

***Case No COMP/M.6921 -
IBM ITALIA / UBIS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/06/2013

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.6921 – IBM ITALIA / UBIS
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

- (1) On 14 May 2013, the European Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² by which the undertaking IBM Italia S.p.A. ("IBM Italia", Italy), a wholly-owned indirect subsidiary of International Business Machines Corporation ("IBM", USA, or the "Notifying Party"), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over a business (the "Transferred Business") of the undertaking Unicredit Business Integrated Solutions S.c.p.a. ("UBIS", Italy), a wholly own subsidiary of UniCredit S.p.A. ("Unicredit"), by way of purchase of shares.³ IBM Italia is designated hereinafter as the "Notifying Party" and IBM Italia and UBIS collectively as the "Parties".

1. THE PARTIES AND THE OPERATION

- (2) **IBM Italia** is part of IBM, which is active worldwide in the development, production, and marketing of a wide variety of IT solutions, comprising software, systems (servers, storage systems, appliances), and services (business consulting and IT infrastructure services).

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

³ Publication in the Official Journal of the European Union No C 142, 22.05.2013, p. 7, corrigendum Publication in the Official Journal of the European Union No C 163, 08.06.2013, p. 8.

- (3) **UBIS** is a non-profit company created in January 2012 to combine companies and businesses within the Unicredit group specialized in the provision at cost of various services (not only IT services, but also back office, real estate, security, and procurement services) to other companies in the Unicredit group.
- (4) The **Transferred Business**, currently part of UBIS, is responsible for the provision of IT outsourcing services to the other companies of the Unicredit group, and, although to a very limited extent, to third parties.
- (5) IBM Italia will acquire 51 % of the shares of a newly-formed limited liability company ("NewCo"), to which UBIS will transfer as a going concern the Transferred Business for a consideration of EUR [...] million. UBIS will own the remaining 49 % of NewCo shares. IBM will appoint the majority of the members of the Board of Directors of NewCo (four out of seven Directors, including the Chief Executive Officer). The Board of Directors will adopt all the decisions concerning the management of NewCo acting by simple majority. UBIS will only be granted customary veto rights normally accorded to minority shareholders in order to protect their financial interests.⁴As a result, IBM, by acquiring 51% of the shares of NewCo, will acquire sole control of NewCo and of the Transferred Business.
- (6) The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

2. EU DIMENSION

- (7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (IBM: EUR 76 807 million, Transferred Business: EUR [...] million)⁵. Each of them has a EU-wide turnover in excess of EUR 250 million (IBM: EUR [...] million in 2011; Transferred Business: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The proposed concentration therefore has an EU dimension.

3. COMPETITIVE ASSESSMENT

3.1. Introduction

- (8) The Parties' activities overlap in the provision of IT outsourcing services (namely data centre services and network outsourcing services) for the banking and securities sector. IT outsourcing services provide day-to-day management and operation of computing and processes, including infrastructure and business applications. IT outsourcing service contracts are differentiated from project services in that they are ongoing, performance-based contracts to deliver day-to-day IT operations and management, versus custom, project-based efforts. Except for help desk services, IT outsourcing market segments are differentiated by the degree and type of vendor responsibility specified in the service contract.

⁴ Matters requiring a special majority of 76% of the share capital at NewCo shareholder meeting (and therefore the favourable vote of UBIS will include, among other things, amendments to the by-laws, NewCo's liquidation, mergers, de-mergers, and increases and reductions of NewCo's share capital.

⁵ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

3.2. Market Definition

3.2.1. Product market definition

3.2.1.1. IT services

- (9) The Notifying Party considers that, from a supply side perspective, a segmentation of the market for the provision of IT services according to functionality, services provided, and industry sector is not appropriate. In the view of the Notifying Party, supply side considerations support this statement as suppliers have gradually been expanding their service offerings to encompass multiple services and supply different segments and sectors in order to offer customers a broader range of IT service solutions (either through the expansion of in-house offerings and/or acquisitions, or through alliances and sub-contracting arrangements with other service providers).
- (10) In its previous decisional practice,⁶ the Commission considered that the market for IT services could be segmented depending on (i) the functionality of the services and (ii) the different sectors concerned by reference to market reports by independent industry analyst companies' such as Gartner.
- (11) The majority of the respondents to the market investigation confirmed the decisional practice of the Commission as regards the segmentation of the market for the provision of IT services: i) on the basis of different functionalities and ii) on the basis of different industry sectors.⁷

