

***Case No COMP/M.6127 -
ATOS ORIGIN /
SIEMENS IT
SOLUTIONS &
SERVICES***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 25/03/2011

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M. 6127 - Atos Origin/Siemens IT Solutions & Services
Notification of 24 February 2011 pursuant to Article 4 of Council
Regulation No 139/2004¹**

1. On 24 February 2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Atos Origin S.A. ("AO", France) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Siemens IT Solutions and Services GmbH ("SIS", Germany) by way of purchase of shares.

I. THE PARTIES

2. AO provides various information technology ("IT") services such as consulting, systems integration and managed operations (design, build and operate) - including payment card processing services - to a focused base of international clients in specifically targeted market segments, which include public sector and utilities, telecom and media, financial services, high-tech manufacturing, consumer products and retail and process industries.

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.

3. Siemens is the ultimate parent of a global group of companies operating in the industry, energy and healthcare sectors. Siemens has started separating its IT services activities from its other business activities by transferring them to separate legal entities engaged exclusively in IT services. The German IT services activities of Siemens, and the remaining IT services activities which fall within the scope of the proposed transaction², have been (or will be) transferred to SIS. The sole shareholder of SIS is Siemens Beteiligungen Inland GmbH, a wholly owned subsidiary of Siemens.
4. SIS provides comprehensive IT services (IT infrastructure, IT application management, business process outsourcing and maintenance services), industry specific IT solutions, IT consulting services and system integration services to Siemens and its affiliates as well as to external customers such as public sector organizations, financial services providers, service industry, enterprises in the industry segments of manufacturing, energy, healthcare, telecommunications and media.

II. THE OPERATION AND CONCENTRATION

5. Pursuant to a Framework Agreement of 1 February 2011, Siemens Beteiligungen Inland GmbH shall contribute to AO one share of SIS in exchange for newly issued shares in AO and a consideration in cash, with a portion of such cash consideration to be immediately set off against the aggregate subscription price for convertible bonds to be issued by AO. AO will accordingly acquire 100% of SIS' equity.
6. In turn, Siemens will obtain a participation of 15% in AO's share capital, with a lock-up commitment of five years. Siemens will possibly be granted one seat at AO's Board of Directors.³ AO's Board comprises 12 members who vote according to simple majority rules. No shareholders agreement exists among the shareholders. In the light of the absence of a shareholder agreement and in the light of AO's shareholding structure, Siemens' participation in AO post-merger will not allow Siemens to exercise sole or joint control of AO.
7. The notified operation, that is to say AO's acquisition of sole control of SIS, therefore constitutes a concentration within the meaning of Article 3 of the Merger Regulation.
8. In addition to this concentration, AO and Siemens have also agreed to develop a partnership (i) with respect to IT services, through the execution of a customer relationship agreement whereby Siemens will commit for a 7-year period to a certain volume of IT services in connection with the operation of Siemens IT infrastructure and applications worldwide and (ii) with respect to the joint development of new IT services and solutions, through the execution of a global alliance agreement, a common investment agreement, a

² The "Excluded Activities" are the following: (a) a business providing software / system solutions, software development, software R&D and system integration services to customers in the industry segments Communications, Media and Technology (CMT); (b) certain cross-sector SIS operations in Romania and Argentina, which shall however be included into the transaction scope at a later stage, and all cross-sector SIS operations in Bulgaria, which shall however be included into the transaction scope at a later stage, South Africa, Greece, Hungary, Japan and Norway; (c) activities related to so-called Project Herkules (i.e. activities in relation with the modernization and operation of certain IT infrastructure for the German Federal Armed Forces (Bundeswehr)).

³ If the convertible bonds which will be attributed to Siemens were to be all converted into equity, this would give Siemens a maximum shareholding of [...].

collaboration agreement, a Siemens One agreement⁴ and a HTTS Agreement⁵, all of which governing the future operational collaboration between AO and Siemens in order to provide AO with development opportunities in hi-tech transactional services and growing sectors such as healthcare, energy, transport or manufacturing.

