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Case No COMP/M.3695 - BT / RADIANZ

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REGULATION (EC) No 139/2004 MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3695 BT/Radianz
Notification of 15/3/2005 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 15/3/2005, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 by which the undertaking British Telecom plc ("BT", UK) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Radianz (US) by way of purchase of shares.

I. THE PARTIES

2. BT is a UK-headquartered provider of telecommunications services. Its principal activities include local, national and international telecommunications services, internet products and services and IT solutions. Amongst other services, BT provides, on a world-wide basis global telecommunications services ("GTS"), which consist of the broad range of telecommunications and IT services provided to multinational companies ("MNCs") with global operations.

[1] OJ L 24, 29.1.2004 p. 1.

3. Radianz is a provider of extranet services to the financial community. Its shared infrastructure called RadianzNet enables financial firms to exchange information and execute trades over this secure extranet hub.

4. Radianz was formed in 2000, as a joint venture company between Reuters and Equant[2] (until recently, Reuters and Equant owned, respectively, 51% and 49% of the shares in Radianz). On November 2004 Reuters purchased Equant's interests in Radianz and it currently holds 100% of the voting shares in Radianz.

II. THE CONCENTRATION

5. The present transaction would cause Radianz to fall under sole control of BT, by way of acquisition by BT of 100% of Reuters' voting shares in Radianz. It therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

6. The concentration is part of a wider outsourcing agreement between BT and Reuters. Under this agreement, BT will continue to provide to Reuters the services that Reuters currently obtains from Radianz, but will migrate these services over the next [...] years to an IP network. The Radianz network will be gradually phased out during this time. BT will need that network to ensure the provision of the existing services until this migration is complete

III. COMMUNITY DIMENSION

7. This operation does not have Community dimension within the meaning of Article 1.2 of EC Merger Regulation. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[3] (€ [...] million for Radianz; € 27, 619 million for BT). However it is not the case that each of Radianz and BT has a Community-wide turnover in excess of EUR 250 million. (€ [...] million for Radianz; [...] million for BT).

8. The test set out in Art.1.3 is not met either, since the aggregate turnovers of BT and Radianz do not each exceed EUR 25 million in each of at least three Member State in which their combined aggregate turnover exceeds EUR 100 million. However, since the operation was reviewable under the national merger control laws of 3 Member States, namely Germany, Ireland and Poland, the parties submitted a Reasoned Submission in pursuance of Article 4(5) of EC Regulation No 139/2004 to ask a referral of the concentration to the Commission. The Member Sates were consulted and did not oppose the referral of the concentration to the Commission. On 27 January 2005, the Commission confirmed that the case was deemed to have a Community dimension and would have to be notified to the Commission.

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[2] The creation of this joint venture was approved by the Commission (Case No COMP/M.1875).

[3] 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).

IV. COMPATIBILITY WITH THE COMMON MARKET

A. RELEVANT MARKETS

(i) Extranet services to the financial community

a) Relevant product market

9. An extranet is a private network for the secure sharing of business' information or operations with vendors, suppliers, customers, partners or other businesses. In essence, it is a platform on which transactions, services or information can be securely executed or transmitted.

10. The Commission, in the Reuters/Equant[4] decision, considered the relevant market as constituted by the provision of "IP based extranet services". Furthermore it held that the public Internet was not at that time a proper substitute for extranet services, since it did not offer the same degree of reliability and security of extranet services.

11. The parties to the present transaction have endorsed the view adopted by the Commission in the Reuters/Equant decision that the two services are currently not entirely substitutable. They believe that, while the Internet is a viable substitute for certain applications (e.g., slower-moving financial markets such as bond trading), it is not viable for other applications (e.g., faster-paced markets such as the trading of equities and foreign exchange instruments). Moreover, according to the parties, extranet services offer decisive advantages compared to Virtual Private Networks (VPNs)[5], primarily in terms of scale, customer reach, connectivity, security and cost. Therefore, substitutability may not be deemed to exist between extranet and VPNs services. Consequently the parties contend that extranet services fall between the public internet and the private intranets and may be considered as constituting a separate market.

