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Case No M.7334 - ORACLE / MICROS

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

Article 6(1)(b) NON-OPPOSITION

Date: 29/08/2014

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 29.8.2014
C(2014) 6234 final

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sir/Madam,

**Subject: Case M.7334 - Oracle / MICROS
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

(1) On 24 July 2014, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Oracle Corporation ("Oracle" or the "Notifying Party") acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of MICROS Systems, Inc. ("MICROS") by way of purchase of shares.

1. THE PARTIES

(2) **Oracle** is a US publicly listed company. It develops, manufactures and distributes computer software and hardware. Its software offer comprises, among others, operating systems, database software and enterprise applications software. Enterprise applications software (EAS) is software that supports the major business functions needed by commercial organisations to manage their business effectively.² It is generally offered

¹ OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² Case M.5529, Oracle / Sun Microsystems, 21 January 2010, paragraph 24; Case M.3216, Oracle / PeopleSoft, 26 October 2004, paragraph 17.

together with services that allow for the implementation and use of such software, such as integration services, support and maintenance services, training services and hosting services.³ EAS includes software for customer relationship management (CRM), supply chain management (SCM), supplier relationship management (SRM), product lifecycle management (PLM) and business analytics (BA). Oracle's offer of EAS comprises, on the one hand, general-purpose EAS, which can be used by any business, and, on the other, EAS adapted to the needs of customers in particular industries. These industries are sometimes referred to as “verticals”, to contrast them to "horizontal" software that can be used across various industries. Of particular relevance for this case is Oracle's offer of EAS specifically designed for the retail industry. The retail industry comprises retail establishments such as clothing stores and supermarkets.

- (3) **MICROS** is also a US publicly listed company. It develops, manufactures and distributes hardware and software for the retail industry and the hospitality industry. The hospitality industry consists of hotels, food and beverage establishments (including bars and restaurants), casinos, entertainment venues and cruise ships. MICROS' hardware is dedicated to the retail and hospitality industry. It includes point of sale workstations with touch screens, which have replaced cash registers in many stores and restaurants, receipt printers and barcode scanners.

2. THE OPERATION

- (4) On 22 June 2014, Oracle and MICROS entered into an agreement pursuant to which Oracle will make a tender offer to purchase 100% of the shares of MICROS for USD 68 (ca. EUR 50) per share. At this price, the total value of the proposed transaction amounts to approximately USD 5 300 million (EUR 3 900 million). If the tender offer is successful, Oracle will acquire sole control over MICROS. The operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (5) The transaction meets the thresholds set out in Article 1(2) of the Merger Regulation. The undertakings concerned (Oracle and MICROS) have a combined aggregate worldwide turnover of more than EUR 5 000 million⁴ (Oracle EUR 28 282 million⁵ and MICROS EUR 980 million⁶). Each of them has an EU-wide turnover in excess of EUR 250 million (Oracle EUR [...] and MICROS EUR [...]) and they do not achieve more than two-thirds of its aggregate EU-wide turnover within one and the same Member State. The notified transaction therefore has an EU dimension.

³ Case M.3216, Oracle / PeopleSoft, 26 October 2004, paragraph 16.

⁴ Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p. 1).

⁵ This figure and the other turnover figures for Oracle in this section are for the business year running from 1 June 2013 to 31 May 2014.

⁶ This figure and the other turnover figures for MICROS in this section are for the business year running from 1 July 2012 to 30 June 2013.

4. RELEVANT MARKETS

- (6) There is no horizontal overlap between Oracle's and MICROS's hardware offer. MICROS offers hardware specifically designed for the retail and hospitality industry, such as “point of sale” workstations. Oracle, by contrast, produces servers and appliances for databases and data storage.
- (7) There is a horizontal overlap between Oracle's and MICROS's software offer. MICROS sells EAS specifically designed for the retail and hospitality industries. Oracle does not sell EAS specifically designed for the hospitality industry but it does sell EAS specifically designed for the retail industry.

