

***Case No COMP/M.5128 -
NORDIC CAPITAL /
TIETOENATOR***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 06/05/2008

***In electronic form on the EUR-Lex website under document
number 32008M5128***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06-V-2008

SG-Greffe(2008) D/203022

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

Dear Sir/Madam,

Subject: Case No COMP/M.5128 – Nordic Capital/ TietoEnator

Notification of 28.03.2008 pursuant to Article 4 of Council Regulation No 139/2004¹

1. On 28.03.2008, 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 the undertakings Nordic Capital VI Limited and Nordic Capital VII Limited, belonging to the Nordic Capital group ("Nordic Capital", Jersey), acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking TietoEnator Oyj ("TietoEnator", Finland) by way of public bid announced on 20.03.2008.

I. THE PARTIES

2. Nordic Capital is a private equity company which invests in large and medium-sized companies, predominantly in the Nordic region. Nordic Capital controls the Swedish company Aditro², which is active in the provision of Information Technology services ("IT services") and Enterprise Application Software ("EAS").
3. TietoEnator is a provider of IT services active in a number of countries. Its primary geographic markets are the Nordic countries, namely Finland, Sweden, Norway and Denmark.

¹ OJ L 24, 29.1.2004 p. 1.

² Aditro is the new name of the merged companies Tradimus and Personec. Personec provided Business Process Outsourcing services and was a part of TietoEnator until the end of 2006 when it was acquired by Nordic Capital.

II. THE OPERATION

4. The notified operation consists of the acquisition by means of a tender offer of all the issued and outstanding shares and stock options in TietoEnator via a special purpose vehicle solely controlled by Nordic Capital. The offer period for the tender offer has commenced on 02.04.2008 and is set to expire on 9.05.2008. The proposed operation therefore consists in the acquisition of sole control over the whole of TietoEnator by Nordic Capital.
5. The operation therefore constitutes a concentration within the meaning of Article 3(1)b of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The transaction has a Community dimension pursuant to Article 1(2) of the Merger Regulation. The parties have a combined aggregate worldwide turnover in excess of € 5 000 million³ (Nordic Capital € [...] million; TietoEnator € [...] million) and a Community-wide turnover in excess of € 250 million (Nordic Capital € [...] million; TietoEnator € [...] million). None of the parties achieves more than two thirds of its Community-wide turnover in one Member State.

IV. THE RELEVANT MARKETS

7. The proposed transaction has an impact on the markets for IT services and enterprise application software ("EAS"), mainly in the Nordic countries, where both Aditro and TietoEnator are active. In addition, the proposed transaction entails a vertical link between the activities of Aditro in the upstream market for the supply of EAS and Aditro's and TietoEnator's activities in the downstream market for the provision of IT services.

A. Relevant product markets

IT services

8. The notifying party submits that the relevant product market comprises all IT services. According to the notifying party, a narrower segmentation of the IT services market based on the type of services provided is not justified, as all these services tend to be offered together, or can at least be provided by all the major IT services companies. Therefore there would be a high degree of supply-side substitutability, as most IT service providers can offer the full range of IT services, depending on the needs of their customers.
9. In previous decisions⁴, the Commission considered a segmentation of the market for IT services based on the categories proposed by the IT analyst Gartner⁵. Gartner's

³ 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, p.25).

⁴ See inter alia case COMP/M.4871, *KPN/Getronics*, para. 8.

current segmentation comprises the following six categories: (i) hardware maintenance and support, (ii) software maintenance and support, (iii) consulting, (iv) development and integration, (v) IT management, and (vi) process management.

10. Besides a possible definition of the product market along service categories, in previous decisions⁶ the Commission also considered the possibility of sub-dividing the market for IT services by industry verticals (such as *e.g.* agriculture, communications, financial services, transport, process manufacturing, services, etc.) and by customer size (i.e. large corporations vs. small and medium-sized enterprises ("SMEs")).
11. However, in all previous cases, the exact delineation of the relevant product market was left open.
12. The market investigation carried out in the present case among customers and providers of IT services active in the Nordic countries was not conclusive concerning the definition of the relevant product market along service categories. While a majority of customers and suppliers indicated that all IT service categories belong to a single product market, a significant number of respondents outlined that hardware support, software support, consulting, and process management constitute separate product markets as they require specific skills and expertise. Respondents also indicated that, although large providers of IT services are usually able to supply all the different types of services, there are smaller players focusing on one or few service categories. It would therefore appear that supply-side substitutability among the different categories of IT services would not be sufficient to warrant the definition of a single product market encompassing all IT service categories.
13. Furthermore, the market investigation in the present case did not support a delineation of the relevant product market along industry verticals or by customer size. Although customers' needs with regard to IT services might differ to some extent depending on their size and the nature of their business activities, a large majority of respondents to the market investigation indicated that such delineations would not be appropriate as they would fail to take account of supply-side substitutability. Some respondents also outlined that such delineations would be subjective by nature.
14. For the purpose of this decision, the exact definition of the market for IT services can be left open since under any possible alternative market delineation the proposed transaction does not raise competition concerns.