12. Some respondents to the Commission's inquiry have put forward that some similarity or vicinity exist between regards extranet services and VPNs, but the vast majority of replies has substantially supported the parties' contention.

13. Furthermore, in the Reuters/Equant[6] decision, the Commission considered the possibility to define a separate market for the "the provision of IP-based extranet services to the financial community". However the precise definition of the relevant market was left open, since even on the narrowest market definition (IP based extranet services to the financial community) the concentration did not lead to the creation or the strengthening of a dominant position.

14. In the present case the parties submitted that the provision of extranet services to the financial community is a separate market from other "generic" extranet solutions. The

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4 Case No COMP/M.1875.

5 An IP VPN (Virtual Private Network) service is defined as a partitioned private network constructed over an IP-based backbone (it is a kind of "intranet" service).

6 Case No COMP/M.1875.

market investigation has substantially confirmed this approach. It appears that the financial community maintains very high service level requirements in comparison to other users. These service level requirements relate to the real time nature of data transmitted, the security required to ring-fence the communications of the trusted financial community from the rest of the world and the requirement of reliability in order to prevent system failures (which would otherwise cause large damages).

15. Furthermore, because of the different customers' needs, extranet providers normally focus on typical industries and market segments to develop a community of interest, which is crucial for the operation of extranet services. The distinctive character of a financial network lies primarily in the scope of the community that is already connected to the network as well as in the content provided by these community members. In addition, members of the financial community do not communicate with other extranet communities of interests such as quick service restaurants, petrol stores etc.

16. However, for the purpose of the analysis of the present transaction the precise definition of this relevant market may be left open since it does not affect the outcome of the assessment.

b) Relevant geographic market

17. In the Reuters/Equant decision, the Commission noted that the geographic market for the provision of extranet services to the financial community could be considered international in scope. However, the precise geographic dimension of the relevant market was left open.

18. The Parties submitted that the dimension of the market is worldwide. This is because customers are entities with multinational operations that source their needs for extranet services internationally and operate on a global basis. In addition, extranets are used for trade across borders, so the connectivity provided is global in scope and connects the world's largest financial centres and the multinational operators involved in the financial world.

19. The market investigation has indicated a possible world-wide dimension of the market. Part of the respondents has highlighted the strategic importance of some regions of the world, where the largest part of the financial community operates, namely London and New York. However it has been argued that the importance of these regions does not deprive the market for the provision of financial services of its global dimension.

20. However the definition of the relevant geographic market may be left open for the purposes of the present decision since, even in the worst case scenario, where the target company would have a larger market share, (which corresponds to a world-wide definition of the relevant market) the concentration does not give rise to competition concerns.

(ii) Global Communication services (vertically-related market)

21. BT is active in the market of Global Telecommunication Services (GTS). This comprises a broad array of telecommunications services to multinational companies (MNCs), ranging from basic connectivity to sophisticated, tailor-made services designed to meet the specific requirements of MNCs. The parties submitted that it may be a vertical relationship between GTS and extranet service in that most providers of

extranet services do not supply the connectivity components necessary to enable them to provide extranet services. Therefore, they must rely on GTS companies and acquire from them the connectivity components that are required for the provision of extranet services. This is the case of Radianz (which until now used Equant's network) and of some of its competitors (e.g. Savvis and TNS). The market investigation has substantially confirmed the existence of such relationship.

22. The Commission has recently scrutinised the GTS market in the case BT/Infonet[7]. In this case, the definition of the geographic market was left open. In the present case, the parties suggest a world-wide dimension of the GTS. However, for the purpose of the analysis of the present transaction the precise definition of this relevant market may be left open since it does not affect the outcome of the assessment.

