

EN

Case No
COMP/M.5437– EQT
GROUP / KMD

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 4 (4)

Date: 06/02/2009



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06/02/2009
SG-Greffe(2009) D/676, 677
C(2009) 858

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 4(4) DECISION

To the notifying party:

To the Danish National Competition Authority

Dear Sirs,

**Subject: Case No COMP/M.5437– EQT GROUP/ KMD
Reasoned Submission pursuant to article 4(4) of Regulation No 139/2004
for referral of the case to Denmark.**

Date of filing: 15/01/2009

Legal deadline for response of Member States: 05/02/2009

Legal deadline for the Commission decision under Article 4(4): 15/02/2009

I. INTRODUCTION

1. On 15/01/2009, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Council Regulation (EC) No 139/2004 (“EC Merger Regulation”) with respect to the transaction cited above. The parties request the operation to be examined in its entirety by the competent authorities of Denmark.
2. According to Article 4(4) of the EC Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition in markets in that Member State which present all the characteristics of a distinct market.
3. A copy of this Reasoned Submission was transmitted to all Member States on 16/01/2009.

4. By fax of 21/01/2009, the Danish Competition Authority as the competent authority of Denmark informed the Commission that Denmark agrees with the proposed referral.

II. THE PARTIES

5. **EQT V Limited** (“EQT”) is a private equity fund established under the laws of the Bailiwick of Guernsey (Channel Islands). EQT is part of a group of nine private equity funds bearing the EQT name and their respective portfolios of acquired companies (the “EQT Group”). In addition to its investments in Denmark, the EQT Group has invested in 28 companies in China, Finland, Germany, Sweden, and the United Kingdom. The EQT Group’s portfolio companies engage in a wide variety of business in different product and geographic markets.
6. **KMD A/S** (“KMD”) is a wholly-owned subsidiary of Kommune Holding A/S (a wholly-owned subsidiary of Kommunernes Landsforening which is the interest group and member authority of all Danish municipalities). KMD is the result of the merger of IT centres owned by Danish municipalities. KMD is a full scope supplier of IT related services and products primarily aimed at the public sector. It notably develops, distributes and centrally operates a wide variety of administrative systems. KMD has approximately 3,000 employees and is primarily active in Denmark.

III. THE OPERATION AND CONCENTRATION

7. The proposed transaction involves the acquisition of sole control by EQT over KMD. For the purpose of the transaction, EQT has established and wholly owns KMD Holding A/S which will acquire all the shares of KMD from Kommune Holding A/S.
8. Thus, the transaction constitutes a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover for the year 2007 of more than EUR [...] ¹ (EQT: EUR [...] million, KMD: EUR [...] million). Each of EQT and KMD has a Community-wide turnover in excess of EUR [...] million (EQT: EUR [...] million, KMD: EUR [...] million), without achieving more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.
10. The notified operation therefore has a Community dimension within Article 1(2) of the EC Merger Regulation.

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (10.7.2007)

V. ASSESSMENT

A. Relevant product markets

11. As mentioned above, KMD is a full scope supplier of IT related services and products principally aimed at the public sector. KMD's public sector activities are primarily based on licensing IT package solutions (Application Service Provider solutions – "ASP") based on both KMD's proprietary source code and third party technology, such as SAP's Enterprise Application Software ("EAS") platform, and cover eight public sector domain areas². KMD also provides IT outsourcing services to the public sector. KMD's private sector activities consist in selected offerings, mostly IT outsourcing services and ASP solutions, and constitute approximately [...] % of its total turnover. In addition, KMD resells third parties' hardware and software to its customers in the course of supplying IT services, while it develops and maintains its own software application generally implemented in its ASP solutions.
12. Although the Commission has in previous cases left open the definition of the relevant product markets within the IT sector, it has indicated that the relevant product markets could be defined as the market for computer hardware³ (with a possible sub-segmentation between (i) access devices – personal computers, workstations, handheld information devices, (ii) servers and (iii) storage solutions), the market for computer software⁴ (with a general sub-segmentation between (i) personal productivity applications, such as word processing or spreadsheets, and (ii) enterprise application software) and the market for IT services⁵ (with a possible sub-segmentation into seven categories⁶).
13. The parties submit that the Danish Competition Authority has applied somewhat different market definitions in past cases in respect of the public IT market, which involved IT vendors who are active on the Danish market, including KMD. It has in a decision regarding KMD and SAP Denmark A/S considered the relevant product market for KMD's activities targeting the public sector to be the market for the supply

² Administrative management (finance, payroll and management information), real estate, basic solutions (infrastructure components, debtor handling, security), case & document management, social benefits, labour market, utility and child & youth care. It comprises facilitation of computing for the end user (case worker, field worker, manager or citizen), operations, service and support, maintenance and output services (printing and mailing).