3.2.1.2. Segmentation of IT services by functionality

- (12) As regards a segmentation of the market for the provision of IT services on the basis of the different functionalities, the Commission considered in the past that the IT services market could be segmented as follows: i) hardware maintenance; ii) software maintenance and support; iii) consulting; iv) development and integration; v) IT outsourcing; vi) business process outsourcing (BPO); vii) management services; and viii) education and training.
- (13) The majority of the respondents to the market investigation confirmed the decisional practice of the Commission as regards the previous segmentation of the market for the provision of IT services on the basis of functionalities.⁸

3.2.1.2.1. Sub-segments of IT outsourcing services

- (14) As regard a further sub-segmentation of the market for the provision of IT outsourcing services based on the type of service offered, the Notifying Party

⁶ See Case *Getronics/Wang*, No IV/M.1561, Commission decision of June 15, 1999; Case *Computer Sciences Corporation/iSoft Group*, COMP/M.6237, Commission decision of June 20, 2011; Case *Atos Origin/Siemens IT Solutions & Services*, COMP/M.6127, Commission decision of March 25, 2011; Case *Xerox/Affiliated Computer Services*, COMP/M.5666, Commission decision of January 19, 2010; Case *Cap Gemini/Bas*, COMP/M.5301, Commission decision of October 13, 2008.

⁷ See Responses to the Questionnaire for Competitors, question 5; Questionnaire for Customers, question 5; as well as footnote 6 and paragraph 3.2.1.2 above.

⁸ See Responses to the Questionnaire for Competitors, question 5; Questionnaire for Customers, question 5.

considers that such a sub-segmentation is not appropriate since: (i) the purpose of all these services is to deliver day-to-day IT operations and management of infrastructure, applications, and the flow of information; (ii) even if a supplier would not be able to offer specific services within the IT outsourcing segment, it could act as prime contractor and entrust other suppliers for the provision of the services that are not in its portfolio; (iii) infrastructure outsourcing services are generally the same with respect to all industry sectors, whereas application outsourcing services may be tailor-made based on the specific applications needed within each industry sector; and (iv) there would be full demand-side substitutability between infrastructure outsourcing services, IaaS, and cloud services as they are all aimed at satisfying the same needs of a customer, the difference residing in the technical way of achieving this.

- (15) However, the Notifying Party reports that Gartner distinguishes the following four different categories in IT outsourcing services: (a) public cloud computing services, (b) infrastructure as a service ("IaaS"), (c) infrastructure outsourcing services, including data centre services, network outsourcing, end-user device outsourcing, and help desk outsourcing, as well as (d) application outsourcing services.
- (16) Within these various sub-segments identified above, the Transferred Business only provides data centre services and network outsourcing services, which are part of the sub-segment for infrastructure outsourcing services. By contrast, IBM is active in all sub-segments of IT outsourcing services.
- (17) Some respondents to the market investigation referred to elements from a demand side that would point to the existence of a possible separate relevant market for infrastructure outsourcing services (or even of possible separate market segments for data centre services and network outsourcing services), namely the fact that (i) these services may be offered and purchased on a stand-alone basis; and (ii) they have specific product characteristics.⁹ However, from a supply side perspective, the market investigation also revealed that almost all responding competitors and several customers consider that competitors, which do not currently provide IT outsourcing services, would have the ability to start providing these services in the short term.¹⁰

3.2.1.3. Segmentation of IT services by industry sector

- (18) According to the Notifying Party, a segmentation of the market for the provision of IT services along industry sectors is not meaningful as: (i) businesses in the different vertical industries would use the same kind of IT services; and (ii) the majority of skills, technology, and know-how involved in providing IT services, for the large part, would be standard and readily transferable between and among industries.
- (19) The high supply side substitutability would be substantiated by IBM's percentage of sales as its percentage of sales in each industry closely reflects its percentage of sales of IT services for all industries combined.
- (20) These arguments of full supply side substitutability would be especially applicable to the infrastructure outsourcing sub-segment of IT outsourcing services, since these

⁹ See responses to the Questionnaire for Competitors, question 7; Questionnaire for Customers, question 7.

