

***Case No IV/M.640 -
KNP BT / Société
Générale***

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

Article 6(1)(b) NON-OPPOSITION
Date: 03/10/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03.10.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.640 - KNP BT/Société Générale
Your notification of 1 September 1995 pursuant to Article 4 of Council Regulation No. 4064/89

1. The abovementioned notification concerns an operation by which NV. KONINKLIJKE KNP BT (KNP BT) and SOCIETE GENERALE will combine through a joint-venture all their activities in France in the field of distribution, maintenance, engineering and training in the professional PC market. SOCIETE GENERALE will also contribute to the joint-venture all its activities in this field outside France, except in Belgium.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation n° 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. KNP BT is a Dutch industrial Group mainly active in distribution (graphic paper, information systems and office products), packaging and paper.
4. SOCIETE GENERALE is a French universal bank. It is also active in life insurance, computer systems development and real estate.

II. THE OPERATION

5. VRG HOLDING FRANCE, a subsidiary of KNP BT will be the joint-venture vehicle. It will comprise the activities of KNP BT's subsidiaries in France in the field of distribution, maintenance, engineering and training in the professional PC market as well as those of SOCIETE GENERALE's subsidiaries in all countries (except Belgium).

III. CONCENTRATION

6. *Joint-venture*

The shareholding of VRG HOLDING FRANCE will be split 50/50 between the parties, who will also share equally the voting-rights. Each party will nominate half of the six members of the Board. The main decisions concerning VRG HOLDING FRANCE (including financial policy and strategic commercial behaviour) will require the unanimous vote of the Board, the Chairman having no casting vote. Therefore VRG HOLDING FRANCE will be jointly controlled by KNP BT and SOCIETE GENERALE.

7. *Autonomous economic entity*

The joint-venture will have all the staff, assets and other means to operate as an independant entity on the market. Services and supply agreements in the field of administration, information systems and certain premises will be concluded on arm's length conditions between SOCIETE GENERALE and the joint-venture to make possible the break up of the economic unity of SOCIETE GENERALE and will therefore reinforce the joint-venture's autonomy (see points 21 and 22 below). VRG HOLDING FRANCE will also be recapitalized at a level enabling it to perform its business. The Joint-Venture Agreement is of an indefinite period of time.

8. *Absence of coordination of competitive behaviour*

All activities of SOCIETE GENERALE in the field of distribution, maintenance, engineering and training in the professional PC market (except in Belgium) will be included in the joint-venture. In Belgium, both SOCIETE GENERALE and KNP BT but not the joint-venture will be active. Nevertheless the presence of the two parents in this country is marginal both in absolute terms (global sales of ECU 14 million in 1994) and in relative terms (global sales account for [...] ⁽¹⁾ of the total turnover of the joint-venture and represent a market share of [...] ⁽¹⁾ in Belgium in 1994). Furthermore, SOCIETE GENERALE's relevant activities were not put into the joint-venture for purely practical reasons as the split-up of several activities of the relevant subsidiary did not appear to be feasible ⁽¹⁾. Therefore no coordination of competitive behaviour is likely between SOCIETE GENERALE/KNP BT and the joint-venture and the operation is concentrative.

IV. COMMUNITY DIMENSION

9. The combined worldwide turnover of SOCIETE GENERALE and KNP BT exceeds ECU 5 billion and they have each an EC-wide turnover of ECU 250 million. SOCIETE

⁽¹⁾ Deleted; business secret - below 5%.

⁽²⁾ [...] Deleted; business secret.

GENERALE and KNP BT do not achieve more than two-thirds of their respective EC turnover in one and the same Member State. The operation has therefore a Community dimension.

V. COMPATIBILITY WITH THE COMMON MARKET

10. *Relevant product markets*

The joint-venture will be active in the field of distribution, maintenance, engineering and training in the professional PC market.

11. The distinction between the professional and the private PC markets

According to the parties the professional and the private PC markets are distinct markets: professional PCs are much more sophisticated than private PCs as they must be adaptable to evolving situations and able to be connected to multiple networks; therefore professional PCs are more expensive than private PCs; professional PCs are sold directly by manufacturers or through specialised distributors after negotiations with commercial engineers and a survey of the company's needs while private PCs are always sold to the end-users through specialised or non-specialised retail outlets; finally, professional PCs are mainly advertised through mailings while private PCs are subject to mass marketing. However, it is not necessary to decide definitely on this point in the present case, given that SOCIETE GENERALE is not present on the private PC market and KNP BT is only marginally present on this market and that consequently a broader market definition would weaken their position.

12. The distinction between distribution, maintenance, engineering and training in the professional PC market

According to the parties, distribution, maintenance, engineering and training in the professional PC market each form a distinct product market. This is because the same company will very often deal with distinct suppliers for each of these activities and the structure of the supply side is different. In any case the Commission notes that even if the four activities in question had to be considered as a single market, the concentration would not lead to the creation or the strengthening of a dominant position.

13. *Relevant geographic market*

The parties argue that for the four abovementioned product markets, the relevant geographic market is national. They base this assessment on the following reasons: distribution, maintenance, engineering and training need a close relationship (in terms of geography, after-sales services, etc.) with customers; accordingly, companies set up distribution networks of local agencies on a national basis; customers require the service to be provided in their own language; the linguistic aspect also dictates certain technical specifications; finally there is almost no cross-border movement of goods at the distribution level. In any case it is not necessary to decide on this point given that even on a national scale the concentration does not lead to the creation or the strengthening of a dominant position.