³ See Case COMP/M.2609 - HP/Compaq.

⁴ See Case COMP/M.3216 - Oracle/Peoplesoft.

⁵ See Cases COMP/M.5301 - Capgemini/BAS, COMP/M.5197 - HP/EDS and COMP/M.3571-IBM/MaerskData/DMdata.

⁶ (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

of IT solutions to Danish local governments. This market definition comprises all IT solutions (hardware, software and services).

14. The precise definition of the relevant product markets can be left open in the present case, since it would not affect the assessment of whether the proposed concentration meets the criteria for an Article 4(4) referral.

B. Relevant geographic markets

15. Although the exact definitions of the relevant geographic markets for IT services, computer and software have been left open in previous cases⁷, the market investigation carried out in the case of IT services had indicated that local factors (such as language skills and local presence) constituted important elements in the selection of providers, supporting a geographic scope for IT services. In addition, KMD is also active in IT products markets (hardware and software), for which the Commission has in previous cases⁸ considered the geographic scopes to be at least EEA-wide. However, the fact that KMD provides these products essentially in the course of supplying IT services, which is its core business, suggests that it could hardly provide such products independently from its IT services.
16. Therefore, in light of KMD's activities, the geographic scope of the relevant product markets at stake in the proposed concentration would be at most national.

C. Assessment

17. On the basis of the information provided by the parties in the Reasoned Submission, the proposed transaction is an appropriate candidate for pre-filing referral from the Commission to the Danish Competition Authority in accordance with Article 4(4) of the EC Merger Regulation.
18. The transaction meets the legal requirements set out in Article 4(4) of the EC Merger Regulation. The transaction is a concentration within the meaning of Article 3 of the EC Merger Regulation, it has a Community dimension and it may significantly affect competition in distinct markets in Denmark.
19. As outlined above, the relevant geographic markets for the proposed operation would be at most national. Moreover, the effects of the proposed operation would be restricted to Denmark as KMD achieves almost all its turnover in Denmark (more than [...] % of its 2007 turnover)⁹. Therefore, and regardless of the exact product market definition, the markets affected by the proposed concentration in Denmark present all the characteristics of distinct markets.

⁷ See Case COMP/M.5128 Nordic Capital/Tietoenator, Case COMP/M.2609 – HP/Compaq and Case COMP/M.3216 - Oracle/Peoplesoft.

⁸ See Case COMP/M.2609 - HP/Compaq and Case COMP/M.3216 - Oracle/Peoplesoft.

⁹ KMD has marginal activities in Germany, Sweden, the Netherlands, the United Kingdom and Norway.

20. On the basis of the information submitted in the Reasoned Submission, the transaction could have a potential impact on competition only on the hypothetical market for the supply of IT solutions to the Danish local governments, a market in which KMD's market share is around [30-40]%. Although the operation leads in fact to a vertical disintegration and horizontal overlaps with companies in EQT's portfolio appear limited¹⁰, it also implies the creation of a large new entrant on the merchant market for the supply of IT solutions to the Danish local governments, and could therefore significantly affect competition in this market.

VI. REFERRAL

21. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the EC Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission notice on case referral in respect of concentrations¹¹ (point 17) indicates that, in seeking a referral under Article 4(4), *“the merging parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny”, and that “such indications may be no more than preliminary in nature...”*. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the concentration is liable to take place on distinct markets in Denmark, and that the requested referral would be consistent with point 20 of the notice.

VII. CONCLUSION

22. For the above reasons, and given that Denmark has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the Denmark. This decision is adopted in application of Article 4(4) of Council Regulation (EC) No 139/2004.

For the Commission
(Signed by)
Philip LOWE
Director General

¹⁰ EQT holds 100 per cent of the shares in SAG GmbH (“SAG”) in Germany. As a limited part of its business, SAG offers geographic information services that are somewhat related to IT services and software. However, these activities are limited to supporting SAG’s core business.

¹¹ OJ C 56, 05.03.2005, p.2.