ACQUISITIONS (ACCOUNTANCY): THE ANDERSEN CASE

Subject: Acquisitions

Industry: Accountancy

Parties: Deloitte & Touche
(Deloitte Touche Tohumatsu)
Arthur Andersen (UK)

Source: Commission Statement IP/02/968, dated 1 July 2002

(Note. Most of the interest of this case lies in the fact that it concerns the demise of a once prestigious accountancy firm, as the result of the Enron scandal in the United States. But it also lies in the same kind of concern expressed by the Commission at the time when Price Waterhouse joined Coopers & Lybrand in 1998. Then the Big Six accountancy firms became the Big Five; and now the Big Five have been replaced by the Big Four. Even so, the Commission considered that the peculiar circumstances of the present case did not even justify the in-depth analysis of the implications for competition.)

The Commission has granted regulatory clearance for the proposed acquisition of most of Arthur Andersen UK's business by UK-based Deloitte & Touche, which is part of the global audit and accounting firm Deloitte Touche Tohumatsu. The Commission examined the merger's impact, particularly for large companies quoted in the London Stock Exchange, which tend to choose one of the Big Five players to audit their accounts. It concluded that the disappearance of Andersen UK was inevitable in view of the serious problems facing Andersen US, which has been convicted of obstruction of justice in a US probe into the collapse of energy trader Enron Corporation. A number of UK customers claimed that the acquisition was preferable to the disorderly disappearance of the UK Andersen partnership.

On May 29, Deloitte & Touche UK (D&T) requested regulatory clearance from the Commission for the acquisition of the various assets of Andersen UK, comprising equipment, furniture and leasehold properties and the rights under service contracts. D&T is also offering partnership or employment to most partners and employees of Andersen UK.

This acquisition must be seen in the context of the disintegration of Andersen Worldwide following the Enron bankruptcy and the ensuing damage for Andersen US, which audited the company's accounts. As a result, Andersen's national practices worldwide have sought separately to join one of the other four big players: PriceWaterhouseCoopers (PwC), KPMG, Ernst & Young and D&T. Andersen France and Andersen Germany, for example, have in the meantime separately teamed up with Ernst & Young. As far as the European Union is concerned, some of these deals will be examined by the Commission whereas

others, depending on their size, will be looked at by national competition authorities.

In the present operation, the Commission examined the acquisition's impact in the United Kingdom and particularly on the market for audit and accounting services to large quoted companies, which usually use the services of the Big Five. The Commission reckoned that there was no danger of creating a single dominant position given that Andersen and D&T were the smallest of the Five in the UK. PwC is by far the biggest firm in audit fees, followed by KPMG, E&Y, AA and D&T whether the market concerned is the FTSE 100 or FTSE 350 firms. However, the Commission also examined the extent to which there could be concerns about the reduction to four of the big auditing firms as it had done in 1998, in the examination of the merger between Price Waterhouse and Coopers & Lybrand, before which there were six big firms.

A careful analysis has shown that, although Andersen UK may be able to continue as an independent audit and accounting services firm for smaller clients, it can no longer service its large clients. These large clients demand a global network, a high degree of international expertise and a reputation which only the remaining Big Four firms can offer. Andersen Worldwide was able to offer this, but Andersen UK on its own cannot. Therefore, and as far as large, quoted clients are concerned, a reduction to four was inevitable and would have occurred whether Andersen UK was taken over or simply disintegrated.

The acquisition of Andersen UK by second-tier UK auditing firms, such as BDO or Grant Thornton would not be able to create either a global network or the reputation required to enter the market for quoted and large companies. Moreover, a number of Andersen UK's customers expressed the view that the merger between Deloitte & Touche and Andersen UK would be preferable to a situation in which Andersen UK's partners, teams and expertise were spread around in a fragmented manner. Taking all these elements into consideration, the Commission concluded that there were no grounds to begin an in-depth investigation and cleared the operation.

Deloitte & Touche is a member of the global Deloitte & Touche Tohumatsu network of firms, which employs over 95,000 people in 140 countries. Andersen UK was active as member firm of the Andersen Worldwide international network. Until recently, the Andersen Worldwide member firms collectively employed approximately 85,000 people around the world in 84 countries. In October 2001, after Enron had announced further losses, the US Securities and Exchange Commission started to seek information about Enron and in relation to Andersen's auditing of Enron's accounts. On 14 March 2002, the Department of Justice in the US accused Andersen US of criminal obstruction for shredding Enron documents. This series of events has damaged the reputation of Andersen and resulted in the disintegration of Andersen Worldwide. Around the world, the firms originally forming part of the Andersen network have either already joined or announced their intention of joining one of the remaining Big Four firms, on a national basis. ■

Deutsche Post: More Trouble

The Commission has concluded that Deutsche Post has used €572 million, funds it received from the State to finance its public service mission, for the purposes of financing an aggressive pricing policy intended to undercut private rivals in the parcel sector between 1994 and 1998. This behaviour breaches the key principle according to which companies receiving State funding for services of general interest cannot use these resources to subsidise activities open to competition. The German government has two months to inform the Commission of how it intends to recover the money unlawfully used by Deutsche Post in the commercial sector.

In 1997 the Commission had taken the view that no state aid was involved in the relationship between the French Post Office, La Poste, and its express courier subsidiary Chronopost. But the Court of First Instance overturned this decision in December 2000 on the grounds that the Commission had failed to verify whether La Poste, in providing logistical assistance to Chronopost, received remuneration that an undertaking operating under normal market conditions would have charged for this logistical assistance.

Source: Commission Statement IP/02/890, dated 19 June 2002

The Landesbank Berlin case

The Commission has initiated formal investigation proceedings in a further case involving a capital injection into a German provincial bank taking the form of a transfer to the bank of an institution governed by public law. Several years ago the Province of Berlin transferred the housing loans institution W-K to the Provincial Bank of Berlin (Landesbank Berlin). This capital injection enabled Landesbank Berlin to expand its business substantially in the face of competition; and, as the Commission understands the matter, the Province never received any appropriate consideration. It appears that that there was state aid to the bank; and it is doubtful whether the aid was compatible with the common market.

The case is similar to that of the transfer of the WFA to WestLB, in which the Commission in 1999 decided to require the recovery of €800 million. The Commission said at the time that it would be looking into other cases of transfers to provincial banks but would await the outcome of court action in the WestLB case. However, given the urgency of the Berlin Bank case and the fact that the court proceedings are now well advanced, the Commission intends to initiate formal investigations in the other Landesbank cases very shortly.

Source: Commission Statement IP/02/983, dated 2 July 2002