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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Subject: **Case M.10060 – FRANCISCO PARTNERS / MARLIN EQUITY PARTNERS / CONAN HOLDCO**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 7 January 2021**,** the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Francisco

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').

Partners and Marlin Equity Partners acquire within the meaning of Articles 3(1)(b) and 3(4) of the Merger Regulation joint control of Conan Holdco AS (the "JV Company", Norway). The JV Company will combine the activities of Consignor, a Norwegian company currently under sole control of Francisco Partners, and Unifaun, a Swedish company currently under sole control of Marlin Equity Partners. The concentration is accomplished by way of purchase of shares in a newly created company constituting a joint venture (the "Transaction"). Francisco Partners and Marlin Equity Partners are designated hereinafter as the "Parties".

1. THE PARTIES

(2) **Francisco Partners**, established in the United States of America, is a global private equity firm that specialises in investments in technology and technology-enabled companies undergoing strategic, technological, and operational inflection points. Amongst its portfolio companies, in addition to Consignor, Francisco Partners also controls BluJay that operates in the EU in some of the same markets as Consignor and Unifaun, via its Software as a Service ("SaaS") platform.

(3) **Marlin Equity Partners**, established in the United States of America, is a global investment firm focused on leveraging its capital base, industry relationships and extensive network of operational resources.

(4) **Consignor,** established in Norway, is currently solely controlled by Francisco Partners. Consignor provides Transport Administration Systems ("TAS") services, a form of Supply Chain Management solution, via a Software as a Service ("SaaS") platform. In the EEA, Consignor has offices in Norway, Sweden and Finland and, outside the EEA, in China, the United Kingdom and the United States.

(5) **Unifaun,** established in Sweden, is currently solely controlled by Marlin Equity Partners. Unifaun also provides TAS services under the Unifaun and the TransSmart brands, via a cloud-based SaaS business platform. Unifaun has offices in Sweden, Finland and the Netherlands, and sales representatives in Denmark, Norway, Germany, Belgium and Poland.

2. THE OPERATION

(6) The Transaction concerns the acquisition by Francisco Partners and Marlin Equity Partners of joint control, by way of acquisition of shares, over a company named Conan Holdco AS ("the JV Company"). In exchange for these shares, Francisco Partners will transfer Consignor's shares and Marlin Equity will transfer Unifaun's shares to the JV Company. As a result, the JV Company will hold 100% of Consignor and Unifaun.[3]

(7) The acquisitions of joint control of Unifaun and Consignor by the same Parties are linked *de jure*: if the Transaction is not completed, Unifaun's sole control will remain with Marlin Equity Partners and Consignor's sole control will remain with

[3] Form CO, paragraph 40.

Francisco Partners.[4] The acquisitions therefore are interdependent within the meaning of the Commission's Consolidated Jurisdictional Notice.[5]

(8) Francisco Partners and Marlin Equity Partners will both have veto rights over the adoption of strategic decisions of the JV Company, such as the adoption of the budget and business plan or the appointment of senior management.[6] The creation of the JV Company will combine two existing businesses that have their own management, staff, assets and customers, and will operate as autonomous entities on the market, independently of the parents.[7] Therefore, the Transaction constitutes a concentration within the meaning of Articles 3(1)(b) and 3(4) of the Merger Regulation.

3. UNION DIMENSION

(9) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Marlin Equity Partners: [>EUR 2.500million]; and Francisco Partners: [>EUR 5.000 million]; combined: >EUR 7.500 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Marlin Equity Partners: [>EUR 250 million] and Francisco Partners: [>EUR 250 million]) but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

(10) In view of the above, the Transaction meets the turnover thresholds as set out in Article 1(2) of the Merger Regulation, and therefore has an EU dimension.

4. MARKET DEFINITION

4.1. Product market

(11) Both Unifaun and Consigor are active in the supply of Transport Administration Systems ("TAS").

Commission precedents

(12) The Commission has previously assessed markets for business software,[8] but has never specifically considered a market for TAS solutions. In previous decisions on business software,[9] the Commission specified that business application software comprises software programs that address some aspects of planning, execution or collaboration in a business, government or other organization. These applications

4 Form CO, paragraph 44.

5 Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ C 95, 16.4.2008), para 39-41.

6 Form CO, paragraph 46.

7 Form CO, paragraphs 48-51.

8 M.3216 – Oracle / PeopleSoft (2004); M.3978 – Oracle / Siebel (2005); M.4944 – SAP / Business Objects (2007); M.4987 – IBM / Cognos (2008); M.5763 – Dassault Systemes / IBM DS PLM Software business (2010).

