II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 20 May 1998

declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement

(Case IV/M.1016 — Price Waterhouse/Coopers & Lybrand)

(notified under document number C(1998) 1388)

(Only the English text is authentic)

(Text with EEA relevance)

(1999/152/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area and in particular Article 57(2)(a) thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings [1], as last amended by Regulation (EC) No 1310/97 [2], and in particular Article 8(2) thereof,

Having regard to the Commission decision of 21 January 1998 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations [3],

Whereas:

(1) On 11 December 1997, the Commission received in complete form a notification of a proposed concentration pursuant to Article 4 of Regulation (EEC) No 4064/89, by which Price Waterhouse and Coopers & Lybrand would enter into a full merger for the purposes of Article 3(1)(a) of that Regulation. Since the agreement in question was entered into before 1 March 1998, the Commission applied Regulation (EEC) No 4064/89 (hereinafter referred to as 'the Merger Regulation') as it stood prior to the amendment made by Regulation (EC) No 1310/97.

(2) After preliminary examination of the notification, the Commission concluded that the proposed concentration could create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it, and as such raised serious doubts as to its compatibility with the common market.

I. THE PARTIES

(3) Both Price Waterhouse ('PW') and Coopers & Lybrand ('C & L') are two of the so-called Big Six audit and accounting organisations worldwide (the other four being Arthur Andersen ('AA'), Deloitte Touche Tohmatsui International ('DTTI'), KPMG, and Ernst & Young ('EY')).

[1] OJ L 395, 30. 12. 1989, p. 1; corrected version OJ L 257, 21. 9. 1990, p. 13.
[2] OJ L 180, 9. 7. 1997, p. 1.
[3] OJ C 56, 26. 2. 1999, p. 12.

(4) Both parties are active in the same fields of business activity, that is to say, the supply of professional services, consisting of the audit of accounts pursuant to audit requirements imposed by law ('statutory audit'), other auditing and accounting services, the provision of tax compliance and advisory services, the provision of management consultancy services, including information technology, strategic planning and human resources, the provision of corporate finance advisory services, and the provision of insolvency services.

II. THE OPERATION

(5) On 17 September 1997, Price Waterhouse and Coopers & Lybrand entered into an agreement by which the two organisations will effectively merge their global networks.

(6) The proposed concentration will take the form of a merger. As both organisations are international networks of national offices, overseen by international bodies, their merger will be achieved by a series of transactions and contractual arrangements through which the two networks will be combined worldwide. In practice, the parties will accede to a new integrated structure (the 'Combination Agreement') which will reflect the existing structure of the 'PW Combination Agreement'. In practical terms, the PW firms carrying on business in any particular territory will merge with the C & L firms which carry on business in the same territory. Depending on national laws concerning the provision of audit and accounting services, in some cases integration will be effected by a formal merger of the relevant firms, in other cases by the acquisition by one entity of the business and assets of the other, while in some other cases the firms will be formally dissolved and a new successor firm created. The new combined entities which will result from the various local mergers will subsequently accede to the new 'Combination Agreement'.

III. THE CONCENTRATION

(7) Both parties are structured as international networks of separate and autonomous national firms operating under a common name and observing common professional and service standards. Given this multi-partnership structure of the parties, it is necessary to examine whether their groups of firms can be regarded as single undertakings for the purposes of the Merger Regulation, whose combination would constitute a single concentration within the meaning of Article 3(1)(a) of the Merger Regulation.

(8) As was mentioned in paragraph 6, the new entity will be based on the structure of the PW combination. Starting from the premise that the result of a concentration is a single undertaking, that is to say a single economic entity, in order to determine whether the transaction at issue is a merger for the purposes of Article 3(1)(a) of the Merger Regulation — that is, whether the combining of the activities of previously independent undertakings would result in the creation of a single economic unit — it is therefore necessary to examine whether the PW combination has a sufficiently high degree of concentration of decision-making and financial interests to confer on it the character of a single economic entity for the purposes of the Merger Regulation.

(9) The PW group has achieved a significant degree of integration, as its structure has evolved considerably over the recent years. Before the creation of any combination arrangements, the PW firms functioned as a network of firms operating under a common name, and observing common professional and service standards. Each firm operated principally in its own territory and a PW firm in one jurisdiction would cross-refer work to a PW firm in another jurisdiction where the opportunity arose.

