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*Case No IV/M.050 -
AT&T / NCR*

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

Article 6(1)(b) NON-OPPOSITION
Date: 18.01.1991

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"VERSION FOR THE PUBLIC"

MERGER PROCEDURE - ARTICLE 6(1)(b) DECISION

Registered with advice of delivery

1. Notifying party
2. Notifying party

Dear Sirs,

Subject: Case n° IV/M050 - AT&T/NCR
Notification of 7.12.1990 pursuant to Article 4 of
Council Regulation n° 4064/89

1. The above notification concerns American Telephone & Telegraph Company's ("AT&T") cash tender offer to purchase the shares of NCR Corporation ("NCR") with the intention of acquiring control of the whole of NCR. As the Board of Directors of NCR has opposed AT&T's bid, this bid has become contested.
2. After full examination of the notification, the Commission has come to the conclusion that the notified operation falls within the scope of Council Regulation n° 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. CONCENTRATION AND COMMUNITY DIMENSION

3. The intention of AT&T is to acquire the control of NCR in its entirety, whereby NCR will become a wholly owned subsidiary corporation of AT&T. Thus the operation constitutes a concentration within the meaning of Art. 3 (1) (b) of the Merger Regulation.

4. In 1989, the combined turnover of AT&T and NCR was more than ECU 35 billion. Both companies concerned meet the requirements of Article 1(2)(b), AT&T and NCR each having an aggregate Community-wide turnover of more than ECU 250 million, of which not more than two thirds were achieved in one and the same Member State. Consequently, the concentration between AT&T and NCR has a Community dimension.

II. COMPATIBILITY

5. AT&T's main activities within the Community are

- telecommunication switching and transmission equipment
- PC and medium size computers (hereinafter referred to as "small multi-user computers")
- operating systems and special applications software
- semiconductors
- establishing and servicing local area networks
- Value Added Network Services (VANS)

NCR's main activities within the Community are

- PCs , small multi-user and mainframe computers
- financial and retail work stations (ATM, POS)
- semiconductors
- operating systems and special applications software.

Horizontal aspects:

6. PCs and small multi-user computers are to be considered on a Community-wide level. All major manufacturers are represented in all Member States, and there are no price differences of major significance between the Member States. In the different product markets even when broken down into the smaller market segments, the combined market shares of AT&T and NCR are estimated to be below 10% within the common market.
7. These figures do not include the market shares of Olivetti. AT&T holds 20% or less of the shares in Compagnie Industriali Riunite S.p.A. ("CIR"), which is the parent holding company of Olivetti and in which Compagnia Finanziaria de Benedetti S.p.A. holds a majority interest. AT&T's shareholding does not confer on AT&T a decisive influence within the meaning of Art. 3(3) of the Merger Regulation. AT&T and Olivetti are, therefore, not linked in such a way that the market shares of Olivetti should be added to those of AT&T.
8. In the field of PCs and small multi-user computers, a number of companies, including IBM, Digital, Olivetti and Siemens/Nixdorf, are strong players. This, together with the low combined market shares of AT&T and NCR, leads to the conclusion that the notified concentration does not create or strengthen a dominant position.
9. As regards semiconductors for use in, inter alia, ATMs and POSs, AT&T is engaged in the Application Specific Integrated Circuits (ASIC) business in Europe. Its market position within the Community is, however, negligible. NCR has up to now

produced its own ASICs for utilization in these workstations. The combined market share of AT&T and NCR in Europe is less than [deleted]%, so no effects on competition within the Community are foreseen.

10. As regards operating systems software, AT&T is the developer of the UNIX operating systems software. NCR has developed its own operating systems software, which is not compatible with the UNIX system. As these systems are considered as separate markets (see paragraphs 16 23 below), there are no horizontal links. Similarly, the special applications software of the parties are not horizontally linked.

Vertical Relationships:

11. There are two possible vertical effects of the notified concentration:

- a) NCR has a fairly strong position on the financial and retail workstations markets. AT&T has activities in a number of markets which are vertically related to these workstations markets. The upstream market to raise the most concern has proved to be the UNIX Operating System Software. The linking of these two activities might strengthen the position of NCR on the workstations markets.

- b) AT&T has a very strong position as a vendor of UNIX operating systems software in particular in view of the fact that it owns the copyright. NCR ranks among the 10 largest vendors of PCs and small multi-user computers in the Community. The linking of these activities might enhance the position of AT&T on the UNIX operating systems market.

