

***Case No IV/M.951 -
CABLE AND
WIRELESS / MAERSK
DATA - NAUTEC***

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

Article 6(1)(b) NON-OPPOSITION
Date: 10/07/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.07.1997

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

**Subject: Case No IV/M.951 - CABLE & WIRELESS/MAERSK DATA-NAUTEC
Notification of 3.06.1997 pursuant to Article 4 of Council Regulation N°
4064/89
Notification declared complete on 9.06.1997 pursuant to Article 4(2) of
Commission Regulation (EC) N° 3384/94 of 21 December 1994.**

1. On 3.06.1997, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) N° 4064/89 by which the undertakings Cable and Wireless plc ("C&W") and Maersk Data A/S ("Maersk Data")- a member of the Danish A.P. Moller Group- will acquire joint control of a newly-created company: Cable&Wireless Nautec Limited ("Nautec"). On 9.06.1997 the notification became effective as at that date complete information was received by the Commission.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope 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. C&W is an international telecommunications group. It provides telecommunications services. It also provides and manages communication facilities and services for public and private customers and provides

telecommunications consultancy world-wide. The group's operations are concentrated mainly in Asia, Europe and the Caribbean/USA.

4. Maersk Data is one of Denmark's leading suppliers of information technology. Maersk Data is a member of the A.P.Moller group. The A.P. Moller Group has wide interests; operation of container shipping (Maersk Line), bulk carriers, tankers, supply ships and drilling rigs. Maersk Data was originally established to meet the IT requirements of the A.P. Moller Group but at present it also supplies many non-group customers. Maersk Data operates the A.P. Moller privately owned global communications network, MaerskNet, and has an expertise in applications software designed to meet the needs of the maritime sector.

II - THE OPERATION

5. C&W (acting via its CWBN division) and Maersk Data will establish Nautec as a 50/50 owned joint venture company. The Agreements between the parent companies basically mean that Nautec will acquire from Maersk Data the fixed assets used to operate the MaerskNet and from C&W its current contracts and customers in the market for the supply of telecommunications and IT goods and services to the container transportation market.

III - CONCENTRATION

6. The operation is a start-up joint venture to which certain assets will be transferred or made available by the parent undertakings. Nautec is a concentration within the meaning of Article 3 (1) (b).

A) JOINT CONTROL

7. Nautec will be owned 50/50 by C&W and Maersk Data and jointly controlled by them. The Nautec Board will consist of three Directors appointed by C&W (one of whom will be Chairman) and two directors nominated by Maersk Data. Decisions will be taken by majority, each Director having one vote. However, Maersk Data will have veto rights on key strategic commercial matters. These reserved matters requiring shareholder unanimity relate, inter alia, to: adoption or material amendment of the initial (or any subsequent) 3 year Business Plan; adoption or material amendment of the Annual Operating Plan; material disposals; certain material contracts.

B) FULL FUNCTION/ABSENCE OF COORDINATION OF ECONOMIC BEHAVIOUR

8. Nautec will be capitalised initially with £ [...] million equity and established with start-up revenues of approximately £ [...] million per annum. Nautec will be launched on the basis of an initial 3 year Business Plan and a one year Annual

¹ Deleted for publication

Operating Plan. The parties expect that Nautech will be self-financing within [...] years of launch and expect that Nautech will be profitable thereafter.

9. On start-up Nautech will have the following principal customers: (a) Maersk Line (part of the A.P.Moller Group); (b) Maersk Data; (c) [...]; and (d) [...]¹. The first two customers are obviously related to one of the parents of the joint venture (A.P.Moller Group). However, the Commission has verified the proportion of sales and purchases between Nautech and the parent companies, in comparison with the total turnover planned for Nautech, in order to evaluate the autonomous character of Nautech. It results that even on start-up the proportion of Nautech's business accounted for by third party customers will be over [...] % and that in the following 3 to 5 years will continue to increase to over [...] % in a context in which the projected turnover of Nautech is expected to rise from US\$ [...] million in Year 1 to US\$ [...] million in Year 5.
10. In addition to that Nautech's staff will basically be direct hires. Nautech will also sub-contract up to [...] technical support staff from Maersk Data for a period of one year to assist in initial operations. These staff will be replaced by direct hires at the end of that period when Nautech will count with a total staff resource of [...]. This staff level will increase in the future.
11. Therefore, Nautech is a full-function joint venture which will have sufficient financial and other resources including staff and assets in order to operate a business activity on a lasting basis.
12. Furthermore, there is no possibility of coordination of the competitive behaviour of the parent companies within the meaning of the Merger Regulation given that one of the parent companies (Maersk Data) has transferred to the joint venture (Nautech) [...] in the market where Nautech will operate. Indeed, Maersk Data has withdrawn from the [...] in the international maritime container transportation sector as it will transfer to Nautech [...]. Maersk Data will no longer be able itself to provide [...] to Nautech's target customer base because it will lack the necessary infrastructure to do so. It is not likely that Maersk Data re-enters the market of the joint venture by, for instance, leasing lines from third party operators and investing in network equipment: it would be too expensive to make it viable for Maersk Data to compete with Nautech in the provision of telecoms services, in addition, it would go against the whole logic of the present operation for Maersk Data which is to refocus its commercial activities away from the provision of global telecoms services to the maritime sector to concentrate on its other business areas such as consultancy in which it has considerable expertise.
13. Therefore, the joint venture is of a concentrative character.

IV - COMMUNITY DIMENSION

14. The operation has a community dimension. The joint world-wide turnover of the undertakings concerned exceeds ECU 5, 000 million (C&W: 5,407 million, A.P.Moller Group [...] million).

