

***Case No COMP/M.5666 -
XEROX/ AFFILIATED
COMPUTER SERVICES***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 19/01/2010

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EUROPEAN COMMISSION

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5666 – XEROX/ Affiliated Computer Services Notification of 4 December 2009 pursuant to Article 4 of Council Regulation No 139/2004¹

1. On 4 December 2009, the Commission received notification of a proposed concentration pursuant to Article 4 of Regulation (EC) No 139/2004 (the "EC Merger Regulation"), by which the Xerox Corporation ("Xerox", USA) acquires within the meaning of Article 3(1)(b) of the EC Merger Regulation control of the whole of Affiliated Computer Services, Inc. ("ACS", USA) by way purchase of shares. In the following, Xerox and ACS are together referred to as "the parties".

I. THE PARTIES

2. **Xerox** is a global provider of document production equipment and related services. Its activities can be divided into two broad categories: (i) its core document production

¹ OJ L 24, 29.1.2004, p. 1.

equipment business and (ii) its services business, known as Xerox Global Services (“XGS”). Xerox’s equipment business develops, manufactures, markets, services and finances a range of document production equipment, including a range of multifunction printer, copier and fax devices as well as digital monochrome and colour printing systems, and offers related software solutions and services. Many of XGS’s activities are derivative of Xerox’s core document equipment business and involve outsourced management services for the office printing environment. XGS also offers a range of business process outsourcing (“BPO”) solutions to reduce the costs and improve the efficiency of document-driven processes such as forms-processing and records management.

3. ACS provides a range of BPO and information technology outsourcing (“ITO”) services and solutions to commercial and government clients worldwide. ACS’s business process and information technology groups provide support services to clients in a variety of industries including communications, financial services, healthcare, manufacturing and transportation. ACS provides clients with BPO services for their finance and accounting, customer service, document and data management, human resources and transportation needs. ACS’s information technology (“IT”) professionals specialize in designing, developing and delivering effective IT solutions to help streamline IT functions.

II. THE OPERATION AND THE CONCENTRATION

4. On 27 September 2009, Xerox, the Boulder Acquisition Corp (“Boulder”, USA), a Delaware corporation formed and currently wholly owned by Xerox, and ACS entered into an Agreement and Plan of Merger under which ACS will merge into Boulder, with the latter being a wholly owned subsidiary of Xerox. Hence, Xerox will acquire sole control of ACS through the Transaction. The notified operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.

IV. COMMUNITY DIMENSION

5. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (Xerox EUR 11 971 million, ACS EUR 4 435 million). Each of them has a Community-wide turnover in excess of EUR 250 million (Xerox EUR [...], ACS EUR [...]), 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 within the meaning of Article 1(2) of the EC Merger Regulation.

V. COMPETITIVE ASSESSMENT

6. The proposed transaction gives rise to a small horizontal overlap between the parties in IT services and to a vertical link between Xerox's document production equipment business and ACS' BPO activities, in particular those involving document-related activities.

IT services

Product markets

² Turnover calculated in accordance with Article 5(1) of the EC Merger Regulation.

7. Both Xerox and ACS are active in two segments of IT services: information technology outsourcing ("ITO") and business process outsourcing ("BPO").
8. According to the parties, the relevant product market encompasses all IT services for the following reasons: (i) many customers purchase all their IT services from a single provider; (ii) all major global IT services providers are active in all or nearly all segments of IT services including ITO and BPO; and (iii) there is a substantial degree of supply-side substitutability in the supply of these services.
9. In several previous decisions related to IT services, the Commission considered the possibility of defining an overall market for IT services but ultimately left the market definition open.³
10. The Commission has most recently addressed the question of market definition in IT services in the cases *Capgemini/BAS* and *HP/EDS*.⁴
11. In both cases, the Commission analyzed various potential market segmentations in the IT services sector by distinguishing among seven types of services in line with the approach taken by Gartner Group⁵, namely: (i) hardware maintenance, (ii) software maintenance and support, (iii) consulting, (iv) development integration, (v) IT outsourcing (ITO), (vi) business process outsourcing (BPO), and (vii) education and training.⁶
12. The Commission also analyzed the market based on the customer "verticals", i.e. according to type of industry in which the customer is active.⁷
13. In *HP/EDS*, these customer sectors were: (i) Agriculture, mining and construction; (ii) Process manufacturing; (iii) Discrete manufacturing; (iv) Utilities; (v) Wholesale; (vi) Retail; (vii) Transportation; (viii) Communications; (ix) Financial services; (x) Healthcare; (xi) Services; (xii) Education; (xiii) National and international government; and (xiv) Local and regional government.

