



EUROPEAN COMMISSION

***Case No COMP/M.9293 - ICONEX /
HANSOL DENMARK / R+S GROUP***

Only the English text is available and authentic.

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

Article 22

Date: 15.03.2019



EUROPEAN COMMISSION

Brussels, 15.3.2019
C(2019) 2185 final

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the German Competition Authority

**Subject: Case M.9293 - ICONEX / HANSOL DENMARK / R+S GROUP
Request for referral by Germany to the Commission pursuant to
Article 22(1) of Council Regulation (EC) No. 139/2004¹ and Article 57
of the Agreement on the European Economic Area²**

Ref.: Letter of the Bundeskartellamt of 7 February 2019

Dear Sir or Madam,

1. INTRODUCTION

- (1) In its letter of 7 February 2019, the Bundeskartellamt of Germany (“the German Competition Authority”) requested the Commission to examine, in application of Article 22(3) of Council Regulation (EC) No 139/2004 (“the Merger Regulation”), the concentration whereby Iconex LLC (“Iconex”, United States) acquires sole control of Hansol Denmark ApS (“Hansol Denmark”, Denmark) and R+S Group GmbH (“R+S Group”, Germany) by way of purchase of shares (the

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 OJ L 1, 3.1.1994, p.3 ("the EEA Agreement").

"Transaction"). Iconex, Hansol Denmark and R+S Group are together referred to as the "Parties".

- (2) Pursuant to Article 22(1) of the Merger Regulation, one or more Member States may request the Commission to examine any concentration as defined in Article 3 of the Merger Regulation that does not have a Union 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 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, Iconex notified the concentration to the German Competition Authority on 18 January 2019. On 7 February 2019, the Commission received a referral request pursuant to Article 22(1) of the Merger Regulation from Germany. In accordance with Article 22(2) of the Merger Regulation, the Commission informed the competent authorities of the other Member States, the EFTA Surveillance Authority and the undertakings concerned of the request on 8 February 2019.
- (4) France joined the request on 26 February 2019, which is within the period of 15 working days of being informed by the Commission of the request.

2. THE PARTIES AND THE OPERATION

- (5) Iconex offers solutions for printer consumables, labels and receipts. [A controlling stake in Iconex is] held by two investment companies which are managed by Atlas Holdings LLC, USA. Atlas Holdings is an industrial holding company whose portfolio includes manufacturers and wholesalers active in the packaging, pulp, paper and logistics sector. Atlas Holdings has a world-wide turnover of EUR [...] (EUR [...] in the EU). Iconex has a world-wide turnover of EUR [...] (EUR [...] in the EU). Iconex has production sites in the US, Mexico, France and the UK. It sells to customers throughout the EEA from its plants in France and the UK.
- (6) Hansol Denmark and R+S Group (the "Target companies") produce and sell self-adhesive labels and receipt rolls. The parent company of the Target companies is the South Korean company Hansol Paper Co. Ltd. Hansol Denmark is a sub-holding, which functions as a parent company of the Schades group, which owns the relevant operative companies. They have a combined world-wide turnover of EUR [...] (EUR [...] in the EU) and they achieve more than EUR 25 million only in Germany and the UK. They have production sites in Germany, France, UK and Denmark from which they sell to customers throughout the EEA.
- (7) Pursuant to a sale and purchase agreement entered into by the Parties on 5 November 2018, Iconex will acquire 100% of shares in the Target companies.

- (8) As the Transaction will result in Iconex acquiring sole control over the Target companies, it constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation. However, given the respective turnovers of the undertakings concerned (as indicated above in recitals (5) and (6)), the concentration would not have a Union dimension within the meaning of Article 1 of the Merger Regulation.³
- (9) Although the criteria for notification were met in Germany and the UK, the Transaction was only notified to the Bundeskartellamt.⁴

3. ASSESSMENT OF THE REFERRAL REQUEST

- (10) In addition to the requirement that a proposed transaction must constitute a concentration without a Union dimension, one procedural and two substantive conditions must be fulfilled according to Article 22(1) of the Merger Regulation before one or more Member States may request the Commission to examine the concentration.
- (11) The procedural precondition is that *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.*
- (12) The substantial conditions are that the concentration must: i) *affect trade between Member States*; and ii) *threaten to significantly affect competition* within the territory of the Member State(s) making the request.⁵ If these two legal requirements are met, the Commission may decide to examine the concentration.

Procedural criteria

- (13) As to the procedural condition, Iconex notified the Transaction to the German Competition Authority on 18 January 2019. The Commission received the referral request made by the German Competition Authority pursuant to Article 22(1) on 7 February 2019.
- (14) Therefore, the referral request was made within 15 working days following the date on which the concentration was notified to the German Competition Authority, within the deadline of Article 22(1) second indent of the Merger Regulation.

Substantive criteria

Effect on trade between Member States

- (15) Paragraph 43 of the Referral Notice provides that a concentration fulfils this requirement to the extent that it is liable to have some discernible influence on the pattern of trade between Member States.

³ This was confirmed by the services in charge of Merger Control in the Directorate-General for Competition of the Commission in reply to the Parties' consultation of 4 January 2019.

⁴ However, the Parties engaged in pre-notification discussions with the UK Competition Authority.

⁵ See also Commission Notice on Case Referral in respect of Concentrations (OJ C 56, 5.3.2005, p. 2) (the "Referral Notice"), paragraphs 42-44.

