

*Case No COMP/M.2257 -
FRANCE TELECOM /
EQUANT*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/03/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.03.2001

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No COMP/M.2257 - France Telecom / Equant
Notification of 29.01.2001 pursuant to Article 4 of Council Regulation
No 4064/89**

1. On 22 January 2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ ("the Merger Regulation") by which the French undertaking France Télécom S.A. ("France Telecom") acquires, control of the whole of the Dutch undertaking Equant N.V. ("Equant") by way of purchase of shares.
2. On 24 January 2001, the notification was declared incomplete. The parties subsequently provided the requested information on 29 January and the notification become effective the same day.
3. The Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

I. THE PARTIES

4. **France Telecom** is the leading telecommunications operator in France. It provides a wide range of telecommunications services to residential, professional and large business customers, primarily in France. The French State currently holds 55.7% of its capital.
5. **Global One** is a wholly-owned subsidiary of France Telecom². It offers integrated voice and data telecommunications services primarily to multinational and large corporate customers, as well as carrier services and travellers services.
6. **Equant** is a worldwide full service provider of seamless international data network services to multinational companies and organisations. It was created in 1995 as an off-shoot of Sita, a co-operative of airline companies that has been offering to its members global telecommunication services since 1949. Equant and Sita until now jointly owned the underlying telecommunications network with Equant servicing companies outside of Sita's traditional customer base. Equant is a public company, listed in New-York and Paris. Sita controls 33.97% of Equant's shares. The remainder is held by the public (64.12%) and Morgan Stanley (1.9%).

II. THE OPERATION AND CONCENTRATION

7. The proposed concentration will be carried out in two simultaneous steps and will lead to France Telecom gaining sole control over Equant. First, the corporate data business of Global One will be transferred to Equant. In exchange, Equant will issue to France Telecom newly created shares representing 40% of its outstanding share capital. Secondly, Sita will transfer all of its 68 million shares in Equant to France Telecom in exchange for 30.9 million shares in France Telecom (representing less than 2.5% of the voting rights).
8. The two transactions will lead to France Telecom acquiring 54.3% of the voting rights in Equant. The acquisition of 54.3% will give France Telecom sole control over Equant. The combined Global One/Equant (hereafter referred to as NewCo or the merged entity) network will be merged with Global One's network.
9. Sita, Equant and France Telecom have entered into a Heads of Agreement, which contains basic terms, and conditions that will govern the relationship between Sita, Equant and France Telecom after the implementation of the transaction. The combined Global One / Equant and Sita would be linked by a 10 years distributorship agreement whereby Sita will distribute Global One / Equant's products to the airline industry and Global One / Equant agreeing not to solicit business from that industry. The Heads of Agreement also provides for wide ranging co-operation and consultation mechanisms between Global One / Equant and Sita notably on the development of products and of the network. The Heads of Agreement should be transformed into detailed agreements in the course of March 2001.

² See the Commission's decision in Case No COMP/M.1865 - *France Telecom/Global One*, decision of 24.03.2000.

III. COMMUNITY DIMENSION

10. The combined aggregate worldwide turnover of the undertakings concerned exceeds EUR 5 000 million. The aggregate Community wide turnover of each party exceeds EUR 250 million. They do not achieve more than two-thirds of their turnover in one and the same Member State. The operation has therefore a Community dimension.

IV. PROCEDURE

11. In order to enable the Commission to assess the notified operation under the Merger Regulation, the Commission addressed a request for information to FT on 25 January 2001, pursuant to Article 11 of Regulation No 4064/89. The period to supply the information requested in the request for information of 25 January 2001 expired on 01 February 2001.
12. Given that FT were not able to provide the requested information within the time limits set by the Commission, the Commission adopted on 1 February 2001 a decision pursuant to Article 11(5) of the Merger Regulation requesting the information to be supplied no later than 9 February 2001 at 08.00 am CET.
13. The requested information was submitted by FT on 9 February. This had the effect, in application of Article 9 of the Implementing Regulation³, to set the final deadline by which the Commission has to adopt an Article 6 decision to 12 March.
14. On 28 February 2001, the parties submitted commitments in order to remedy any potential competition concerns relating to France Telecom's current and future position on the market for data communications services in France and the possible competition concerns arising out of this position in France on the global telecommunications services market(s). This had the effect, in application of Article 10 of the Merger Regulation, to set the final deadline by which the Commission has to adopt an Article 6 decision to 21 March. These commitments were withdrawn by the parties on 16 March 2001.
15. Given that the Commission has reached the conclusion that the notified operation does not give rise to any serious doubts, irrespective of the market definitions chosen, the withdrawal of the proposed commitment is of no consequence to the Commission's final conclusion.