B. COMPETITIVE ASSESSMENT

(i) Extranet services to the financial community

23. The parties submit that the present transaction would not raise any competition concern since there is no horizontal overlap between the activities of BT and those of Radianz. Furthermore, they contended that the market in question is characterised by low barriers to entry and strong customers' countervailing powers. The parties contended that extranet services and self-supply or DIY (Do It Yourself) solutions (in-house solutions adopted by some financial institutions[8]) are substitutes and, therefore, are in competition with each other. Furthermore, the parties indicated that the services provided by applications software vendors (e.g. Macgregor Group) and by market information service providers (e.g. Thomson Corporation and Bloomberg) are also to be comprised in the relevant market. Finally, the parties included as main supplier Swift, i.e. the communication and settlement system of the financial industry, despite the significant differences existing between Swift and Radianz in relation to both the kind of services offered and the technical solutions adopted.

Market shares

24. On the basis of the market picture proposed and data provided by the parties, Radianz would have a market share of [1-10]% on a world-wide basis and of [1-10]% in the EEA. Swift would have a market share of [10-20] % on a world-wide basis ([35-45]% in the EEA), while DIY solutions would be credited with 67% on a world-wide basis (and 44% at the EEA level). Should the relevant market definition be narrowed so as to exclude in-house solutions, Radianz' market shares would be respectively of [20-30]% on a world-wide level and of [10-20]% in the EEA. However, the Commission's analysis provided indications that DIY (Do It Yourself) solutions may not be deemed to pose a competitive constraint vis-à-vis the extranet services provided by Radianz, that software application vendors and information service providers are not in the relevant market and that Swift may not be deemed to offer services that are to be considered substitutes for those of Radianz. This is illustrated in the following paragraphs.

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7 COMP/M.3641 - BT/Infonet.

8 These financial institutions would self-supply and operate their own extranet service, by buying all the necessary connectivity components from other telecommunication providers.

a) DIY solutions (self-supply)

25. As regards DIY solutions, respondents to the Commission's inquiry put forward that an extranet solution may be cost effective if the scale of the extranet community it connects is sufficiently large. Consequently a DIY solution could theoretically be cost-effective only if constructed for a large community of users. However, competitive sensitivities make it difficult for DIYs to create large communities of interests[9]. Moreover, it was put forward that it would be unlikely that a large number of buy-side entities would accept to connect to the DIY investment banks network, since such a connection would only provide access to one entity. Finally, the market investigation has confirmed that an increasing number of financial institutions prefer outsourcing its extranet services to third parties.

b) Application software vendors and Information service providers

26. Vendors of application software have as their primary business the provision of software application on a hosted or in-house basis. These vendors normally rely on interconnection agreements with other networks (which are generally proprietary) in order to reach a broader set of trading partners. Although such interconnection agreements may broaden the reach of the network, no single network is able to monitor and personally guarantee the performance of messages and transactions on an end-to-end basis. Providers of financial information services (such as Reuters, Bloomberg, etc.) appear to provide part of the content (news, quotes, etc.) of extranet services. In contrast, their ability to integrate transactional processing elements intro their market data and research information appear to be limited.

c) Swift

27. The services offered by Swift are based on the SWIFTNet messaging platform, which financial institutions use for certain post-trade electronic communications between them. The Swift platform is being used for message-oriented non-real-time communications, such as bank reporting, reconciliation or post-trade operations, namely payments, clearing and settlements operations[10]. Even if, as the parties contended, Swift would possess the technical means, namely a large band-width network, which may be used for the transmission of real-time data, it appears that it currently does not actually provide such a service. Conversely, the Radianz extranet platform was designed to support Reuters' real-time applications for trading data delivery and is able, therefore, to cover the entire Straight Through Processing (STP) chain, including both pre-trade and post-trade operations. In addition, SWIFTNet is a restricted platform, available only to a restricted community of members using

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[9] A large investment bank might be able, for instance, to deploy and operate an extranet to connect its group offices and buy-side trading partners. However, it is highly unlikely that other investment banks may be permitted to access to this network because the DIY would not want its competitors to be connected to its buy-side trading partners.

