

***Case No COMP/M.2946 -
IBM / PWC
CONSULTING***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 23/09/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 23.09.2002

SG (2002) D/231713

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.2946 - IBM/PwC Consulting
Notification of 22.08.2002 pursuant to Article 4 of Council Regulation
No 4064/89¹

1. On 22.08.2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ by which the US undertaking International Business Machines Corporation ("IBM") acquires, within the meaning of Article 3(1)(b) of the Merger Regulation, substantially all of the global management consulting and technology services business ("PwC Consulting") of the PricewaterhouseCoopers network of firms ("PwC") by way of purchase of shares and assets.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that the concentration does not raise serious doubts as to its compatibility with the common market and with the EEA agreement.

I. THE PARTIES

3. IBM is global provider of IT systems, equipment, computer software and ancillary products, primarily in the IT area, as well as ancillary products. Through its Global Services business unit, IBM provides a broad range of IT services including business and IT management consulting and technology services.
4. PwC is an international network of professional service firms that provide a variety of accounting, audit, tax, management consulting, corporate finance etc. under one common name, management oversight, common strategies and operational standards.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

PwC's management consulting and technology services are conducted essentially through its PwC Consulting business unit.

5. PwC Consulting provides IT services including business and IT management consulting and technology services

II. THE OPERATION AND THE CONCENTRATION

6. Following a Master Stock and Asset Purchase Agreement dated 30 July 2002, IBM will, through the notified transaction, purchase substantially all of PwC's global management consulting and technology business (representing [...] % of PwC's consulting revenues) from the relevant local firm on a country-by-country basis. The acquired PwC Consulting businesses will be integrated into IBM's corporate structure and will operate under the IBM brand. The operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 Bio (EUR 85,9 Bio for IBM and [1-5] Bio for PwC Consulting in 2001)². Each of IBM and PwC Consulting have a Community-wide turnover in excess of EUR 250 million (EUR [...] for IBM and EUR [1-5] Bio for PwC Consulting in 2001), but they 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.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. RELEVANT PRODUCT MARKETS

8. The notifying parties consider that the relevant product market for the purpose of the proposed transaction is the market for all IT services.
9. The Commission has in previous decisions³ found that the product market for such services may either be the overall market for IT services or seven service categories reflecting standard industry practice.⁴ For example, in HP/Compaq, it was held that the delineation made in earlier Commission decisions could be maintained although both customers and competitors had confirmed that the exact limits of the defined service categories are gradually becoming indistinct as customers are increasingly procuring full package services through so-called "one stop shopping" practices and that due to the fast technology

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 Case No IV/M.1561 – Getronics/Wang, Case No COMP/M.1901 – Cap Gemini/Ernst&Young and Case No COMP/M.2609 – HP/Compaq.

⁴ These are: (i) hardware maintenance, (ii) software maintenance and support; (iii) consulting; (iv) development integration; (v) IT management services; (vi) business management services, and (vii) education and training.

changes in the IT sector, the already high degree of supply side substitutability was further facilitated.⁵

10. This growing tendency of procuring multiple-items packages also called “end-to-end IT solutions” including products and services ranging from business consulting to hardware and financing services, could result in the future development of a separate individual market of its own.
11. Suggestions were also made with respect to a further delineation of this possible “end-to-end solutions” market according to the respective sectors of activities of customers such as, for example, banking & finance, oil & energy, etc. since specific demand-side characteristics such as a high level of business process sophistication and the increased interdependence between the various elements of the package might warrant such delineation.
12. Finally, as already considered in a previous Commission decision⁶, the results of the market investigation also indicated the possibility for a further delineation of the markets or market segments according to the end-customer category i.e. small and medium-sized enterprises (“SME”) and large (or global) companies. Although the parties dispute such delineation, the Commission found that such an approach could be justified on the basis of the differences in the needs, purchasing patterns, financial means and geographic reach between SMEs and larger companies.
13. For the purpose of this case, it was however not necessary to further define the market as the concentration would not result in the creation or the strengthening of a dominant position in the EEA or any substantial part of it on any such or alternative market definition considered.

B. RELEVANT GEOGRAPHIC MARKETS

14. Although the results of the market investigation carried out for the purpose of the assessment of the proposed transaction have confirmed the strong trend towards internationalisation of the IT services market as already indicated by the Commission in previous decisions, the supplier’s ability to provide products and services tailored to local cultural and business particularities remains an important element taken into account by customers when purchasing such products and services.
15. It can therefore not yet be concluded, at this stage of the evolution of the market, that the geographic scope of the IT services markets has become international or at least EEA-wide. However, for the purpose of the proposed transaction, the exact geographic market definition can be left open, since on any possible geographic market definition, the concentration does not raise competition concerns.