³ See e.g. Commission decision of 25 July 2008 in Case COMP/M.5197 – *HP/EDS*; Commission decision of 29 June 2001 in Case COMP/M.2478 – *IBM Italia/Business Solutions/JV*; Commission decision of 17 May 2000 in Case COMP/M. 1901 – *Cap Gemini/Ernst & Young*; Commission decision of 15 June 1999 in Case No IV/M.1561 – *Getronics/Wang*; Commission decision of 31 January 2002 in Case No IV/M.2609 – *HP/Compaq*; and Commission decision of 26 March 2004 in Case No IV/M.3398 – *HP/Triaton*.

⁴ Commission decision of 3 October 2008 in Case COMP/M.5301– *Capgemini/BAS*, Commission decision of 25 July 2008 in Case COMP/M.5197 – *HP/EDS*.

⁵ The Gartner Group is an independent industry analyst specializing in the IT industry. Gartner collects market data and produces reports on the overall IT services market and subdivided by various segments and sub-segments.

⁶ See Commission decision of 13 January 2001 in Case COMP/M.5301 – *Capgemini/BAS* , paragraph 9; Commission decision of 25 July 2008 in Case COMP/M.5197 – *HP/EDS*, paragraph 8.

⁷ Commission decision of 13 January 2001 in Case COMP/M.5301 – *Capgemini/BAS*, paragraphs 13 and 31.

14. However, in *HP/EDS* the Commission also noted that, whilst certain customers may have specific requirements, it appears that most service providers operate across each or a large number of verticals, suggesting a significant degree of supply-side substitutability.
15. However, for the purpose of the assessment of the present transaction, the exact scope of the market for IT services can be left open, given that the proposed transaction does not raise any competition concerns under any alternative market definition.

Geographic market

16. The parties submit that the relevant geographic market for assessing competition in IT services is worldwide or at least EEA-wide in scope, the main reason being that the major providers of IT services operate on a worldwide basis and customers frequently have worldwide or EEA-wide tenders.
17. In previous decisions, the Commission indicated that the IT services market has increasingly shown a strong trend towards internationalisation of supply and demand, but left the geographic market definition open.⁸
18. In this case the market investigation also pointed to an increasingly international scope of the market for IT services.
19. However, for the purpose of the assessment of the present transaction, the exact geographic scope of the IT services market or its possible sub-segments can be left open, given that the proposed transaction does not raise any competition concerns under any alternative market definition.

Document production equipment

Product markets

20. Xerox designs, assembles and sells a wide variety of document production devices, including black-and-white and colour digital printers and black-and-white and colour digital Multifunction Peripherals ("MFPs").
21. The Commission analyzed the market for manufacturing document production equipment in *Konica/Minolta*, which addressed mainly photocopiers, and more recently, in *Canon/Océ*, which addressed (single function) digital printers and MFPs and large format printers.⁹
22. In the *Canon/Océ* case, the Commission found that, within regular format office automation equipment (A3/A4 paper size), a distinction could be made between single

⁸ Commission decision in Case COMP/M. – *IBM Italia/Business Solutions/JV*, paragraph 28; Commission decision in Case COMP/M. – *Cap Gemini/Ernst & Young*, paragraph 11; Commission decision in Case IV/M.2609 – *HP/Compaq*, paragraph 26; and Commission decision in Case IV/M.3398 – *HP/Triaton*, paragraph 10.

