

***Case No COMP/M.2195 -
CAP GEMINI /
VODAFONE / JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 29/11/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.11.2000
SG (2000) D/108839-40

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No COMP/M.2195 – Cap Gemini / Vodafone / JV
Notification of 26.10.2000 pursuant to Article 4 of Council Regulation (EEC) No 4064/89**

1. On 26.10.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) N 4064/89 by which Cap Gemini S.A. (“Cap Gemini”) and the Vodafone Group Plc (“Vodafone”) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of a newly created company (“the JV”) constituting a joint venture.
2. After examination of the notification, the Commission has concluded that the notified operation 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 AND THE OPERATION

3. Cap Gemini, a French company, is a consulting and Information Technology (IT) services company, present on a global basis.
4. Vodafone, based in the UK, is a leading operator of mobile telecommunications networks and provides related telecommunications services.

II. THE OPERATION

5. According to the JV Agreement, the parties will set up a joint venture in the form of a German joint stock corporation (Aktiengesellschaft), whose share capital will be held in equal (50:50) shares by Cap Gemini and Vodafone International Holdings BV. The start-up Joint Venture will be active in the market for the provision of IT services and will be aimed at building and operating digital mobile-enabled marketplaces on behalf of independent clients. The activities of the joint venture will focus on Business-to-Business ('B2B') marketplaces.
6. Industry forecasts predict that the mobile commerce sector ("m-commerce") will multiply in size over the next few years, as such requiring a combination of IT integration expertise and mobile telecoms experience in support of the m-commerce activities. Through the JV, Cap Gemini's expertise in applications and system integration and Vodafone's skills in mobile services provision will be combined to offer mobile solutions and marketplaces to corporate clients who wish to establish B2B marketplaces using mobile access and applications. The JV's proposition to such customers is the integration of services and applications from third party suppliers into solutions for clients rather than to run marketplaces on its own. The JV will not be involved in the provision of content, nor will it provide for the distribution of content.

III. COMMUNITY DIMENSION

7. The combined aggregate worldwide turnover of the undertakings concerned exceeds € 5.000 million (Cap Gemini € [...] million, Vodafone € [...] million). The aggregate Community-wide turnover of each party exceeds € 250 million (Cap Gemini € [...] million, Vodafone € [...] million). 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 according to Article 1(2) of the Merger Regulation.

IV. CONCENTRATION

Joint control

8. The joint venture will be jointly controlled by Cap Gemini and Vodafone. Each party will own half of the shares of the joint venture and will appoint three members each to the Supervisory Board of the joint venture. As there will be no casting vote, neither shareholder will be able to outvote the other, and as such it is considered that the parties have absolute mutual veto rights over strategic business decisions of the JV. Moreover, certain major decisions require unanimous approval of the Board.

Full function

9. Examination of the business plan of the joint venture clearly shows that the joint-venture will operate on a long-lasting basis. The duration of the JVSA is for an indefinite period. Although Vodafone's involvement in the JV is aimed at the promotion of sales in its core areas, all transactions involving the procurement of goods or services from the parents will be concluded at arm's length. It can therefore be concluded that the JV is entirely market facing and has not been created with the specific purpose of providing any services to the parent companies. The joint venture will be allocated with sufficient financial and other resources including staff and assets to operate on a long-lasting basis. Additionally, it is the intention that the joint

venture will attract additional funding capital from the market after the initial start-up period. It can therefore be concluded that the joint venture will perform, on a long-lasting basis, all the functions of an autonomous economic entity.

V. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product markets

10. In previous decisions¹, the Commission has broken down the market for IT services into seven segments that can be considered as relevant product markets: (1) Hardware maintenance, (2) Software maintenance and support, (3) Consulting, (4) Development and integration, (5) IT management services, (6) Business management services and (7) Education and training. As the objective of the JV will be to aggregate services, software and applications from third parties into integrated IT solutions for the development of digital-mobile marketplaces, the ‘development and integration’ market would be the most relevant categorisation, without however excluding the relevance of adjacent markets. As the emerging business area of mobile commerce is still in its infancy, it would be difficult to define a more narrow market, i.e. the market for the conception and development of digital mobile B2B marketplaces. In the present case, the precise relevant product market definition can anyhow be left open since irrespective of the market definition chosen, the proposed concentration does not give rise to the creation or strengthening of a dominant position.

B. Relevant geographic market

11. As concluded in previous cases, IT services are provided on a national basis, mainly due to customised solutions according to language and local business particularities, although the increasing globalisation of supply and demand indicate a strong trend towards the internationalisation of the market. In any event, for the purpose of this case, it is not necessary to further define the relevant geographic market, since, even on the basis of the narrowest possible geographical definition, effective competition would not be significantly impeded in the EEA or any substantial part of it.

V. ASSESSMENT

12. The operation does not represent any material overlap as neither Vodafone or its subsidiaries within the EEA provide IT services to any material extent. Although Cap Gemini is one of the leading players for consulting and IT services, it does not offer telecommunications services.

13. The JV will also not enable Cap Gemini and Vodafone to co-ordinate their behaviour, as neither Vodafone nor its subsidiaries compete in any markets that are upstream, downstream or neighbouring to the IT services market.

14. The transaction will create a new player in the market for consulting and IT services, itself a very dynamic and competitive market where customers have considerable leverage to play one supplier against another. Although the segment for designing and servicing mobile-enabled digital marketplaces is, in parallel to the m-commerce sector

¹ Case No IV/M. 1561 - Getronics/Wang , Case COMP/M.1901 – Cap Gemini/Ernst & Young

itself, still in its infancy, the main competing IT services providers such as IBM, EDS, PwC and Andersen Consulting as well as professional Internet services providers such as Viant and Framfab are developing expertise in this segment.

VI. CONCLUSION

15. In view of the foregoing, it can be concluded 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.
16. For the above reasons, the Commission decides not to oppose the notified operation and to declare it compatible with the common market and with the functioning of 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