C. COMPETITIVE ASSESSMENT

16. The acquisition of PwC Consulting by IBM will expand IBM’s service delivery portfolio by providing it with strategy, consulting, business process and vertical industry expertise. The combined company of around 180,000 employees will be the largest IT services company in the world.

⁵ Case No COMP/M.2609 – HP/Compaq, § 26.

⁶ Case No COMP/M.2478– IBM Italia/ Business Solutions/JV.

17. On the basis of the EEA-wide market for IT services, the merged entity's post-transaction share of sales of overall IT services will be less than 15% (IBM about [5-10]% and PwC Consulting about [0-5]%). Even on the basis of national markets, the parties' combined 2001 share of IT services would be less than 15%, with a maximum of [10-20]% in Spain.
18. When considering possible separate markets according to the seven products and services categories outlined above at the EEA-wide level, the merged entity's market shares do not reach beyond 15% in any single category except for IT management services where the combined share for the full year 2001 is [10-20]% including a *de minimis* addition of below [0-5]% from PwC Consulting. However, looking at the merged entity's position on the basis of national markets for IT management, the combined IBM/PwC Consulting will have market shares exceeding 15% in the following eleven EEA countries: Austria ([20-30]%; Belgium ([20-30]%; Denmark ([20-30]%; France ([20-30]%; Germany ([10-20]%; Greece ([20-30]%; Ireland ([30-40]%; Italy ([10-20]%; Norway ([10-20]%; Portugal ([30-40]%; and Spain ([20-30]%).
19. While IBM is the largest provider of IT management services in all these countries, PwC Consulting, however, has no significant presence in any of these countries with market shares of between [0-5]% except for Portugal where its market shares has reached [0-5]% for the full year 2001.
20. In addition to the marginal nature of the market share additions from PwC Consulting in all those countries, a significant number of customers indicated that the merged IBM/PwC Consulting will remain faced with a large number of global and viable players such as EDS, the new HP, Siemens Business Services ("SBS"), Fujitsu and Accenture, as well as a large number of local or regional players. In addition, the ability of rivals to swiftly react to changing customer demands and the opportunity for customers to play one supplier against another in a dynamic market support the absence of a finding of competitive concerns as a result of the transaction on these possible national markets for IT management services.
21. On any of the 6 other possible products and services categories outlined above, the combined entity will not have market shares beyond 15% in any EEA country, except in very few isolated markets. In these markets, however, either PwC Consulting has no significant presence or, the combined entity's market share remains below 30%. In light of the above and the markets characteristics outlined in this decision, the absence of a finding of competitive concerns as a result of the transaction on these possible national markets for any of the 6 other possible products and services categories outlined above can therefore be confirmed.
22. Similarly, the proposed transaction is not expected to raise any competitive concern as far as its impact on the possible separate markets for SMEs on the one hand and larger corporations on the other is concerned. Indeed, given the marginal increase in IBM's overall market share from the addition of PwC Consulting, the proposed transaction does not raise any concerns as to the possible creation or strengthening of a dominant position on any of the two possible delineated markets.
23. Finally, while it has been argued by third parties in the course of the investigation that, as a result of the proposed acquisition of PwC Consulting, IBM would gain full control over all components of a possible separate market for "end-to-end IT solutions" as described above, the results of the Commission's market investigation have shown that, even in that case, the combination would not raise serious doubts as to its compatibility with the Common Market.

24. Indeed, while IBM is probably the supplier with the broadest range of products and services available in-house, it holds no dominant position on any of the products or services markets that could be included in such packaged IT solutions. It can therefore be excluded that the merged entity could gain market power through such combined sales.
25. Similarly, with respect to the effects on possible “end-to-end solutions” markets further delineated according to the activities of customers such as, for example, banking & finance, the proposed transaction is neither expected to raise competitive concerns. Indeed, even when broken-down by types of industries, the merged entity’s European market shares rarely goes beyond 15%. On a national basis, market shares remain around the European average with the notable exception of IBM’s share of the Portuguese IT services market for the telecom and utilities industries⁷ where it reported a [50-70]% share for the year 2000, this situation being the result of the award of a major contract in a market of a relatively small size.

V. CONCLUSION

26. In light of the above, the Commission has concluded that the proposed transaction is not likely to 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.
27. 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
Mario MONTI
Member of the Commission

⁷ As provided by the parties on the basis of information prepared and released by Pierre Audoin Conseil SA.