9. The notifying party submits that these agreements are directly related to, and necessary for, the implementation of the concentration.
10. According to the Commission Notice on restrictions directly related and necessary to concentrations⁶, the Commission is not obliged to assess and individually address ancillary restraints.
11. The Commission, in this decision, does not take a position whether all of these agreements between AO and Siemens are directly related to and necessary for the implementation of the concentration. This decision under the Merger Regulation is therefore without prejudice to a potential assessment of the additional agreements between AO and Siemens under EU or Member States' competition law.

IV. EU DIMENSION

12. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁷ [AO:EUR 5 100 million, SIS: EUR 3 700 million]. Each of them has an EU-wide turnover in excess of 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. The notified operation therefore has an EU dimension.

V. COMPETITIVE ASSESSMENT

13. The proposed transaction concerns the market for IT services.

Relevant Market

Product market

14. In previous decisions⁸, the Commission considered various market segmentations based on the type of IT services (according to industry analyst Gartner) namely: (i) hardware

⁴ Siemens One is an internal platform to exchange know-how and information between Siemens' respective business units/affiliates and to provide the participating members with certain services to improve the cooperation between such business units/affiliates. According to the Siemens One agreement AO will be allowed to participate to this internal platform, for a limited duration and in relation to a limited number of business areas.

⁵ AO has developed "High Tech Transaction Services" as a product; the purpose of the HTTS Agreement is to establish working groups between AO and Siemens to identify opportunities for the creation of business by the combination of HTTS and various of Siemens' products and solutions.

⁶ OJ C 56, 5.3.2005, p. 24.

⁷ Turnover calculated in accordance with Article 5 of the Merger Regulation.

⁸ See Commission decisions in Cases COMP/M.3571 - IBM/Maerskdata/DMDData; COMP/M.3995 - Belgacom/Telindus; COMP/M.4871 - KPN/Getronics; and COMP/M.5301 - Cap Gemini/BAS.

maintenance, (ii) software maintenance and support, (iii) consulting, (iv) development integration, (v) IT management services, (vi) business management services, and (vii) education and training. In the past, the Commission also considered subdividing IT services markets based on customers' sector (such as financial services, transport manufacturing, government etc.), or the distinction between small and large customers. In the recent *Cap Gemini/BAS* case, the Commission however noted that the market for IT services is a dynamic market with a degree of supply-side substitutability between the various IT services. In all the above cases, the Commission left open the exact delineation of the product market.

15. The notifying party considers that, within the IT services market, the distinction between services is, in most cases, very difficult. In particular, the notifying party considers that the customers' sectors of activity do not correspond to different relevant markets as all the main IT services providers such as IBM, EDS, Fujitsu or Accenture, for instance, are technically able to meet the needs of clients regardless of their sector of activity. In addition, the notifying party considers that a segmentation on the basis of the size of the customer is inappropriate in light of the similarity of services provided to small and large customers. The notifying party therefore submits that the relevant market is the overall IT services market.
16. The respondents to the market investigation confirmed almost unanimously that the Gartner segmentation of the IT market is still relevant, as only two competitors indicated that they consider the relevant market as the overall market for IT services. The market investigation also indicated that the majority of the respondents does not consider the further segmentation of the IT services markets based on customers' sector or the distinction between small and large customers as relevant. Finally, the market investigation confirmed that the market for IT services is a dynamic market with a degree of supply-side substitutability between the various IT services, as the main IT service providers are technically able to and do provide services to customers active across a large number of sectors.
17. For the purpose of the present decision, the precise product market definition can be left open as under all possible product market definitions the proposed transaction does not give rise to any competition concerns.

Geographic market

18. In past decisions⁹, the Commission considered that certain IT services markets could have a national dimension, since IT solutions are customised according to language and local business particularities and also in light of the fact that IT services require the maintenance of a close and constant relationship between the service provider and the client. However, market investigations in more recent cases have indicated an increasing globalisation of the supply and demand for IT services.¹⁰

⁹ Case IV/M.336 - IBM France/CGI; Case IV/M.668 - Philips/Origin; Case IV/M.798 - General Electric/CompuNet; Case IV/M.1580 - CAI/Platinum; Case IV/M.1561 - Getronics/Wang.