4.1. Relevant product market

- (8) According to the Notifying Party, there is a distinct market for retail-specific EAS or, in short, retail software, meaning EAS that is specifically designed for the retail industry. Retail software allows for automation of store operations. It facilitates customer sales and keeps real time data on customer sales and inventory. The Notifying Party submits that retailers cannot run their stores only on general-purpose EAS, meaning EAS that is not specifically designed for a specific industry. Instead, they need retail software. Conversely, large enterprises, including large retailers, cannot run their business on industry-specific EAS alone but need general-purpose EAS as a complement.
- (9) In several previous decisions, the Commission already examined whether the various EAS markets can be further divided by industry. The investigation in *Oracle / Siebel* related to a specific type of EAS, namely software for customer relationship management (CRM). In that case, decided in 2005, the Commission considered that a segmentation by industry was generally inappropriate⁷ but ultimately left open whether industry-specific segments constituted relevant product markets.⁸ In *SAP / Sybase* the Commission also left open whether EAS could be divided into separate markets by industry.⁹ The question was also left open in *Dassault Systèmes / IBM DS PLM Software business*, a case concerning another category of EAS, namely product lifecycle management (PLM) software.¹⁰ However, in *Computer Sciences Corporation / iSoft Group*, the Commission concluded that a separate market for application software for the healthcare industry existed.¹¹
- (10) In the present case, the activities of Oracle and MICROS only overlap with respect to the sale of retail software, since Oracle does not offer hospitality software. However, the Commission does not need to conclude whether retail software constitutes a distinct market because the transaction does not raise serious doubts as to its compatibility with the internal market regardless of the exact product market definition applied.

⁷ Case M.3978, *Oracle / Siebel*, 22 December 2005, paragraph 12.

⁸ Case M.3978, *Oracle / Siebel*, 22 December 2005, paragraph 16.

⁹ Case M.5904, *SAP / Sybase*, 20 July 2010, paragraph 28.

¹⁰ Case M.5763, *Dassault Systèmes / IBM DS PLM Software business*, 29 March 2010, paragraph 19.

¹¹ Case M.6237, *Computer Sciences Corporation / iSoft Group*, 20 June 2011, paragraphs 29, 32.

- (11) If no separate market for retail software were to exist, the retail and hospitality software sold by MICROS would have to be considered as part of the general-purpose EAS market and its various categories. MICROS' retail and hospitality software may be said to include functionalities that fall under commonly used EAS categories such as enterprise resources planning (ERP), customer relationship management (CRM), business analytics (BA) and so on.
- (12) According to the Notifying Party, this market definition is not appropriate because, although retail and hospitality software might provide functionality that could be said to fall within the general subdivisions of EAS, they are developed to support the specific workflows of the retail and hospitality industries. Retail and hospitality software are therefore generally unsuitable for use in other industries. Conversely, general-purpose EAS is normally not used to fill retail or hospitality-specific needs.
- (13) In previous decisions, the Commission defined several distinct markets within the broad category of EAS. In *Oracle / PeopleSoft*, the Commission considered that the market for EAS solutions can be divided according to functionality.¹² In that case, it concluded that separate markets existed for financial management systems (FMS) and human resources (HR), which are both part of a wider market for enterprise resource planning (ERP). In addition, the Commission concluded that, within the financial management systems (FMS) and human resources (HR) markets, distinct markets existed for "high-function" solutions typically purchased by large organisations with complex functional needs.¹³ In *SAP / Business Objects* the Commission found that, within EAS, a separate market for business analytics (BA) may exist. Ultimately, however, it was not necessary to define the exact scope of the market and the definition was left open in that case.¹⁴
- (14) In the present case, the Commission does not need to decide whether the retail software sold by MICROS and Oracle belongs to a distinct market for retail software or is part of the different EAS markets that exist by functionality because, as explained in section 5, the transaction does not raise serious doubts as to its compatibility with the internal market regardless of how the product market is defined.

