ACQUISITIONS (COMPUTERS): THE HP / COMPAQ CASE

Subject: Acquisitions

Industry: Computers and related technology

Parties: Hewlett-Packard Co
Compaq Computer Corporation

Source: Commission Statement IP/02/181, dated 31 January 2002

(Note. On the principle that all the current decisions of the Commission involving United States corporations have a special interest, this case is reported here, even though it resulted in a favourable outcome for the parties. Looked at from each of a number of different standpoints, the Commission was unable to find any respect in which the acquisition by HP of Compaq could jeopardize competition in the highly competitive market in which they operate.)

The Commission has formally approved the acquisition of Compaq Computer Corporation (Compaq) by Hewlett-Packard Co (HP), two US-based global providers of computing and enterprise technology solutions. A careful analysis of the merger, the largest ever in the Information Technology sector, and of the competitive forces in the markets concerned, has shown that HP would not be in a position to increase prices and that consumers would continue to benefit from sufficient choice and innovation.

HP's announced acquisition of Compaq was notified to the Commission for regulatory approval on December 20. The Commission's analysis focused on the combination of HP's and Compaq's activities in the markets for personal computers (PCs), servers, handheld products, storage solutions and services. In addition, the Commission also assessed the impact of the merger on HP's joint development of the Itanium processor with Intel as well as the importance of HP's increased opportunity for joint sales of PCs and printers following the integration of Compaq's PC products.

With regard to PCs, the Commission concluded that the merged entity would continue to face strong competition in Europe from a number of credible rivals including IBM, Dell and Fujitsu-Siemens, which, together with the absence of significant barriers to entry and the practice of non-exclusive contractual relationships between retailers and manufacturers, would prevent the new HP from any attempt to raise prices significantly.

On the market for servers, which are central computers linking PCs, workstations, printers and related devices into a network, the Commission similarly concluded that the proposed transaction was not likely to raise competitive issues. Indeed, while the servers market can be broken down according to price bands into entry-level servers, mid-range and large servers, HP and Compaq are largely

complementary, except in the entry-level market segment where the combined entity will have relatively high market shares. However, the Commission's analysis of that segment confirmed that the new HP would not be able to act independently from either customers or competitors. This was a result of the combination of a number of factors, among them the dynamic and growing nature of the market, the absence of entry barriers, the presence of several strong competitors including fringe suppliers and the white brands built around Intel processors.

As to the potential impact of HP and Intel's jointly developed Itanium processor, the Commission's analysis concluded that the merged entity would not be able to foreclose competitors' access to this component and that it was in HP and Intel's interest to guarantee unrestricted access.

Finally, the results of the Commission's analysis further indicated that, due among other things to the merged entity's moderate share of the relevant PC market and the limited impact that joint PC/printer sales could have on the new HP's printer market share, the proposed transaction was not likely to give HP the ability to foreclose competition from the printer markets.

In view of the presence of strong existing and potential competition in all markets considered, the Commission concluded that the operation would not result in the creation or strengthening of any dominant position, and has decided not to oppose the concentration. According to the 1991 agreement on anti-trust issues between the European Union and the United States, the Commission has co-operated closely with the Federal Trade Commission, which is still investigating the transaction. The Commission's decision does not prejudice in any way the outcome of the assessment in the US. ■

Overpayment of Compensation: The Credit Mutuel Case

One of the more entertaining aspects of the otherwise sombre subject of state aids is the remarkable variety of forms which state aids may assume. In the early days, they were mainly associated with straightforward government subsidies. Later, it was recognised that tax concessions could be a state aid. Later still, it was almost as though Member States' governments were pitting their wits against the Commission to find ingenious ways of indirectly and discreetly handing out funds. In the Credit Mutuel case, an unusual form of state aid was detected by the Commission. The bank was entrusted by the French government with the operation of a special savings scheme, known as the Livret Bleu, which had public policy objectives, and received compensation for the costs of doing so. However, in the present case, the government over-compensated the bank to the tune of €164m; and the Commission has decided that this is a form of state aid and must be repaid by the bank. Source: Commission Statement IP/02/67, dated15 January 2002.