

***Case No COMP/M.1841 -
CELESTICA / IBM
(EMS)***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/02/2000

*Also available in the CELEX database
Document No 300M1841*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.02.2000
SG (2000) D/101806

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sirs,

Subject: Case No COMP/M.1841-Celestica/IBM (EMS)

Notification of 26 January 2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 26 January 2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) N° 4064/89¹ by which the undertaking Celestica Inc. ("Celestica") will acquire sole control within the meaning of Article 3(1)(b) of the Council Regulation of some parts of the undertaking International Business Machines Corporation ("IBM")
2. After examining the notification, the Commission has concluded that the notified concentration 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

3. IBM is the ultimate parent company of the IBM group of companies, which develops, produces, and markets information technology ("IT") systems, equipment, computer software, and services on a global scale.

¹ OJ L 395, 30.12.1989, p.1; corrected version OJ L 257 of 21.9.1990, p.13; as last amended by Regulation (EC) N°1310/97, OJ L 180, 9.7.1997, p.1, corrigendum in OJ L 140, 13.2.1998, p.17.

4. Celestica Inc, controlled by the Canadian based group Onex Corporation, is the head company of an international group based in the US active worldwide mainly in the field of electronics manufacturing services (EMS) for original equipment manufacturers (OEMs).

II. THE OPERATION

5. The operation will result in the acquisition of sole control by Celestica over part of IBM Italia S.p.A.'s and part of IBM Corporation's manufacturing operations presently developed in Italy and the US respectively. In particular Celestica will acquire from IBM Italia S.p.A, sole control over the manufacturing operations located at Vimercate (Milan) and Santa Palomba (Rome), which respectively refer to the manufacturing of printed circuit assemblies and the assembly and test of servers. In the US Celestica will acquire sole control over the manufacturing operations of electronic card assembly and test, located at the IBM's Rochester facilities (Minnesota).

III. CONCENTRATION

6. The acquisition of parts of IBM activities by Celestica constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion². (€[...] millions for the whole of the Onex group and €[...] millions for the IBM acquired business). Each of them have a Community-wide turnover in excess of EUR 250 million (€[...] millions for the Onex group and €[...] millions for the IBM acquired business), 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.

V. COMPETITIVE ASSESSMENT

Relevant Product Markets

Electronics Manufacturing Services (EMS)

8. The notifying party considers that the relevant product market concerned by the proposed operation is the market for the provision of Electronics Manufacturing Services (EMS) to original equipment manufacturers (OEMs). EMS providers can manufacture on an outsourcing/procurement basis various types of electronic products including different functions such as design, component selections and procurement, prototyping, product assurance, assembly, testing, failure analysis, et...EMS providers do not normally own the intellectual property rights linked with the design and development of such products and rely on the relevant OEM for licensing of such rights. In the parties' opinion the market for the provision of EMS to OEMs cannot be

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.

further subdivided into the different products which are produced and assembled by the EMS providers mainly because they have the capability to offer a wide range of services and to switch production in the short term, according to different orders from OEMs, without having to acquire additional manufacturing units.

9. However from the market test undertaken by the Commission it can be inferred that while switching capacity might be possible from one type of product to another (i.e, switching between different product lines), switching from one product category to another is not likely to be possible without a major investment. There is also the possibility of subdividing the manufacturer's activity following different target markets such as automotive, consumer electronics, computer, telecommunications, or medical.
10. Notwithstanding the foregoing, the parties have provided separate data for the main products which they produce for OEMs, namely *Electronic cards for IT systems* and *Servers*. As regards *Electronic cards for IT systems*, they provide different functions such as data processing, data storage or data transmission. The cards produced by the parties are mainly of three different types: Single/Dual in Line Memory Modules; electronic cards with specific tasks as part of a higher level of aggregation (functional sub-assembly), and assembly of modified cards, optical links cards, multilayer hybrid and contract manufacturing for various OEMs users.
11. However it is not necessary to further delineate the relevant product market since, even if alternative definitions were considered, effective competition will not be significantly impeded in the EEA or any substantial part of that area.

Servers

12. As regards *Servers* the Commission's approach to this market as specified in previous decisions³ accepts a further division of servers into ranges according to different criteria, mainly price-bands according to standard industry practice : high-end servers (over US \$ 1 million; mid-range (between US\$ 100,000 and 999,999) and low-end servers (less than US \$100,000). Nevertheless the present technology developments bring into the market new generations of products that are more powerful and less expensive than the previous generation and makes possible the acquisition of scalable products . The market test undertaken by the Commission tends to confirm this view.
13. The Commission therefore considers that the production and assembly of Servers constitutes a different product market either taken as a whole or subdivided into different product markets as above mentioned. Within the frame of this operation the servers produced and assembled by the parties are placed within the mid-range category. However it is not necessary to further delineate this market since, even if alternative definitions were considered there would be no creation or strengthening of a dominant position in the EEA or any substantial part of that area.