Enterprise Application Software

15. In the Oracle/PeopleSoft decision⁷, the Commission considered that the Enterprise Application Software market comprises several distinct software categories, including Enterprise Resource Planning ("ERP"). Within the ERP category, three segments were

⁵ Gartner is an industry analyst company that provides market data, research and analysis on the information technology (IT) sector. As noted in several Commission decisions, the IT industry widely recognises and relies upon Gartner's classifications.

⁶ See inter alia case COMP/M.4871, *KPN/Getronics*, para. 7 and case COMP/M.3571 – *IBM/MaerskData/DMdata*, para. 12 and 13.

⁷ Case No COMP/M. 3216.

identified, namely (i) Financial Management Systems ("FMS"); (ii) Human Resources ("HR"); and (iii) Enterprise Project Management ("EPM"). Furthermore, each of these three segments was further subdivided into two sub-segments, each constituting relevant product markets, namely (i) high-function solutions (designed for large enterprises); and (ii) mid-market solutions (for smaller companies).

16. The notifying party does not oppose such market definition. The market investigation did not provide conclusive indications as to whether FMS and HR high-function and mid-market solutions constitute separate relevant product markets. However, for the purpose of the present decision, the exact definition of the market for EAS can be left open as the result of the competitive assessment will not change under any alternative possible market definition.

B. Relevant geographic markets

IT services

17. The notifying party submits that the market for IT services is worldwide, or at least EEA-wide. Most suppliers of IT services would make their services available to customers on a worldwide, or at least on an EEA-wide basis. All major competitors in the IT services market would be active on a European scale, and some even worldwide. Likewise, there would tend to be European-wide demand/tendering procedures from large companies for the above-mentioned IT services. Therefore, from an economic perspective, the IT services market would be at least European in scope.
18. In previous Commission decisions, the exact geographic definition of the market(s) for IT services has been left open. While acknowledging the continuing internationalisation of IT services, the Commission nevertheless noted that customers continue to value the supplier's ability to provide IT services tailored to local cultural, language and business particularities⁸.
19. The market investigation carried out in the present case largely confirmed that, although the IT services that do not require on-site support can be provided off-shore, language skills and strong local presence constitute important elements in the selection of IT service providers by most of the customers located in the Nordic countries. Furthermore, the market investigation revealed that even when agreements covering multiple jurisdictions are concluded between Nordic customers and IT service providers, they are complemented by specific national provisions, concerning in particular the services to be provided and the pricing conditions.
20. For the purpose of this decision, the exact geographic definition of market(s) for IT services can be left open as under any possible alternative definition (EEA-wide, regional comprising the Nordic countries or national) the proposed transaction does not raise competition concerns.

⁸ See *inter alia* case COMP/M.4871, *KPN/Getronics*, para. 13 and 14, and case COMP/M.3571 – *IBM/MaerskData/DMdata*, para. 16.

Enterprise Application Software

21. The notifying party submits that the market for Enterprise Application Software is at least EEA-wide in scope. According to the Commission precedent in *Oracle/PeopleSoft*, the markets for HR and FMS high-function solutions are worldwide in scope. As regards mid-market HR and FMS solutions, the geographic scope of the market was left open. However, the Commission noted that the markets for HR and FMS solutions adapted to the needs and purchased by mid-sized companies may be more restricted in geographic scope than the markets for high-function FMS and HR solutions. Indeed, customers of mid-market HR and FMS solutions are not global corporations, but are more likely to be smaller companies, usually focusing on a more limited geographical area in which they also procure their software. Accordingly, vendors of FMS and HR mid-market solutions have a more regional focus: they do not usually sell their applications directly via a direct sales force, as the suppliers of high-function HR and FMS solutions do, but via partners and resellers with a limited geographic coverage. The result of this is that the strength of the vendors in a certain territory depends to a considerable extent on the respective resellers chosen in that territory⁹.
22. The market investigation carried out in the present case confirmed that the market for HR and FMS high-function solutions are at least EEA-wide in scope, but was not conclusive as regards the geographic scope of the markets for HR and FMS solutions for mid-sized companies.
23. The exact geographic definition of the market(s) for EAS can be left open in the present case as under any possible alternative definition (EEA-wide, regional comprising the Nordic countries or national) the proposed transaction does not raise competition concerns.

