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*Case No COMP/M.4465
– Thrane&Thrane/ Nera*

Only the English text is available and authentic.

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

Article 22 (3)
Date: 11/12/2006



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11/12/2006

SG-Greffe(2006) D/207600

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 22(3) DECISION

To the Office of Fair Trading

**Subject: Case No COMP/M.4465 – Thrane&Thrane / Nera
Request for referral by the Office of Fair Trading to the Commission
pursuant to Article 22(1) of the EC Merger Regulation**

Ref.: Letter of the Office of Fair Trading of 31 October 2006

I. INTRODUCTION

1. With the above-mentioned letter the United Kingdom formally requests the Commission to examine, in application of Article 22(3) of Council Regulation (EC) No 139/2004 (“the EC Merger Regulation”), the concentration whereby the Danish undertaking Thrane & Thrane AS (“T&T”) acquires sole control of the Norwegian company Nera ASA (“Nera”).
2. Pursuant to Article 22(1) of the EC Merger Regulation, one or more Member States may request the Commission to examine any concentration as defined in Article 3 of the EC Merger Regulation that does not have a Community dimension within the meaning of Article 1 of the Regulation but affects trade between Member States and threatens to significantly affect competition within the territory of the Member State or States making the request. Such a request must be made within 15 working days of the date of the notification of the concentration, or if notification is not required, otherwise made known to the Member State. Pursuant to Article 22(2) of the EC Merger Regulation, any other Member State may join the initial request within a period of 15 working days of being informed by the Commission of the initial request. Pursuant to Article 6(3) of Protocol 24 to the EEA Agreement, any EFTA State may join the request within a period of 15 working days from the day on which the Commission informed the EFTA Surveillance Authority of the initial request.

3. In the present case, the parties did not notify the transaction in the United Kingdom which has a voluntary notification system. Following a first complaint received by the Office of Fair Trading (“OFT”), the authority sent to the parties an initial information request on 29 September 2006. The OFT received the response of the parties’ deemed to be complete for the purpose of the assessment in accordance with Article 22 on 10 October 2006.
4. The Commission received the referral request made by the United Kingdom pursuant to Article 22(1) of the EC Merger Regulation on 31 October 2006.
5. The Commission informed, in accordance with Article 22(2) of the EC Merger Regulation, the competent authorities of the other Member States and the EFTA Surveillance Authority on 7 November 2006. None of the Member States and EFTA States has joined the request within 15 working days as foreseen by the EC Merger Regulation.

II. THE PARTIES AND THE OPERATION

6. The acquirer, “T&T” is active in the development, production and sale of equipment for land-based, maritime and aeronautical satellite communications based on the Inmarsat¹ system. It also produces and sells equipment for radio communication. In the 2005/06 financial year, T&T generated a turnover of DKK [...] million (approximately €[...] million) worldwide.
7. The target, Nera is active in the development, production and sale of satellite terminals and gateways for land mobile and maritime satellite communications. It achieved in 2005 a turnover of DKK [...] million (approximately €[...] million) worldwide.
8. With the operation, which was completed on 10 October 2006, T&T acquired sole control by way of acquisition of shares. The transaction is therefore a concentration within the meaning of Article 3 of the EC Merger Regulation. However, it does not have a Community dimension within the meaning of Article 1 of the EC Merger Regulation.

III. ASSESSMENT OF THE REFERRAL REQUEST

9. In order for a referral to be made by a Member State, one procedural and two substantive conditions must be fulfilled pursuant to Article 22(1) of the EC Merger Regulation. As to the procedural precondition *the referral shall be made at most within 15 working days of the date on which the concentration was notified, or if no notification is required, otherwise made known to the Member State concerned*. As to the substantial conditions the concentration must: i) *affect trade between Member States*; and (ii) *threaten to significantly affect competition* within the territory of the

¹ Inmarsat was founded in 1979 as an intergovernmental organisation to provide global safety and other communications for the maritime community. It was transformed into a private company in 1999 and is currently listed at the London Stock Exchange. With a 10-satellite constellation as well as a network of ground control and support facilities, it competes with other satellite system operators as Iridium, Globalstar and Thuraya for global satellite communications solutions.