- a) Financial and Retail workstations

12. Financial workstations are utilized in the banking sector. They consist mainly of Automatic Teller Machines (ATM) and Cash Dispensers which are connected to a central computer. Retail workstations are configurations of cash-register and/or automatic credit/debit facilities (Points of Sale, "POS" and Electronic Cash Registers, "ECR"), which are connected to central verification points in the same way as the ATM's. These central verification points are linked with computerized bank accounts.

13. As regards the abovementioned workstations, the relevant geographical market is the Community. Buyers of ATMs and POSs are banks and retailers. The setting up of these banking and retail systems is a major investment. Investors do not limit their choice to national manufacturers. Relevant criteria in this respect are the quality of the product and the accompanying service. All the main players on the workstations markets are found on almost all national markets. Moreover, the information available to the Commission, shows a substantial cross-border trade in these products, and there does not appear to be any unusually strong preference among the end users for nationally manufactured products.

14. NCR's share of the Community's ATM market, calculated on the basis of installed units, is about [deleted]%. The figures of shipments in the past year suggest that NCR's position is strengthening.

NCR holds about [deleted]% of the Community market for POSs and ECRs, and no more than [deleted]% in any one Member State. The main competitors on the market for POSs and ECRs are IBM, Nixdorf and ICL with market shares within the Community of [deleted]%.

15. The information technology markets present the characteristics of very fast technical development and intensive competition on quality. Furthermore the financial workstations market has been growing fast up to now. However, it is doubtful to what extent this growth in the workstations markets will continue as rapidly as has been the case over the past few years. There are a number of strong competitors like Olivetti, Siemens/Nixdorf, Fujitsu and IBM in cooperation with Diebold, the most important seller of ATM's in the USA. All these competitors can be assumed to play major roles not only on currently expanding markets for new installations but also on existing and future replacement markets. Having regard to the above market figures, even if NCR holds a dominant position in the financial workstations markets, this position is not a result of or strengthened by the notified operation.
16. After the concentration, the way in which AT&T/NCR could reinforce the position of NCR in the workstations business would be by restricting the access of competitors of NCR to UNIX, an operating systems software which is used in a number of workstations systems.

In this respect, a distinction must be made between operating systems, which can only run on a particular architecture, and systems which can run on more than one hardware architecture (also referred to as "open systems"). The advantage of an open system is that the user can keep his special applications software even when changing to another hardware architecture. The open system gives the user a wider choice when investing in new and/or additional hardware. Neither of the operating systems software are substitutable in a majority of cases. Each operating systems software may therefore be considered to represent a market of its own.

UNIX is one of the most widespread open operating systems software. In 1989, about 13% of all computer systems in the Community ran on the UNIX operating systems software (hereinafter referred to as "UNIX"). This figure is projected to rise to around 20% in 1993.⁽¹⁾

17. It could therefore be that AT&T, upon acquiring NCR, could make access to UNIX more difficult for competitors of NCR in the workstations markets and thus strengthen its position on these markets.
18. However,
 - (a) AT&T's policy is to license the UNIX source code to all major computer manufacturers under generally irrevocable, paid up licenses. Once UNIX is thus licensed, these companies can and often do develop their own versions of UNIX for their own purposes. As a result, there are presently about 100 versions of UNIX or "UNIX derivatives", on the market.

⁽¹⁾ Source: Dataquest

- (b) AT&T's licensees are free to commercialise these UNIX-versions, subject to the payment of royalties which are subject only to inflationary adjustments.
 - (c) In addition, in 1988, IBM, DEC, Hewlett-Packard and several other major computer companies founded Open Systems Foundation ("OSF"), a joint development activity with the purpose of using their licensed version of UNIX as a base from which to build a new version to compete with whatever versions of UNIX AT&T (or others) develop in the future.
 - (d) The major competitors of AT&T and NCR are generally of the opinion that the concentration will not result in any dramatic changes in the sense of dependency on AT&T and NCR.
19. Based upon the present conditions as stated in the notification, it seems unlikely that the concentration will strengthen NCR's position on these workstations markets. For the purposes of the Merger Regulation, the concentration does not, therefore, give rise to any serious doubts as to its compatibility with the common market on these markets.

b) The UNIX-market

20. As for the UNIX-market, the notified concentration might affect the position of NCR/AT&T in two ways:
- NCR's position as, inter alia, a manufacturer of computers, by easing NCR's access to the UNIX-system, and
 - AT&T's position as a supplier of UNIX, - in connection with upgradings of the existing versions of UNIX - by introducing restrictive conditions for granting source code licences or even aborting the granting of such licences altogether.
21. Given the situation in the field of computers, inter alia NCR's low ranking therein, and on the basis that no change in AT&T's licensing policy is envisaged (see paragraphs 18 - 20 above), it is not possible to predict with any degree of certainty a development whereby NCR will obtain a dominant position within the Community as a manufacturer and supplier of computers.
22. As regards AT&T's position as a supplier of UNIX, the acquisition of NCR does not in itself strengthen AT&T's position on the UNIX-market. Under the present conditions, any growth in its UNIX business will be due to an increasing acceptance of UNIX as a standard system, but not to links with NCR as a computer manufacturer. Even in the absence of this concentration, the position of AT&T as a licensor of UNIX would be the same.

