

***Case No COMP/M.2982 -
LAZARD / INTESABCI /
JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 04/02/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04/02/2003 *
SG (2002) D/228383-84

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2982 – Lazard LLC / Intesa BCI / JV
Notification of 20 December 2002 pursuant to Article 4 of Council
Regulation No 4064/89¹**

1. On 20 December 2002 the Commission received a notification of a concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (“Merger Regulation”) by which the undertakings Intesa BCI S.p.A. (“Intesa”) and Lazard LLC (“Lazard”) intend to acquire, within the meaning of Article 3(1)(b) of the Council Regulation, joint control of an undertaking, which will constitute a joint venture.
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that it 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

3. Intesa is an Italian undertaking active, through its controlled entities, in the banking and bank assurance sectors as well as in the financial brokerage, assets management, leasing and factoring sectors.
4. Lazard is a world-wide leader provider of investment banking services such as financial strategic advice, mergers and acquisition and divestitures, corporate restructuring, take-over defences, special committee assignments, strategic partnerships and joint ventures and capital raising activities.

II. THE OPERATION

5. On 21 November 2002 Lazard and Intesa signed an agreement (“the Agreement”) providing for the establishment of the joint venture (“JV”). According to the agreement, Lazard will contribute to an existing corporate vehicle the assets and resources currently used to carry out its Italian investment banking business. In particular Lazard will transfer most of the personnel currently active in the Italian investment banking business (around 60 persons), some intangible assets (including software, leasehold improvement and goodwill) and some tangible assets (including furniture electronic office equipment and motor vehicles).
6. Thereafter Intesa will subscribe to a capital increase of the JV for USD 100 million in exchange for an interest in the JV equal to 40 % of the paid up capital of the JV. Intesa will also purchase from the JV a subordinated loan note for a total consideration of USD 50 million.
7. The Agreement provides that the initial term of the JV relationship will end on 31 December 2007. However this term will be extended for successive 5 year terms unless and until terminated by written notice by one of the parties, delivered at least 90 days prior to the next renewal date.
8. The JV will provide the investment banking services listed in the Agreement² to customers or potential customers identified as Italian Parties³ in the Agreement. The Agreement provides that these services will be provided to customers other than those who have consolidated gross revenues of less than EURO 450 million. It is intended that Intesa will continue to provide M&A advisory services to those clients that have consolidated gross revenues of less than EURO 450 million.

² [Business Secret]

³ [Business Secret]

III. CONCENTRATION

Joint control

9. After the completion of the concentration, Intesa will have a 40 % interest and Lazard will have a 60 % interest in the JV. The Agreement provides that Intesa and Lazard will be entitled to appoint three members of the Board of Directors each. To be validly adopted, Resolutions of the Board will require the approval of at least four Board members. The Agreement provides, furthermore, that the Board will have the power to review the budget and the business plan. The day-to-day management will be carried out by Lazard.
10. Both the Chairman and the CEO of the JV will be selected by Lazard following consultation with the CEO of Intesa. In the event that the CEO of Intesa does not consent to the dismissal of the Chairman and, notwithstanding such dissent, Lazard proceeds with such dismissal Intesa BCI shall have the right to terminate the JV.
11. With regard to the shareholders meetings, the parties have agreed that the shareholders will follow the Board's recommendations with respect to voting, to the fullest extent permitted by Italian law.
12. In conclusion in view of the governance arrangements relating to the way in which the JV will take key strategic decisions and of Intesa's substantial ownership position and equal board representation, which give it an effective veto power over Board actions, it can be concluded that the parties will have joint control of the joint venture.

Full function character

13. Since Lazard will contribute to the JV the assets and resources currently used to carry out its Italian investment banking business, the JV will be able to perform the functions normally carried out by undertakings operating in the markets for M&A and equity capital investment advisory services in Italy. Lazard will supply some services (management services, IT services and Insurance) to the JV. However, as these services are not crucial to the operation of the JV and as the JV could easily obtain them from third parties, this will not alter the full function nature of the JV.
14. With regard to the duration of the JV, the Commission in a previous case has concluded that a joint venture established for an initial term of 5 years, subject to renewal is a period sufficiently long in order to bring about a lasting change in the structure of the undertakings concerned. The JV will therefore perform on a lasting basis all the functions of an economic entity.⁴

IV. COMMUNITY DIMENSION

15. The combined aggregate world-wide turnover of all the undertakings concerned for the year 2001 exceeds 5000 million EURO and both Intesa and Lazard generated in the same fiscal year more than 250 million EURO within the Community. Although Intesa

⁴ Case IV/M.152 – *Volvo/Atlas*, para 8.

achieved more than two-thirds of its Community-wide turnover within Italy Lazard did not achieve more than two-thirds of its Community-wide turnover in one and the same Member State. Therefore the concentration has a Community dimension pursuant to Art. 1 (2).