V. THE RELEVANT MARKETS

A. Bilateral routes

16. The Commission has in previous decisions found that there are distinct markets for the provision of telecommunications services between bilateral routes (country pairs).⁴

³ Commission Regulation (EC) No 447/98 of 1 March 1998 on the notifications, time limits and hearings, OJ L61, 02 March 1998, p.1.

⁴ See Case No IV/M.856 – *BT/MCI (II)* and Case No IV/JV.15- *BT/AT&T*

17. It could be argued that the provision of carrier services (for instance through the leasing of telecommunications capacity) between any given pair of countries or territories constitute a separate relevant market. Alternatively, it has been explained to the Commission that with the availability of satellite telecommunications and transiting through third countries or territories, bilateral routes could be regrouped in wider categories for the purpose of defining relevant markets. As the assessment of the notified transaction does not give rise to the creation or strengthening of a dominant position, the question of how to define the market for the provision of carrier services between pairs of countries or territories can be left open (see further below).

B. Global telecommunications services

18. The Commission has in previous decisions found that there is a distinct market for the provision of global telecommunications services to multinational corporations⁵. The market for such services has been considered global in scope.

19. Global telecommunication services (GTS) consist of a broad category of voice and/or data services to multinational companies. Generally speaking, global telecommunication services are provided end-to-end and cover multiple countries and continents. Such services are usually adapted and tailored to each customer's specific telecommunications needs. Because of the complex nature and the variability of the customers' needs, contracts for such services are normally awarded through international tendering procedures (requests for proposals, RFPs).

20. GTS can be categorised into increasing levels of value added to and technicality of the tailored offering. A first (basic) level would involve adding physical and logical layers to the underlying physical network (or telecommunications means), such as interconnecting routers and switches, and the physical management of such devices. Examples of services falling into this category are the provision of bandwidth, basic Virtual Private Network (VPN), Frame Relay, and Asynchronous Transfer Mode (ATM) services.

21. The following (second) level would involve the provision of essentially the same services, but with a much higher degree of management by the service provider. The services supplied at this level are generally "managed solutions" to the customer's telecommunication needs and would normally include a higher input of management than "level one" services. Services at this level include notably managed data network services (MDNS). MDNS are end-to-end solutions that combine the management of the network, the physical and logical management of the network equipment and other telecommunications services. This could include maintenance and security services (7 days a week/24 hours per day) to determine where and when a possible failure may occur on the customer's network and to intervene accordingly.

C. The provision of Managed Data Network Services (MDNS)

22. The Commission has in previous decisions never identified a separate market for the provision of managed data services but it has never excluded the possibility of a number of discrete markets within the GTS market.⁶

⁵ See Case No IV/JV.15- *BT/AT&T* and Case No COMP/M.1741 – *MCI WorldCom/Sprint*.