(10) As this structure proved unsatisfactory in terms of transaction costs and resources deployment and in order to remedy difficulties in organising operations at an international level, PW introduced a new system under which a combination board reviews and provides guidance to the national firms essentially on all aspects of the conduct of their business. The PW Europe combination was adopted in 1988 in order to allow the European PW firms to operate in a manner which harmonised the interests of proprietors of the individual PW firms and promoted their collective interests, thereby reducing their incentives to make business decisions which promoted the interests of their own firm at the expense of another combination firm. Separately, PW US entered into bilateral arrangements with other PW firms around the world, including those in Mexico, India, Israel and Japan, under which they agreed to pool resources and coordinate their strategies to their mutual benefit. Moreover, the PW Europe combination has recently been extended in a combination

contract among the PW firms operating in Europe and the USA. The combination has the effect that the constituent PW firms function collectively as a single economic unit. The combination comprises PW firms in Western Europe, the USA, Eastern Europe, the Middle East, North Africa and the Republic of South Africa.

(11) [. . .] (1).

(12) [. . .].

(13) [. . .].

(14) [. . .].

(15) [. . .].

(16) From the description in the preceding paragraphs, it appears that the PW combination is characterised by a significant degree of integration [. . .].

(17) These features indicate considerable centralisation of management and [. . .]. Therefore, for the purposes of the Merger Regulation, the result of the transaction in issue will be a single economic entity, and the transaction constitutes a single concentration to which PW taken as a whole constitutes one party. In this respect, it has been left open whether the C & L firms made up a single economic entity, since in any case the series of individual mergers between each of the national partnerships of PW and C & L have been examined as part of one single transaction between the two groups of firms. Accordingly, the material scope of the competitive assessment in this case covered all the local mergers effected within the EEA.

IV. COMMUNITY DIMENSION

(18) The combined aggregate worldwide turnover of both parties is more than ECU 5 000 million (namely Price Waterhouse: ECU 4 630 million, Coopers & Lybrand: 5 305 million). The aggregate Community-wide turnover of each of the parties exceeds ECU 250 million (i.e. Price Waterhouse: ECU 1 301 million, Coopers & Lybrand: 2 249 million). Moreover, even if the C & L partnerships are to be treated as several distinct units, in at least three Member States, namely the United Kingdom, the Netherlands and Germany, they achieve turnover exceeding ECU 250 million (that is, ECU 772 million, ECU 299 million and ECU 487 million, respectively). Furthermore, the parties do not achieve more than two thirds of their aggregate Community-wide turnover within one and the same Member State, nor do they achieve more than two thirds of their EFTA-wide turnover within one and the same EFTA State. Consequently, the notified operation is concentration with a Community and EEA dimension.

(1) This version of the Decision has been edited to ensure that confidential information is not disclosed.

V. COMPETITIVE ASSESSMENT

A. THE RELEVANT PRODUCT MARKETS

1. *Areas of activity of the parties*

(19) Both parties to the concentration are active in the provision of a broad range of professional services to clients, which consist mainly of large companies, of both a national and multinational dimension, spanning a broad spectrum of business sectors, as well as to clients in the public sector.

(20) The parties divided the said range of professional services into five broad service lines which they consider to constitute the product markets relevant to the case: audit and accounting; tax advisory and compliance; management consultancy; insolvency; and corporate finance advisory.

2. *Relevant product markets*

(21) The market investigation carried out by the Commission broadly confirmed that the said five product markets correctly categorised the main areas of activity of the parties.

(22) The Commission, however, identified two distinct markets within the area of audit and accounting services: (i) a market for the provision of these services to medium and small-sized companies, which consist mainly of national companies, and on which the Big Six firms are active together with the 'second tier' of audit and accounting firms; and (ii) a market for providing audit and accounting services to quoted and large companies, whether national or multinational in dimension, which are predominantly provided by the Big Six firms.

(23) The Commission identified the possible existence of still narrower markets for the provision of audit and accounting services in some sectors, in particular the banking and insurance sectors.

(24) Likewise, the Commission identified the possible existence of another narrow market within the area of the provision of tax advisory and compliance services, namely the provision of these services to the large company clients of the Big Six.