V. MARKET DEFINITION

Relevant product markets

16. As mentioned above, the JV will provide investment-banking services as listed in the Agreement, including both M&A and capital markets advisory services. According to the Commission's previous decisions, investment-banking services constitute a segment within the overall banking sector⁵. The Commission has further segmented the investment banking sector so as to distinguish M&A advisory services from other investment banking services, such as securities and derivatives trading and foreign exchange trading.
17. M&A advisory services consist in providing corporate advice on acquisitions and disposals by trade purchases/sales, public bids, privatisation, corporate restructuring, corporate rescues and advice on de-mergers⁶.
18. In one case the Commission distinguished, without taking a definitive view on product markets definitions, M&A advisory services from Initial Public Offering ("IPO") advisory services and equity and debt underwriting⁷.
19. However for the purpose of the present case it is not necessary to define conclusively the relevant product markets because, even on the basis of the narrowest market definition, the concentration does not threaten to create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or in any substantial part thereof.

Relevant geographic markets

20. The Commission has in previous cases found that the market for M&A advisory services has a national dimension⁸. This is due to a number of factors, such as the need for detailed knowledge of local corporate law and business structures, accounting rules, regulatory regimes and market prices. In practice the Commission has found that provision of M&A services generally requires that the principal advisor be physically established in the country where the target company is situated⁹.

⁵ See IV/M.1172 *Fortis AG/Generale Bank*; IV/M.1910 – *MeritaNordbanken/Unidanmark*; Comp/M.2158 – *Credit Suisse Group/Donaldson, Lufkin & Jenrette*.

⁶ Comp/M.1856 – *Citigroup/Schroders*, para 10.

⁷ See Comp/M.2158 – *Credit Suisse Group/Donaldson, Lufkin & Jenrette* para. 7.

⁸ See Comp/M.2158 – *Credit Suisse Group/Donaldson, Lufkin & Jenrette* para. 10; Comp/M.1856 – *Citigroup/Schroders*, para 13.

⁹ Case N° IV/ M. 508 BHF/CCF (II).

21. For the purpose of the present case it is not necessary to define conclusively the relevant geographic market because, even on the basis of the narrowest market definition, the concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or in any substantial part of that area.
22. As regards IPO advisory services the notifying parties affirm that the Commission has taken the view in a previous case that the relevant market is EU-wide or world-wide¹⁰. However in view of the fact that in that case the market definition was left open a narrower dimension of the market can not be excluded. In any event for the purpose of the present case a definitive delimitation of the relevant geographic market is not necessary, since a dominant position would not be created or reinforced even on the basis of the narrowest geographic market definition.

VI. COMPETITIVE ASSESSMENT

Horizontal effects

23. Since market shares in this sector are difficult to determine “league tables” may give an indication of relative market position and performance. The Commission has used leagues tables in previous cases¹¹.
24. The parties submit that Lazard is far from being dominant on the market for M&A advisory services either at national or EU level. In M&A advice Lazard’s market shares have remained on average below 30 % in Italy and below 20 % at EU level, whereas Intesa’s presence on this market in Italy can be considered de minimis (below 3%) and almost non-existent at EEA level. As regards ranking, of completed transactions in Italy, Lazard was ranked number one in 2001 but number ten in 2000 and number six in 1999. As regards completed transactions in the EU, Lazard ranked 5th, 10th and 6th in 2001, 2000 and 1999, respectively. Intesa for its part was not [in a prominent position] in 2001.
25. As regards IPO advisory services, at EU level, Lazard's share of this market is not significant (on average less than 5 % in the last 3 years) and Intesa is hardly present on this market. In Italy neither party has a significant presence.
26. Furthermore there is also a large number of strong competitors established in Italy such as Morgan Stanley, Mediobanca, Lehman Brothers, JP Morgan, Merrill Lynch, Goldman Sachs, who are active in this sector and who can provide substantial competition to the joint venture.
27. Finally as the Commission noted in the Credit Suisse Decision "markets for M&A advisory services are competitive. Both services are generally provided on a project-by-project basis, and consequently, for a new project, a customer can switch supplier at no cost and is not in any way bound by his choice in previous projects. In addition, customers for M&A advisory services frequently use more than one advisor or even no

¹⁰See Comp/M.2158 – *Credit Suisse Group/Donaldson, Lufkin & Jenrette* para. 9;

¹¹ See Comp/M.2158 – *Credit Suisse Group/Donaldson, Lufkin & Jenrette* para. 12.

advisor at all"¹². Consequently although, in a given year, a bank can achieve a high ranking and a correspondingly high market share, this may not necessarily reflect consistent market power over a period of time. In any event as the transaction represents an insignificant increase in concentration levels it does not give rise to any risk of creation or strengthening of dominance within the EEA or a substantial part thereof.

Co-ordination effects - Art. 2 (4)

28. The parties claim that they will not retain to a significant extent activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in any neighbouring market. A preliminary analysis indicates that there is little risk of co-ordination between the JV and the parties. Intesa's presence outside Italy is de minimis, and Lazard's presence within Italy outside the JV is non-existent.

VII. CONCLUSION

29. 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 by Mario MONTI
Member of the Commission

¹² See Comp/M.2158 – *Credit Suisse Group/Donaldson, Lufkin & Jenrette* para. 16.