23. A number of respondents to the Commission's market investigation have argued that a separate market for the provision of managed data network services could be defined and that this should be seen as separate to the GTS market. The provision of cross-border managed data services would thus be a discrete market within the wider categories of data communications services or global telecommunications services because of demand-side considerations. As with other data communications services, MDNS can be provided on a national, regional (e.g. pan-European) or global level. As regards the provision of MDNS to MNCs, the relevant market would be considered by most respondents to be at least pan-European, if not global in scope.
24. Both suppliers and customers of managed data network services have argued that the "managed" and "cross-border" aspects of these kinds of services would have disproportionately large effects on the economics of large companies. As to demand side substitutability, companies would make a strategic choice when they decide to purchase managed data network services that would be difficult to reverse. It is likely that it would be too costly and difficult (with, for instance the need to find telecommunications specialists) for these companies to switch back to less sophisticated categories of services and, possibly, to more than one supplier.
25. The Commission's investigation has confirmed that customers of managed data network services do not consider non-managed services a substitute to managed services. The running of many large companies' telecommunications needs require more and more specialised expertise. For customers that have chosen (for reasons such as a need for guaranteed managed maintenance and security of the network across the globe and cost of building up in-house competence etc.) managed services over non-managed services, a hypothetical price increase of 5-10% would not make these customers to switch to non-managed data services. Indeed, a number of respondents has replied that it would take a significant price increase (20% and more) before they would consider switching.
26. As to supply side substitutability, it appears that the need to offer a broad geographic coverage in combination with the necessary local staff constitutes a high barrier to offering such services. Thus, for suppliers providing less sophisticated services (such as supply of international leased lines, or basic ATM) without such coverage in combination with local staff it is difficult to provide end-to-end managed services. Customers of managed data services are also sophisticated customers with a great knowledge of the different suppliers and these suppliers' capabilities. In addition, companies seem to be sensitive to the quality reputation of the suppliers. Reputation in terms of quality is often assessed through the extent of the customer/client base of the supplier. This constitutes a further barrier to entry into the market.
27. Thus, the investigation into the proposed transaction indicates that the provision of cross-border managed data services could be seen as a discrete market within the wider categories of data communications services or global telecommunications services because of demand and supply side considerations. However, given that irrespective of whether such a separate market is identified no competition concerns arise out of the notified operation, the relevant market definition can be left open (see further below).

⁶ See Case No COMP/M.1396 – *AT&T/IBM Global Networks* (decision of 22.04.1999)

D. Provision of global telecommunications services/MDNS to French companies

28. It has been argued by some third parties that for a number of large multinational companies, the component of their demand for global telecommunications services that involves France is so important that it is a pre-requisite for any bidder for global telecommunications services (whether managed or non-managed services) to show an ability to operate with a high quality on the French territory. Such an interest in the quality of the French component would make it possible to price discriminate between this category of customers and all the other categories of customers. As such, the French component would be a necessary building block for the provision of the global services.
29. The Commission's investigation has confirmed that there are a number of companies with distinct domestic telecommunications needs in France. However, irrespective of how this demand (customer base) is defined the investigation has shown that the proposed transaction would not lead to either a creation or strengthening of a dominant position for the provision of global telecommunication services (whether managed or non-managed) to such a subset of customers. The exact relevant market definition can therefore be left open.

E. Telecommunications services to the airline industry

30. Telecommunications services to the airline industry were for a long period of time operated on the basis of proprietary protocols. This was notably due to the timing of the development of these services. They started to be developed and used in the airline industry while there was no demand and no supply for such services on the part of non-airline companies. Telecommunications services were based on so-called type A protocols whereas type B protocols were used for messaging services. The market investigation revealed that there might be some core products that can only be delivered by Sita/Equant. However, a majority of respondents explained that such protocols are compatible with other telecommunications protocols available to Sita and Equant's competitors and that thus the protocols used by the airline industry would come under strong competitive pressure from more modern data protocols such as the Internet protocol.
31. As will be shown below the notified transaction does not lead either the creation or strengthening of a dominant position irrespective of the market definitions chosen. Therefore the issue of whether there exists a discrete market and the hypothetical scope of such market(s) for the provision of global telecommunications services to the airline industry can be left open.

VI. ASSESSMENT

A. Bilateral routes

32. The market investigation has shown that the proposed transaction would not lead to any significant overlaps or addition of market shares on any bilateral routes. In particular, France Telecom does not hold significant interests on the routes linking France to the countries to which Equant/Sita have privileged access. The notified transaction does thus not lead to the creation or strengthening of a dominant market on any bilateral route.