V. PRELIMINARY ASSESSMENT

A. Horizontal assessment

IT services

24. The table below sets out the market shares of Aditor, TietoEnator and their main competitors in the IT service markets where the proposed transaction will lead to a combined market share of more than 15%:

⁹ Case No COMP/M. 3216, *Oracle/PeopleSoft*, para 177.

% in value, 2006		TietoEnator 10	Aditro	Combined	Competitors
Europe	Total market	[<1]	[<1]	[<1]	
Nordic area	Total market	[5-10]	[0-5]	[0-10]	LogicaCMG [5-10]; EDB Bus [0-5]; IBM [0-5]; Fujitsu [0-5]; HP [0-5]
	Software support	[10-20]	[0-5]	[20-30]	LogicaCMG [5-10]; TeliaSonera [0-5]; HP [0-5]; SAP [0-5]
Finland	Total market	[20-30]	[0-5]	[20-30]	Fujitsu [10-20]; LogicaCMG [5-10]; HP [0-5]; Accenture [0-5]
	Software support	[10-20]	[0-5]	[10-20]	LogicaCMG [5-10]; Fujitsu [0-5]
	Consulting	[30-40] ¹¹	[<1]	[30-40]	LogicaCMG [20-30]; Fujitsu [10-20];
	Development & Integration		absent	[30-40]	Fujitsu [5-10]; LogicaCMG [5-10]; Accenture [0-5]; Capgmini [0-5]
	IT Management	[20-30]	[0-5]	[25-35]	Fujitsu [30-40]; HP [5-10]

Source: Nordic Capital & TietoEnator.

25. It can be concluded from the above market shares that the proposed transaction will not have a significant impact on competition under any geographic and product market definition. Indeed, accretions of market shares do not exceed [<2] % in any market or sub-segments, with the exception of the software support sector, where the increment is [<5]% in the Nordic area and [<5]% in Finland. However, even in this sector, the combined market shares of the parties still allow excluding competition concerns.
26. Moreover it appears that TietoEnator and Aditro serve different types of customers and provide different services within the market segments where they are both active. Even though TietoEnator and Aditro are in some instances active in the same sub-segments as defined by the industry analyst Gartner, they are not close competitors within any of these segments. As confirmed by the market investigation, TietoEnator and Aditro are not close competitors, and the proposed transaction will therefore not lead to the removal of a significant competitive constraint on any of them.
27. Finally, it must be noted that a number of large IT service providers, including IBM, LogicaCMG, CapGemini, Accenture and Hewlett-Packard, are all present in each of

¹⁰ All market shares provided by TietoEnator, except for the Nordic area for which TietoEnator's market shares are based on estimates by Nordic Capital.

¹¹ TietoEnator has not been able to submit separate market shares for Software support and Development & Integration. Nordic Capital estimates that TietoEnator's share of the Consulting and Development & Integration market segments were [20-30]% and [20-30]% respectively in 2006.

Finland, Sweden, Norway and Denmark and will be able to ensure effective competition in the overall IT services market as well as in its possible sub-segments.

Enterprise Application Software

28. The table below sets out the market shares of Aditro, TietoEnator and their main competitors in the EAS market and its sub-segments where either of the parties holds a market share above 15%:

% in vendor shares 2006		TietoEnator	Aditro	Combined	Competitors
Western Europe	Software application	[<1]	[<1]	[<1]	
Nordic area	Software application	[<1]	[<5]	[0-5]	
Nordic area ERP Applications – financial applications, 500-999 - Employee Segment			[10-20]	[10-20]	Visma [20-30]; Microsoft [20-30]; Hogia [10-20]; Mamut [10-20]
Finland	Software application	[<1]	[5-10]	[5-10]	
Finland ERP – financial applications, 500-999 - Employee Segment			[20-30]	[20-30]	Visma [20-30]; Logica [20-30]; Microsoft [10-20]
Sweden	Software application	[<1]	[0-5]	[0-5]	
Sweden ERP – Financial applications			[10-20]	[10-20]	SAP [10-20]; Visma [5-10]; Oracle [5-10]
Sweden ERP – financial applications, 500-999 - Employee Segment			[20-30]	[20-30]	Visma [10-20]; Hogia [20-30]; Microsoft [10-20]
Sweden ERP – HCM applications ¹² , 500-999 - Employee Segment			[20-30]	[20-30]	
Sweden ERP – Financial applications, 1,000 Employee Plus Segment			[20-30]		Sap [20-30]; Oracle [10-20]; Lawson [5-10]
Sweden ERP – HCM applications, 1,000 Employee Plus Segment			[10-20]		SAP [40-50]; Oracle [20-30]; Lawson [0-5]