9 M.3216 – Oracle / PeopleSoft (2004); M.3978 – Oracle / Siebel (2005); M.4944 – SAP / Business Objects (2007); M.4987 – IBM / Cognos (2008); M.5763 – Dassault Systemes / IBM DS PLM Software business (2010).

can in general be divided into: (i) Personal Productivity Applications; and (ii) Enterprise Application Software ("EAS").[10] EAS can be further sub-segmented into Enterprise Resource Planning ("ERP"), Customer Relationship Management ("CRM"), Supply Chain Management ("SCM"), Supplier Relationship Management ("SRM"), Product Lifecycle Management ("PLM") and Business Analytics ("BA").[11]

(13) The Commission has defined SCM as applications that automate the process of planning, producing and delivering a good or service to market (supply planning, manufacturing, order fulfilment, distribution and logistics, sourcing and procurement).[12] The Commission also previously identified SaaS as a possible segment of CRM but left the precise market definition open.[13]

The Parties' views

(14) The Parties consider that SCM is a far broader concept than TAS, since it encompasses the entire supply chain from start to finish, whereas TAS is limited to the various functionalities of Transport Administration only. TAS software helps companies to automate and optimise their functions within distribution centres, and around order fulfilment, shipping and delivery processes.[14]

(15) The Parties also submit that TAS covers an array of different operators including: (i) Generalist Supply Chain Execution ("SCE") operators; (ii) Specialised SCE operators; (iii) fully-integrated suppliers of Third Party Logistics Services ("3PL"); and (iv) Transport Carriers that provide their own-brand TAS solutions. The Parties explain that Consignor qualifies as a Specialised SCE operator whereas Unifaun would qualify as a Generalist SCE operator.

(16) The Parties nevertheless consider that all these operators should be part of a single TAS market, since there are no material differences between the core services provided by the different types of operators and product differentiation plays only a limited role.[15]

Outcome of the market investigation

(17) In view of the lack of precedents on the market definition for TAS software solutions, the Commission launched a market investigation on 7 January 2021, asking customers and competitors their views on the market definition. The results of the market investigation support the Parties' views that the provision of TAS software solutions may constitute a product market distinct from other business software.[16] As one competitor explained: "[e]*xpanding supply chain execution capabilities into areas like warehousing requires substantial investments, know-how and market reputation. Each segment has specialized companies covering transportation and warehouse management solutions.*" This view is corroborated by

10 M.8984 - Hg/Vista/Allocate (2018), paragraph 15.
11 M.8984 – M.4944 – SAP / Business Objects (2007), paragraph 7.
12 M.3216 – Oracle / PeopleSoft (2004), paragraph 18.
13 M.3978 – Oracle / Siebel (2005); M.8124 – Microsoft / LinkedIn (2016), paragraph 36].
14 Form CO, paragraph 76.
15 Form CO, paragraph 81.
16 See replies to question 3.1 – Questionnaire to competitors.

competitors' acknowledgment that "*Unifaun and Consignor seem to cover the transportation management software space only*".[17]

(18) Conversely, the majority of competitors who responded to the market investigation indicated that generalist and specialised SCE operators do compete with each other.[18] Whilst the responses of customers were less conclusive, some customers also indicated that there was a degree of substitutability between the services offered by the Parties.[19] As regards competition between SCE operators on the one hand, and 3PL suppliers and Transport Carriers on the other hand, the results of the market investigation are mixed. For customers, the substitutability of TAS services provided by 3PL and Transport Carriers solutions is dependent on, amongst other things, *"the functionality and carriers supported*".[20]

(19) Thus, whilst the results of the market investigation support a distinct market for TAS software solutions provided by both Generalist and Specialised SCE operators, it is less clear whether the solutions provided by 3PL suppliers and Transport Carriers are part of this product market.

Conclusion

(20) In light of the above, and on the basis of the outcome of the market investigation, the Commission considers that TAS software solutions constitute a market distinct from SCM and other business software. Whilst the Commission considers that the market for TAS software solutions comprises the software solutions provided by both Generalist and Specialized SCE operators, it can be left open whether the software solutions provided by 3PL suppliers and Transport Carriers are part of the same market, as this would in any case not impact the outcome of the competitive assessment below.

(21) In any case, the Commission considers that, for the purposes of this decision, the precise product definition can be left open as no serious doubts arise under the narrowest plausible product market of TAS solutions provided by Generalist and Specialised SCE operators, as assessed below.

4.2. Geographic market

Commission precedents

(22) The Commission has previously considered that markets for business software/EAS solutions were at least EEA-wide and possibly worldwide in scope.[21]

17 Idem.

18 See replies to question 4 – Questionnaire to competitors.

19 See replies to questions 3 and 3.2 – Questionnaire to customers.

20 See replies to question 5 – Questionnaire to competitors and questions 4 – Questionnaire to customers.

21 M.5904 – SAP/SYBASE (2010); M.4944 – SAP / Business Objects (2007); M.3978 – Oracle / Siebel (2005); and M.8984 – Hg/Vista/Allocate (2018).

The Parties' views

(23) The Parties also submit that the market for TAS software solutions, being equivalent in nature to business software, is at least EEA-wide in scope. They consider, in particular, that (i) TAS operators do not need physical presence in a particular country in order to provide services; (ii) the services are standard and do not vary between Member States; and (iii) there are minimal national requirements for doing business with customers in particular countries.[22]

Outcome of the market investigation

(24) The outcome of the market investigation supports the views of the Parties, since the majority of respondents consider that the market for TAS software solutions is at least EEA-wide and possibly worldwide in scope.[23] Only a limited number of respondents indicated the potential existence of a regional cross-border market for TAS software solutions. Conversely, the results of the market investigation exclude a possible national scope of the market for TAS software solutions.

