

***Case No IV/M.1580 -
CAI / PLATINUM***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/06/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.6.1999

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 6(1)(b) DECISION

To the notifying party

Subject: Case No IV/M.1580 – CAI/PLATINUM

Notification of 26/5/1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 26 May 1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ by which Computer Associates International Inc. (“CAI”), U.S.A., will acquire sole control of Platinum Technology International Inc. (“Platinum”), U.S.A..
2. After examining the notification, the Commission has concluded that the notified concentration 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

3. CAI, a publicly quoted company, has its activities in the field of Information Technology (“IT”) and offers a broad range of integrated computer software products. Furthermore, the company offers a variety of IT-related professional services.
4. Platinum, a publicly listed company, provides software products and consulting services related, *inter alia*, to data management, electronic commerce, application infrastructure management, decision support systems.

¹ OJ L 395, 30.12.1989, p.1; corrected version OJ L 257 of 21.9.1990, p. 13; as last amended by Regulation (EC) No 1310/97, OJ L 180, 9.7.1997, p. 1, corrigendum in OJ L40, 13.2.1998, p. 17.

II. THE OPERATION

5. The notified operation concerns the acquisition of sole control of Platinum by CAI which will be carried out by way of public tender offer in the U.S..

III. CONCENTRATION

6. The acquisition by CAI of Platinum constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The notified operation does not qualify for the thresholds pursuant to Art. 1(2) of the Council Regulation, as the aggregate Community-wide turnover of Platinum is less than EUR 250 million. However, the notified concentration has Community dimension pursuant to Article 1(3) of the Council Regulation.. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2.5 billion² (In fiscal year 1998, CAI: EUR 4.7 billion, Platinum: EUR 0.9 billion). Each of them have a aggregate Community-wide turnover in excess of EUR 100 million (CAI: EUR 1,063 million, Platinum: EUR 162 million). In three Member States, France, Germany and United Kingdom, the aggregate turnover of each undertaking exceeds EUR 25 million. In each of these Member States, the combined aggregate turnover of both undertakings exceeds EUR 100 million. Both undertakings 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. It does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

V. COMPETITIVE ASSESSMENT

A. Relevant product markets

8. The relevant product markets concerned by the proposed operation are the overall markets for professional services, application software and systems software. According to the notifying party, who referred to standard IT industry practice, and with reference to previous Commission's decisions³, a further level of detail can be made of these broad categories for professional services and systems software.
9. - Professional services
 - IT consulting
 - Education & Training
 - Software development
 - Systems software
 - Systems control products

2 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

3 IV/M.112 – SD/Scicon, IV/M.336 – IBM France/CGI, IV/M.560 – EDS/Lufthansa

- Operations management tools
- Application development tools
- Data management systems

10. These sub-categories as proposed by the notifying party have been widely confirmed by the competitors and the customers who responded to the investigation carried out by the Commission, with each sub-category corresponding to a specific product market.
11. According to the notifying party, technology changes very fast in the IT sector and consequently products have to be adapted to customer needs. Therefore, exact definitions of the categories become indistinct and can change quickly.
12. For the purpose of this case, however, the exact product market definitions can be left open, since, even on the narrower market definition, the proposed operation will not lead to the creation or strengthening of a dominant position.

B. Relevant geographic markets

13. The notifying party has taken the view that the markets for professional services, application software and system software (“IT products”) are of world-wide dimension, but have an at least EEA-wide scope. IT products, made by CAI or Platinum, are delivered to customers only in its original English version with no country customisation except that the user manual is made available in translation. Furthermore, product configurations made for the U.S. market remain unchanged for almost any other country. Professional services are provided to a certain degree on an international basis.
14. Third parties, who replied to the investigation carried out by the Commission, however, expressed the view that some professional services are still provided on a national basis, mainly due to customised solutions according to language and local business particularities. Moreover, this view is largely in line with previous Commission’s decisions⁴. However, it is not necessary in the present case to define precisely the geographic scope for professional services and IT products because the transaction does not lead to the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

C. Competitive Assessment

15. Brand loyalty is of no particular importance in professional services and application software products. According to customers, who replied to the Commission’s investigation, focus is given to price and performance in order to satisfy their needs. As far as systems software products are concerned, a certain degree of brand loyalty appears to exist according to some customers, as this category of products is typically linked with functions of the underlying operating system. However, no particular concerns were expressed as a sufficient number of independent suppliers of systems software products operate on the market. In line with this, competitors focus on

⁴ Case IV/M.668 – Philips/Origin, Case IV/M.798 – General Electric/Compunet

delivering superior customer service and tailor-made IT products rather than establishing a brand name.

16. The product portfolio of the parties concerned by the proposed operation is largely of complementary nature, but overlapping activities exist. The combined market shares of the new entity, however, amounts to less than 15% in any of the categories concerned on a EEA-wide scope. In some Member States, the combined market share of the new entity, however, exceeds 15% if considered on a national basis, namely in the Netherlands [14-18]%, in Portugal [33-38]%, in the UK [14-18]%, for products of the category systems software. In any event, strong competitors, for example IBM, Oracle, Hewlett Packard, Cap Gemini, which are operating in almost any Member State, enjoy market shares in the range of 7-20%. Furthermore, an even larger number of smaller competitors, who are active on a national scope but also to a large extent in the EEA, have market shares in the range of 3-5%.
17. Therefore, it can be concluded that the proposed operation would 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.

VI. CONCLUSION

18. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,