¹⁰ See responses to the Questionnaire for Competitors, question 8; Questionnaire for Customers, question 8.

services are exactly the same independently of the industry in which they are provided. All data centres and networks would function in the same way regardless of the customer's domain of activity. IBM does not have industry-specific divisions and the same employees often work for clients active in completely different industries.¹¹

- (21) In any case, the Notifying Party considered also a segmentation of IT services on the basis of the following sectors, as defined by Gartner: (i) communications, media & services; (ii) education; (iii) transportation; (iv) utilities; (v) wholesale trade; (vi) manufacturing & natural resources; (vii) healthcare providers; (viii) banking & securities; (ix) retail; (x) government; and (xi) insurance.¹²
- (22) The majority of the respondents to the market investigation confirmed the decisional practice of the Commission as regards the previous segmentation of the market for the provision of IT services on the basis of industry sectors¹³
- (23) Given that the Transferred Business only provides IT outsourcing services for the banking and securities sector, the following discussion is limited to this sub-segment. The market investigation revealed some elements supporting that, from a demand side perspective, IT services in the banking and securities sector may differ from IT services offered in other industry sectors, notably due to (i) specific rules, guidelines and (local) regulations especially regarding security, risk, compliance and regulatory issues; (ii) possible differences in performance prices, and (iii) higher requirements for performance monitoring.¹⁴ Some market participants also considered the availability of technical infrastructure, technical expertise, skilled personnel and a proven track record as pre-requisites to successfully operate in the provision of IT outsourcing services for the banking and securities sector.¹⁵
- (24) However, from a supply side perspective, all of the IT suppliers who responded to the market investigation confirmed that they provide these services for multiple industry sectors.¹⁶ Moreover, a vast majority of competitors and customers expressing a view consider that suppliers of IT services who do not currently provide IT outsourcing services for the banking and securities sector are considered to be

¹¹ The only difference in the needs of the customers would possibly concern more stringent requirements for data security and the privacy of the persons in industries like banking and securities, insurance, healthcare, and government. However, once a supplier would be able to provide services ensuring an adequate level of security, it will not reduce its security standards only because it is working with a client that does not have high requirements.

¹² For the segmentation considered by Gartner, see Gartner's March/April 2012 pivot-table named "*Market Share: IT Services, 2011*", with reference to the functionality of the services.

¹³ See Responses to the Questionnaire for Competitors, question 6; Questionnaire for Customers, question 6.

¹⁴ See responses to the Questionnaire for Competitors, question 9; Questionnaire for Customers, question 9.

¹⁵ See Responses to the Questionnaire for Competitors, question 21; Questionnaire for Customers, question 21.

¹⁶ See Responses to the Questionnaire for Competitors, question 22.

able to start providing IT services for the banking and securities sector in the short term.¹⁷

3.2.1.4. Conclusion

- (25) For the purpose of the decision, the exact delineation of the relevant product market(s) for the provision of IT services can be left open since the proposed concentration does not give rise to competition concerns under any alternative market definition.

3.2.2. *Geographic market definition*

- (26) The Notifying Party submits that the geographic market for the provision of IT services, irrespective of any further segmentation, is wider than national and at least EEA-wide.
- (27) In previous decisions, the Commission, while considering that IT services are provided on a national basis, it also pointed that the market could have a broader geographic scope, as major providers of IT services operate on a worldwide basis and customers frequently issue worldwide/EEA-wide tenders.¹⁸
- (28) From a supply side perspective, the majority of IT service providers who responded to the market investigation indicated that they offer IT services at a worldwide or EEA-wide level.¹⁹ However, from a demand side, the market investigation was inconclusive as to whether the relevant geographic market should be considered to be national or EEA-wide in scope.²⁰
- (29) Notably, the market investigation indicated that IT solutions are often customised according to language and local business particularities. It also revealed that a close and constant relationship between the service provider and the client needs to be maintained for local after sales services.²¹ Most customers expressing a view also consider that IT service suppliers need to provide logistics, marketing, sales branches, distribution network and after sales/maintenance services at national level.²²

¹⁷ See Responses to the Questionnaire for Competitors, question 10; Questionnaire for Customers, question 10.

¹⁸ See Case *Computer Sciences Corporation/iSoft Group*, COMP/M.6237, Commission decision of June 20, 2011, paras. 17 and 18; Case *XEROX/ Affiliated Computer Services*, COMP/M.5666, Commission decision of 19 January 2010.

¹⁹ See Responses to the Questionnaire for Competitors, question 12.

²⁰ See Responses to the Questionnaire for Customers, question 12.