B. Global telecommunications services / Managed Data Network Services (MDNS)

33. Irrespective of whether an assessment is made on the basis of a global telecommunications services to MNCs or a more narrow market encompassing managed data network services to such customers, the Commission's investigation has shown that the proposed transaction would not lead to either a creation or a strengthening of a dominant position, irrespective of the market definition chosen.
34. The parties have estimated their combined market share to be [**below 15%**] for the provision of GTS both at a level involving all service lines and on a service per service line level. To reach these estimates the parties assessed the size of the market through applying an average ratio of expenditure by large companies on global telecommunications services to the aggregated turnover of a list of more than 2 000 companies assumed to have multinational telecommunications needs. This led to a global market size for 1999 of around €15 600 million. This is likely to be an overestimation of the size of the market since the parties assumed that any company with at least one subsidiary abroad would have multinational telecommunications needs. The Commission has in previous decisions⁷ found that there is a specific demand for global telecommunications services from large multinational corporations (MNCs) with businesses activities on at least two continents that is distinct from the demand of other businesses. Thus, the proxy used by the parties for the relevant customers is wider than has previously been used by the Commission. In addition, this estimate is inconsistent with an internal France Telecom document that estimates the market potential (world-wide level) in 2002 to a total amount of [...] in 2002.⁸
35. In their estimate, the parties did not take into account the turnover generated by Sita and by Radianz, a joint venture between Equant and Reuters for the provision of global telecommunications services to the financial services industry. Since Radianz is today jointly controlled by Equant and would be jointly controlled by the merged entity, its turnover has to be taken into account for assessing future market power. This would lead to a combined market share of around [**10-20%**]. This market share would be of a maximum of [**40-50%**] on the basis of the market size estimates provided in the WorldCom / Sprint proceedings.
36. As to Sita, given the structural and long term nature of its links with the combined entity, it appears that its turnover should be added to the parties' activities in the relevant market in order to have a proxy of the combined entity's market power.
37. Furthermore, the parties' estimate conflicts with submissions from third parties. For instance, it has been submitted that the merged entity would have a strong position in the market for cross-border managed data services both at a pan-European level, with a combined market share of [**50-60%**], and at a world-wide level, with a market share of [**45-50%**]. The main competitors would be the Concert alliance (regrouping AT&T, BT and their joint venture Concert) and Infonet. Other competitors include

⁷ See e.g. the Commission's decision in Case No IV/JV.15 – *BT/AT&T* (decision of 30.03.1999) and Case No COMP/M.1741 – *MCI Worldcom/Sprint* (decision of 28 June 2000).

⁸ [**Consultant document internal to France Telecom**].

WorldCom, Cable & Wireless, Telia and Deutsche Telekom. The parties have estimated their combined market share at around [20-30%].

38. On the basis of an estimated worldwide market size of [less than USD 10 billion], revenue information submitted under cross-waivers to the European Commission and to the US Department of Justice for MDNS, the parties' market share for the provision of MDNS is estimated to around [25-35%] on a worldwide market. The second largest competitor would be Concert with an estimated market share of around [20-30%]. Additional competitors in this market would be WorldCom, Infonet, Cable & Wireless. If the markets were to be more narrowly defined (cross-border regional) the parties would face a number of additional competitors in European, North and South American as well as in the Asian/Pacific markets.
39. However, even if the combined entity would earn half of the revenues from the provision of managed data services, this would not pre-empt the possibility for its competitors to bid successfully for new contracts. When asked to list the main providers of such services they would consider to retain, most respondents cited not only Global One and Equant, but also the Concert Alliance, WorldCom and Infonet. This is also consistent with the market shares calculated on the basis of revenue. The analysis of the bids to which Global One and/or Equant have participated in the recent past also shows that the above mentioned competitors took part in a significant number of bids and won a significant number of new contracts.
40. The investigation has indicated that other competitors would be able to efficiently contest any attempt to raise prices by the combined entity. Indeed, in such a bidding market what matters for competition is the ability to credibly take part in future bids (in particular the perception of the customers are important) rather than the actual breakdown of bids won and lost. This credibility was confirmed both in terms of current customer base and results of the market investigation. Thus, there is no indication that the merged entity would be able to leverage any market power on either a global telecommunications market or a more narrowly defined managed data network services market, irrespective of the geographic scope of the market.

C. Provision of global telecommunications services to French companies

41. It has been argued by competitors to the merging parties that France Telecom is unavoidable for telecommunications companies that want to provide telecommunications services from and to France. Indeed, France Telecom, via notably its subsidiary Transpac, is the dominant player in the French market for the provision of data communications services, with a market share that has been estimated by third parties at over 75 %. France Telecom is said to hold a market share of over 80 % in the French market for leased lines for short distance links (short distance leased lines of lengths of up to 5km). In addition, France Telecom is the predominant supplier of long distance leased lines in France.
42. Third parties have argued that the combined France Telecom/ Global One/ Equant/ Sita would be in a position and have incentives to leverage France Telecom's control of the French markets on to the market for the provision of global telecommunication services and / or managed data telecommunications to companies based in France or companies with a significant telecommunications need in France.