Assessment

14. The operation has its main impact in France. In the other member States the overlap is minimal since SOCIETE GENERALE's presence is not significant. Furthermore KNP BT's market share does not exceed 10% in any market in the other member States. As a

result, the following analysis will focus on the effects of the operation in the French market.

15. Distribution of professional PCs

This activity consists in selling to end-customers hardware and software products and peripherals on the basis of a catalogue in which the products of computer manufacturers and software editors are presented. On this market, distributors who are directly supplied by manufacturers compete with retailers who are supplied by wholesalers and with manufacturers/editors. Although there is a competitive pressure from leasing of professional PCs, it seems that distribution and leasing of professional PCs form two distinct markets: on the supply side, competitors in the leasing market are specialised companies (subsidiaries of banks or independent companies) which are generally not involved in distribution; on the demand side, customers expect leasing companies to bear the risk of the purchase and to provide a financial service.

16. In this context, the joint-venture will have a market share of [...] ⁽¹⁾ (KNP BT: [...] ⁽¹⁾, SOCIETE GENERALE: [...] ⁽⁴⁾). Such a market share is not indicative by itself of a dominant position. There exist numerous competitors among them ISTA (market share: [...] ⁽³⁾) and five others each with a market share [...] ⁽¹⁾. The new entity is also faced with powerful suppliers (computer manufacturers) who also compete with distributors through direct sales. Therefore no creation or strengthening of a dominant position is likely to occur.

17. Maintenance of professional PCs

The Commission has already recognised that hardware maintenance services is a specific market ⁽¹⁾. On this market, distributors who might have contractual obligations vis-à-vis their customers compete with computer manufacturers and companies specialised in maintenance. The joint-venture will have a [...] ⁽⁴⁾ market share in maintenance (KNP BT: [...] ⁽⁵⁾, SOCIETE GENERALE: [...] ⁽⁵⁾). Its main competitors are THOMAINFOR with an [...] ⁽⁷⁾ market share and five other companies with market shares [...] ⁽⁴⁾. No dominance is therefore expected.

18. Engineering in the field of professional PCs

This service is designed to provide solutions and specific applications for requirements of companies such as connecting different systems, integration of systems, local extension of existing systems, safety systems, etc. It includes audit and review, elaboration of specifications requirements and installation, operation and optimisation of the system. On this market, distributors compete with computer manufacturers and companies specialised in engineering. The joint-venture will have a [...] ⁽⁵⁾ market share in engineering. Consequently no dominant position will be strengthened or created.

19. Training in the field of professional PCs

This service consists in organising courses for companies'employees in order to optimise the use of PCs and peripherals. On this market, distributors compete with computer manufacturers, software editors, companies specialised in information technology training and training and consulting firms. The joint-venture will have a market share between

⁽³⁾ Deleted; business secret - between 10% and 20%.

⁽⁴⁾ Deleted; business secret - less than 10%.

⁽⁵⁾ Deleted; business secret - less than 5%.

⁽⁶⁾ cf. Commission Decision of 02.09.1991 in Case N°IV/M129-DIGITAL/PHILIPS, point 8 and 9

[...]⁽⁴⁾ in training (KNP BT: [...]⁽⁵⁾; SOCIETE GENERALE: [...]⁽⁵⁾). The market is very fragmented but CEGOS has a market share between [...]⁽⁴⁾. The operation will therefore not lead to the creation or the strengthening of a dominant position.

VI. ANCILLARY RESTRAINTS

20. Non competition provision

According to Article 11 of the Agreement, the parent companies⁽¹⁾ undertake not to enter into direct or indirect competition with the joint-venture on the French market for professional PCs and PC-related products and services as long as they remain shareholders of the joint-venture and during one year from the date of the complete withdrawal of any of the parties from the share capital of the joint-venture. This clause is in line with point V.A of *Commission notice regarding restrictions ancillary to concentrations*⁽¹⁾ and can therefore be considered as ancillary to the concentration.

21. Supply agreement

According to Article 10(1)(1) of the Agreement, SOCIETE GENERALE's operating lease subsidiaries will, as a general rule, purchase their equipment from the joint-venture. Likewise, the joint-venture will, as a general rule, offer operating lease contracts from SOCIETE GENERALE's operating subsidiaries whenever a client asks for it. This supply agreement has been concluded for three years. This clause is in line with points III.C and V.C of the abovementioned notice as the arrangements are not exclusive, are transitional and are necessary in order not to disrupt the internal supply between SOCIETE GENERALE's leasing subsidiaries and SOCIETE GENERALE's distribution subsidiaries. It can therefore be considered as ancillary to the concentration.

22. Services agreement

According to Article 10(2) of the Agreement, several services agreements in the field of administration, information system and certain premises will be concluded on arm's length conditions between SOCIETE GENERALE and the joint-venture to make possible the break up of the former economic unity of SOCIETE GENERALE. This clause, which will reinforce the joint-venture's autonomy (see point 7 above), can be considered as ancillary to the concentration.

VII. CONCLUSION

23. For the abovementioned reasons, the Commission has concluded that the notified operation does not raise serious doubts as to its compatibility 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 N° 4064/89.

For the Commission,

⁽⁷⁾ [...] Deleted; business secret.

⁽⁸⁾ OJ C 203, 14.08.1990, p.5 .