

***Case No COMP/M.1901 -  
CAP GEMINI / ERNST &  
YOUNG***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 17/05/2000

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## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.05.2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sirs,

**Subject: Case No COMP/M.1901 – Cap Gemini/Ernst & Young**  
Notification of 07.04.2000 pursuant to Article 4 of Council Regulation (EEC) No 4064/89

1. On 07.04.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) N 4064/89 by which Cap Gemini acquires sole control of the consulting and Information Technology (IT) activities of Ernst & Young (E&Y). The transaction is structured as a global acquisition pursuant to one master purchase agreement signed on 28/02/2000 and by way of 'joinder agreements' with each relevant E&Y entity. In return, Cap Gemini will issue ordinary shares and an additional cash payment to the parties of E&Y that have contributed their shares to Cap Gemini.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) N° 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 AND THE OPERATION**

3. Cap Gemini, a French company, is a consulting and IT services company, present on a global basis.
4. E&Y is one of the 'Big five'<sup>1</sup> accountancy firms. Alongside its core practice areas: accountancy and financial services, it has developed a consulting activity and offers IT related services.

## **II. CONCENTRATION**

5. The notified operation concerns the acquisition of sole control by Cap Gemini of the consulting and IT activities of E&Y, an undertaking previously independent of the former. As a result of the operation, E&Y will hold a participation in Cap Gemini's share capital. However, this participation will not confer the former any form of control. Moreover, as E&Y will seek to monetise its participation in the shortest possible time frame, it is considered that Cap Gemini will gain sole control of the E&Y consulting and IT services business. The operation therefore constitutes a concentration within the meaning of article 3(1) (b) of the Merger Regulation.

## **III. COMMUNITY DIMENSION**

6. The combined aggregate worldwide turnover of the undertakings concerned exceeds € 5.000 million (Cap Gemini € 4.310 million, E&Y € 3.444 million). The aggregate Community-wide turnover of each party exceeds € 250 million (Cap Gemini € [...], E&Y € [...]). They do not achieve more than two-thirds of their aggregate Community-wide turnover within in one and the same Member State. The notified operation, therefore, has a Community dimension according to Article 1(2) of the Merger Regulation.
7. As typical for the 'Big Five' accountancy firms, E&Y is organised in a network of separate national and local firms under the structure of separate partnerships. As decided in the case Price Waterhouse/Coopers & Lybrand <sup>2</sup>, the Commission considers that the individual partnerships and other entities making up E&Y can be regarded as forming a single undertaking for the purposes of the Merger Regulation. Indeed, partnerships use the same business name, have the same business strategy, have a central management structure, do not compete with each other and the individual partnerships participate in global arrangements and procedures. In addition, it is not relevant to determine whether E&Y constitutes a single entity since a number of national partnerships have turnover in excess of € 100 Million (in [four Member States]) or in excess of € 250 Million ([one Member State]). Thus in any event the merger falls to be examined under the Merger Regulation.

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<sup>1</sup> Price Waterhouse – Coopers, Ernst & Young, KMPG, Anderson Consulting and Deloitte Touche Tohmatsu

<sup>2</sup> Case No IV/M. 1016 - Price Waterhouse / Coopers & Lybrand

#### **IV. THE RELEVANT MARKETS**

##### **A. Relevant product markets**

8. The operation is limited to the integration of the E&Y consulting and IT business in the corporate structure of Cap Gemini. The E&Y core activities of accounting services, tax advice, internal audit, the undertaking of due diligence work, risk assessment and other audit services remain unaffected.
9. In previous decisions<sup>3</sup>, the Commission has broken down the market for IT services into seven segments that can be considered as relevant product markets: (1) Hardware maintenance, (2) Software maintenance and support, (3) Consulting, (4) Development integration, (5) IT management services, (6) Business management services and (7) Education and training. Although the general term ‘consulting’ covers a broad market, the above breakdown is a standard and logical approach adopted by many of the industry analysts such as Gartner Group. The parties have stressed that the exact limits of the defined service categories are gradually becoming indistinct as services have to be adapted to customer needs who are increasingly procuring full package services (one stop shopping) and the fast technology changes in the IT sector. Both customers and competitors have confirmed that due to the rapid evolution in the IT sector, the already high degree of supply side substitutability is further facilitated. As for the segment ‘consulting’, it is not considered relevant in the market to make a distinction between IT consulting and business consulting as the latter is often closely related to IT. All major players offer a fully integrated service in response to market demands.
10. In any event, it is not necessary to further define this market because in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of it.