43. On the hypothetical market for the provision of global telecommunications services to customers based in France, already prior to the proposed transaction France Telecom was in a position to leverage its market power in France with its control over Global One. Indeed, France Telecom/Global One has only an estimated share of such subset of customers of **[10-20%]**. Of the merged entities main competitors Concert has an estimated market share of 10-15% and Infonet 10-15% and WorldCom 5-10% respectively for such customers for the provision of cross-border services.
44. Even though Equant would add some **[10-15%]** (and Sita less than **[inferior to 10%]**) market share of a hypothetical subset of customers based in France, the market investigation has shown that the addition of Equant would not significantly alter the possibility of France Telecom to leverage its strong position in France onto the global telecommunications services market (whether managed or non-managed services).
45. From the point of view of customers, the investigation has confirmed the view of third parties that there are a number of MNCs with specific domestic telecommunications needs (in this case France) and that the France based customers' needs could arguably be distinct from the needs of companies without a significant presence in France. The investigation has also revealed that the demand for services in France is a continuum of these MNCs pan-European/global services needs. It is therefore conceptually possible to see these customers as a distinct subset of customers. It may even be possible to divide these customers into those that are situated mainly in the largest cities and business areas in France and those with a majority of their activities outside such areas. Typical examples of the latter would be banks and insurance companies.
46. However, the investigation has clearly shown that irrespective of if and how such subsets of customers are defined, customers were not concerned about the proposed transaction's effect on their choice of supplier for global telecommunications services or the possibility of France Telecom leveraging its dominant position in France onto the global telecommunications services market.
47. As regards companies located in urban and business centres the investigation has shown that the transaction would not significantly alter their choice of either national or international supplier(s). In France, companies such as Cegetel (part of the Vivendi group and exclusive distributor for Concert in France) and Siris (subsidiary of Deutsche Telekom) and to a lesser extent Colt, 9Telecom and Cable & Wireless are considered viable alternatives to the services the France Telecom group could offer. It should also be noted that none of these customers have identified Sita/Equant as viable suppliers in France for domestic services. This subset of customers has also indicated that their choice of international supplier would not normally be dependent on their choice of domestic supplier(s). Rather, a significant part of these customers appears to tender for their international telecommunications needs separately from their national needs. For these customers, competitors such as Concert, Infonet, WorldCom and Cable & Wireless appear to continue to provide viable alternatives to the merged entity.
48. For customers mainly located in more rural areas and outside main business areas of France the proposed transaction would not alter their choice of supplier. Already today France Telecom/Transpac is their only possible supplier given that only France Telecom/Transpac is able to provide them with the necessary network reach (coverage) and other specific needs. As regards their choice of international provider, the investigation has shown that also for this subset of customers their choice of international supplier would not normally be biased by their choice of domestic

supplier. Indeed, these companies would not normally need international telecommunications services from remote areas in France, but only from main business areas where their headquarters are located. The investigation has not revealed that the addition of Equant would change this to any significant degree.

49. Thus, even if assessing the impact on the provision of global telecommunications services (whether managed or non-managed) to companies based in France or with significant telecommunications needs in France, irrespective of the market definition chosen, the investigation has not revealed that the proposed transaction would lead to either a creation or strengthening of a dominant position for such subset(s) of customers.

D. Telecommunications services to the airline industry

50. As to the airline industry, Sita holds a very strong position (estimated to between [**less than 45%**] in internal documents of Sita to 80% by third parties) over this category of customers. Apart from the strong and long-lasting links between Sita and the airline industry, Sita/Equant's position results from the combination of the existence of specific data communication protocols and of the specific geographic needs of the airline industry. However, the Commission's investigation has shown that the importance of airline specific data protocols is materially decreasing. In addition, other telecommunication providers and airline industry customers have confirmed that these competitors were able to offer services based on these protocols on a competitive basis.
51. Airline companies require global coverage because of the very nature of their activities. It is true that Equant/Sita is present in a number of remote areas where other providers are not necessarily active. However, respondents to the market investigation explained that very few areas were accessible only to Equant/Sita and that even these areas had no significant competitive effect. France Telecom/Global One are only marginally active in this industry (they represent [**less than 10%**] of Sita's activities) and therefore this transaction does not alter significantly the conditions of competition in this hypothetical market. Arguably, the only competitive concern that may arise would be linked to the elimination of a potential competitor to Sita. However, the Concert Alliance, WorldCom and all the other global telecommunications services market participants remain either active or potential entrants into this hypothetical market. It can therefore be excluded that the notified transaction would alter the possible market power held by Sita over the airline industry.

