

*Case No IV/M.532 -
Cable and Wireless /
Schlumberger*

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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION

Date: 22/12/1994

*Also available in the CELEX database
Document No 394M0532*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.1994

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No.IV/M. 532 - CABLE AND WIRELESS/SCHLUMBERGER
Notification of 21 November 1994 pursuant to Council Regulation (EC) No. 4064/89

1. On 21 November 1994 Cable and Wireless plc and Schlumberger Ltd notified to the Commission their intended creation of a concentrative joint venture, Omnes, to supply to the oil, gas and other industries commercial data services, voice services and added-value services via a communications network comprised of communication lines from public telecommunications operators around the world.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I THE PARTIES

3. Cable and Wireless is a leading supplier of national and international telecommunication services worldwide.
4. Schlumberger is engaged in the supply of various services in connection with oil and gas exploration; measurement systems and services for electricity, water and gas; products and systems for electronic payments and transactions; and automatic test equipment and software for diagnostic testing and integrated circuits.

II THE OPERATION

5. Schlumberger has an internal telecommunication and IT support function called SINet which links its oil, gas and other sites around the world. The purpose of the joint venture is to supply SINet to businesses with worldwide interests who wish to establish more reliable internal communications than are offered by PTOs. The service will be of particular value to businesses with sites in remote locations. The contribution of Cable and Wireless is its experience in telecommunications and IT; Schlumberger has an established reputation as a supplier of support services in the oil and gas sector.
6. Omnes will consist of several entities (partnerships or corporations) established in various countries. Cable and Wireless and Schlumberger will each own 50 per cent of each entity and will exercise joint control over it. The strategic overview of the joint venture's activities and assessment of the parents' investment will be conducted by the Omnes Committee, on which the parents will be equally represented. The managing body of each entity will have the final authority with respect to its management; here too the parties will be equally represented. Certain decisions of these bodies will require unanimity - eg adoption of the budget, entering into major transactions with the parents, incurring debts or executing unbudgeted contracts in excess of certain amounts, requesting additional capital contributions, and the removal of specified senior executives. Day to day commercial management of each entity will be conducted by local executive boards, again composed of equal numbers of representatives of the parties.
7. Omnes will perform on a lasting basis all the functions of an autonomous economic entity. Although initially Omnes will be highly dependent upon Schlumberger for its sales, it is anticipated that the proportion of its sales made to Schlumberger will fall to 18 per cent after two years. After three years the original contract between Omnes and Schlumberger will be replaced by one on arms length market terms. The parties will provide funds to the joint venture only until such time as it has sufficient cash flow to be self-financing. Initially Omnes will be dependent for its technical staff upon employees of Schlumberger engaged in supplying SINet transferred from Schlumberger and will rely for sales upon contacts provided by its parents, but it will progressively recruit its own technical and sales staff. The main asset of Omnes, the SINet network equipment, will be made available to Omnes at cost for the duration of the joint venture; so too will the necessary intellectual property rights. Omnes will be responsible for its network development. It will acquire headquarters and other assets from third parties on normal commercial terms. If after three years the joint venture has not generated substantial sales to third parties it is unlikely to continue.
8. Only Cable and Wireless is active in the market of the joint venture, however it is defined. The joint venture therefore does not give rise to coordination of competitive behaviour.

III CONCENTRATION OF COMMUNITY DIMENSION

9. The notified operation constitutes a concentration within the meaning of Article 3(1)b of the Regulation.

10. The undertakings concerned have a combined aggregate worldwide turnover in excess of 5000 million ECU. Each party has a Community-wide turnover in excess of 250 million ECU. Only Cable and Wireless achieves more than two-thirds of its aggregate Community-wide turnover within one Member State. The notified operation therefore has a Community dimension.

IV COMPATIBILITY WITH THE COMMON MARKET

a) Relevant product markets

11. Omnes will operate in the market for international advanced telecommunication services, supplying network services (connections), network applications (eg messaging and Internet services) and IT support services (eg procurement and maintenance services), initially to companies in the upstream oil and gas sector but later more generally. The supply of these products to the upstream oil and gas sector has, however, no characteristic which distinguishes it from supply to any other industrial sector. But since on even a narrower definition of the market as the supply of international advanced telecommunications and IT services to the upstream oil and gas sector no competition problem arises the market definition can be left open.

b) Geographical reference markets

12. The Commission has formerly considered the provision of international advanced telecommunication services to multinational companies to be a global market (Case IV/M.353 - BT/MCI, para 8). The services to be supplied by Omnes resemble those supplied by the joint venture company in BT/MCI with the addition of related IT support services. An essential characteristic of the Omnes operation is the creation of connections between a company's offices and its remotely located sites. Companies requiring such services already source their telecommunication services globally.

c) Competitive assessment

13. Only Cable and Wireless supplies international advanced telecommunication and IT services to the upstream oil and gas sector. The Commission has formerly considered that the internal supply of a product by a party is not to be included in the calculation of that party's market share (Cases IV/M.126 Accor/Wagons-Lits , para 15(a) and IV/M.134 Mannesmann/Boge, para 19). On that analysis Schlumberger does not supply the material services and the concentration results in no increase in market share. If however the existing Cable and Wireless turnover from the supply of such services were combined with the value of the SINet service supplied within Schlumberger, it would amount to only an insignificant share of the global market described above. Accordingly the operation neither creates nor strengthens a dominant position in a substantial part of the common market.

V ANCILLARY RESTRAINTS

14. The notifying parties have requested that certain restrictions be considered as ancillary to the concentration.

15. By clause 2.3 of the memorandum of understanding between the parties and equivalent provisions in other documents which constitute the agreement setting up the joint venture the parties agree that all commercial dealings between the parties and Omnes will be on terms at least as favourable as those in commercial dealings between the parties and their subsidiaries. In so far as this constitutes a restriction it is not directly related or necessary to the implementation of the concentration. It is therefore not covered by this decision.
16. Clause 2.3 of the memorandum of understanding also provides for Omnes to develop joint marketing agreements with the parties. This provision contains no restriction; it is therefore unnecessary to decide whether it is ancillary to the concentration. It is of course quite possible that any agreement which results from it will contain restrictions; any such restriction is not covered by this decision.
17. Article 13 of the articles and agreement of partnership of the Omnes General Partnership, together with similar provisions in other documents, imposes on the parties obligations as to the disclosure and use of confidential information. In so far as such provisions constitute restrictions they are directly related to and necessary for the successful implementation of the concentration. They can therefore be treated as ancillary to the concentration.

VI CONCLUSION

18. For the foregoing reasons, the proposed concentration does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

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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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No. 4064/89.

For the Commission