³ See for instance IV/M.1643-IBM/Sequent; IV/M.1120-Compaq/Digital, IV/M.977-Fujitsu/Amdahl

B. Relevant Geographic Markets.

14. The notifying party takes the view that the geographic scope of Electronic Manufacturing Systems for OEMs, either considered as a whole or for the different products above identified is global. They claim that a global presence is one of the assets pursued by OEMs when selecting EMS providers. In addition large OEMs operate on a global scale and there are similar product standards and specifications. Other market participants seem to follow a similar approach. At the same time the EMS provider prefers the location of the manufacturing facility to be near its customer's location. Given the low transport cost relative to price, the similar custom preferences and the absence of major local barriers to entry, the relevant geographic markets appears to be at least EEA-wide. However it is not necessary to further delineate the relevant geographic market in this case as in either alternative market definitions considered, effective competition will not be significantly impeded in the EEA or any substantial part of that area.

C. Competitive Assessment

EMS

15. As a result of the proposed operation the increase in market share for the relevant geographic market as above mentioned is not significant. Celestica presently holds a market-share of [4-8] % at the EEA level and after the concentration it will increase to [less than 15] % and will become first player on this market overtaking its present main competitors SCI Systems and Solectron. At a world-wide level Celestica's market share will be around [4-8] % while keeping its present [...] position.
16. The market characteristics shows a scenario of a highly fragmented market, whatever its geographic scope, with a significant number of small players and customers being big groups operating in the field of information technology and electronics manufacturing holding a strong purchasing power.
17. If the product market for *electronic cards for IT systems* had to be analysed separately Celestica's final market share at a global level would be around [4-8] % if considering both captive (non outsourced) and outsourced market. In the more restricted market of outsourced production and assembly Celestica would account for a [5-10] %. At the EEA level and for the whole market (that is including both outsourced and not outsource production) Celestica's position will remain less than [0-10] %. If only considering the outsourcing of the production and assembly in the EEA after the proposed operation Celestica's market share will be of [10-15] % in value.

Servers

18. According to the parties information the transaction does not bring about any modification in the market scenario regarding the market of servers to final users as Celestica produced servers only to a limited extent for the European market. At a global level Celestica's position in the market for all servers will be less than [0-10] % and less than [5-15] % in the market for mid-range servers. At the EEA level its market share for the whole market of servers will be less than [0-10] % and for the market of mid-range servers of less than [5-15] %.

Summary

19. It can be concluded from the above 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.

V. ANCILLARY RESTRAINTS

20. The parties have requested three contractual provisions to be considered as ancillary to the concentration.
21. The first relates to a Celestica's status as preferred supplier during the transitional period ([...]) and, on the other hand, IBM's favourite customer clause for the same period of time. However these arrangements contained in the Supply Agreement are not exclusive. IBM's status as a favourite customer will allow IBM to ensure the continuity in supply at the same standards of qualities, previously guaranteed by its internal manufacturing sources. On the other hand Celestica's status as preferred supplier will allow Celestica a minimum economic protection during the start-up period providing that is able to make competitive offers as any other third party.
22. The second provision relates to a provision contained in the Intellectual Property Agreement by which IBM grants to Celestica the access to certain technology linked with intellectual property rights. It refers to non exclusive licences to use and reproduce certain intellectual property rights (including know how, software, patents and computer programs) and technical and business information necessary to carry out the activities and for which Celestica will pay a royalty This provision ensures that Celstica gets full value of the assets acquired. Therefore it will also be covered by the present decision.
23. The third provision is contained in the Transitional Services Agreement. Under this agreement IBM shall supply to Celestica a number of services including financial services, supply and procurement services and IT services to the transferred plants at the sites of Vimercate and Santa Palomba for a limited transitional period of [...] months for financial and procurement services and of one year for IT services. These provisions will allow Celestica to establish its own internal organisation during an initial start-up period and will also be covered by the present decision.
24. Insofar as these provisions should amount to restrictions of competition, they can be considered directly related and necessary to the implementation of the concentration, in the meaning of Article 6(1)(b) subparagraph 2 of the Merger Regulation.

VI CONCLUSION

25. 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