

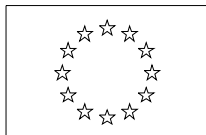
***Case No COMP/M.2460 -
IBM / INFORMIX***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/06/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19/6/2001

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject: Case No COMP/M.2460 - IBM/Informix

Notification of 14/5/2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 14.05.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ by which International Business Machines Corporation ("IBM", USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Informix Software Inc. ("Informix", USA), an undertaking belonging to the Informix Corporation Group, by purchase of assets.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. IBM is one of the largest Information Technology (IT) companies in the world offering a diverse range of IT products including IT equipment, computer software, including database management systems ('DBMS'), and other related services.
4. Informix Corporation is a US company which is also active in the IT field. Informix (the target in this transaction) is active in the production and supply of distributed database management systems ('dDBMS').
5. IBM will acquire the whole of Informix by purchase of assets including all the rights, interests and titles of Informix. Post-merger, IBM will have sole control of Informix. The

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).

operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

II. COMMUNITY DIMENSION

6. Undertakings Informix and IBM have a combined aggregate worldwide turnover in excess of EUR 5,000 million². Each of them has a Community-wide turnover in excess of EUR 250 million, 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, but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

III. ASSESSMENT

A. Market Definition

1) *Product markets*

7. The market concerned by the transaction is the market for DBMS, which are systems software packages which are used to store, retrieve, manipulate and sort information stored in a database. DBMS are “middleware” systems which run between a computer’s operating system (e.g. Windows NT) and software applications programmes (e.g. airline reservation systems, e-commerce applications, banking applications etc.) Databases can either be based on a centralised or so-called “legacy” computer system (such as a mainframe computer) or on a non-centralised or “distributed” client/server network (e.g. Windows NT or Unix).
8. The parties claim that there exist distinct markets for “legacy” DBMS and dDBMS, since the demand for legacy systems is declining, whereas that for distributed systems is growing, the overwhelming majority of end-use applications are written for distributed networks and hence most customers who require an application cannot use a legacy DBMS as a substitute for a dDBMS.
9. As far as dDBMS are concerned, it is not appropriate, according to the parties, to distinguish different markets for Unix- and Windows-based systems, as all suppliers are active in both segments, with the exception of Microsoft which is only active in Windows NT but could enter the Unix market easily if it chose to do so. Customers can always choose between a Unix-based or Windows-based dDBMS for almost all new applications, and therefore the pricing of a Unix dDBMS is constrained by the pricing of dDBMS on Windows NT, and 'vice-versa'.
10. There is, according to the parties, no reason to distinguish different markets by end-use applications, in particular by the customers' requirements for size and power (eg large and powerful 'high-end' systems), since all suppliers are already present in, or are capable of rapidly entering, the different end-use segments, such as 'high-end'.

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.

11. Therefore, according to the parties, the relevant product market on which the competitive assessment should focus ought to be the market for dDBMS (running on both Unix and Windows NT systems) which is the only market in which there is an overlap between the parties' activities, since Informix is not active in "legacy" systems.
12. For the purposes of the present case the precise product market definition can be left open since, whatever market definition is considered, the transaction will not create or strengthen a dominant position (see below).

2) *Geographic markets*

13. The notifying party claims that the geographic market is at least EEA-wide and probably worldwide, and this has been confirmed by the Commission's investigation.

B. Assessment

14. There are several companies other than IBM and Informix active in DBMS, including Oracle (the leading company in DBMS), Microsoft (which is particularly strong in DBMS running on Windows NT), Sybase, NCR and Computer Associates.
15. In the market for dDBMS (the parties' preferred market definition), the horizontal overlap between the parties' activities is not such as to cause competition concerns; the combined entity's market share would be 20% world-wide and 21% in Western Europe (Informix accounting for about 8% of that share). Oracle would remain the clear leader with a market share of about 50%. If the dDBMS segment was divided in Unix/Windows NT (and regardless of the precise geographic extent of the market, EEA-wide or world-wide), the merged entity's market share would not exceed 21.6% on any given permutation; Oracle in the UNIX segment, and Microsoft in the Windows NT segment, would be leaders with, respectively, 60% and 40% share. Under an overall DBMS market definition, (i.e. including legacy, where IBM is stronger, and dDBMS) the merged entity's share of the market would not exceed 35%-40% with Oracle having a similarly large share and Microsoft having a market share of around 10%. Under a "high-end" market definition, the merged entity would have a market share of less than 20%, with NCR, a niche player in this market, having almost 80%.
16. In all the above markets, there are various niche players and competition amongst the three big players, Oracle, IBM and Microsoft. Informix has a relatively modest market share, and the transaction may strengthen IBM's ability to compete with Oracle (the market leader) and Microsoft and indeed with NCR for "high-end" systems.

IV. CONCLUSION

17. 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