15. The aggregate EC-wide turnover of at least two of the undertakings concerned exceeds ECU 250 million (C&W: 845 million, A.P.Moller Group: [...] million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a community dimension, but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

V - COMPATIBILITY WITH THE COMMON MARKET AND THE EEA

Relevant product and geographic markets

16. The services Nautec will offer to its target customers fall into two main categories:
 - (i) telecommunications services; and
 - (ii) IT services.
17. The parties contend that there is nothing inherently distinctive about the type of services Nautec will supply by virtue of being supplied to maritime sector customers and that the market concerned by the operation could be the provision of international advanced telecommunication services. These type of services, in each instance customised to a degree to the needs of the particular sector and, further, the particular customer, are marketeable at international level in all sorts of economic sectors. However, since on even a narrower definition of the market as the supply of international advanced telecommunications and IT services to the international maritime container transportation sector no competition problem arises, the market definition can be left open.
18. In a previous case, Cable & Wireless/Schlumberger (Case N°. IV/M.532, decision of 22nd December 1994), which concerned the formation of a concentrative joint venture, Omnes, designed to provide to the oil and gas sector services of the kind which Nautec will provide to the maritime sector, it was suggested that the relevant geographic market was global. 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). It is however, for the assessment of the present operation, not necessary to define the relevant geographic market since even the narrowest definition will not give rise to the creation or strengthening of a dominant position.

VI - ASSESSMENT

19. Managed global network and IT services to the maritime container transportation sector is a new and developing activity. The parties contended that currently no supplier has a 5% share of supply on any global market basis. The parties have provided an estimation of their market size at start-up on the basis of a US\$ 1.1

billion global spend on telecoms/IT services by the maritime container transportation sector. Their market share would amount to as [...] %. Nautec's share of that supply would not be substantially higher in the Community as a whole. The Commission has confirmed with present or potential competitors in this sector the fragmented character of the market and the absence of a competition concern as a consequence of this operation.

VII - ANCILLARY RESTRAINTS

20. The parties have presented as ancillary restraints to the concentration the following clauses of their agreements:
21. In their Shareholders' Agreement both C&W and Maersk Data have agreed that they will use Nautec as their preferred channel for the supply of telecommunications and IT goods and services to the container transportation market. This means, for instance, that should any container transportation customer wish to be supplied with telecoms and IT services by the parent companies, it is intended that such services will be provided by the joint venture. This clause is intended to ensure in practice that Nautec is the only undertaking in both the Cable & Wireless group and A.P. Moller group that is to provide the telecoms and IT services in the maritime and container transportation sector. To the extent that this clause aims at expressing the reality of the transfer of the interests of the parties in the sector affected by the operation to Nautec, it can be considered as an integral part of the concentration.
22. It has also been agreed in the Shareholder's Agreement that C&W and Maersk Data will be Nautec's preferred supplier of goods and services, in relation to a requirement of Nautec, unless the terms on which such goods and services are offered to Nautec are uncompetitive when compared to those of others suppliers, or the goods and services offered are technically inappropriate for Nautec's needs. These restrictions are not ancillary and necessary to the concentration, and are therefore not covered by the present decision, because it has not been justified why it is objectively necessary for Nautec to be obliged to obtain its supplies from the parent companies in order to become a viable commercial entity.
23. The Channel Agreements, signed between Nautec and the undertakings of the Cable & Wireless group (Mercury Communications Limited, Hong Kong Telephone Company Limited and Hong Kong Telecom International Limited, Cable & Wireless Inc., referred to as 'the Cable & Wireless subsidiaries') which have been active in the market segment to be addressed by Nautec, contain certain restrictions which the parties consider to be ancillary to the concentration. The Channel Agreements provide for the progressive transferral to Nautec of the Cable & Wireless subsidiaries' customer accounts in the international maritime container transportation sector [...]¹. Therefore, the existing terms and conditions of those customers will, during a certain period, have to be consistent with those previously enjoyed by the customers when the services were provided by the

² Deleted for publication : less than 10%

Cable & Wireless subsidiaries. Nautec and each of the Cable & Wireless subsidiaries also agree to the extent permitted by law, to exchange information on customer accounts in the container transportation sector. This is to enable customer accounts to be re-classified in accordance with the Channel Agreements in order to determine the further business of the the Cable & Wireless subsidiaries for which Nautec should assume responsibility. These provisions will help Nautec in the start-up period to achieve the critical mass necessary to be an autonomous undertaking capable of addressing its target market and ensure that the business that Cable & Wireless wants to inject into Nautec does in fact pass to Nautec smoothly.

24. These provisions are ancillary to and necessary for the implementation of the concentration in Nautec's start-up period . Therefore they are covered by the present decision for a period of three years from the date of the adoption of this decision.
25. Nautec, 1912 and Svendborg (the two latter companies of the A.P.Moller Group) have signed a Managed Network Services Agreement under which Nautec agrees to provide certain telecommunications services to Maersk Line. This agreement is terminable by either party after [...] years.
26. The agreement requires Maersk Line, [...]. The parties submitted that these restrictions are necessary to the implementation of the concentration as one of the essential requirements needed to establish Nautec as a viable commercial entity is the contract with Maersk Line which Maersk Data, due to its association with the A.P.Moller Group, will contribute to Nautec. However, following the figures provided by the parties to prove the autonomous character of Nautec (see section III/B above) the contribution by Maersk Line may be significant in the first [...] years of operation to ensure a viable start-up business but not afterwards when Nautec's business accounted for by third parties customers will be over [...] % of Nautec's total revenue. Therefore this restriction is only considered necessary and covered under this decision for a period of three years from the adoption of this decision and to the extent that it is not to the detriment of third parties [...].

VIII - CONCLUSION

27. 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.
28. 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 N°.4064/89.

For the Commission,