(25) The Commission opened proceedings as a result of its concerns with regard to the competitive impact of the operation on the market for the provision of audit and accounting services to large companies which are Big Six clients, and also owing to its

concerns over the competitive impact on possible markets for the provision of audit and accounting services to certain sectors (in particular banking and insurance) of the large company clients of the Big Six, and on a possible market for the provision of tax advisory and compliance services to large companies which are Big Six clients.

(a) **Audit and accounting services to large companies which are Big Six clients**

(i) *Description of services*

(26) For the purposes of the present analysis, 'audit and accounting services' consist of the performance of statutory and other audits of companies' accounts and other 'audit-related' accounting services which employ the auditor's skills of reviewing business transactions and accounting processes to check that the transactions and their implications (in terms of, among others, contingent liabilities, risks, future revenues) are truly and fairly reflected in the companies' financial statements.

(27) In this context of 'audit-related' accounting services, the parties also identified the accounting services provided as including general accounting advice, systems assurance, business risks assessment, internal audit, due diligence work preparatory to the acquisition of new businesses, the preparation of reports in connection with stock exchange listings and post acquisition reviews, among others.

(ii) *Large companies which are Big Six clients*

(28) The parties contended that large multinational companies who need access to the international capital markets purchase audit services only from audit firms with both an international network and a recognised international reputation. This contention was corroborated by the different operators in the market during the course of the Commission's market investigation. Furthermore, the said investigation revealed that the choice of such client companies is largely limited to the six audit and accounting firms known as the Big Six, as only those firms have both the geographic coverage that such companies require and the degree of credence on financial statements required by the international capital markets.

(29) Likewise, the Commission, in the course of its investigation, identified the Big Six as the main, and indeed exclusive, providers of audit and accounting services to large national quoted companies, not for regulatory reasons but because the stock markets in general expect it.

(30) Furthermore, the Commission was informed in the responses to its market enquiry that it is mainly the Big Six who have the depth of sectorial expertise required by most of the large companies, whether national or multinational, for the provision of audit services in their particular sector. Such sectorial expertise was found to be of particular importance in the banking and insurance sectors, as will be seen at paragraphs 35 *et seq.*

(31) Moreover, the market investigation of the Commission revealed that any audit firm aspiring to satisfy the audit needs of large companies must be able to deploy significant resources to satisfy the demands of such clients.

(iii) *Conclusion*

(32) Consequently, the Commission has identified a relevant product market which consists of the market for the provision of audit and accounting services to quoted and large companies, whether national or multinational, and which are provided predominantly by the Big Six firms as, in the main, only they can satisfy the requirements of such companies, namely to have their audit and accounting services provided by a firm with the necessary reputation in the financial markets (in the case of quoted companies), the geographic breadth to cover their companies' needs worldwide (in the case of the multinationals), the depth of expertise in their particular sector (large companies in general and, in particular, regulated sectors such as banking and insurance) and significant resources (all large companies).

(b) **Sectorial audit and accounting services to large companies which are Big Six clients**

(i) *Sectorial audit expertise*

(33) Audit and accounting services are professional services provided by firms with personnel who are professionally qualified to carry out statutory audit work. Such qualified auditors may be called on to provide their services across a broad range of industrial and business sectors, but the Commission's market investigation revealed that the tendency

at a certain stage in their careers is towards specialisation in a limited number of sectors, whereby they gain additional professional expertise of a specialised nature. In this context it appeared that an audit firm which has enjoyed a large presence in a given sector over a long period of time builds up a reputation for depth of expertise in that particular sector.

(34) In the light of this evidence, the Commission considered the possibility that there were separate markets for the provision of audit services in the case of sectors where there were indications that the particularly complex nature of the sector's activities required a significant level of specialist expertise on the part of the auditor. However, the only sectors where the Commission's market investigation confirmed this possibility were the financial sectors of banking and insurance. Indeed, both clients and competitors concurred in distinguishing these two sectors from all others, including the other regulated sectors and public companies.

(ii) *Banking and insurance audits*

(35) Consequently, the Commission considered the possibility that there were relevant product markets for audit in these particular sectors due to their specific and complex nature as regulated financial services sectors, and in particular the combined strength the parties would have as a result of the proposed operation in these sectors in some Member States. Furthermore, as was already mentioned, third parties in general coincided in indicating to the Commission the peculiar nature of these sectors.

