

*Case No IV/M.963 -  
COMPAQ / TANDEM*

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 11/08/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.08.1997

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

**Subject: Case No IV/M.963 - COMPAQ/TANDEM**

Notification of 10.07.1997 pursuant to Article 4 of Council Regulation N/4064/89

1. On 10.07.1997, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking Compaq Computer Co., Inc (Compaq) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Tandem Computers, Inc. (Tandem) through an operation involving a merger of Tandem with a subsidiary of Compaq specially created for that purpose.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 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' ACTIVITIES AND THE OPERATION**

3. The business activities of the undertakings concerned are :

Compaq is one of the largest global suppliers of personal computers, offering Internet and enterprise computing solutions, networking products, commercial PC products, and consumer PCs.

Tandem is specialised in highly scaleable, highly reliable computing products, parallel processing systems for business-critical applications.

4. The concentration involves: the merger with and into Tandem of a new, wholly-owned Compaq subsidiary, Compaq-Project Inc., solely established for this

purpose, with Tandem to be the surviving corporation. This transaction takes place pursuant to a merger agreement and subject to the terms and conditions set forth therein. As a result of this, Tandem becomes a wholly-owned subsidiary of Compaq. The operation therefore constitutes a concentration within the meaning of Article 3(1)b of the Council Regulation.

## **II. COMMUNITY DIMENSION**

5. The parties have a combined aggregate worldwide turnover in excess of ECU 5,000 million (Compaq, ECU 14,260 million; and Tandem, ECU 1,500 million ). Each of them has a Community-wide turnover in excess of ECU 250 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.

## **III. COMPETITIVE ASSESSMENT**

### **A. Relevant product market(s)**

6. The notifying parties state that there is no affected relevant product market. The parties' activities overlap solely with respect to servers. Regardless of price, servers can be differentiated in a variety of ways:
  - From a customer perspective, servers could be divided into application servers and file/print servers. Application servers run business applications on the server machine, providing responses or requested information to the user client systems. In contrast, file/print servers share resources on the network (e.g. disk space, high-speed printers). This enables end-user client systems to use these resources as if they were their own, but here the application programmes do not run on the server.
  - Application servers can be further distinguished by their degree of high-availability and fault-tolerance features. High-availability and fault-tolerance are generally achieved through more reliable components and built-in redundancy.
  - Equally, servers can be differentiated by reference to hardware architecture. There is a range of processor architectures such as RISC, Intel/CISC and System 390.
  - Again, one could focus on the range of different software operating system platforms such as Unix, Windows NT, Netware, OS400 and MVS.
  - Differentiation can be made by power or processing capacity.
7. All of the above factors are brought into play as customers seek to use and combine a range of interchangeable products in order to arrive at an optimum solution for their particular requirement and contribute to substantial price gaps.
8. The parties consider that prices reflect the above features well and distinguish between high-end servers (cost over US\$ 1 million), midrange servers (priced between US\$ 100,000 and 999,999) and low-end servers (less than US\$ 100,000). By the use of these three price bands, applied on Compaq's and

Tandem's sales in the respective segments, the parties want to demonstrate the absence of any affected horizontal market. Tandem is almost exclusively present in the high-end and midrange segments (average price of about US\$ 1,000,000) due to the specialised nature of its products: fault tolerant, highly reliable and highly available servers are used for very specific purposes (business critical applications, e.g. in banks, telecom, etc). By contrast, Compaq's servers are situated in the lower-end of the server market (primarily in the US\$ 3,000-\$13,000 range) and are typically found in a normal office environment.

9. Although the Commission agrees with both the parties and their competitors that prices are a good indicator; they believe that one should not overlook the very competitive nature of the information technology business, in so far that server product markets could rapidly change as new techniques, e.g. clustering, offer a number of potential benefits, which could increase the use of less expensive systems (UNIX, Windows NT) for business critical operations.
10. The Commission considers that for the purposes of this case, it is not necessary to further delineate the relevant product market because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

#### **B. Relevant geographic market(s)**

11. The notifying parties state that the relevant geographic market is worldwide. Given the small transport costs relative to price, the similarity of consumer preferences, product specifications and patterns of sales of major manufacturers throughout EEA countries, the relevant geographic market appears to be at least EEA-wide. However, it is not necessary to further delineate the relevant geographic market because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

#### **C. Assessment**

12. According to data provided by the parties, Compaq's market share of servers at EU level is less than 15%. When taking account of the segmentation, as the parties proposed, one finds out that their share at the low-end servers at EU level is less than 20%, whereas Tandem has only negligible low-end servers' sales (less than 1%) within the EU. In high-end and midrange servers, the proposed concentration accounts for less than 25% and on the basis of all alternative segment definitions, there is no horizontal affected market, so as that there will be virtually no overlap resulting from the proposed operation. Furthermore, whatever the geographic dimension of the relevant product market for servers, there are no affected markets in the meaning of FormCO, since in any event the parties' combined market share will not amount to 25%, as measured within the EEA or EU as a whole, or in any individual Member State.
13. In view of the market position of the parties to the concentration and the high number of competitors active herein, it appears that the notified operation will not have a significant impact on competition in the EEA. Largely in line with this, all the competitors (IBM, HP, Hitachi, Siemens Nixdorf, etc) and clients contacted by the Commission, expressed having no serious concerns about the

merger. Consequently, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

#### **IV ANCILLARY RESTRICTIONS**

14. The parties have requested that certain restrictions on Tandem, intended to preserve the status quo of Tandem's business during the period between the signing of the agreement and its completion be treated as ancillary restraints. To the extent that they would be a restriction of competition, the Commission considers that these restraints are directly related to and necessary for the implementation of the proposed concentration, and should therefore be assessed in conjunction with the concentration itself.

#### **V. CONCLUSION**

15. 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 (EEC) No 4064/89.

For the Commission,