Member State(s) making the request². If these requirements are met, the Commission has *discretion* as to whether or not to examine the concentration.

Procedural criteria

10. As to the procedural condition, the request was submitted by the United Kingdom, where the parties did not notify on a voluntary basis. The notion of “made known”, derived from the wording of Article 22, should in this context be interpreted as implying sufficient information to make a preliminary assessment as to the existence of the criteria for the making of a referral request pursuant to Article 22. It appears in this case that that such an assessment could only be made on the basis of the information contained in the “satisfactory submission of the parties” of 10 October 2006, made in response to the initial information request of the OFT.
11. Therefore, it appears that the referral request, which was received 15 working days following the “satisfactory submission of the parties” to the OFT, was made within the deadline of Article 22(1) second indent of the EC Merger Regulation.

Substantive criteria

12. Regarding the first substantive criterion, the United Kingdom argues that the market for mobile satellite maritime communication is at least EEA-wide, while T&T maintains that they are global. Therefore it appears that the present concentration affects trade between Member States.
13. Regarding the second criterion, according to which the concentration must threaten to significantly affect competition, the request of the United Kingdom in accordance with paragraph 44 of the Commission’s Notice on Case Referral in respect of concentrations³ (“the Referral Notice”), demonstrates that there are sufficient *prima facie* elements to indicate that the concentration may significantly lessen competition in the area of maritime terminals for satellite communication. According to paragraph 44 of the Commission’s Notice on Case Referral in respect of concentrations (“the Referral Notice”), a referring Member State should demonstrate that, based on a preliminary analysis, there is a real risk that the transaction may have a significant adverse effect on competition and thus deserves close scrutiny, without prejudice to the outcome of a full investigation.
14. Although, the United Kingdom does not conclude on market definitions, it notes that the concentration would result in very large horizontal overlaps if Inmarsat-compatible equipment or specific terminal types within Inmarsat-compatible types within Inmarsat-compatible equipment were to be considered in isolation. The referral request also raises potential competition problems regarding new Inmarsat-compatible maritime currently at the development stage and regarding possible input foreclosure of competitors who currently source from the target some key components for their terminals.

² See also Commission Notice on Case Referral in respect of Concentrations, paragraphs 42-44.

³ OJ C 56, 05.03.2005, p. 2.

15. On the basis of the prima facie analysis of the United Kingdom, the Commission considers, without prejudice to the outcome of its investigation that the concentration threatens to significantly affect competition within the territory of the United Kingdom.

Appropriateness of the referral

16. Pursuant to paragraph 45 of the Referral Notice, referrals of concentrations already notified should normally be limited to those cases which appear to present a real risk of negative effects on competition and trade between Member States and where it appears that these would be best addressed at the Community level. The same applies *a fortiori* when a concentration is not subject to compulsory notification and was not notified on a voluntary basis. One of the categories of cases normally most appropriate for referral under Article 22 of the EC Merger Regulation are cases giving rise to serious competition concerns in one or more market wider than national, or where some of the potentially affected markets to which the main economic impact of the concentration is connected are wider than national. In this case, all the markets concerned by the concentration appear to be at least EEA-wide. Depending on the definition of the affected markets, the concentration may give rise to serious competition concerns, particularly in respect of Inmarsat-compatible equipment or of specific terminal types within Inmarsat-compatible equipment. Therefore the present concentration falls under one of the categories of cases referred to in paragraph 45 of the Referral Notice.
17. Therefore, the present concentration is an appropriate one for referral to the Commission pursuant to Article 22 of the EC Merger Regulation.

IV. CONCLUSION

18. For the above mentioned reasons, the Commission has decided to examine the concentration. This decision is based on Article 22(3) of the EC Merger Regulation.

For the Commission
signed
Benita Ferrero-Waldner
Member of the Commission