

***Case No COMP/M.3978 -
ORACLE / SIEBEL***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 22/12/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.2005
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3978 – ORACLE/SIEBEL
Notification of 18 November 2005 pursuant to Article 4 of Council
Regulation No 139/2004¹**

1. On 18 November 2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Oracle Corporation (“Oracle”, USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Siebel Systems Inc. (“Siebel”, USA) 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 EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. Oracle develops, manufactures, markets and distributes enterprise application software (“EAS”) and related services, including *inter alia* customer relationship management (“CRM”) software. Furthermore, Oracle provides infrastructure software and related services, including *inter alia* database software, application middleware and related services.

¹ OJ L 24, 29.1.2004 p. 1.

4. Siebel has its focus on CRM software and business intelligence software (“BI”) and related services.
5. Oracle intends to acquire sole control of Siebel by way of purchase of shares. It therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

II. COMMUNITY DIMENSION

6. The parties have a combined worldwide turnover of more than € 5.000 million (€ [...] million for Oracle (turnover achieved in fiscal year 2005²), € [...] million for Siebel (turnover achieved in 2004). The aggregate Community-wide turnover of each of at least two of the undertakings exceeds € 250 million ([...] million for Oracle; € [...] million for Siebel). Neither Oracle nor Siebel has achieved more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The concentration therefore has a Community dimension.

III. COMPETITIVE ASSESSMENT

A. RELEVANT MARKETS AND HORIZONTAL EFFECTS ON COMPETITION

CRM software solutions

a) Product market

7. The proposed transaction involves mainly the market for CRM solutions. In line with a recent Commission’s decision³, the notifying party submits that CRM solutions form a distinct product category of EAS as CRM offers specific and distinct functionalities intrinsically linked to a specific business function, namely customer relationship management⁴. CRM solutions ensure the automation of customer-facing functions such as sales force automation (“SFA”), marketing automation (“MA”), customer service and support (“CSS”), call-centres and all the other processes related to the automation of sales: order processing, contract management, information sharing, inventory monitoring and control, order tracking, sales forecast and analysis, etc.
8. The notifying party further submits that due to the nature of its application, users of CRM solutions see it as a competitive differentiator in their relations with their customers. As no “one-size fits all” CRM solution exists in the market place, a substantial number of vendors are capable of offering CRM solutions, providing customers with a wide choice between various technological and marketing approaches or combinations thereof. CRM solutions may vary across industries (also known as “industry verticals”), and there are vendors that specialise on a particular industry or focus on specific CRM functionalities, in order to carve out their niche. Nevertheless,

² Oracle’s financial year runs from 1 June to 31 May.

³ Case No COMP/M.3216 – ORACLE/PEOPLESOFT

⁴ Other distinct EAS categories are *inter alia* human resource management (HR) and financial management systems (FMS), forming the enterprise resource planning software (“ERP”), supply chain management (“SCM”), etc.

the parties submit that, for the purpose of market definition, these variations do not alter the conclusion that there is one market for CRM solutions, since all of the functionalities at issue serve the same purpose for the application user.