²¹ See Responses to the Questionnaire for Competitors, questions 13–14; Questionnaire for Customers, questions 14–15.

²² See Responses to the Questionnaire for Customers, questions 13.

3.2.2.1. Conclusion

- (30) For the purpose of the decision, the exact delineation of the relevant geographic market(s) can be left open, as the proposed concentration does not give rise to competition concerns under any alternative market definition.

3.3. Horizontal analysis

3.3.1. The merchant market for the provision of IT services and its segments

- (31) In this section, the Commission assessed the impact of the proposed concentration on the merchant market for the provision of IT services and its segments, that is, the extent to which the proposed concentration is likely to increase IBM's market position in the relevant markets through the addition of the Transferred Business' existing non-captive activities.

3.3.1.1. EEA level

- (32) The Transferred Business' activities are almost exclusively captive, since IT services are provided to a large extent to UBIS and the other companies of the Unicredit group. In 2012, merchant sales of the Transferred Business amounted to approximately [...] % of the overall theoretical turnover of the Transferred Business (EUR [...] million out of EUR [...] million).
- (33) Table I below includes the market shares of IBM and the Transferred Business in the various IT services markets/segments potentially concerned by the proposed concentration.

Table 1 -- Parties' Shares of Sales at the European Level (2012)²³

Parties	IT Services	IT Outsourcing	IT Outsourcing in Banking & Securities
IBM	[5-10]%	[5-10]%	[10-20]%
Transferred Business	[0-5]%	[0-5]%	[0-5]%
Total	[5-10]%	[5-10]%	[10-20]%

Source: Gartner 2012 data, published in 2013, and UBIS' internal estimations for 2012²⁴

3.3.1.1.1. IT outsourcing services sub-segments

- (34) As regards the segment for the provision of IT infrastructure outsourcing services at EEA level, where the Transferred Business is active, the Notifying Party submits that, while no detailed market share data is available, the Parties' shares of sales would be by and large the same as in the broader IT outsourcing segment.

²³ The Notifying Party notes that the data include Western European and Eastern European sales, as estimated by Gartner. Therefore, these data also include sales outside the EEA (e.g., in Switzerland and in certain Eastern European countries).

²⁴ UBIS does not have exact data concerning its sales of IT services to third parties, since these services are invoiced together with a wider range of services provided by UBIS (including, e.g., back office, real estate, security, and procurement services). Accordingly, UBIS has estimated the value of the merchant sales attributable to the Transferred Business.

- (35) As to the possible narrower segmentation, the Notifying Party estimates that, in comparison with IT outsourcing services, IBM's shares of sales would be somewhat higher in the provision of data centre services and somewhat lower in the provision of networking outsourcing services. Moreover, the Notifying Party refers to an analysis by Gartner of the largest suppliers of the two types of infrastructure outsourcing services offered by the Transferred Business: data centre services and networking outsourcing services.
- (36) As regards data centre services, Gartner notes that IBM is the largest supplier in a space that is characterized as "a hypercompetitive market".²⁵ In particular, Gartner estimated that the sales of data centre services in Europe amount to around USD 40 billion and that, collectively, the 12 suppliers it analysed generated revenue estimated at USD 19 billion, which is less than 50% of the total sales.²⁶ From these estimates, it would appear that IBM's share of sales in this narrower sub-segment, although relatively higher than in the overall IT outsourcing segment, cannot be too significant and that, in any event, IBM is subject to competition from a range of suppliers of data centre services.
- (37) As to network outsourcing services, Gartner analyses IBM's profile together with those of 20 other suppliers. While Gartner places IBM among the seven leading companies in the provision of these services,²⁷ the Notifying Party submits that IBM does not have all the capabilities to provide network outsourcing services in-house, but relies on telecommunication operators such as AT&T to satisfy the Unicredit group's requirements in that field.
- (38) As regards UBIS's shares of sales, the Notifying Party estimates that UBIS' shares of sales in the EEA would amount to [0-5]% for the provision of data centre services and to [0-5]% for the provision of network outsourcing services.