¹⁰ Case COMP/M.1901 - Cap Gemini/Ernst & Young; Case COMP/M.2478 - IBM Italia/Business Solutions; Case COMP/M.3398 - Hewlett Packard/Triaton; Case COMP/M.5197 - Hewlett Packard/EDS; Case COMP/M.5666 - Xerox/Affiliated Computer Services.

19. The notifying party submits that, in line with the findings of the market investigations carried out in the most recent cases, the relevant geographic market is at least EEA-wide.
20. The vast majority of the respondents to the market investigation confirmed the previous Commission's findings and the notifying party's claims.
21. For the purpose of the present decision, the exact delineation of the geographic market for IT services (and its possible further segmentation) can be left open as under all possible product market definitions the proposed transaction does not give rise to any competition concerns.

Competitive assessment

22. The proposed transaction does not give rise to any affected market on an overall IT professional services market at the EEA level, where the parties would have a combined market share of [5-10]%. At the national level, the proposed transaction would give rise to only one affected market in Austria (combined market share of [10-20]% in 2009), with a very small increment of [0-5]%.
23. If one considers a segmentation of the IT services market according to the type of IT services, two markets/segments are affected:
 - Development and integration in Austria with a combined market share of [10-20]% and an increment of [0-5]%; and
 - IT management services in Austria with a combined market share of [20-30]% and an increment of [0-5]%.
24. If one considers a further segmentation according to the customers' sector, 18 markets/segments are affected:

Product market/segment	Customers' sector	Geographic market/segment	Parties' combined market share	Increment
IT management services	Financial services sector	The Netherlands	[10-20]%	[0-5]%
Development & integration services	Government sector	Austria	[30-40]%	[0-5]%
Development & integration services	Government sector	Belgium	[10-20]%	[5-10]%
Development & integration services	Government sector	Spain	[10-20]%	[5-10]%
Development & integration services	Transportation sector	Germany	[10-20]%	[0-5]%
IT management services	Transportation sector	Germany	[20-30]%	[0-5]%
Development &	Transportation	Spain	[10-20]%	[0-5]%

integration services	sector			
Development & integration services	Utilities sector	Austria	[10-20]%	[0-5]%
IT management services	Utilities sector	France	[10-20]%	[0-5]%
Development & integration services	Discrete manufacturing	Austria	[40-50]%	[0-5]%
IT management services	Discrete manufacturing	Austria	[70-80]%	[5-10]%
IT management services	Discrete manufacturing	Germany	[40-50]%	[0-5]%
IT management services	Discrete manufacturing	The Netherlands	[20-30]%	[0-5]%
IT management services	Process manufacturing sector	Austria	[60-70]%	[0-5]%
IT management services	Process manufacturing sector	Belgium	[20-30]%	[10-20]%
IT management services	Process manufacturing sector	Germany	[20-30]%	[0-5]%
IT management services	Process manufacturing sector	The Netherlands	[20-30]%	[0-5]%
IT management services	Retail trade sector	Germany	[30-40]%	[0-5]%

Source: Gartner and parties' sales data for 2009

25. The table above shows that in most hypothetical submarkets, the parties' combined market shares would be below 25% (and exceeding 30% in only 6 hypothetical submarkets) and/or the increment would be below 3% (and exceeding 5% in only 4 hypothetical submarkets).

26. Moreover, two remarks have to be made on these data. On the one hand, 2010 figures tend to show a decrease of SIS sales. On the other hand, 2009 figures include Siemens group's captive sales. Post transaction, despite the Customer Relationship Agreement which will be entered into by the AO and Siemens, AO has no guarantee that it will continue in the future to achieve sales with the Siemens group of the level reached by the SIS Business until now and some of Siemens' formerly captive sales may become contestable on the market.