VII. ANCILLARY RESTRICTIONS

52. Sita, Equant and France Telecom have entered into a Heads of Agreement which contains basic terms and conditions that will govern the relationship between Sita, Equant and France Telecom after the implementation of the transaction. The proposed arrangements between Sita and the merged entity ("NewCo") are considered by the parties equivalent to a distributorship agreement, i.e. the wholesaler (NewCo) agrees not to sell directly to the end-users (air transport community) services by the retailer (Sita).
53. In particular, for future contracts, NewCo will be the exclusive supplier of network services and products of Sita for a period of 10 years (*NewCo supply clause*). France Telecom and NewCo will not, directly or indirectly, solicit the air transport community to buy network services for a period of 10 years (*NewCo non-solicit clause*) and Sita and its group of companies will not solicit customers outside of the air transport

community to buy network services for a period of 10 years (*Sita non-solicitation clause*). The parties have requested the Commission to assess the ancillarity of the three clauses cited above. The following assessment does not prejudice any assessment of the Heads of Agreement or of any subsequent implementing agreement under the provisions of Article 81 of the EC Treaty. In addition, this assessment does not cover the other clauses of the Heads of Agreement.

54. The *Sita non-solicit clause* will enable the break-up of the Sita/Equant relationship and allow the transfer of the full value of the assets to NewCo.
55. The parties have argued that the *Newco non-solicitation* and *Newco supply clauses* could not be seen as separate to the distribution agreement given that they are inherent to and a direct consequence of the distribution agreement. These clauses would therefore be covered by the ancillarity of the distribution agreement.
56. The Commission however finds that the distribution agreement as a whole cannot be considered as ancillary to the proposed transaction. Indeed, the different restrictions contained in the distribution agreement are unrelated.
57. The *NewCo supply clause* appears to preserve a flow of business that went through the Equant/Sita network prior to the notified transaction. It can therefore be considered as being to the advantage of NewCo. However, the *Newco supply clause* also aims at enabling Sita to continue relying on Equant's network. There is not however a necessary link between a transaction by which Sita sells its stake in the network which it has historically relied on to provide its services and Sita's exclusive supply by such network. While Sita has a legitimate interest in the continuity of the services which it previously assured within Equant, the latter's network is no longer indispensable to provide such services (see sections V.E and VI.D above). Therefore, the *Newco supply clause* cannot be considered ancillary to the extent it is exclusive.
58. Furthermore, the restrictions imposed on FT/Equant to actively solicit business from airlines cannot be seen as either necessary or ancillary to the concentration. The parties argue that such a clause would be necessary in order to preserve the 'universal service' obligation that Sita has towards its members. This "universal service" obligation should be seen as an exceptional circumstance justifying that the protection of the sellers' interest be considered as ancillary to the transaction. [...]
59. However, the Commission cannot accept this argument. By the parties' own admission, the airline industry benefits from the 'universal service' provided by Sita and is therefore most unlikely to undermine the existing mutual communications system. Equant's proprietary protocols and geographic network coverage have both lost competitive relevance. Equant's competitors could therefore have solicited Sita's airline customers for quite some time. If such risk did exist, [...]. Moreover, given the sophistication of the airline industry as customers for telecommunications services, merely restricting the merged entity from actively soliciting airline customers would be an insufficient protection for Sita. Therefore, the *Newco non-solicitation* clause is not necessary for the preservation of the alleged 'universal service' obligation of Sita. It follows that the *Newco non-solicitation* cannot be considered as ancillary to the concentration.
60. Irrespective of the above, after **[3-5 years]** it may be reasonably expected that NewCo has fully established itself in the market and that the assets France Telecom purchase

from Sita/Equant have been fully integrated into NewCo. Therefore, the *Sita non-solicitation clause* (see paragraph 54 above) can be considered directly related and necessary for the implementation of the proposed transaction for a period of [3-5 years].

VIII. CONCLUSION

61. 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
(signed : *Mario MONTI*
Member of the Commission)