4.2. Relevant geographic market

- (15) The Notifying Party argues that the relevant geographic market on which retail software is sold is global or at least EEA-wide. Although retail software bears some local specificity, due to differences in language, currency, tax and accounting rules, major vendors can quickly configure their products depending on the area of their deployment.
- (16) In previous decisions, the Commission concluded that the market for EAS was at least EEA-wide.¹⁵ With respect to customer relationship management (CRM), a subcategory of EAS, it concluded that the market was worldwide or at least EEA-wide.¹⁶

¹² Case M.3216, *Oracle / PeopleSoft*, 26 October 2004, paragraph 59.

¹³ Case M.3216, *Oracle / PeopleSoft*, 26 October 2004, paragraph 57, 135.

¹⁴ Case M.4944, *SAP / Business Objects*, 27 November 2007, paragraphs 13, 16.

¹⁵ Case M.5904, *SAP / Sybase*, 20 July 2010, paragraphs 29-30.

¹⁶ Case M.3978, *Oracle / Siebel*, 22 December 2005, paragraph 19.

Concerning high-function solutions for human resources (HR) and financial management systems (FMS), it concluded that the market was global.¹⁷ For mid-market HR and FMS, the Commission found indications that it may not be wider than EEA-wide, but ultimately left the question open.¹⁸

- (17) In the present case, the Commission considers that the relevant geographic market is either EEA-wide or worldwide, regardless of the exact product market definition. Customers of various types of EAS can source their EAS from vendors across the world. Local software providers exist but they compete with vendors active on a regional or worldwide basis. In any event, since the transaction does not raise serious doubts as to its compatibility with the internal market regardless of the exact geographic market definition, it is not necessary to reach a conclusion on whether the relevant geographic market is EEA-wide or worldwide.

5. COMPETITIVE ASSESSMENT

5.1. Horizontal assessment

a. Retail software

- (18) According to the Notifying Party, the combined market share of Oracle and MICROS is well below 20% on the market for retail software, both on a global and EEA-wide level.

- (19) The Notifying Party estimated market shares on this market on a global level based on reports published by Gartner, a market research firm, for 2010, which it has then updated using more recent sales figures of MICROS and Oracle. In doing so, the Notifying Party assumed that, since 2010, the size of the market for retail software has remained relatively stable. Based on the size of the market in 2010, it has estimated that the size of the market amounted to between EUR [...] and [...] in 2013.

- (20) Based on these assumptions, on a global basis, the combined market share of Oracle and MICROS in 2013 was [5–10]%. This combined market share is the addition of MICROS' [0–5]% market share and Oracle's slightly higher [0–5]% market share.

- (21) The Notifying Party also provided a second calculation of market shares on a global level, based on IDC data of 2012. In this second calculation, the Notifying Party has compared the total revenue that Oracle and MICROS derived from the sale of enterprise applications with the total spend of the retail industry on enterprise applications in 2012. This calculation, however, overestimates the market share of MICROS on the market for retail software because it includes revenues from hospitality software. In spite of this overestimate, the combined market share of Oracle and MICROS would still be well below 20%: MICROS has a [5–10]% market share and Oracle a [5–10]% market share, leading to a combined market share of [10–20]%.

- (22) As regards the EEA, the Notifying Party argues that there could be minor differences with the worldwide market shares. In particular, MICROS' position could be slightly stronger in the EEA and Oracle's slightly weaker. However, the Notifying Party argues that these minor differences would not change the fact that, overall, the situation

¹⁷ Case M.3216, Oracle / PeopleSoft, 26 October 2004, paragraphs 173-176.

¹⁸ Case M.3216, Oracle / PeopleSoft, 26 October 2004, paragraphs 178-180.

in the EEA is a reflection of the situation on a worldwide basis, namely that the EEA market is highly fragmented with no supplier having a significant share.

(23) Based on the above, the Commission considers that the transaction would lead to a limited combined market share and bring about a limited market share increment. Moreover, the market will continue to be characterised by the presence of a significant number of competitors such as Epicor, Demandware, IBM (through its partnership with Toshiba TEC), JDA, NCR, SAP and Wincor Nixdorf. In addition, none of the respondents to the market investigation raised concerns on the basis of the horizontal effects of the notified transaction.

b. Retail software as part of the markets for general-purpose EAS

(24) The Notifying Party has also submitted market shares under the assumption that retail software does not constitute a distinct product market, but forms part of the different markets for general-purpose EAS.