[10] This platform was originally designed with "store and forward" message transmission technology and performs various controls on message content and delivery (e.g. semantic verification, filtering, receipt acknowledgement, etc.). These characteristics are not compatible with the performance requirements of real-time or near-real-time applications,

messaging protocol and applications proprietary to Swift, whilst Radianz's platform is not restricted, but is possibly open to all players acting in the financial markets (information aggregators, brokers, hedge funds, investment banks, etc.). Based on the above, it appears that a complete and mutual substitutability relationship does not exist between the services offered by Swift and those offered by Radianz.

d) Conclusions on market shares

28. In view of the foregoing, the effects of the present transaction are better assessed in the worst-case scenario, where the market suppliers have been narrowed so as to exclude DIY solutions, the services provided by vendors of application software and by financial information providers, as well as Swift's ones. In this scenario, the market would encompass only three main players: Radianz, Savvis and TNS. Radianz would have a leading position with, according to the Commission's investigation, an approximate market share of more than [40-60]%, while Savvis would be number two with roughly half the size of Radianz and TNS a distant third player.

Absence of horizontal overlap

29. In the narrow market as delineated above, the concentration would not alter the pre-merger scenario, since it would not bring about any horizontal overlap. In addition, the sale of extranet services by Radianz to third parties other than Reuters would not be initially more than a relatively minor aspect of Radianz activity (approximately [...]% of Radianz total turnover). However the Commission has examined whether BT would have been a competitive constraint as a potential competitor, whose removal would, as such, entail competition concerns.

30. The market investigation and the analysis of Radianz's internal documents showed that BT was not the most important and the most likely entrant in the market for extranet services in the foreseeable future. None of the companies belonging to BT group is currently active in the extranet sector. BT has recently sought to offer a connectivity product with applications aimed specifically at the financial community, (the so-called "BT Finance Highway" initiative), which was based on the IP VPN technology. BT had sought to offer this service with a view - in the medium to long term - to building it into a true extranet service on a global basis. However, this experience has been unsuccessful due to the insufficient customer base available to sign-in to the project, whilst BT neither currently has a financial extranet service offering, nor it derive any revenues from its BT Finance Highway initiative.

31. BT currently sells a secure network connectivity product called BT SettleNet. BT SettleNet is a standard based messaging service, enabling financial institutions to connect to CREST - the UK's real-time settlement system, allowing them to settle trades in UK and Irish equities and UK gilts. However this product is not an extranet service because it only provides connectivity services between a given financial institution and CREST. It does not allow financial institutions to communicate between them.

32. Extranet services require the lease of significant bandwidth necessary to connect the various users. Furthermore, as previously said, the value of an extranet service depends on the community of interests which uses it. Therefore one of the most effective ways to enter the market would appear to be on the back of an anchor client that sells content

and requires connectivity. BT, prior to the contacts with Radianz, did not have such an anchor client. The parties submit that this is one of the reasons why the "Finance Highway" project did not succeed. Moreover it appears that Radianz never identified BT as a potential entrant in the market, but expected the most significant competition threat to come from operators already well positioned in the financial industry which could build up their extranet services on the back of anchor clients.

33. Other operators appear, at a minimum, as well placed as BT to be considered potential entrants into the market, inter alia because of their existing relationship with the financial community: these include, inter alia, Swift (which could enlarge its offering by leveraging on its existing consumers' base), MCI Worlcom (which actually sells connectivity components to inter alia the NASDAQ), Equant and possibly also others.

(ii) Effects of the vertical integration

34. As regards the effects of the vertical integration, the parties submitted that post-merger no competition concern may be deemed to arise either due to the competitive structure of the GTS market, which would be characterised by the presence of numerous powerful players, or to the low market share of BT (which, even taking into account the recent acquisition of Infonet, should be less than [10-20]% at a world-wide level). Moreover the parties submitted that customers of GTS services are large multinational companies that have countervailing power.

35. Some respondents to the market investigation highlighted the possibility that the vertical integration between the activity of an extranet provider, like Radianz, and that of an operator with a very strong presence in the local access to network connectivity and the full array of telecommunication services, like BT, might lead to harmful effects.