9. According to the notifying party, there are various deployment modes of CRM solutions. Apart from the traditional packaged CRM software, installed on the computer systems of the customer as stand-alone solution or as software integrated and run with other EAS, another form is the “host-based” deployment or known as “on demand” CRM solution. In that mode, the CRM solution is physically located outside the customer’s premises. The vendor, which designs, develops and maintains the software application, also hosts the application on their own servers and at the same time makes the application available to customers while they pay a subscription fee (monthly or on a pay-as-you-go basis) to have access to the application and thereby receiving the right to use the software. The parties submit that this “on demand” CRM solution model has been extremely successful in recent years regardless of the customer size and submit that industry analysts predict steady growth.
10. Furthermore, system integrators of enterprise application software offer the possibility to make custom-built CRM solutions and to integrate them into the overall EAS software architecture of individual clients. According to the notifying party, such alternative still represents a substantial part of the overall spends for CRM solutions.
11. The Commission’s market investigation (“the investigation”) confirmed that CRM solutions are a separate product market as opposed to other software categories or “pillars” within EAS. Furthermore, the investigation generally showed that the functionalities within CRM (such as SFA, MA, customer service and support, etc.) cannot be considered as stand-alone products, since these functions need to be highly integrated and interoperable with each other in order to provide customers with the required added value typical of seamless services.
12. The investigation also confirmed that segmentation across “industry verticals” is generally inappropriate. CRM “core” functionalities would be common across various sectors. The undeniable requirement to adjust the CRM software according to the industry specific needs would not alter the overall basic configuration of the CRM software and would not lead to identify separate product markets according to various industries, even if it is possible that some vendors (for historical reasons or similar) are more present in some sectors than in others.
13. As regards the CRM deployment mode, respondents to the investigation generally see host-based deployment to be a growing phenomenon, especially as regards CRM software reflecting lower requirements and simpler infrastructure and integration needs of customers. It however rarely appears to be a viable option at this stage as regards larger CRM installations responding to more complex needs and larger scale “enterprise” environments. In any event, most vendors of packaged CRM software appear to recognise this trend and hence offer their CRM solutions on a host-base mode as well.
14. Furthermore, the majority of respondents do not see custom-built CRM solutions as being an alternative to packaged CRM solutions. Even if they may offer a better fit for the customer’s individual requirements, CRM bespoke solutions are not necessarily a viable option especially due to the high integration (as well as maintenance and upgrade)

cost and knowledge required, compared to packaged CRM solutions. In addition, it would appear that packaged CRM software today available in the market is able to handle virtually all key needs of enterprises and still provide for sufficient flexibility to accommodate smoothly further customization needs.

15. In a previous case, M.3216 Oracle/PeopleSoft, the relevant market was found to be “high-function” solutions (i.e. software capable of catering for the performance requirements of large enterprises with complex functional needs) in the field of HR and FMS categories. The investigation showed that, as regards CRM software, this distinction (i.e. the “high-function” solution) is not necessarily relevant. This is *inter alia* because the level of customisation and use of CRM solutions is particularly high (even in respect of packaged software) for every possible layer of the customer spectrum; hence it would be rather artificial to try to differentiate precisely between products according to clearly defined customers requirements. At the same time, the investigation does not suggest that a segmentation of the CRM software market along the lines of products responding to the functional requirements of different customer categories would yield a different outcome in terms of competitive effects of the merger.
16. From the above, it can be concluded that for the purpose of the present case, the relevant product market to consider is the market for CRM solutions. It can be left open whether further segmentations (including CRM sub-segments, industry-specific software, various deployment modes, as well as “high-function” CRM software, etc.) yield separate product markets, since the proposed operation would give rise to no competition concerns under all definitions.

b) Geographic scope

17. The notifying party submits that the market for CRM solutions is worldwide. Manufacturers distribute essentially the same products to all their customers regardless of geographic location; transport costs, technical requirements and language-specific demand characteristics would not constitute significant limitations to cross-border trade; all major suppliers of CRM solutions offer their products to customers all over the world.
18. The investigation confirms that trade patterns of CRM solutions do not vary to any significant extent across different geographic regions of the world. Furthermore, the investigation gave no indications that CRM solutions would be made either specific for the EEA region or specific to any other world region. Local customisation is typically made for language reason, or through customised add-ons to meet specific local needs.
19. It can be left open whether geographic scope is worldwide or at least EEA-wide, since the proposed operation would give rise to no competition concerns under all definitions.

c) Horizontal effects as regards CRM solutions

20. Table 1 below provides an overview of the parties and their main competitors’ market shares according to three principal industry analyst sources and reports, namely Gartner, IDC and AMR, which survey the industry developments. Shares are on a worldwide

basis in the overall market for CRM solutions⁵. These do not include the custom-built CRM solutions.