(aa) Demand side

(36) The Commission consulted extensively the clients of the Big Six in both the banking and insurance sectors in the course of its in-depth market investigation, given the indications it had received of the particular importance of the factors of sectorial expertise and reputation for these sectors. The examination of the replies of these clients revealed the complex and individual nature of the audit in both of these sectors and showed that, compared to other sectors, the requirement of having the necessary sectorial expertise in a given country, together with sufficient specialist resources, both of which intertwine with the corresponding sectorial audit reputation in the market, outweigh price considerations for the clients in both these sectors. Indeed, the Commission, in the course of its market investigation, had ample evidence from both the Big Six firms and their clients of the relatively low degree of importance of price as a factor in determining the client's decision with regard to either choosing or retaining its auditor. In the case of banking and insurance clients, the responses received by the Commission showed that these clients practically always consider price less important, and in many instances 'far less' important, than the other factors of sectorial expertise and reputation, discussed above, or the incumbent auditor's knowledge of them as a client.

(37) Furthermore, clients indicated the need for a comparatively long period of time for acquiring the appropriate audit skills for these particular sectors. Clients cited 'start-up' periods which were mainly in the range of two to three years for an alternative Big Six firm to become competent to carry out their audit adequately and stressed the 'intangible' costs to them in terms of disruption and investment of their management time. However, in the present case, this situation is mitigated by the fact that, as was confirmed by most of the clients consulted by the Commission, at least three if not all the Big Six firms are regarded as valid alternative suppliers. Furthermore, these clients expect the new auditor to absorb in their price the switching costs of a financial nature associated with any change of auditors. Nonetheless, given the 'intangible' costs to them, banking and insurance clients show a strong reluctance to change their incumbent auditor, due also to the importance they attribute to the factors of trust and confidence, which are built up over long-lasting relationships with their auditor, very often running into decades.

(38) However, in analysing the evidence it has gathered during its market investigation, the Commission has identified other factors which attenuate these demand-side issues and which concern, in particular, the perception of banking and insurance clients with regard to two main elements: (i) the time needed for an alternative Big Six firm to reach the same level of competence as their incumbent auditor — the 'start-up' period; and (ii) the clients' reluctance, in any case, to change auditors, as is described under paragraph 37.

(39) With regard to the first of these elements, the Commission considers that the 'start-up' periods cited by clients need to be seen in the overall context of a service which carries inherent in any auditor/client change a certain initial period during which the new auditor has to become acquainted with the client as such and which involves a

certain disruption and investment of the client's time, even where no change of sector is involved. This fact is consistent with the importance attached by clients to their incumbent auditor's knowledge of them as a client. Thus the Commission is of the view that the differential introduced by the 'learning time' due to a change of sector on the part of the auditor is marginal in the overall 'start-up' periods cited by clients. Furthermore, the Commission considers that the significance of such periods has to be evaluated in the context of the particularly lengthy auditor/client relationships mentioned above.

(40) With regard to the second of the elements, the Commission considers that the reluctance of clients to change auditors, in so far as it has been attributed by clients to factors such as 'trust' and 'confidence' in their incumbent auditor, need also to be put into perspective in the context of a service in which personal relations and personal perceptions play an important role. In this context, the Commission considers that these qualitative factors of 'trust' and 'confidence', should also be interpreted in the broader picture of any auditor/client relationship, in which 'trust' and 'confidence' have an inherent significance because of the very nature of the audit service itself, independent of the particular sector involved.

(bb) Supply side

(41) The Big Six firms, in response to clients' expectations and demands, are organised internally on a sectorial basis and this strategy is also justified by their need to have sufficient sectorial expertise to avoid any possible liability problems in these high-risk financial services sectors of banking and insurance.

(42) The Commission had evidence during its market investigation of a particularly high degree of sectorial alignment of the audit staff of the Big Six firms in the case of the banking and insurance sectors, with their specialists in either of these two sectors spending a proportionately larger part of their professional lives and working hours dedicated to them than to other sectors in which they might be active. Furthermore, it emerged from the replies of the Big Six firms that such a degree of specialisation in these sectors is due to their particular complexity as financial services sectors, with their higher inherent risks and added regulatory responsibilities, together with the corresponding knowledge of the regulatory requirements which this entails.

(43) This situation was confirmed by the parties themselves, one of whom stated that these financial services sectors (banking and insurance) 'require special expertise because of higher inherent risk and, in some institutions, complex transactions'; the other party stated that 'in the large firms and in capital cities, the client base lends itself to the formation of dedicated teams with specialist skills and experience within particular industry sectors (for example financial services). Staff will typically join and develop their careers through to senior management within these divisions'.