36. It was submitted that BT, post-merger, would have the ability and the incentives to leverage its position in the telecommunication services market in order to foreclose Radianz' competitors from the downstream market of extranet services, by marketing Radianz' services at unfairly low prices, that Radianz competitors would never be able to meet. The marketing of Radianz' services at a very low price, possibly below costs, would not only be the consequence of the economies realised through the vertical integration, but also of the possibility for Radianz to have access to all BT telecommunication services at lower prices than its competitors.

37. Along similar lines, it was argued that BT could give Radianz a preferential treatment in respect to a number of services such as, for instance, speed of service turn up, access to local exchanges for other potential local loop providers or preferred access to bandwidth. This could enable Radianz to supply superior services in respect of network availability, latency and throughput.

38. In respect to the above, the following should be noted: BT enjoys significant market power positions in the UK only, whereas in the rest of the world it faces competition of other local loop and telecommunication services providers (e.g. Verizon, AT&T, etc.). Thus, Radianz would benefit of the possible competitive advantages resulting from BT's local access network, only in relation to a limited region of the globe, i.e. the UK, and to a restricted community/segment of the market of extranet services to the financial community, namely London.

39. The extent of such competitive advantages, if any, would theoretically not be very significant since it appears that, for Radianz, the UK local access cost is a minor proportion of its total access costs. The parties submit that Radianz's local access costs in the UK (London accounting for 95% of it) account for (i) approximately [below 15]% of Radianz's total local access costs on a worldwide basis and (ii) approximately [below 15]% of Radianz's total costs (including local access and other costs). On a global basis, BT currently only accounts for [below 15]% of the total bandwidth which is leased by Radianz.

40. In addition, there is a large number of telecommunication operators in the City of London which should ensure sufficient choice to Radianz’s competitors for the supply of their connectivity components, should BT engage in discriminatory practices in respect to both prices and access conditions to its telecommunication services. Among these operators it is possible to mention: Cable and Wireless, Colt, Global Crossing, MCI WorldCom, etc.[11].

41. In view of the above, it can be concluded that - also given the limited geographic scope of BT’s significant market power and the alternatives available to Radianz’s competitors - it is highly unlikely that any possible harmful effect stemming from BT’s vertical integration with Radianz would foreclose Radianz’ s competitors in the extranet service market to the financial community, whatever its geographic scope.

42. In addition, it should be noted that, being in a position of SMP (substantial market power), BT is subject in the UK, in relation to all the services relevant for the provision of extranet services (namely local loop access and leased lines services), to the obligations provided by the Directive 2002/21[12] and by the national implementing legislation. This involves inter alia the requirement to provide network access at reasonable and non discriminatory terms, price regulation (cost oriented pricing principles), transparency obligations (publication of reference offers, notification of charges, terms, conditions and regulations) and accounting separation. If anything, while the existence of a detailed set of obligation on BT cannot be considered to be an absolute shield from any possible abusive conduct of the merged entity at this stage, nevertheless it would indeed strengthen the above conclusion.

43. Some respondents voiced additional concerns in relation to the possibility that the present acquisition would enable BT to bundle Radianz’s extranet services with other services which it provides to the financial community, through its business unit Syntegra; these services are, for instance, switch voice services, dealing systems, international bandwidth and internet service provision. By selling a customer a bundle of services BT would be able to cross-subsidise the extranet services with other higher margin services of its portfolio. The possible aggressive marketing of bundled offers by BT and Radianz to multinational financial institutions would therefore consolidate their position in both the GTS and the extranet markets and might significantly restrict consumers’ freedom in these markets.

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[11] It appears, in fact that, aside from Colt, WorldCom,(which have networks extending close to offices and businesses) - and Cable and Wireless, the London Metropolitan Fiber Optic Networks is very extensive.

[12] Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (“The Framework directive”), OJ L 108, 24.4.2002, p.33.

44. While for the extranet market the considerations set out above remain valid, it appears that such practices would not have a significant impact on the market of GTS since BT does not enjoy a dominant position in this market, in which, as it has been recently concluded by the Commission in the decision BT/Infonet[13], a number of other global players are also active.

V. CONCLUSION

45. 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 (EC) No 139/2004.

For the Commission
(Signed)
Ján FIGEL'
Member of the Commission

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