

*Case No IV/M.765 -  
ADIA / ECCO*

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 24/06/1996

*Also available in the CELEX database  
Document No 396M0765*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.06.1996

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.765 - ADIA/ECCO

Notification of 20.05.1996 pursuant to Article 4 of Council Regulation No 4064/89

1. On 20 May 1996 Adia s.a. (ADIA) and Ecco s.a. (ECCO) have notified an operation by which ADIA will acquire sole control of ECCO.
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 or with the functioning of the EEA Agreement.

**I. THE PARTIES**

3. ADIA is a Swiss company, which is engaged primarily in the provision of temporary personnel services to businesses.
4. ECCO is a French company, which is engaged primarily in the provision of temporary personnel services to businesses. It also provides other services, including industrial security monitoring and contract cleaning.

**II. THE OPERATION**

5. The agreement being notified has been entered between ADIA, ECCO, Klaus J. Jacobs Holding AG (KJJ), holding company which is the controlling shareholder of ADIA, and Finecco s.a. (FINECCO), holding company which is the controlling shareholder of ECCO. The agreement obliges ADIA to launch a French public exchange offer (Offre Publique d'Echange - OPE) for all the stock of ECCO and obliges FINECCO to make an irrevocable tender into the offer of its 45.57% controlling minority interest in ECCO.
6. The offer will be made to all of ECCO's shareholders on the same terms. All shareholders except FINECCO (which will irrevocably elect to receive stock) will have a choice as to whether to accept cash or ADIA shares in exchange for their ECCO shares.
7. The agreement notified provides that, following the acquisition, the contract cleaning business of ECCO will be retransferred to FINECCO.

**III. CONCENTRATION**

8. FINECCO currently holds 45.57% of the total voting rights in ECCO. None of the shares currently held by FINECCO carry double voting rights. Nonetheless, FINECCO has consistently held a majority of the votes present at ECCO's annual general meetings. For example, in 1995 FINECCO's shares in ECCO represented 88.9% of the shares actually voted, in 1994 90.0% and in 1993 88.5%. ECCO remaining share capital is widely dispersed. The acquisition of FINECCO's stake in ECCO will thus confer sole control to ADIA.
9. ADIA's acquisition of sole control of ECCO constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

**IV. COMMUNITY DIMENSION**

10. The worldwide turnover of ADIA and ECCO in year 1995 was respectively ECU 2.4 billion and ECU 3.1 billion. The combined aggregate turnover of the undertakings concerned exceeds therefore 5,000 million ECU. The aggregate Community wide turnover of each party exceeds 250 million ECU, being in year 1995 ECU 965.13 million for ADIA and ECU 2,857.0 million for ECCO. ADIA and ECCO did not both of them achieve more than two thirds of 1995 Community-wide turnover in one and the same Member State. The operation has therefore a Community dimension.

## **V. COMPATIBILITY WITH THE COMMON MARKETS**

### **A. Relevant product market**

11. The activities of ADIA and ECCO only overlap in the business of the provision of temporary employment services to undertakings.
12. It appears that this business constitutes the relevant product market. Within this market a very large number of firms operate in supplying workers to undertakings that use such firms to manage part of their human resources function by temporary staff.
13. Information provided by competitors and customers shows that a more narrow market definition is not appropriate. Some firms specialise in providing certain types of employees (eg. provision of temporary secretaries). However, in general, temporary employment services firms do not seek to specialise and customers can get a broad range of different types of employees from the same temporary employment services firm. Furthermore, seen from the supply side, most firms could within a short time extend their range of types of employees if necessary.
14. The parties have suggested broader market definitions: (i) all temporary employment, regardless of whether they are hired directly by their ultimate employer or through temporary employment services firms or (ii) the supply of labour, regardless of whether the workers are hired through a private or public firm or directly, or whether the workers are permanent or temporary.
15. Temporary employment services firms perform a variety of services (eg. training services) to undertakings which differentiate them from permanent employment firms and from direct employment. Also, they normally establish a direct, long lasting and in some circumstances even exclusive relationship with workers seeking employment. These workers are in most Member States receiving wages and benefits directly from temporary employment services firms. As a matter of fact, permanent employment firms and other forms of labour supply function on a rather different basis. From the demand side, although a certain degree of substitutability can certainly be noticed between permanent and temporary employment, they can hardly be considered as belonging to the same market. They normally respond to different needs of the customers in respect of the time horizon to be regarded when seeking to cover a vacant position. Also, legal and regulatory requirements are still substantially different between permanent and temporary employment. Consequently, the relevant product market is the provision by employment services firms of temporary personnel to undertakings.