⁹ Commission decision of 11 July 2003 in Case COMP/M.3091 – *Konica/Minolta*; Commission decision of 22 December 2009 in Case COMP/M.5672 – *Canon/Océ*.

function office equipment (including printers, photocopiers or fax machines) and MFPs.¹⁰

23. In the *Konica/Minolta* and *Canon/Océ* cases, the Commission found that a further distinction could be made between black-and-white and colour.¹¹
24. In the *Konica/Minolta* and *Canon/Océ* cases, the Commission also considered a further distinction into three segments based on speed measured by the output of pages per minute (“ppm”):
 - a) personal copiers (speed up to 10 or 20 ppm);
 - b) office copiers (speed between 11-20 and 90 ppm) intended for own use by business customers and small reprography professionals; and
 - c) commercial / production copiers (speed over 91+ ppm) used by reprography centers or other industrial/professional users.
25. In these cases, the Commission left open the exact product market definition as to the possible segmentation based on single function v. MFPs, black-and-white v. colour or speed range because the transactions did not raise any competition concerns under any alternative product market definition.¹²
26. Based on the Commission's approach in *Konica/Minolta* and on the segmentation adopted by IDC, an industry analyst, the parties propose to segment the relevant product markets in document production equipment as follows:
 - (a) Office Mono Printers;
 - (b) Office Colour Printers;
 - (c) Office Mono MFPs;
 - (d) Office Colour MFPs;
 - (e) Production Mono Devices; and
 - (f) Production Colour MFPs and High End Colour Systems ("HECS").
27. The Commission's market investigation indicated that customer needs in the printing business in general and in the high-volume printing business in particular are rapidly evolving, which makes narrow segmentation difficult and limits its usefulness for a prospective analysis. For example, respondents pointed to the increasing displacement of mono devices by colour devices. As all colour devices have the capability to print in black and white and costs of both types of devices converge, the distinction between the two is becoming increasingly blurred. There is also increasing displacement of one-function devices by multifunction peripherals.
28. The distinction between office document printing devices and document printing devices used for large-scale document production is also becoming less relevant. The market investigation revealed that vendors of production printers are offering cheaper

¹⁰ Commission decision of 22 December 2009 in Case COMP/M.5672 – *Canon/Océ*, paragraphs 16-19.

¹¹ *Konica/Minolta*, paragraphs 10, 11 and 15; *Canon/Océ*, paragraphs 20-22.

¹² *Konica/Minolta*, paragraph 11; *Canon/Océ*, paragraphs 19, 22 and 30.

machines with less functionality which compete in the office segment. On the other hand traditional office printer manufacturers keep increasing functionality of their office equipment in order to compete in the higher volume production segment.

29. However, for the purpose of the assessment of the present transaction, the exact definition of the relevant product market as regards document production equipment can be left open, given that the proposed transaction does not raise any competition concerns under any alternative market definition.

Geographic market

30. According to the parties, the market for document production equipment is worldwide.
31. In *Konica/Minolta* and *Canon/Océ*, the Commission analyzed the document production equipment market at both the EEA-wide and national levels, but ultimately left the geographic market definition open.¹³
32. The Commission's market investigation indicated that the markets for document production equipment have a worldwide or at least EEA-wide scope.
33. However, for the purpose of the assessment of the present transaction, the exact geographic scope of the document production equipment market(s) can be left open, given that the proposed transaction does not raise any competition concerns under any alternative market definition.