Conglomerate aspects:

23. Another important aspect of the proposed concentration is the possible combination of AT&T's know-how and manufacturing capacities within the telecommunication and network processing

businesses with those of NCR in its computer and, in particular, its workstations businesses. Considering the strength and market position of the parties on their respective markets, the concentration could lead to a strengthening of NCR's leading position on the workstations markets. This aspect of the concentration also needs to be appraised according to Art. 2(1)(b) of the Merger Regulation.

24. In the chain of information handling (collecting - networking processing - delivering - information), AT&T/NCR could play an important part in the networking field given the special know-how and the variety of AT&T's activities in establishing communication networks.

Networking plays an important role in setting up workstations systems. So the proposed concentration could have an impact on NCR's position in the financial and retail workstations markets.

25. Connectivity Technology for computers (financial and retail workstations are computers using special peripheral equipment) comprises hardware (transmission and switching equipment, communication processors), the setting up of net architecture and software for communication procedures.

AT&T has the following telecommunication activities:

- long distance telephone services (in the USA only)
 - private telecommunication services in the form of special data transmission services (VAN and VADS - in the UK only)
 - telecommunication equipment for transmission and switching (in the public sector as well as in the private sector)
 - Local Area Networks (equipment, software, installation).
26. a) In the Member States, except the UK, telecommunication services are supplied by public monopolies. Liberalisation has been initiated in certain countries with the leasing of parts of the public network for the provision of telecommunication services (VANS, VADS). AT&T is offering this kind of service in the UK through its subsidiary ISTEEL. Its market share in the UK is well below 10%. AT&T is not present in any other Member State.
- b) Within the Community, AT&T's market shares for telecommunication equipment, namely Public Transmission and Public Switching are in both cases below 10%. The main competitors are Alcatel, Siemens, CPT and Ericsson.
- c) In the sector of Private Branch Exchange AT&T's market share in the EC is below 1%.
- d) AT&T estimates its market share in the Community is below 1% for Local Area Networks (LAN) hardware as well as for the software.
27. AT&T is the world's largest manufacturer of telecommunication equipment. However, the above figures for the telecommunication markets show a rather limited presence in the Community. This means that AT&T is not able to back up NCR's workstations

business by the strength of its market position in the network processing markets in the Community, but rather by its technical and commercial know-how.

28. The question remains whether there is a high probability that this concentration would enhance the position of NCR in the workstation market by a flow of technical and marketing know-how in the future.

This does not appear to be the case for the reasons given below. There is a potential complementarity in the technical field and the marketing of workstations and communication products, and these synergies may give AT&T/NCR the chance of developing more advanced communication features at lower cost, although to date in similar cases, such potential synergies have never been realised.

29. For the moment such a complementarity cannot be foreseen as there are no precise indications of concrete technical developments or possible marketing strategies apart from the general consideration that the combination of both sectors allows AT&T/NCR to offer workstations and networking facilities as a whole.
30. It is not excluded that potential advantages flowing from synergies may create or strengthen a dominant position. In this case, however, AT&T/NCR have to face important competitors such as IBM, Siemens/Nixdorf, Olivetti, CGE. These companies are active in the computer field as well as in the telecommunications sector⁽²⁾. The possible advantages which AT&T hopes to gain from this concentration are for the moment theoretical and have yet to be proved in a future market place. To date, similar attempts to combine computer and telecommunications business have all failed or at least not yet fulfilled the expectations which motivated the participants (e.g. Siemens/Nixdorf).
31. On the basis of the information currently available to the Commission concerning the present situation and future developments in these markets, these potential benefits to AT&T/NCR do not lead to the conclusion that the concentration will result in the creation or strengthening of a dominant position.

IV. COMMENTS FROM THIRD PARTIES

32. The notification of the proposed concentration was published in the Official Journal of the European Communities on 11 December 1990. No comments from third parties were received following that publication.

⁽²⁾ CGE's is currently active in telecommunication and computer markets, but not in the financial and retail workstations market.

V. FINAL ASSESSMENT

33. Based on the above findings the Commission has come to the conclusion that the proposed concentration does not raise serious doubts as to its compatibility with the common market.

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For the above reasons, the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of Council Regulation n° 4064/89.

For the Commission,