

***Case No COMP/M.4881 -
DELL / ASAP***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 09/11/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 09/11/2007

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4881 – Dell / ASAP
Notification of 3 October 2007 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 03/10/2007 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "Merger Regulation") by which Dell Inc. ("Dell", USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of ASAP Software Express Inc. (USA), ASAP Software SAS (France), 26ème Avenue SAS (France) and SCI Simon (France), (altogether "ASAP").
2. After examining the notification, the Commission found that the notified transaction fell within the scope of the Merger Regulation and that it did not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

I. THE PARTIES

3. Dell is a global manufacturer and retailer of computing hardware (including notebook and desktop personal computers ("PCs"), workstations and servers, networking products and storage products), imaging solutions (including printers) and displays, software and services. Dell's business is primarily based on supplying products and services directly to private and business end-customers, rather than selling via third party resellers.

¹ OJ L 24, 29.1.2004 p. 1.

4. ASAP's core business is the sale and distribution of third-party software (primarily Microsoft) and own-developed software. ASAP has also a limited activity in hosted IT asset tracking service and the sale of third-party computing hardware.

II. THE OPERATION AND THE CONCENTRATION

5. The ASAP business is currently operated by four separate unit businesses - ASAP Software Express Inc, ASAP Software SAS, 26ème Avenue SAS and SCI Simon - under the ultimate control of Corporate Express N.V. Pursuant to the stock purchase agreement signed by the parties on 01/08/2007, Dell will acquire, directly or through its wholly-owned subsidiaries, the whole of the issued share capital of the four entities from Corporate Express N.V.. Following completion of the transaction, the companies associated with the ASAP business will become wholly-owned indirect subsidiaries of Dell.
6. Dell will therefore acquire sole control of ASAP. Hence the operation constitutes a concentration within the meaning of Article 3 of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The notified concentration does not have a Community dimension within the meaning of Article 1 of the Merger Regulation².
8. However, on 28 August 2007, the notifying party informed the Commission in a reasoned submission pursuant to Article 4(5) of the Merger Regulation that the concentration was capable of being reviewed under the national competition laws of five Member States: Austria, Czech Republic, France, Germany and Ireland³ and requested the Commission to examine it. None of the Member States competent to examine the concentration indicated its disagreement.
9. Therefore the concentration is deemed to have a Community dimension pursuant to Article 4(5) of the Merger Regulation.

² Dell achieved a world-wide turnover of € 45 301 million in 2005 and a Community-wide turnover of € [] million in 2006. Dell's 2005 worldwide turnover figure is based on its financial statement covering the period between 31 January 2005 and 3 February 2006 and it has not yet finalised its financial statements for the fiscal year ended on 3 February 2007. Dell's 2006 Community wide turnover figure is based on preliminary results. ASAP achieved a world-wide turnover of € 813 million and a Community-wide turnover of € [] million in 2006. ASAP does not achieve a turnover exceeding € 25 million in each of at least three Member States

³ During the procedure the notifying party informed the Commission that the concentration was also reviewable under Bulgarian competition law. The case-team has immediately informed the Bulgarian Competition Authority of this issue, which then confirmed that it had no objection to the Commission's examining the concentration.

IV. COMPETITIVE ASSESSMENT

A. Relevant markets

1. Relevant product market

1.1 Retail sale of computing hardware

10. Computing hardware include all devices that enable the user to perform various data manipulation tasks by means of different software applications. The notifying party argues that further delineation of the computing hardware retail market according to various product types (desktops, notebooks, work stations, X86 servers, etc.) would not be justified in the present case because the skills and facilities needed to sell one type of such product is essentially the same as those needed to sell another. Dell sells the majority of its computing hardware directly to end-users via the Internet. Nevertheless, it agrees with the Commission practice according to which the direct distribution channel of computing hardware should be considered together with the traditional indirect distribution channel as part of an integrated retail market for computing devices⁴.
11. In previous cases, the Commission has further subdivided the market for the up-stream supply of computing hardware in particular into personal computers, handheld devices and different categories of servers. The Commission, however, has it has left it open whether, on the level of wholesale distribution of IT products, there is one market or whether it should be further subdivided.
12. In fact, considering that ASAP's market share on the computing hardware retail market is minimal and that further segmentation would make no difference to the assessment of the present case, it is not necessary to decide whether this market should be further segmented.

1.2 Sale of packaged software

13. This market is considered as it is in a potential vertical relationship with the downstream market for sale of computing hardware. The notifying party submits that, according to IDC's Software Taxonomy 2007, the term packaged software is used to describe the sale of all commercially available software, regardless of delivery medium, provided that it is not sold on a "custom" basis. IDC breaks down the total packaged software market into three segments (applications; application development and deployment; system infrastructure software) and the latter three into 79 individual functional markets. Both Dell and ASAP resell third-party packaged software to end-users (mainly Microsoft's products) across all the three segments mentioned above.
14. Besides, both of them sell a limited number of own-developed software applications. This latter category of software is not sold on standalone basis, rather, Dell supplies these software exclusively to its customers with its own devices, whilst ASAP's own software is designed to help its customers manage their purchases of third-party software through ASAP. Considering the fact that the parties' activity in selling own-developed software does not seem to be interchangeable or substitutable due to

⁴ See Case M.2609 – *HP/Compaq*.

substantially different products' characteristics and intended use, for the assessment of the present transaction it is considered that the relevant product market is the overall sale of packaged software. Furthermore, since the overlap is limited in scope and, in any event, the assessment of the effects of the merger would not change in the present case, it is not necessary to define whether all categories and/or sub-categories of packaged software would constitute separate product markets or one market.