3.3.1.2. National level

- (39) If the relevant geographic markets were to be national, the merged entity would not have market shares exceeding 25% in the market for IT services.²⁸ The same goes for the possible national markets for IT outsourcing services (considering only markets where proposed concentration leads to an increment).
- (40) As regards the possible national markets for IT outsourcing services in the banking and securities sector, the proposed concentration would lead to market shares higher than 25% in Italy ([30-40]% in 2012) and Austria ([20-30]% in 2012). However, the increment contributed by the Transferred Business is limited to only [0-5]% and [0-5]% respectively. Moreover, the merged entity faces a number of other competitors in both countries. In Italy, these include HP ([5-10]%), Accenture ([5-10]%), BT ([0-

25 See Gartner: *Magic Quadrant for Data Center Outsourcing and Infrastructure Utility Services, Europe*, 12 July 2012, page 10. (Annex 7.1.1)

26 See Gartner: *Magic Quadrant for Data Center Outsourcing and Infrastructure Utility Services, Europe*, 12 July 2012, page 27. (Annex 7.1.1)

27 See Gartner, *Magic Quadrant for Communications Outsourcing and Professional Services*, 20 December 2012, page 26. (Annex 7.1.2)

28 According to paragraph 18 of the Commission's Horizontal Guidelines, an indication that a concentration is not liable to impede effective competition exists in particular where the market share of the undertaking concerned does not exceed 25%.

5]%) as well as a large number of companies with market shares below 3%. In Austria, competitors include Atos ([10-20]%), T-Systems ([0-5]%), Beko Engineering ([0-5]%), HP ([0-5]%) and a large number of companies with market shares below 3% (all 2012 figures).

- (41) As regards the sub-segment of infrastructure outsourcing services where the Transferred Business is active and notably the sub-segments data centre services and network outsourcing services, the Notifying Party submits that UBIS' shares of sales for the provision of data centre services would amount to [0-5]% in Italy, [0-5]% in Austria and [0-5]% in Poland and to [0-5]% in Italy, [0-5]% in Austria and [0-5]% in Poland for the provision of network outsourcing services.
- (42) The Notifying Party also submits that the proposed concentration would not confer upon IBM a competitive advantage over its competitors in terms of increase of its ability to serve customers in the banking and securities sector, compared to the situation preceding the proposed concentration, for the following reasons: (i) although the proposed concentration might positively affect IBM's reputation, IBM's reputation as a reliable IT service provider is already well established; and (ii) infrastructure outsourcing services do not have characteristics specific to the industry in which they are provided, and therefore all data centres and networks function in the same way regardless of the customer's domain of activity.

3.3.1.3. Competitive assessment

- (43) The Commission notes that the merged entity's market share will at most reach 30% on the markets for the provision of IT services on the merchant market (including the possible segments for the provision of IT outsourcing services and IT outsourcing services for the banking and securities sector). with the market share increments arising from the Transferred Business' activities being very limited. Moreover, as regards the possible sub-segments for the provision of data centre services and network outsourcing services, the increment deriving from the Transferred Business' activities is negligible.
- (44) The market investigation also confirms that the proposed concentration will not confer upon IBM a significant competitive advantage over its competitors in terms of increase of its ability to serve customers in the banking and securities sector, compared to the situation preceding the proposed concentration. The majority of the respondents expressing a view do not consider that the Transferred Business is a particularly strong player in the provision of IT outsourcing services for the banking and securities sector.²⁹ They also do not anticipate that the proposed concentration would make it more difficult for IBM's competitors to compete in the market for the provision of IT services (including IT outsourcing services) in the banking and securities sector.³⁰ IBM also already has a consolidated experience in providing IT services to banks and, therefore, the increase in IBM's strength in the possible IT outsourcing market for the banking and securities sector due to the proposed concentration would appear to be immaterial.

²⁹ See Responses to the Questionnaire for Competitors, question 17; Questionnaire for Customers, question 17.

³⁰ See Responses to the Questionnaire for Customers, question 25.

- (45) Moreover, the vast majority of respondents to the market investigation did not raise any concerns as regards the possible impact of the proposed concentration on competition on any possible market segment and considered that, post-merger, there will continue to be a sufficient number of credible alternative IT service providers who are able to provide the same range of IT outsourcing services for the banking and securities sector as the merged entity.³¹

3.3.2. *The market for the provision of IT services and its segments (including captive sales)*