- (16) The Parties produce converted rolls (“receipt rolls”) and converted labels. Only their activities in the sale of converted rolls appear to give rise to affected markets, both at EEA level and in some Member States, including Germany. The Notifying Party considered in its submission to the German Competition Authority that the scope of the market is likely EEA-wide. The German Competition Authority argues that the Transaction affects trade between Member States on the market for receipt rolls for cash registers and ATMs, a potential subsegmentation by application. First, the production sites affected by the Transaction are situated in different Member States. Second, the Parties and their main competitors supply customers throughout the EEA from a limited number of sites.⁶ Iconex for instance only has plants in France and the UK but has customers in other countries such as Germany, where its activities overlap with those of the Target, which does have plants there. Finally, according to the Parties a substantial share of customer demand of receipt rolls for cash registers and ATMs is covered by European wide tenders.⁷ Therefore, at least some of the affected markets, whether converted rolls or narrower, are likely to be defined as EEA-wide in scope.
- (17) On the basis of the *prima facie* analysis submitted by the German Competition Authority, the Commission considers, without prejudice to the outcome of its investigation, that the concentration may affect trade between Member States. Therefore, the first substantive criterion of Article 22(1) is fulfilled.

Threat to significantly affect competition within the territory of the Member State(s) making the request

- (18) Paragraph 44 of the Referral Notice provides that 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.
- (19) The request from the German Competition Authority suggests that the transaction would significantly affect competition at least within Germany on the market for the supply of receipt rolls for cash registers.
- (20) The German Competition Authority’s preliminary assessment is based on the information gained during its investigation of Iconex’s acquisition by Atlas Holdings in 2016⁸. In particular, the German Competition Authority established a market share of the Target companies of [significantly above [20-30]%) on the market for the supply of receipt rolls for cash registers in the EEA. The German Competition Authority argues that the product market definition could be segmented by end use application, and that these markets could be national in scope.⁹ Under this assumption, the Parties would achieve a combined market share of 70-80 % on the market for the supply of receipt rolls for cash registers in the retail sector in each of Germany, the UK and France.

⁶ Referral request submitted by the Bundeskartellamt on 7 February 2019, Section 4.

⁷ Referral request submitted by the Bundeskartellamt on 7 February 2019, Section 4.

⁸ Referral request submitted by the Bundeskartellamt on 7 February 2019, Section 5.

⁹ Referral request submitted by the Bundeskartellamt on 7 February 2019, Section 5.2.

- (21) In addition, concerns have been raised by larger German customers in relation to a possible market for large orders that the merger would amount to a reduction from 3 to 2 competitors, as no other supplier would be in a position to supply the necessary quality in the required quantity.¹⁰ In Germany only the competitor Veit would remain as a credible alternative to the Parties and other suppliers would not achieve a market share above 5%. In addition, no new supplier would be expected to enter the market in view of the lack of suppliers of the necessary machines upstream. Expanding capacity is therefore difficult, according to the German Competition Authority.¹¹
- (22) On the basis of the *prima facie* analysis submitted by the German Competition Authority, the Commission considers that, without prejudice to the outcome of its investigation, the concentration threatens to significantly affect competition at least within the territory of Germany. Therefore, the second substantive criterion of Article 22(1) is fulfilled.

Appropriateness of the referral

- (23) 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 EEA level.
- (24) Furthermore, pursuant to paragraph 8 of the Referral Notice, in exercising its discretion to accede to a referral, the Commission must respect the general principles guiding referrals, notably the principle that, by preference, the most appropriate authority should carry out the investigation, bearing in mind the need to ensure effective protection of competition in all markets affected by the transaction.
- (25) One of the categories of cases normally most appropriate for referral under Article 22 of the Merger Regulation are cases giving rise to serious competition concerns in one or more market(s) wider than national.
- (26) In the present case, the proposed concentration matches the type of cases where the Commission appears to be the most appropriate authority to carry out the investigation. At least some of the markets concerned by the concentration appear to be at least EEA-wide. The proposed concentration may give rise to serious competition concerns for the supply of receipt rolls (or possible sub-segments) in the EEA. The German Competition Authority also argues that as a result of this, the market investigation will have to include market participants from jurisdictions of other Member States such as France, where the transaction would not otherwise be notified. Therefore, the Commission has concluded that, in the present circumstances, the potential risks to competition caused by the transaction would be best addressed at the EEA level.

¹⁰ Referral request submitted by the Bundeskartellamt on 7 February 2019, Section 5.2.

¹¹ Referral request submitted by the Bundeskartellamt on 7 February 2019, Section 5.2.

- (27) In addition, the Commission would have better possibilities than the German Competition Authority to implement any remedies which involve the production sites of the Parties in the EU, but outside Germany.
- (28) In light of the above, the present concentration falls under the category of cases referred to in paragraph 45 of the Referral Notice.
- (29) As a result, the Commission considers that it is appropriate to accept the referral of the Transaction pursuant to Article 22 of the Merger Regulation.

4. CONCLUSION

- (30) On the basis of the above considerations, the Commission has concluded that the Transaction, as described by German Competition Authority is a concentration within the meaning of Article 3 of the Merger Regulation.
- (31) Pursuant to paragraph 45 of the Referral Notice and given the circumstances of the case, the Commission considers that it is appropriate to accept the referral of the Transaction pursuant to Article 22 of the Merger Regulation,
- (32) The Commission therefore has decided to examine the concentration by which Iconex acquires sole control over Hansol Denmark and R+S Group under the Merger Regulation. This decision is based on Article 22(3) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission