maersk Data/DMdata: [10-20]%.

¹¹ IBM: [10-20]%, Maersk Data/DMdata [10-20]% - Including Maersk Data's and DMdata's current intra-group sales: IBM: [0-10]%, Maersk Data/DMdata [30-40]%.

¹² IBM: [20-30]%, Maersk Data/DMdata: [<1]% - Including Maersk Data's and DMdata's current intra-group sales IBM: [10-20]%, Maersk Data/DMdata: [0-10]%.

¹³ IBM: [10-20]%, Maersk Data/DM data: [0-10]%, no change when Maersk Data's and DMdata's current intra-group sales are included.

IT services according to industries

26. As far as a market definition based on industries is concerned, the only affected market segments would be on a Danish market. The following market shares would arise for the affected segments:

Industries		Combined market shares in %	
		only external sales	incl. intra-group sales of Maersk Data/DMdata
IT services	Transport	[10-20]	[60-70]
	Finance	[10-20]	[30-40]
	Agriculture	[50-60]	[50-60]
	Services	[40-50]	[40-50]
	Process manufacturing	[30-40]	[30-40]
	Education	[20-30]	[20-30]
	Healthcare	[20-30]	[20-30]

27. For the transport and finance segments, market shares significantly higher than 15% only occur when the current intra-group sales of Maersk Data/DMdata are included. In both cases it holds true that Maersk Data/DMdata accounts for a very small market share increment of [0-10]% respectively [0-10]% when looking at external sales only and for high increments ([60-70]% for transport and [10-20]% for finance) when taking into account the relevant intra-group sales. The relatively high market shares in these industry segments therefore result from the fact that Maersk Data/DMdata's parent companies A.P.Møller and Danske Bank are active mainly in these industries and are supplied with IT services by their current subsidiaries. Without taking intra-group sales into account the market shares are clearly on a level which does not give rise to concerns.
28. High market shares mainly occur for the markets for IT services for agriculture, for services and for process manufacturing. In all of these cases, internal sales of Maersk Data/DMdata are not of relevance. Maersk Data/DMdata accounts for an increment in market shares of [50-60]% in the agriculture segment. Tieto Enator, WM-data and CSC follow with market shares between [0-10] and [10-20]%. In the services segment IBM exhibits [10-20]% while Maersk Data/DMdata has [30-40]%. Fujitsu, Emenator and Tele Danmark follow with market shares between [0-10] and [0-10]%. On a market for IT services for process manufacturing the increment brought about by Maersk Data/DMdata is [10-20]%. CSC, WM-data, T-Systems, Fujitsu and SAP all have market shares between [0-10] and [0-10]%. On the markets for IT services for education and for healthcare Maersk Data/DMdata have market shares between [10-20]%. In the healthcare segment CSC has [10-20]%, WM-data [0-10]% and HP [0-10]%. In the education segment the biggest competitors are Sun Microsystems and Fujitsu with [0-10]% each followed by Tele Danmark, SAS Institute and HP with [0-10]% each.

IT services for small/large customers

29. When assessed on the basis of a distinction between supplies to large customers and SMEs the concentration brings about affected markets only on the Danish market. The parties will reach the following combined market shares:

Customer size		Combined market shares in %	
		only external sales	incl. intra-group sales of Maersk Data/DMdata
Denmark	small	[10-20]	[10-20]
	large	[10-20]	[20-30]

30. In Denmark the parties will have a combined market share in IT services of [10-20]% ([10-20]%)¹⁴ for SMEs and [10-20]% ([20-30]%)¹⁵ for large costumers. Again, market shares significantly higher than 15% only occur when the intra-group sales of Maersk Data and DMdata are included.

Effects on competition

31. The vast majority of respondents to the market investigation (be they competitors or customers) did not express concerns as to the impact of the concentration on their ability to compete or obtain competitive offers in the course. This holds true whatever the market definition retained. Indeed, it appears that IBM will continue to face both multinational competitors such as HP, CSC or EDS and local competitors such as KMD, Ementor and Tieto Enator which are mainly active in the Nordics. Moreover, the market investigation confirmed that many IT service contracts are awarded by means of tenders and for limited periods of time, which imposes additional competitive constraints on market players who repeatedly have to undergo bidding processes. In addition to that the IT services market is a dynamic market where market service offerings change rapidly. Rivals with the right skills can swiftly react to changing customer demands and customers have the ability to play one supplier against another.¹⁶
32. It appears, moreover, that market shares can change rapidly. In particular on the very narrowly defined markets it has to be considered, that those markets usually are composed of some very big contracts and others which are smaller. Only a few wins can therefore materially change market shares. CSC, for example, recently managed to obtain a big contract in Denmark in the service segment of IT management services. If this contract was included into the market share calculations exhibited above, CSC's market share would increase by [0-10]% and the parties' market share would decrease by roughly [0-10]% (from around [40-50]% to [40-50]%) on the Danish market for IT management services¹⁷. This shows, as confirmed by the market investigation, that high market shares on these narrowly defined markets do not appear to hinder the ability of other competitors to win tenders.

¹⁴ IBM: [0-10]%, Maersk Data/DMdata: [0-10]% - Including Maersk Data's and DMdata's current intra-group sales
IBM: [0-10]%, Maersk Data/DMdata: [0-10]%

¹⁵ IBM: [10-20]%, Maersk Data/DMdata: [0-10]% - Including Maersk Data's and DMdata's current intra-group sales
IBM: [10-20]%, Maersk Data/DMdata: [10-20]%

¹⁶ Case No COMP/M.2946 - IBM/PwC Consulting.

¹⁷ Market shares including current intra-group sales of Maersk Data/DMdata.

33. In the course of the market investigation very few companies expressed concerns as to the impact of the concentration on certain market segments in Denmark. These were related to possible markets for IT-services for agriculture, for finance and for large customers. However, given the above-mentioned market characteristics, the current market shares of the parties in these markets do not genuinely reflect the possible competitive impact of the concentration. In view of the market situation outlined above (notably the dynamics of the IT sector, the nature of the bidding procedures and the resulting contestability of even strong market positions), these market shares are not likely to raise serious doubts as to the compatibility of the proposed transaction with the common market.
34. IBM is also active in the IT software and IT systems markets. As the Commission has previously stated¹⁸ customers are able to decouple the procurement of their IT services and hardware and software in order to ensure independent multi-sourcing. It is therefore considered unlikely that IBM could influence its IT services' customers hardware or software decisions, particularly when considering the limited impact of the transaction on IBM's IT services position. It is therefore unlikely that competition concerns will arise on either the services, hardware or software markets.
35. In view of the foregoing, it can be concluded that the proposed operation would not, in any of the markets considered, significantly impede effective competition in particular as a result of creating or strengthening a dominant position in the EEA or any substantial part of it.

VI. CONCLUSION

36. 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

Mario Monti
Member of the Commission
signed

¹⁸ Case No COMP/M.3555 - Hewlett-Packard/Synstar.