Case No IV/M.336 - IBM FRANCE / CGI

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19.05.1993

*Also available in the CELEX database
Document No 393M0336*

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6 (1) (b) DECISION

Registered with advice of delivery

To the notifying party

Dear Sirs,

Subject: Case No. IV/M336 - IBM France/CGI
            Your notification of 16.4.93 pursuant to Article 4 of Council Regulation No. 4064/89

1. On 16.4.93, IBM France notified a public tender other than for cash ("offre publique d'échange", hereafter OPE) which had been previously announced at the Paris stock exchange and by which newly issued IBM France convertible bonds will be exchanged for the outstanding ordinary shares of Compagnie Générale d'Informatique (CGI).

2. After examination of the notification, 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.

I.   THE PARTIES

3. IBM France, a French société anonyme, is part of the IBM group of which the ultimate parent company is the US company IBM Corporation. It is active mainly in France within the information technology business including hardware, software and services.

4. CGI, a French société anonyme whose capital is widely spread, is active mainly in France in the information technology software and services business.

II. THE OPERATION

5. The OPE, which is amicable, has been preceded by a private agreement by which IBM France has secured from three CGI key shareholders an initial minority stake representing

Rue de la Loi 200 - B-1049 Brussels - Belgium

Telephone: direct line 29..... exchange 299.11.11 - Telex COMEU B 21822 - Telegraphic address COMEUR Brussels telefax 29.......

25.37% of CGI's equity. Furthermore, IBM France has the right not to purchase the shares offered within the OPE if less than 66.67% of CGI voting rights are obtained.

III. CONCENTRATION

6. If the OPE succeeds the operation will give rise to a concentration within the meaning of Article 3(1)(b) of the Merger Regulation as, clearly IBM will acquire control of CGI.

IV. COMMUNITY DIMENSION

7. The combined aggregate worldwide turnover of the IBM group and CGI in their last financial year exceeds 5000 million ECU (IBM group: 49,706 million ECU; CGI: 291 million ECU). Their Community-wide turnover is more than 250 million ECU (IBM group: 15,412 million ECU; CGI 254 million ECU). The IBM group and CGI do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. Therefore, the proposed concentration has a Community dimension.

V. COMPATIBILITY WITH THE COMMON MARKET

Product and geographic markets

8. The Commission recognises that there are different segments within the information technology software and services domain which can be differentiated by a number of characteristics such as capital investment requirements, role of brand image, development costs, switching costs (installed base effect), etc.

Four areas of activity within the IT software and services domain have been identified by the parties where both companies, target and acquirer, are involved:

- Consultancy services: activities performed by certified consultants which frequently precede other activities and may take the form of advice on the best way to address fundamental issues for business undertakings such as overall IT strategy and planning, management of change, quality control and production, administrative and human resources productivity improvements.

- Operational support services: included in this category are services performed on behalf of customers, ie installation, operation and optimisation of their information systems network and may include contracting out certain data processing needs ("facilities management").

- Applications development and delivery services: these include the analysis, planning, design and implementation of specific projects which are tailor-made in response to the particular requirements of a user or closed user group. This activity may also be designated "customised software" or "systems integration and development".

- Applications software: products which enable a user or group of users to support and perform an operational or administrative process. Applications software is a package of software which is generally sold or licensed in multiple, identical copies that cannot be modified in substance by the user. Applications software products may include both cross industry products such as spreadsheets, word processors, and data bases as well as accounting, human resources, planning and analysis and engineering and scientific tools and also industry specific packages for manufacturing industries, banking, insurance, etc.

Nevertheless, taking into account the market position held by the parties in each of the segments defined above, it is not necessary in the present case to decide if these segments

(even if some of them, like applications software, could be further segmented) constitute distinct product markets within the meaning of the Regulation.

9. However, a major conceptual distinction should be made between IT services and IT software which should be assessed separately in the context of the present notification.

    (a) the IT services market which includes consultancy services, operational support services and applications and delivery services is basically a services market requiring a close and constant relationship between the service provider and the client, and

    (b) the IT software market which includes the applications software (and also the systems software market which is not affected by the present concentration) is a product market in which the product (package) can be sold or licensed to the clients through independent distributors.

10. With regard to geographic markets, the parties claim that usually the geographic markets for services (consultancy, operational support services and applications development and delivery) are national markets as the ability to communicate in the customer's own language is essential and the close relationship with clients often requires a local presence. On the contrary, software products can easily be imported/exported from one country to another and distributed after linguistic and regulatory adaptations have been made, usually by the national distributor. Nevertheless, the precise definition of geographic markets can be left open since the operation does not raise serious doubts as to its compatibility with the common market even on a national basis.

Assessment

11. Information technology services accounted for about 60% of the total Community-wide turnover of CGI (the remaining 40% being accounted for by IT software products). The concentration affects mainly France where 80% of CGI's IT services' turnover is made. At the European level, IBM, the largest service provider, has a market share below 5%. In France, the combined market share of IBM and CGI will not exceed 5% and IBM, with the acquisition of CGI, will rank second behind Cap Gemini Sogeti. Comparable market shares would be held by IBM in each of the IT services segments mentioned in paragraph 8.

12. Prior to the concentration, IBM was already the largest applications software product supplier in the EC with a market share just exceeding 4% [1] and one of the most important players on the French market. IBM markets a large number of packages mainly in the areas of graphic applications, computer integrated manufacturing, executive decision and office management. A large number of these applications software packages are used on IBM systems software but there are also applications which are used on open systems like Unix and MS-DOS. CGI has approximately a 3% [1] market share of the French applications software market and under 2% at Community level and is mainly active in the areas of human and financial resources management and computer aided software engineering with two families of products, SIGAGIP and PACBASE respectively. These packages are marketed in several versions in order to be operated in a number of operating systems both of a proprietary - IBM but also other hardware manufacturers' proprietary systems - and open nature.

---

[1]   Input figures

13. Therefore, it is unlikely that this concentration could raise competition concerns in the overall IT software and services markets or in any individual segment covered by the present operation, either in the EC or in France.

VI. <u>CONCLUSION</u>

14. Based upon the above findings and considerations, the Commission has come to the conclusion that the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

<div align="center">*</div>

<div align="center">*   *</div>

For the above reasons, the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of Council Regulation No. 4064/89.

<div align="center">For the Commission</div>