(25) Under such assumption, the combined market share of Oracle and MICROS on a global level is well below 20% in the markets for enterprise resource planning (ERP), customer relationship management (CRM), supply chain management (SCM), business analytics (BA) and product lifecycle management (PLM).

Estimated world-wide market shares in various EAS markets 2012/2013

	ERP	CRM	SCM	BA	PLM
Market size (EUR billions)	[...]	[...]	[...]	[...]	[...]
Oracle share %	[10–20]	[10–20]	[10–20]	[10–20]	[5–10]
MICROS share %	[0–5]	[0–5]	[0–5]	[0–5]	[0–5]
Others %	[80–90]	[80–90]	[80–90]	[80–90]	[90–100]

Source: Form CO, paragraph 133, Figure 21

(26) In each of these EAS markets, MICROS has a market share of less than [0–5]%. In part, MICROS' limited market share in these markets is explained by the fact that MICROS exclusively sells to the retail and hospitality industries, which are only two of the dozens of industries that purchase general-purpose EAS (other industries include automotive, chemicals, communications, construction, research, financial services, healthcare, manufacturing, media, professional services, etc.). Because of this, MICROS' market share is also limited in various subcategories of the abovementioned categories of general-purpose EAS. In the subcategories for which market share data from IDC and Gartner are available, MICROS is only attributed a share in the subcategory for order management, which is part of the EAS category for customer relationship management (CRM). In this segment, MICROS had a market share of [0–5]% in 2012, while Oracle had a [5–10]% market share.

(27) As regards the EEA, the Notifying Party argues that the market shares are broadly in line with those on a global level. The Notifying Party also provided market share data at the level of the EMEA-region (Europe, Middle East and Africa) as a proxy for EEA-wide data. These market share data confirm that MICROS has a very limited market share in the various subcategories of EAS and that the combined market share of MICROS and Oracle is well below 20%. MICROS' highest market share at the EAME-level is in the market for business analytics (BA), where it has a market share of [0–5]%. Oracle has a market share of [10–20]% in that market, leading to a combined market share of [10–20]%.

- (28) Based on the above, the Commission considers that the transaction would bring about a limited market share increment and that the combined market share of MICROS and Oracle would be limited in the various EAS markets. Moreover, the EAS markets will continue to be characterised by the presence of strong players such as SAP, IBM and Microsoft. In addition, none of the respondents to the market investigation raised concerns on the basis of the horizontal effects of the notified transaction.

5.1.1. Conclusion

- (29) In light of the above, the notified transaction does not give rise to serious doubts as to its compatibility with the internal market as regards the markets of which Oracle's and MICROS' EAS form part.

5.2. Non-horizontal assessment

- (30) MICROS' retail and hospitality software does not function in isolation, but needs to interoperate with other components of the so-called "IT stack", meaning the various hardware and software components necessary for companies to ultimately use their software applications. There is therefore a non-horizontal link between, on the one hand, MICROS' retail and hospitality software and, on the other, Oracle's servers, operating systems, database software, middleware and general-purpose EAS.
- (31) The Commission examined whether, based on this non-horizontal link, the notified transaction would raise serious doubts as to its compatibility with the internal market. In particular, the Commission examined whether Oracle would have the ability and incentive to restrict interoperability between certain components of the IT stack and the retail and hospitality software that it would offer.
- (32) Most respondents to the Commission's market investigation did not raise concerns about interoperability restrictions that Oracle could impose in the future. Some respondents, however, expressed the concern that Oracle would optimise MICROS' software to run with Oracle's database software only. Customers that rely on MICROS' software would therefore be forced to also purchase Oracle database software.
- (33) The Commission considers, however, that such a foreclosure strategy would be unlikely to succeed. The combined entity will have a limited market share in the market of which retail software forms part, ranging from [5–10]% and [10–20]% depending on the market definition. Given these limited market shares, it seems unlikely that Oracle would have sufficient market power to successfully engage in such a strategy.

6. CONCLUSION

- (34) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission

(Signed)

*Tonio BORG
Commissioner*