Purchasing patterns for IT services: bidding vs. bilateral negotiations

27. The notifying party argues that the IT services market is a bidding market.
28. However, the market investigation is inconclusive on this point. While many respondents indicated that IT services are selected through tender procedures, the market investigation showed that IT services are also sourced/supplied following individual negotiations and some customers pointed out that they only carry out individual negotiations. Respondents to the market investigation indicated that the dividing line between individual negotiations and tender procedures is usually the size of the project, with big projects (in terms of volume and value) being usually put for tenders.
29. In any event, the notifying party submits that the proposed operation is unlikely to give rise to any competition concerns for the following reasons.

Closeness of competition

30. First, the notifying party submits that AO and SIS have complementary activities in terms of geographies, lines of business and client bases. This is confirmed by the analysis of the internal documents of the parties.
31. However, the market investigation is inconclusive on that point.
32. Furthermore, AO and Siemens submitted a sample of bidding data for IT services. The bidding data provided by the parties confirms that AO and SIS do not appear to be close competitors. Indeed, if one consolidates the lists of tenders of both parties, the result clearly shows that the number of occasions where both parties competed in the same tenders is extremely limited. In fact, out of [...] tenders with a value of more than EUR 50 million to which AO participated over the last three years, only [...] were also reviewed and examined by the SIS Business and only [...] of these tender procedures were actually pursued by the SIS Business and led to the effective submission of a bid.
33. The market investigation did not indicate that AO and SIS regularly take part in the same tenders in the market segments mentioned above. While some competitors suggested that the parties participate in the same tenders, a large majority of customers did not experience the parties participating in the same tenders in the past three years. The market investigation therefore confirmed that AO and SIS are not perceived as close competitors in the large majority of bidding situations.

Existence of competitors

34. Second, according to the notifying party, the IT services market is characterised by the presence of strong competitors led by the global industry giants IBM and HP-EDS, who post-transaction will remain strong number 1 and 2 respectively.
35. The market investigation confirmed the existence of several strong competitors, such as IBM, HP/EDS but also Accenture, Cap Gemini, CSC and T-Systems.

Buyer power

36. Third, the notifying party submits that customers who procure IT services are sophisticated buyers who have strong bargaining power vis-à-vis providers of IT services.

37. In this context, the notifying party also submits that switching costs are insignificant for customers.
38. The market investigation indicated that a majority of customers use the services of different providers for different projects.
39. The market investigation showed that competitors consider customers have a strong negotiating position, given a wide use of sophisticated internal procurement processes or a possibility to use third party sourcing advisers. Furthermore, a large majority of customers confirmed that they have a strong negotiating position. However, the replies from certain customers suggested that only large customers have a significant bargaining power.
40. As regards switching costs, the market investigation showed that switching costs do play a role when choosing a new supplier. While most of the customers bear the cost of switching IT services providers, it is possible to negotiate a sharing of switching costs between the customer and the new supplier. In the view of some competitors, they have to offer major cost cuts or bear part of the switching costs in order to be able to sign a contract with a new customer. The market investigation did therefore not clearly confirm that switching costs are insignificant. However, the market investigation indicated that those costs do not usually limit the possibility for customers to switch IT services provider.

Barriers to entry

41. Fourth, the notifying party submits that barriers to entry into the IT services market are low given notably that the key factor for successful entry lies in the ability to provide the appropriate technical skills which are currently widely available in the market place and that IT services offerings change rapidly and new players with the right skills can enter into alliances in response to client demands. In this regard, the notifying party points at the increasing competition the parties are facing from non-European “offshore” IT services providers, especially from India such as Tata Consultancy Services, Infosys, HCL, or Wipro.
42. The market investigation showed the existence of some entry barriers for new entrants such as capital requirements, sufficient expertise and proven track record. However, in the view of a majority of respondents, entry barriers are not substantial. Moreover, the investigation confirmed that the market is characterized by new entry and expansion, illustrated mainly by the entry of several Indian based companies such as Wipro, Infosys and TCS.
43. In light of the above considerations, the Commission concludes that the proposed transaction does not give rise to a significant impediment to effective competition in the internal market or a substantial part of it.

VI. CONCLUSION

44. 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.

For the Commission

(signed)
Joaquín ALMUNIA
Vice-President