##### **B. Relevant geographic market**

11. The notifying party has taken the view that many IT services are still provided on a national basis, mainly due to customised solutions according to language and local business particularities, although the increasing globalisation of the supply and demand indicate a strong trend towards the internationalisation of the market. Market investigation has shown that, increasingly, contracts are agreed globally and applied nationally or locally. In addition, labour mobility, the centralisation of IT management, the use of English as ‘*lingua franca*’ for IT applications and the use of Internet, enabling to operate from remote bases, tend to indicate a widening of the market for IT Services despite the importance of national practices.
12. In any event, for the purpose of this case, it is not necessary to further define the relevant geographic market, since, even on the basis of the narrowest possible geographical definition, effective competition would not be significantly impeded in the EEA or any substantial part of it.

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<sup>3</sup> Case No IV/M. 1561 - Getronics/Wang , Case IV/M.668 – Philips/Origin

## V. ASSESSMENT

13. To a large extent, Cap Gemini and E&Y complement each other geographically since Cap Gemini's practice is chiefly based in Europe ([...] % of its turnover) and E&Y's strength lies in North America where it has [...] % of its turnover. The parties also complement each other in their activities. E&Y is considered in the market as strong in general consulting while Cap Gemini strength is in IT. Several customers have therefore underlined their increased possibility for one stop shopping.
14. The IT consulting services market is highly fragmented. Although Cap Gemini is one of the fastest growing consulting and IT services companies within the EEA top five (it holds the third place behind IBM and EDS) it only has a market share of [...]. E&Y is number [...] with [...]. Through the operation, Cap Gemini will become the second player in the market with [below 5]%, behind IBM that has [between 5% and 10%] of the market.
15. Concerning the defined product markets, the parties are not active in the markets for hardware/software maintenance and support. As far as the remaining segments are concerned, there are no horizontally or vertically affected markets on an EEA level. When assessed on a member state level, only the market segment consulting results in affected markets as the parties' combined market share will be [between 15 and 25]% in France, [between 15 and 25]% in Sweden and [between 30 and 40]% in Norway<sup>4</sup>. Market investigation has indicated that notably in Norway the indicated market position of the parties could be overestimated as these market shares are strictly concentrated on IT related consulting. A broader market survey indicates a combined market share in Norway of below 15%.
16. In all above mentioned countries, most of the leading names in the international consulting business are present on the market, together with a considerable number of recent entrants. Recent consolidation has led to significant Scandinavian competitors such as Merkantidata, TietoEnator and WM-Data.
17. Geographical coverage, track record and brand recognition are considered as important to serve global customers and to attract the highly skilled human resources needed. However, barriers to entry are regarded as fairly low as service offerings change rapidly and new players with the right skills can enter into alliances in response to client demands. According to the market, small and previously unknown service suppliers do take away business from larger incumbent consultants and increase the fragmentation of the market.
18. As their competitors, the parties have concluded non-exclusive alliances with major equipment and software vendors. These alliances are considered important as they underline the service provider's close co-operation with a given technology supplier enabling preferred access to the latter's know-how and resources. Market investigation has not indicated restrictive effects on competition as consultants are thought to be most effective when being objective and neutral.

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<sup>4</sup> parties' figures based on Gartner / Dataquest market view for 1998

19. The transaction brings about minor overlap in a very dynamic and competitive market where customers have considerable leverage to play one supplier against another. There are no indications that the operation could alter this present situation significantly.

## **VI. ANCILLARY RESTRAINTS**

20. The parties have agreed that E&Y will not engage in any consulting and IT business for a period of five years following the transfer of this business to Cap Gemini. A non-competition obligation of up to five years can be considered reasonably necessary and directly related to the implementation of the concentration when the transfer includes elements of goodwill and know-how. The protection against competition from the vendor, i.e. E&Y who will still use the brand name for the non-transferred activities, is therefore, for a five year duration, considered ancillary to the concentration.
21. E&Y will grant a license to Cap Gemini to use the name Ernst & Young (consulting) for a period of four years from the closing of the transaction for the consulting and IT business. In addition to this four year period, E&Y undertakes not to use the Ernst & Young name in relation to the business transferred for a period of [...] years following the lapse of Cap Gemini's right to use the Ernst & Young name. The Commission however considers that such a [...] year period is not justified. Indeed, the above mentioned transition period, for which a non-competition obligation of five years is proposed, should be sufficient for the build up of the goodwill linked to its own name. Consequently, this decision does not cover the use of the Ernst & Young name beyond the period of five years.

## **VII. CONCLUSION**

22. In view of the foregoing, 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.
23. For the above reasons, the Commission decides 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,