- (46) In the following paragraphs, the Commission assesses the impact of the proposed concentration in a scenario, in which the size of the relevant market, as well as the sales on such market of the Transferred Business, are increased so as to also include the sales to Unicredit, which, pre-merger are carried out captively by the Transferred Business, and, post-merger, will be achieved by IBM.
- (47) Even in this scenario, the increment in IBM's market share will be very limited. The evidence that the Transferred Business is not a particularly strong player in the provision of IT outsourcing services for the banking and securities sector (see paragraph 44) shows that the impact of this already small increment is even more limited. There will moreover remain a sufficient number of credible alternative IT service providers who are able to provide the same range of IT outsourcing services for the banking and securities sector as the merged entity.
- (48) The Commission also assessed potential foreclosure effects arising from the proposed concentration. Such effects would mainly derive from the conversion of part of Unicredit's previous captive sales into merchant sales based on the relevant outsourcing agreement. If this were to reveal that, post-merger, only a limited portion of the market for the provision of IT services (and its possible sub-segments) were available for IBM's competitors, the question may arise as to whether these competitors would be able to compete with IBM in this market in the future. As will be described in the sections that follow, the market investigation however confirmed that the proposed concentration is not likely to result in customer foreclosure.

3.3.2.1. EEA level

- (49) The merged entity's market shares in the various IT services markets/ segments remain modest at EEA level, as demonstrated by the following table:

Table 2 -- Parties' Shares of Sales (including the Transferred Business' Captive Sales) at the European Level in 2012³²

Parties	IT Services	IT Outsourcing	IT Outsourcing in Banking & Securities
IBM	[5-10]%	[5-10]%	[10-20]%
Transferred Business	[0-5]%	[0-5]%	[0-5]%
Total	[5-10]%	[10-20]%	[10-20]%

Source: Gartner 2012 data, published in 2013, and UBIS' internal estimations for 2012

³¹ See Responses to the Questionnaire for Competitors, questions 25–26 and 29; Questionnaire for Customers, questions 22–23 and 26.

³² For purposes of calculating shares of sales, the Parties have grossed up the overall 2011 merchant sales figures provided by Gartner to include the Transferred Business' captive 2012 sales.

3.3.2.2. National level

- (50) If the relevant geographic markets were to be national, the merged entity would not have market shares exceeding 25% in the market for the provision of IT services in the various EEA countries.
- (51) With respect to the possible national markets for the provision of IT outsourcing services, the merged entity would hold market shares above 25% in Italy ([20-30]%, with an increment of [5-10]%) in 2012.³³
- (52) As regards the possible national markets for IT outsourcing in banking and securities sector, the merged entity would hold a market share above 25% in 2012 in Italy ([50-60]%, with an increment of [10-20]%), Austria ([40-50]%, with an increment of [10-20]%), and Poland ([30-40]%). However, the increment in Poland is limited to a negligible [0-5]%
- (53) As regards Italy, the Notifying Party submits that some of the largest Italian banking groups³⁴, currently satisfy the majority of their IT outsourcing requirements in-house. Based on a rough estimate, if one were to include in the relevant market those banks' IT outsourcing requirements that are currently satisfied captively, IBM's share of sales would be less than 15% and the Transferred Business' share around [20-30]%.³⁵
- (54) As regards Austria, the Notifying Party submits that most of the largest Austrian banking groups³⁶ currently satisfy the majority of their IT outsourcing requirements in-house. Based on a rough estimate, if one were to include in the relevant market those banks' IT outsourcing requirements that are currently satisfied captively, IBM's share of sales would be about [10-20]% and the Transferred Business' share around [20-30]%.³⁷

³³ Gartner does not produce estimates of the market shares of IT services concerning Slovakia and Romania. The Notifying Party notes however that in neither Member State, the Transferred Business had any merchant sales. Captive sales amounted to approximately USD [...] million in Slovakia and USD [...] in Romania and conclude therefore that the Transferred Business' shares of sales would be negligible.

³⁴ Including Banca Intesa, Banco Popolare, UBI Banca, Mediobanca, Banca Popolare dell'Emilia Romagna, Banca Popolare di Milano, Cassa di Risparmio di Parma e Piacenza, and Banca Carige, as well as the Bank of Italy.

³⁵ The Notifying Party submits that, based on 2011 data on total assets, these eight banks are among the 12 largest Italian banking groups (which also include Unicredit). Taking into account their total assets (which however include their assets possibly held outside Italy), one may estimate the size of their IT outsourcing requirements. Since the assets of the eight listed banks represent the 47% of the total assets of the 12 largest banks (more than a third of which is represented by Unicredit, which in any event has a large part of its assets outside Italy), one may estimate that the total size of the captive demand for IT outsourcing services in the banking sector in Italy is about the double of the figure provided by Gartner, i.e., approximately USD 1.4 billion.