### **B. Relevant geographic market**

16. According to information provided by the parties, competitors and customers, the relevant geographic market is not wider than national. This geographic definition is suggested by several factors such as language differences personal preferences regarding relocation and differing legal and regulatory regimes between Member. Indeed, the temporary personnel service industry appears highly fragmented. However, although the smaller firms tend to operate on a local or regional basis basically all larger firms operate throughout the national market with offices in several different regional areas. Consequently, the relevant geographic market for the provision by employment services firms of temporary personnel services to undertakings appears to be national.

## VI. ASSESSMENT

17. At an EU level the new company will have a share of approximately [...] <sup>(1)</sup> (ADIA and ECCO [...] <sup>(2)</sup> and [...] <sup>(3)</sup> respectively). Number two will be the US company Manpower with an EU share of approximately [...] <sup>(1)</sup>. No other companies reach a [...] <sup>(3)</sup> EU share or higher.
18. The affected markets are the provisions by employment services firms of temporary personnel to undertakings in Denmark, France, Luxembourg and Spain.
19. In Denmark the new company obtains a market share of approximately [...] <sup>(1)</sup> (ADIA and ECCO respectively [...] <sup>(1)</sup> and [...] <sup>(2)</sup>). The competitors include major players like Attention ([...] <sup>(1)</sup> market share) and Manpower ([...] <sup>(1)</sup> market share).
20. The new company will be the market leader in France with a share of approximately [...] <sup>(4)</sup> (ADIA [...] <sup>(2)</sup> and ECCO [...] <sup>(4)</sup>) followed by Manpower [...] <sup>(4)</sup> and BIS ([...] <sup>(1)</sup>).
21. In Luxembourg the new company will obtain a market share of approximately [...] <sup>(4)</sup> (ECCO and ADIA have respectively [...] <sup>(1)</sup> and [...] <sup>(1)</sup>). No other competitor reach a [...] <sup>(3)</sup> share.
22. In Spain the new company will have a market share of approximately [...] <sup>(4)</sup> (ECCO and ADIA's respective market shares are [...] <sup>(4)</sup> and [...] <sup>(2)</sup>). No other competitor reach a [...] <sup>(3)</sup> share.
23. The temporary personnel services market over the last years has been characterized by substantial growth. At the EU level, in terms of sales, the market has increased by approx. 53% from 1993 to 1995. This growth reflects changing social patterns regarding employment. Employees are increasingly finding that temporary employment provides a better fit with their needs. Employers are also looking at a temporary workforce as a means of boosting productivity while, at the same time, lowering labour and administrative costs. Market growth has also been favoured by the liberalization from legal restrictions in various Member States, and by entries of new operators allowed by low entry cost barriers.
24. In fact, the main entry costs for temporary personnel firms are related to administrative and staff expenses, without major investments being necessary. Entry and growth can occur rapidly and with minimal financial risk.
25. In conclusion, in view of the fact that the new company's market shares on any of the affected markets will not exceed 28% and that competition is guaranteed by substantial growth and low barriers to entry, the Commission concludes that the transaction does not raise doubts as to its compatibility with the common market.

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<sup>(1)</sup> business secrets - between 10 - 20%

<sup>(2)</sup> business secrets - between 0 - 10%

<sup>(3)</sup> business secrets - between 5 - 15%

<sup>(4)</sup> business secrets - between 20 - 30%

## VII. ANCILLARY RESTRAINTS

26. A non-competition clause has been agreed upon, by which [...] <sup>(5)</sup> FINECCO undertake not to compete for a five year renewable period in the field of the business transferred to ADIA. Since the operation consists of the transfer of ECCO from FINECCO to ADIA, the Commission considers that only the non competition obligation of FINECCO in the business transferred is directly related and necessary to the concentration. With regard to its duration, a five years period is appropriate. A longer duration does not appear necessary in order to protect the acquiror, since the business concerned does not show particular features such as long persistence of customer loyalty or long life cycle of the products. Therefore, the Commission considers that the said clause, limited to a five year duration, complies with the criteria laid down in point III.A. of the Commission notice regarding restrictions ancillary to the concentration <sup>(6)</sup>. On the other hand, KJJ's [...] <sup>(5)</sup> obligation is not directly related to the concentration, and is therefore not covered by the present decision.
27. KJJ, ADIA and ECCO have also agreed not to compete [...] <sup>(5)</sup>. This clause regards a business which is not directly related to the concentration, and therefore is not covered by the present decision.

## VII. CONCLUSION

28. 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,

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<sup>(5)</sup> business secrets

<sup>(6)</sup> OJ C 203, 14.8.1990, p.5