Competitive Assessment

Horizontal issues

34. The parties provided market share data for the IT services market as a whole as well as its different segments (by type of activity and by type of customer).
35. The combined market share of the parties in the market for IT services was [0-5]% worldwide and [0-5]% at the EEA level.
36. The proposed transaction gives rise to small horizontal overlaps in the activities of the parties in some segments of the market for IT services. Under the different possible market definitions, the proposed transaction gives rise to only one affected market: the worldwide market for business process management services in the healthcare sector.
37. The parties' combined market share in healthcare process management was [10-20]% in 2008 (ACS [10-20]%, Xerox [0-5]%). The increment in market share resulting from the merger will be below [0-5]%.
38. In addition, the market investigation confirmed that the parties will continue to face a number of strong competitors in this segment (Accenture, EDS, Automatic Data Processing).
39. In view of these considerations, this horizontal overlap does not raise any competition concerns.

¹³ *Konica/Minolta*, paragraphs 34-36; *Canon/Océ*, paragraphs 41-47.

Vertical issues

40. The transaction gives rise to a vertical relationship between Xerox's document production equipment business and certain of ACS's BPO services. ACS purchases office and commercial document production equipment for the purpose of providing document-related services to its customers.
41. Xerox's market share exceeds 25% in two hypothetical markets:
 - (i) the market for Production Mono Devices ([30-40]% worldwide; [40-50]% in the EEA); and
 - (ii) the market for HECS ([40-50]% worldwide; [20-30]% in the EEA).
42. The parties argue that Xerox faces strong competitors in all segments of document production devices. They claim that the merged company will have neither the ability, nor the incentive to adopt a foreclosure strategy with respect to the downstream competitors of ACS who are also potential customers of Xerox in the Production Mono devices and the HECS segments.
43. According to the Commission's assessment, it is unlikely that the merged company will have the ability to foreclose ACS's downstream competitors for the following reasons:
 - a) There are at least four other competitors (Canon, Ricoh, Konica Minolta and Océ) active in the EEA with shares in excess of 10% in both segments that could easily supply ACS's competitors;
 - b) There are no significant constraints on Xerox's equipment competitors' capacity to increase production of Production Mono Devices or HECS to supply ACS's competitors;
 - c) When outsourcing document-related processes, customers base their decision mainly on their confidence that BPO providers can deliver the promised solution at an agreed upon price and level of quality. Customers outsourcing document-processing services do not choose their BPO provider based on the document equipment it uses, and therefore, a BPO provider would suffer no competitive disadvantage if it could not offer Xerox equipment;
 - d) Xerox sells approximately [...] % of its document production equipment in the EEA through third parties which are free to sell to any end users, including ACS's competitors. Many of these third-parties also sell equipment produced by Xerox's competitors. Accordingly, any effort by Xerox to restrict sales to ACS's competitors could easily cause these distributors to promote the products of Xerox's competitors to other customers as well.
44. The market investigation confirmed that in the two hypothetical markets where Xerox's market share exceeds 25% (Production Mono Devices and HECS), ACS's competitors have alternative suppliers to Xerox.
45. Given that it is likely that the merged company will not have the ability to foreclose, it is not necessary to examine the incentive to foreclose. However, even if the parties had the ability to foreclose it is unlikely that they would have the incentive to do so.

46. Under Xerox's business model, the sale of document production equipment generates two revenue streams: (i) from the sale of the equipment and (ii) from maintenance, services, supplies and financing (including revenues from rentals and operating lease arrangements). According to the parties, for each dollar of equipment sales, Xerox, on average, earns [...] in post-sale revenues. Xerox's business model is therefore driven by increasing equipment sales and installations to generate this post-acquisition revenue multiplier.
47. By foreclosing ACS's competitors Xerox would lose the equipment sales revenues and the equipment post-sale revenues without necessarily gaining any BPO business since customers are in no way driven by the brand of document production equipment that the BPO provider employs.
48. Accordingly, it seems that Xerox would not have the incentive to foreclose ACS's competitors from access to its equipment.
49. In view of these considerations, the vertical link between Xerox's document production equipment activities and certain of ACS's BPO activities does not raise any competition concerns.

VI. CONCLUSION

50. 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 EC Merger Regulation (EC) No 139/2004.

For the Commission
(*signed*)
Charlie McCREEVY
Member of the Commission