

***Case No COMP/M.1767 -  
AT&T / IBM / INTESA***

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: 20/12/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, **20.12.1999**  
SG (99) D/10580

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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. 1767 – AT&T / IBM / INTESA**

Notification of 17.11.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 17.11.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 as amended (“the ECMR”) by which AT&T Corp. (hereinafter “AT&T” and referring to the AT&T group of companies) notified an operation whereby it would acquire from International Business Machines Corporation (“IBM”) the network connectivity business (the “Business”) currently operated by Iniziative Telematiche per I Servizi Applicativi S.p.A (“Intesa”).

**I THE PARTIES**

2. AT&T is a telecommunications common carrier in the United States providing a broad range of US and international voice and data communications services, including long-distance and on-line Internet services to and from the United States.
3. IBM is a corporation organised under the laws of the State of New York. It is the ultimate parent of the IBM group of companies, which develops, manufactures and markets hardware, software, and services, principally in the information technology area.

4. Until 3 August 1999, Intesa was a 50-50 joint venture between IBM Italy and FIAT. On that date, IBM Italy purchased all the shares held by FIAT and Intesa thereby became a wholly-owned subsidiary of IBM Italy. Intesa operates a network connectivity business involving the marketing and provision of managed solutions communications services through its own national network and through connection with the AT&T Global Network. It also provides consulting services, sells and distributes hardware products and provides related training and after-sales services.

## **II THE OPERATION AND THE CONCENTRATION**

5. In April 1999 the Commission approved AT&T's acquisition of the IBM Global Network ("IGN") (*AT&T/IBM Global Network*, Commission Decision of 22 April 1999, Case No. IV/M.1396), by which AT&T purchased the physical and logical infrastructure of the IGN network and part of its corporate and consumer customer base for the IGN services. These services comprise managed Internet access, file transfer, transaction routing, universal messaging services, managed data network services, network outsourcing services and custom network services.
6. By the notified operation AT&T will acquire sole control of the network connectivity business currently operated by Intesa. This consists of designing, implementing the design of, operating, managing and maintaining the leased-line and remote access based data and voice network in Italy that it owns and runs. Intesa's other activities (eg the resale of personal computers) do not form part of the operation and following the concentration these will continue to be operated by Intesa.
7. The operation therefore extends the geographical range of AT&T's managed solutions communications services, based on the former IBM Global Network (now AT&T Global Network), to include Italy.

## **III COMMUNITY DIMENSION**

8. After making adjustments to reflect turnover attributable to undertakings acquired or disposed of since its most recent set of audited accounts, the world-wide turnover of AT&T for the 1997 accounting year was just over EUR 45 000 million. Pursuant to the second paragraph of Article 5(2) of the ECMR, for the purposes of calculating turnover, the turnover of IGN acquired by AT&T in the AT&T/IGN transaction is aggregated with the turnover of the part of Intesa to be acquired. The combined world-wide turnover of IGN and that part of Intesa in 1997 was not more than EUR 1 900.
9. The determination of Community-wide turnover under the Merger Regulation involves the allocation of turnover on a geographical basis. There are various possible methods of allocating revenue earned by telephone companies providing services which generate revenue outside the country in which they are based. On all the variants proposed, AT&T and IGN each have Community-wide turnover exceeding ECU 250 million. AT&T and IGN do not both achieve more than two-thirds of their Community-wide turnover within one and the same Member State. Accordingly the concentration has a Community dimension within the meaning of Article 1 of the ECMR. However, it does not fall to be treated as an EFTA co-operation case.

## **IV COMPETITIVE ASSESSMENT**

### *Relevant product markets*

10. The notifying parties suggest two alternative ways of assessing the relevant product markets for this concentration. On a wider view, the relevant product market is the market for all managed solutions communications services. On a narrower view, the markets for outsourcing, for MDNS (managed data network solutions), for internet access services and for managed electronic transaction services are all separate relevant product markets.
11. Against this background and based on the approach taken in the AT&T/IGN decision, the assessment was carried out by looking at the narrowest possible product markets which might exist and then widening the definition to cover the broader market.

### *Geographic market*

12. The part of Intesa's business to be acquired relates only to managed solutions communications services in Italy. The business to be sold operates across Italy in a uniform fashion. The relevant geographic market for the purposes of this assessment was therefore taken to be Italy.

### *Competitive assessment*

13. On the narrowest possible product market definition, AT&T's only managed solutions communications services in Italy in 1998 were outsourcing services, with a market share that was almost nil. Thus if the narrow product market definition were used, there would be an overlap only in the area of outsourcing services. This overlap would have no appreciable effect on the market for outsourcing services in Italy, where Intesa currently has a market share of [5-10%], and would thus not raise any competition concerns.
14. On the broader product market definition AT&T's market share is even smaller and thus the overlap with the business to be acquired from Intesa would not have any appreciable effect on the market for managed solutions communications services in Italy, where Intesa's current market share is [5-10%]. There are thus no competition concerns.

## **V ANCILLARY RESTRAINTS**

15. The parties have sought clearance of a non-compete obligation in one of the relevant purchase agreements, whereby IBM undertakes, for a period of five years following the sale of the relevant part of Intesa, not to recreate a facilities-based network or to engage in any business the primary purpose of which is the provision of access to and transport service on a facilities-based or leased line-based network owned by IBM, subject to certain limited exceptions.
16. In the AT&T/IGN transaction, the Commission concluded that a similar non-compete clause was directly related and necessary to the concentration because it guarantees to AT&T the full value of the assets transferred, which include both physical assets and intangible assets, including goodwill and know-how. The five year period was necessary for AT&T to gain the loyalty of customers and to assimilate and exploit the transferred know-how. The same reasoning and logic apply equally to the non-competition obligation in this operation.

17. The relevant sale agreements also include provisions whereby the de-merged part of Intesa to be acquired by AT&T is awarded a three-year contract for a significant proportion of IBM's Italian networking needs, with revenues of approximately [...] in the first year and reducing minimum annual revenue levels in each subsequent year.
18. This provision is the country-specific implementation of a similar provision in the agreement whereby AT&T acquired IGN from IBM. In clearing this previous transaction, the Commission concluded that such a provision would not in practice restrict competition because under the terms of the non-compete clause, IBM would not be competing for AT&T's business with AT&T during the duration of the contract. The same reasoning applies equally to the provision in this case, as under the terms of the relevant agreement IBM will not be competing for AT&T's business in Italy during the term of the contract.
19. In the AT&T/IGN decision, in relation to the procurement obligations, the Commission indicated that a certain time period was necessary for IBM to adjust from services previously internalised to services being provided by a third party. However, it concluded that a period of five years appears to be excessive to enable a company to sever economic links which have been externalised following a divestiture and eventually substitute market-place offerings. This is even more the case in the telecommunications industry where technological changes are taking place at a fast pace.
20. In this case the parties submit that a period of five years for the procurement obligation clause is industry standard and that it is directly related and necessary to the present transaction for its full duration. However, there is no obvious reason why the conclusion reached by the Commission in the previous case, that five years is excessive, does not equally apply here. Accordingly insofar as the clause is considered a restriction of competition, it is considered as directly related and necessary to the transaction for three years from the date of this decision.

## **VI CONCLUSION**

21. 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,