Source: IDC

29. As is evident from the table above, there is no substantial overlap of activities between TietoEnator and Aditro.

¹² According to the definition provided by IDC, Human capital management (HCM) applications software automates business processes that cover the entire span of an employee's relationship with the corporation (as opposed to the department or group to which the employee belongs) as well as management of other human resources used by the enterprise (e.g., contingent labor, contractors, and consultants), including — increasingly — human resources employed by suppliers and customers.

30. Aditro is a provider of financial, payroll and HR management software, with a particular geographic strength in the Nordic countries. Aditro's ERP software applications therefore cover FMS and HR applications. In light of the Commission's product market definition in *Oracle/PeopleSoft*, Aditro's ERP software is to be classified as mid-market HR and FMS solutions that are adapted to the needs of and generally purchased by mid-size companies. This is evidenced by the fact that most of its customers only carry out their business either in Sweden or in Finland or in the Nordic region.
31. In contrast TietoEnator has a rather limited software offering. According to IDC, none of its software falls into the category of ERP as defined by the Commission in the *Oracle/Peoplesoft* decision. This explains why no sales or market shares are reported for TietoEnator in any ERP market segments in the above table.

B. Non-horizontal assessment

32. FMS and HR solutions can be used in combination with all IT services except hardware maintenance & support services in the case of HR software, and all IT services except hardware maintenance & support services in the case of FMS software. This means that at least in theory the software supplier can have an influence on the selection of the IT service provider, or conversely that the provider of IT services can have an influence on the selection of the software supplier.
33. As noted above, the parties' combined market share exceeds 25% in the Finnish market for FMS mid-market solutions and the Swedish market for HR mid-market solutions as well as in several segments of the IT services market in Finland, namely consulting, development and integration and IT management. Therefore the proposed transaction gives rise to vertically affected markets.

Foreclosure of rivals in FMS or HR mid-market solutions in Finland

34. It appears unlikely that the merged entity could foreclose competitors in the Finnish market for FMS or HR mid-market solutions.
35. Firstly, Aditro's FMS and HR software is generally more adapted to the needs of smaller and mid-sized companies, whereas TietoEnator provides ERP-related IT services mainly to larger organisations on ERP-platforms of larger, full-range ERP software providers. Due to these differences in the customer bases of Aditro and TietoEnator the scope for Aditro to leverage its market position in FMS and HR mid-market solutions in Finland into the Finnish IT services market is limited.
36. Moreover, customers typically purchase ERP software and related IT services separately. The market investigation showed that customers tend to select the ERP solution that best serves their needs in the first place, and then, having selected the respective ERP solution, turn to the question of selecting an IT service provider to service that ERP software. This applies to all types of IT services that could be provided in relation to FMS and HR solutions, namely software support, consulting, development & integration and IT management, with the possible exception of process management. As regards process management services, however, the combined market share of Aditro and TietoEnator in Finland, Sweden and the Nordic region does not exceed 15% and therefore any risk of foreclosure of rivals in the FMS and HR markets can be excluded.

37. Finally, the market investigation also indicated that in Sweden and Finland FMS and HR software are seldom used in combination with process management services; indeed, less than 5-20% of the total sales of FMS and HR software in Sweden and Finland would be accounted for by sales of such software used in combination with process management. This further reduces any potential for leveraging market power from the market for process management services into the FMS and HR software markets.

Foreclosure of rivals in IT services in Finland or Sweden

38. Finally, it also seems unlikely that the merged entity could foreclose rivals in the IT services market in Finland or Sweden. IT services can be provided not only in relation to FMS and HR solutions, but with regard to all sorts of different types of software. IT services relating to FMS and HR solutions thus constitute only a small fraction of the overall IT services market. In order to foreclose rivals in the IT services market or any of its sub-segments, the merged entity would therefore have to have a strong market position in the overall software market in Finland or Sweden. As is evident from the table in paragraph 28, however, the parties combined market share in the total software applications market in both of these countries hardly exceeds 5%. In view of these figures, the proposed transaction does not give rise to non-horizontal concerns.

VI. CONCLUSION

39. 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