Table 1 (CRM worldwide market shares)

CRM share Vendors	AMR			IDC**			Gartner		
	2002	2003	2004	2002	2003	2004	2002	2003	2004
Oracle*		[<5]	[<5]	[5-10]	[5-10]	[5-10]	[<5]	[<5]	[<5]
PeopleSoft		[<5]	[<5]	//	//	//	[<5]	[<5]	[<5]
Siebel		[10-20]	[10-20]	[10-20]	[5-15]	[5-15]	[15-25]	[10-20]	[10-20]
Combined		[15-25]	[15-25]	[15-25]	[10-20]	[10-20]	[20-30]	[15-25]	[15-25]
SAP		[10-20]	[10-20]	[5-10]	[5-10]	[5-10]	[10-20]	[10-20]	[15-25]
Amdocs		[<5]	[<5]	[<5]	[5-10]	[<5]	[<5]	[<5]	[<5]
Salesforce.com		[<5]	[<5]	[<5]	[<5]	[<5]	[<5]	[<5]	[<5]
Others		62.0	60.5	69.7	72.2	71.2	56.0	61.5	56.4
Total	100	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

*Based on the individual market shares of Oracle, PeopleSoft and JD Edwards.

**IDC does not provide individual market shares for Oracle and PeopleSoft

21. The merged entity would become the leading vendor of CRM according to each of the three sets of data with market shares between [15-25]% in 2004, followed by SAP (a large established vendor of various EAS solutions) with market shares between [5-20]% the same year. The distance with SAP tends to be greater when data (such as AMR and IDC) take into account the installed base (and the associated maintenance and upgrade revenues accruing to the vendor), thus also reflecting the historic market position of the vendor. Other competitors had much smaller market shares rarely higher than [<5]%, giving a picture of a largely fragmented market.
22. Table 2 below provides an overview of the worldwide market shares in terms of new license sales only⁶.

⁵ Oracle submitted market share data collected from three different industry analyst groups: Gartner, AMR and IDC. Gartner, as opposed to AMR and IDC, does not include maintenance fees but only new license sales in their market share picture. Therefore, Gartner's shares reflect the latest market dynamics, while AMR' and IDC' ones also reflect the vendor's historical position. In addition, none of the analysts takes into account custom-built solutions, often developed with the help of system integrators, such as IBM or Accenture.

⁶ New license sales is a measure also used in the case COMP/M.3216 – Oracle/PeopleSoft dealing with EAS.

Table 2: CRM solutions worldwide market shares: new license revenues

Vendor	2002	2003	2004
Oracle	[5-10]%	[5-10]%	[5-10]%
Siebel	[15-25]%	[10-20]%	[10-20]%
Oracle/Siebel combined	[20-30]%	[15-25]%	[15-25]%
SAP	[10-20]%	[10-20]%	[10-20]%
Salesforce.com	[<5]%	[<5]%	[<5]%
Sage	[<5]%	[<5]%	[<5]%
Amdocs	[<5]%	[<5]%	[<5]%
SAS Institute	[<5]%	[<5]%	[<5]%
Microsoft	[<1]%	[<1]%	[<5]%
Others	53.7%	58.3%	52.5%
Total	100%	100%	100%

Source: Gartner Group, CRM Software worldwide, 2002-2004

23. In terms of shares of sales for new CRM licenses, the new entity had a worldwide combined market share of approximately [15-25]% in 2004. The largest competitor, German SAP, achieved a market share of approximately [10-20]%. Other competitors had much smaller market shares of approximately [<5]% and less.
24. It is important to mention that Siebel's market share declined over the past years, in particular from 2002 to 2003, while the total market volume has remained stable between 2002 and 2004 around EUR 2.8 billion (and 2005 according to Gartner's forecast). As Table 2 shows, other competitors have gained market share in the last years, in particular SAP to a significant degree.
25. Furthermore, as already mentioned at paragraph 21, Table 1 and 2 show many competitors with small market shares, thereby confirming the fact that CRM solutions form a largely fragmented market. Altogether, besides the merged entity and SAP, the other players hold a market share of approximately 60% to 65%. At least some of these players have demonstrated to be a viable competitive force being able to increase their market share within a short period, even with a rather stable total market size. For instance, Salesforce.com, a recent entrant with its new approach on deploying CRM solutions to the market has almost doubled its market share in each period, from 2002 to 2003 and from 2003 to 2004, especially by selling its products to small and medium enterprises. Microsoft is also another recent entrant into the CRM space.
26. As to the EEA region, the notifying party provided in their notification market share data for the European region⁷ from Gartner. In this respect, the merged entity's market share