2. Relevant geographic market

2.1 Retail sale of computing hardware

15. The notifying party argues that the retail supply of computing devices is closely related to the upstream manufacturing and wholesale market which is proposed to be worldwide in terms of geographic scope. In previous cases the Commission has found that the relevant geographic scope of the PC market, which is a more narrowly defined sector of computing hardware, is at least EEA-wide since transport costs are small relative to price, products show similar specifications, many significant PC suppliers have activities in all Member States and in all product segments, and PC suppliers charge similar prices across Member States⁵. The notifying party believes that a similar approach should be taken in assessing the retail sale of computing hardware, should the Commission find that the market is narrower than worldwide. However, the Commission, in a previous case⁶, has gathered indications of a national as well as a wider than national dimension of the market. Therefore it cannot be ruled out that the market for retail sale of computing devices is national in scope.
16. In any case, the exact geographic market definition may be left open in the present case as, under any possible definition, it does not affect the competitive assessment.

2.2 Sale of packaged software

17. According to the notifying party, the geographic scope for packaged software is worldwide and in any event at least of EEA-wide scope. It also submits that the software products sold by Dell and ASAP are developed and sold on a worldwide basis and they would have no country specific customisation with respect to functions, except for the language.
18. In previous decisions, the Commission left open the question of the geographic scope of software markets⁷. It has been noted that some software applications were still provided to customers on a national basis.
19. All in all, it appears that the exact geographic market definition may be left open in the present case since under all alternative geographic market definitions, the transaction will not raise competition concerns.

⁵ See Case M.2609 – *HP/Compaq* and Case M.1120 – *Compaq/Digital*.

⁶ See Case COMP/M2223 – *Getronics/Hagemeyer/JV* (relating to the distribution of mid-range and entry level servers).

⁷ See Case IV/M.336 - *IBM France/CGI*, Case IV/M.1580 - *CAI/PLATINUM*.

B. Assessment

1. Horizontal issues

20. The assessment of the horizontal effects of the concentration is focused on the narrowest possible market definition for retail sale of computing devices i.e. at national level.
21. The parties' combined market share in the markets considered above gives rise, technically, to affected markets only in the retail sale of computing hardware in Belgium, the Netherlands, Sweden and the UK as shown in the below chart⁸:

EEA-State	Value (EUR m)			Share (%)		
	Dell	ASAP	Market Total	Dell	ASAP	Combined
Belgium	[]	[]	1 302.0	[15-25]	[<1]	[15-25]
Netherlands	[]	[]	2 539.0	[20-30]	[<1]	[20-30]
Sweden	[]	[]	1 630.0	[10-20]	[<1]	[10-20]
UK	[]	[]	9 600.0	[20-30]	[<1]	[20-30]
Total EEA	[]	[]	50 215.0	[10-20]	[<1]	[10-20]

22. The increment of the market share brought about by the transaction in these four EEA-States is negligible. Furthermore, the presence of other competitors such as HP (whose market share is [20-30]% in Belgium and the Netherlands, [20-30]% in the UK and [30-40]% in Sweden), Acer (whose market share is [10-20]% in Belgium and the Netherlands, [0-10]% in the UK and [0-10]% in Sweden), Toshiba (whose market share is [0-10]% in the Netherlands and [0-10]% in the UK) and Fujitsu/Fujitsu Siemens (whose market share is [0-10]% both in Belgium and Sweden)⁹, demonstrates that the structure of the markets affected will still wield a competitive constraint on the merged entity.
23. It can therefore be concluded that the transaction does not raise serious doubts as to its compatibility with the Common Market with regard to the horizontal overlaps in the market for retail sale of computing devices.

2. Vertical issues

24. The notifying party points out that because software is run on hardware devices it may be possible broadly to identify a vertical relationship between hardware and software, although it does not view that Dell's and ASAP's respective activities are vertically

⁸ Notifying party' estimates. The table shows only the Member States in which the combined entity's market share exceeds 15%. In Ireland, Denmark and Malta Dell's market share is, respectively, [30-40]%, [10-20]% and [10-20]%, but ASAP is not active in any of these three markets.

⁹ Source: IDC.

related. In this respect, the only technically affected market would be Ireland, where Dell's market share in the retail sale of computing hardware is [30-40]% and ASAP's market share in sale of packaged software is [<5]¹⁰.

25. As regards the possible vertically affected market in Ireland, due to the absence of any ability and incentive for foreclosure, as well as the parties' respective positions in the competitive structure, the Commission considers that the concentration will not result in any anti competitive effects which would constitute a substantial impediment of effective competition.
26. It can therefore be concluded that the transaction does not raise serious doubts as to its compatibility with the Common Market with regard to the vertical overlaps in the market for retail sale of computing devices and sale of packaged software in Ireland.

V. CONCLUSION

27. 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

¹⁰ Source: parties' estimates and IDC.