Conclusion

(25) In light of the above, and on the basis of the outcome of the market investigation, the Commission considers that the market for TAS software solutions (whether including or excluding solutions by 3PL suppliers and Transport Carriers) is at least EEA-wide in scope and potentially worldwide. However, since a limited number of respondents indicated the potential existence of a regional cross-border market for TAS software solutions (whether including or excluding solutions by 3PL suppliers and Transport Carriers), for the purposes of this Transaction, the Commission has also assessed the effects of the Transaction at regional level, namely in the Nordic region where both Parties are active.

5. COMPETITIVE ASSESSMENT

(26) The Parties' activities overlap horizontally on the market for TAS software solutions. There are no vertical overlaps between the Parties.

22 Form CO, paragraphs 98 – 100.

23 See replies to question 6 – Questionnaire to competitors and question 5 – Questionnaire to customers.

(27) Even on the narrowest plausible product market of TAS software solutions provided by Generalist and Specialised SCE operators (and excluding 3PL suppliers and Transport Carriers), at EEA-wide level, the Transaction gives rise to very low market shares, as shown in Table 1 below. The Parties would have combined market shares not exceeding 5% in the last three years. These market shares would be even lower at worldwide level or if software solutions by 3PL suppliers and Transport Carriers were included in the market definition.

Table 1: Parties' market shares (sales values) of TAS software solutions provided by Generalist and Specialised SCE operators, at EEA-wide level

Company	2017	2018	2019
Consignor	[0-5]%	[0-5]%	[0-5]%
Unifaun	[0-5]%	[0-5]%	[0-5]%
BluJay	[0-5]%	[0-5]%	[0-5]%
Combined	**[5-10]%**	**[0-5]%**	**[0-5]%**

Source: Form CO, Table 7.3(a).

(28) As mentioned above, the Commission has also assessed the potential effects of the Transaction on the narrower geographic market in the Nordic region, where the Transaction would give rise to an affected market. Consignor is primarily active in Norway and Denmark, with BluJay also operating in the latter country, while Unifaun is primarily active in Sweden. As shown in Table 2 below, on the market for TAS software solutions provided by Generalist and Specialised SCE operators, the market shares of the merged entity would amount to [20-30]%. On the market for TAS solutions including 3PL suppliers and Transport Carriers, the merged entity's market share would amount to [20-30]%, as shown in Table 3 below.

Table 2: Parties' market shares (sales values) of TAS software solutions provided by Generalist and Specialised SCE operators, in the Nordic countries

Company	2017	2018	2019
Consignor	[5-10]%	[5-10]%	[10-20]%
Unifaun	[5-10]%	[5-10]%	[5-10]%
BluJay	[0-5]%	[0-5]%	[0-5]%
Combined	**[20-30]%**	**[20-30]%**	**[20-30]%**

Source: Form CO, Table 7.3(a).

Table 3: Parties' market shares (sales values) in the wider market of TAS software solutions provided by Generalist and Specialised SCE operators, 3PL suppliers and Transport Carriers, in the Nordic countries

Company	2017	2018	2019
Consignor	[5-10]%	[5-10]%	[10-20]%
Unifaun	[5-10]%	[5-10]%	[5-10]%
BluJay	[0-5]%	[0-5]%	[0-5]%
Combined	**[20-30]%**	**[20-30]%**	**[20-30]%**

Source: Form CO, Table 7.3(a).

(29) The Commission considers that the Transaction is unlikely to raise competition concerns at EEA-wide or worldwide level, and even on a potential narrower geographic market for TAS solutions (whether including or excluding solutions by 3PL suppliers and Transport Carriers) limited to the Nordic countries, for the below reasons.

(30) During the market investigation, the majority of respondents, *i.e.* both competitors and customers, indicated that the impact of the Transaction on the market for TAS software solutions (whether including or excluding solutions by 3PL suppliers and Transport Carriers) would be neutral.[24] In addition, the majority of customers responding to the market investigation considered that there would be sufficient alternative TAS providers post-Transaction.[25] One competitor stated illustratively that "[…] *there are many vendors, global and regional, active in this space already and these two are not large enough that it would make a significant impact*", while a customer stated that "[...] *there are other suppliers of TAS software that can offer the same functionalities*".

(31) In view of the above, the Commission considers that the horizontal overlap resulting from the Transaction does not give rise to serious doubts as to its compatibility with the internal market in the EEA, worldwide, or on a narrower regional market limited to the Nordic countries.

24 See replies to questions 9 and 10 – Questionnaire to competitors and questions 9 and 10 – Questionnaire to customers.

25 See replies to questions 9 and 10 – Questionnaire to competitors and questions 9 and 10 – Questionnaire to customers.

6. CONCLUSION

(32) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President