⁷ Gartner traditionally collects under the region "Europe" data from the EEA, Middle East and Africa. Since the two latter world regions represent only a fraction of sales within this large geographic region, these data appear suitable to represent approximately the sales revenues achieved in the EEA. IDC collects data as regards "Western Europe" (a definition that does not include all EEA member states).

in the EMEA region (Europe, Middle East, and Africa) would be around [15-25]%, with SAP being market leader with around [25-35]%.

27. As regards the market position in respect of individual functional segments within CRM (i.e. SFA, MA, CSS), the merged entity would appear to be stronger in CSS (with shares around [20-30]% worldwide) and SFA (with shares around [20-30]% worldwide), but the market position of SAP is always very significant (especially in the EEA, where it takes the lead). In addition, numerous other vendors are also present with limited shares of sales (Sage, Amdocs, Microsoft, Dendrite, Salesforce.com, RightNow, etc.).
28. Concerning shares by industry segment, the combined market share of the new entity is equal or below 25% in most industry segments, except for communications ([30-40]%) and financial services ([25-35]%). In both segments, many smaller competitors have market shares between approximately [<5]%, while the investigation has not suggested that the merger would give rise to any competition concern. In particular, with respect to “industry verticals”, respondents to the investigation take the view that no clear market leader exists as regards industry specific CRM solutions. While Siebel has a footprint in many sectors, there appears to be in each sector at least some smaller players that (may) belong to the group of market leaders. Moreover, dynamic market characteristics, driven by changing customers’ need favours entry of smaller players. This furthermore prevents stronger players from maintaining their market position without providing even better solutions for their customers.
29. For the same token, the investigation has not provided any indication that the merger would adversely affect competition in any possible upper-end CRM market (i.e. encompassing possible CRM solutions capable of responding to the performance requirements of large customers with complex functional needs), or as regards a CRM mid-market.
30. Overall, the investigation gave no indication as to whether the merged entity would be in a position to successfully impose restrictions on customers as to the choice, variety or interoperability of CRM solutions. In view of the fact that the CRM solutions market is of very fragmented nature, customers took the view that they would continue to have sufficient choice in the CRM space to find suitable alternatives.
31. In view of the above, it can be concluded that the proposed operation would give rise to no competition concerns in the market for CRM solutions under all examined definitions.

Customer Data Integration (“CDI”)

32. The notifying party further submit that distinct from CRM is CDI as it focuses on the combination of technologies, processes and services required to develop and maintain accurate, timely and complete views of the customers across multiple channels, business lines and companies whereby multiple sources of customer data in various applications find their appropriate aggregation.
33. The market investigation showed that CDI software could be seen alternatively as a separate category, which responds to autonomous decision cycles of the enterprise, or as a tool to be inherently integrated with CRM, in order to enable the sharing of customer data across the business. In any event, the issue whether CDI constitutes a distinct

market, or is a segment of the CRM market⁸ can be left open since the level of activities of the parties do not give rise to competition concerns with any of the proposed delineations.

34. According to an analyst report⁹, the parties to the transaction would have an aggregate worldwide market share of less than [5-15]% if CDI were considered a distinct product market. Many vendors of different kind¹⁰ are active on this market, however, with no clear market leader as the market is characterised by a very fragmented structure. In view of the above, it can therefore be concluded that CDI raises no competition concern as to the horizontal overlap of Oracle and Siebel's activities in this market.