(44) Furthermore, the financial costs, inherent in auditing clients in these sectors when the new auditor lacks an adequate level of sectorial expertise, are borne by the audit firm, which is expected by the client to adjust its fees to absorb such costs during the 'start-up' period, generally two or three years as mentioned under paragraph 37. Consequently, an audit firm has every interest in having available professional audit staff with in-depth expertise, in sufficient number, and with a proven track record in the particular sector, whether banking or insurance, so as to be able to convince the client that it is in a position to satisfy its needs.

(45) Moreover, the Commission has been informed that the high-risk nature of these financial services sectors can in itself constitute a deterrent to the audit firm which lacks sufficient sectorial expertise, as it has to evaluate in financial and reputational terms the costs of taking on the responsibilities involved, in particular in the case of large clients.

(46) However, it appears that sectorial expertise is available to all Big Six firms. This derives from the following factors:

— most of the Big Six are already present in the audit of these sectors, even if with different strengths in different Member States,

— in nearly all Member States, all of the Big Six have some level of sectorial expertise, due to presence in a particular segment (for example smaller banks or insurance companies, subsidiaries or branches of foreign companies, as auditors on behalf of the regulators, etc.),

— sectorial expertise can also be acquired in a given Member State simply by means of the acquisition of a company by a client,

— there is a significant number of non-financial companies which have subsidiaries involved in financial services (such as financing subsidiaries of car manufacturers, payment cards or retail banking subsidiaries of big retailers, etc.). Sectorial expertise can therefore be gained by auditing these subsidiaries,

— sectorial expertise in banking and insurance is also obtained through non-audit advisory assignments such as management consultancy in which all of the Big Six are involved,

— the Big Six firms have, with certain limitations, opportunities for redeploying personnel between countries or for poaching staff from their competitors.

(47) It follows that the competitive potential of the Big Six firms who have a smaller presence in these sectors in a given country is not reflected by their current share in these sectors. This finding has been confirmed by an overwhelming majority of banking or insurance clients who stated that they would consider at least four of the Big Six as able to audit them. Hence any of the Big Six could find relatively easily the resources to expand their auditing activities in the banking and insurance sectors.

(48) As a consequence of the above-described position of the Big Six, some successful entries have been made in the financial services sectors, including PW in the insurance sector.

(cc) Conclusion

(49) The Commission, having considered all the above factors, has concluded that the provision of audit and accounting services to the banking and insurance sectors does not constitute separate relevant product markets for the purposes of assessing the competitive effects of the present operation.

(c) Tax-advisory and compliance services to large companies which are Big Six clients

(50) Tax advisory services comprise advice on the structuring of transactions and business organisations so as to minimise tax liability, as well as dealing with revenue/taxation authorities on behalf of customers.

(51) Similarly, compliance services comprise the provision of assistance in computing the quantum of tax that clients are liable to pay and the preparation of returns to the national revenue/taxation authorities.

(52) The parties contended that tax advisory and compliance services are provided not only by audit and accounting firms, including the 'second-tier' firms, but also by law firms. The Commission's investigation confirmed the parties' contention that the large company clients of the Big Six firms do not necessarily limit themselves to their Big Six audit and accounting services supplier for the provision of such services.

(53) Consequently, the Commission has concluded that there is not a relevant product market for the provision of tax advisory and compliance services to the large companies which are clients of the Big Six in audit and accounting services, as distinct from the market for the provision of such tax services to all categories of clients.

3. *Conclusion on relevant product markets*

(54) Given all the above factors, the Commission has concluded that the relevant product markets for the purposes of its competitive assessment in this case are the markets for the provision of the following services:

(i) audit and accounting to large companies which are Big Six clients;

(ii) audit and accounting to small and medium-sized companies;

(iii) tax advisory and compliance (to entire market);

(iv) management consultancy;

(v) insolvency;

(vi) corporate finance advisory.