³⁶ Including the Raiffeisen Banking Group, the Hypo banks, the Volksbank, and Oberbank.

³⁷ The Notifying Party submits that, out of the nine largest banking groups in Austria (based on total assets at the end of 2010), besides Unicredit Bank Austria, only Erste Group and BAWAG, which however satisfy most of their IT service requirements in-house, have limited outsourcing deals with, respectively, IBM and Atos. Accordingly, one may estimate that the total size of the captive demand for IT outsourcing services in the banking sector in Austria is at least the double of the figure provided by Gartner, i.e., approximately USD 400 million.

- (55) The Notifying Party submits that the proposed concentration is unlikely to result in the foreclosure of third party competitors in the supply of IT sourcing services for the banking and securities sector since (i) post-merger, Unicredit will be required to source from IBM only up to [...] % of its total demand of the IT outsourcing services covered by the outsourcing agreement; (ii) the IT outsourcing agreement between IBM and Unicredit does not cover all types of IT outsourcing services required by Unicredit; and (iii) particularly in Italy and Austria, there are other large banking groups, which currently satisfy the majority of their IT outsourcing requirements in-house, and which could therefore become potential customers of competitors of the merged entity.

3.3.2.3. Competitive assessment

- (56) The Commission considers that the proposed concentration will not lead to a foreclosure of IBM's competitors for a number of reasons.
- (57) First, post-merger, IBM competitors will continue to be able to compete with IBM for the provision of IT outsourcing services to Unicredit for the part of Unicredit's requirements that Unicredit will not be contractually required to source from IBM (at least, up to [...] % of Unicredit's total demand of the services covered by the outsourcing agreement), including data centre and network outsourcing services.
- (58) Second, Unicredit will continue to source from third parties as it did prior to the proposed concentration all other types of IT services, including IT outsourcing services, not covered by the outsourcing agreement.
- (59) Third, a number of respondents to the market investigation confirmed that market participants are aware that there are such other banking groups currently sourcing their requirements in-house. In particular, a respondent reported the expectation of an increased demand for IT outsourcing services in the next three years, due to a trend by banking groups to cease sourcing their requirement in-house.
- (60) Fourth, the vast majority of competitors and a majority of customers considered that the proposed concentration will not make it more difficult for IBM's competitors to compete in this market for the provision of IT services (including the type of IT outsourcing services for the banking and securities sector covered by the outsourcing agreement).³⁸

3.3.3 Conclusion

- (61) In light of the above, the proposed concentration is unlikely to raise serious doubts on the potential market for the provision of IT services and its possible sub-segments in the internal market or any substantial part of it, and this is irrespective of the inclusion of captive sales.

³⁸ See Responses to the Questionnaire for Competitors, question 28; Questionnaire for Customers, question 29.

3.4. Non-horizontal analysis

- (62) The provision of IT services may require the use of (i) IT software, comprising application software and systems software, and (ii) IT systems comprising electronic information processing systems (including servers and storage).
- (63) The Notifying Party submits that as a result of the proposed concentration IBM will not have the ability or the incentive to foreclose other suppliers of IT software and IT systems by limiting their access to Unicredit's demand for those services. In particular, the Notifying Party submits that IBM Italia will have a limited ability to replace IT software and IT systems of other suppliers with its own products.³⁹ In addition, the Transferred Business and the activities of the Unicredit group benefiting from the services provided by the Transferred Business would only represent a negligible portion of the demand for IT software (about USD [...] million out of approximately USD 100 billion) and IT systems (less than USD [...] million out of approximately USD 17 billion).
- (64) The respondents to the market investigation did not raise any concern as regard the potential customer foreclosure in the market for the provision of IT software and IT systems by limiting access to Unicredit's demand for those services.
- (65) In light of the above, and consistent with the provisions of Commission's Guidelines on the assessment of non-horizontal mergers,⁴⁰ it can therefore be concluded that the proposed concentration will not give rise to any vertical concerns in the markets for IT software and IT systems.

4. CONCLUSION

- (66) For the above reasons, the European Commission has decided not to oppose the proposed concentration and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission

(signed)

*Joaquín ALMUNIA
Vice-President*

³⁹ [...]

⁴⁰ See, in particular, paras. 60-71.