Businesses Intelligence (“BI”)¹¹

35. According to the notifying party, a further distinct market are BI solutions as used to assist in the analysis of current and historical customer information and which include applications and technology for collecting, storing, consolidating, assessing and analysing data to help decision makers in their business decisions. BI solutions represent an aggregate function of business data rather than a management tool to manage business accounts like in CRM. The market investigation showed that BI software could be considered as a separate market, which responds to autonomous decision cycles of the enterprise, going beyond CRM functionality. However, the issue whether BI constitutes a distinct market, or is a segment of the CRM market can be left open since the level of activities of the parties do not give rise to competition concerns under any of the proposed delineations.
36. The parties to the transaction would have an aggregate market share of less than [5-10]% worldwide, while in the EEA the activities of Siebel are almost insignificant. In view of this limited combined market share, it can therefore be concluded that the merger raises no competition concern as regards a possible BI market.

B. CONGLOMERATE ISSUES

37. Oracle is also active in other parts of the software market, namely as regards Relational Database Management Systems (“RDBMS”) and application middleware¹². Siebel has no activities as regards databases, hence there is no horizontal overlap.
38. With respect to RDBMS, Oracle has a market share of approximately [25-35]%¹³ (Gartner), or [35-45]% (IDC), on a worldwide level¹⁴. The largest competitors of Oracle

⁸ The Commission is verifying this question in its market investigation with competitors and customers.

⁹ CDI Institute: Market Review and Forecast 2005-2006.

¹⁰ Enterprise suite vendors, e.g. SAP, Oracle; industry-specific CRM vendors, e.g. Siebel, Dendrite; CDI specific vendors, e.g. DWL, Initiate Systems; application integration vendors, e.g. ObjectStar, SeeBeyond Technologies.

¹¹ Business analytics is another well-known expression for BI software.

¹² This product category comprises *inter alia* application servers, application infrastructure software and open standard-based web-services software.

¹³ Gartner's report on RDBMS new license sales.

are IBM with a market share of approximately [30-40]% (Gartner), or [25-35]% (IDC) and Microsoft with about [15-25]% (Gartner), [10-20]% (IDC). Oracle's CRM offering is part of Oracle's e-Business suite offering, an integrated EAS package. It means that Oracle's CRM product only runs on the Oracle's database. On the contrary, Siebel's CRM solutions run on multiple databases, i.e. on both Oracle and non-Oracle databases.

39. Respondents to the investigation have taken the view that no credible elements exists inducing to believe that post-merger Oracle's possible attempt to bundle the Siebel's CRM solutions with the Oracle database would give rise to harmful effects on competition. Firstly, the larger part of the market uses non-Oracle databases and the customer chooses the CRM solution based on the user requirements and not necessarily based on whether the CRM solution would fit into its installed software architecture (i.e. the database etc.). Secondly, the potential increase in Oracle's database market share (because of a successful bundling strategy) would not be appreciable. In addition, due to the heterogeneity of solutions available in this market, which appear to interoperate fully with other software solutions through standard interfaces, the merged entity is unlikely to impose or even introduce restrictions, in particular on interfaces or choice of underlying software such as databases, without facing the risk that customers move away from their CRM offerings.
40. As regards application middleware, Oracle has a worldwide market share of approximately [5-10]% (IDC). Siebel offers application middleware solutions but enjoys less than [<1]% market share. Competitors are IBM with a market share about [30-40]% (IDC) and BEA Systems with [10-20]% (IDC). Since open standards are the key feature in application middleware to enable interoperability between the various layers in a complex software stack, Oracle's limited position would not enable the merged entity to impose restrictions on interoperability for its CRM solutions. Therefore, the proposed concentration gives no rise to competition concern in this respect.

¹⁴ As already mentioned, Gartner data focus on new sales, whilst IDC also encompass in its data the installed base.

IV. CONCLUSION

41. 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
Neelie Kroes
Member of the Commission