B. THE RELEVANT GEOGRAPHIC MARKETS

1. *Audit and accountancy services*

(a) Regulatory framework/national market considerations

(55) The provision of audit services is regulated across the Community at the level of each Member State. The national regulatory requirements stipulate which types of entity must have a statutory audit, the frequency of the audits, the type of auditor eligible to conduct such a statutory audit, the professional qualifications which the statutory auditor must have and the legal forms which audit firms must assume. Moreover, while the clients appoint their own auditors, in several Member States and for particular sectors (namely banking, insurance and listed companies) approval by the

corresponding supervisory body is required for the appointment. Furthermore, some Member States regulate the duration and renewal possibilities of audit contracts. Yet another aspect of the provision of audit services which is regulated is the freedom to establish an audit firm, owing to the restrictions on the ownership, management and legal form of audit firms in the particular Member States.

(56) The parties themselves recognised that the provision of audit and accounting services is highly regulated at a national level and stated that this fact 'suggests' national markets for the provision of such services. However, they contended that such a definition is primarily applicable in the case of the auditing of 'smaller companies, operating primarily in only one country, and not raising capital through the international markets'.

(b) **Multinational dimension considerations**

(57) Furthermore, the parties contended that, owing to the increase in the number of companies with multinational operations requiring professional services in several countries from a single provider, the market for audit and accounting is taking on an international dimension. The Commission, in its analysis of the responses from the market operators on the issue of the geographic scope of audit and accounting services, took into account the question of the international dimension raised by the parties in the particular case of multinational companies (supplied with audit and accounting services by the Big Six), which form part of the client base in the relevant product market retained for assessment in this case.

(c) **The testimony of the Big Six and their audit clients**

(58) Such an analysis indicated that there is an ever-increasing tendency on the part of multinational Big Six clients to negotiate their worldwide service needs with the partner firm of the Big Six located in the country of the client's parent company, in the form of an 'international package' negotiation. However, the analysis of the responses to the Commission, both from the Big Six audit firms, including the parties themselves, and from the clients of those firms in the course of the in-depth market investigation, confirmed that, while such a 'package', when it exists, constitutes in principle a single package covering the offer of the potential audit firm supplier in all the different national locations in which the multinational client requires the services concerned, it is, nonetheless, constituted taking into account both the needs of the national subsidiary of the client company (including national regulatory requirements) and the offer, including fees, of the particular audit partner firm which would potentially be providing the services to that particular subsidiary.

(59) Indeed, one of the parties to the operation described the tender procedure as one of 'central negotiation with the parent company, following consolidation of local estimates and negotiation between local partners and the lead partner in the country of the parent company', adding that 'this approach applies to approximately 90 % of tenders'. The other party stated that 'on receipt of an invitation to tender, the lead office identifies offices, partners and teams to serve all the operations of the potential client. These offices are asked to research the work to be carried out and prepare an estimate of the scale value of time. Local scale estimates are submitted directly to the lead office on an audit to assist in setting the strategy for the overall fee approach ... if the total fee which is quoted is less than the total scale fee estimated, any discount is applied fairly to those offices participating'. This same party further stated that 'subsidiary management are often consulted by group management as to what they think of the competing (audit) firms' and that 'the audit practice management in territories where subsidiaries are located would be consulted to ensure that local statutory and regulatory requirements are considered in preparing the tender centrally and these technical aspects of the tender offering would be handled nationally to ensure compliance with the overall requirements'.

(60) Moreover, several multinational clients of the parties, addressed by the Commission in the course of its market investigation, indicated that they negotiate such services, including fees, with the audit suppliers at a national level, that is, their subsidiaries deal directly with the national partner firm, even if the final offer is often coordinated and/or overviewed at a central level. One such multinational client, when stating that it considered the geographic scope of the market to be national, confirmed that in the case of its company 'the negotiation of audit fees for subsidiary undertakings is the responsibility of subsidiary company management'. Another multinational client of the parties, while admitting that it did 'centrally discuss audit fees and quality issues', stated that it 'agreed price and conditions on a company by company basis' as 'each company bears its own costs for

these services and local management is normally involved in the discussions and negotiations', and that it had 'not negotiated any international packages from any Big Six firm'. Yet another multinational client of the parties stated that it 'negotiated locally with the audit firms' and carried out 'no central negotiation on services'.

(61) Furthermore, there is a factor which is common to all multinational clients, which is their need, as corporate groups, to have an audit carried out on their consolidated accounts, which combines the audit of the accounts of the parent company and of its subsidiaries worldwide. As this consolidated audit takes place in the national territory where the parent company is located, the parent company's choice of auditor for this particular audit (and, consequently, for the audit of its group worldwide) is influenced by its appreciation (in terms of, *inter alia,* reputation and expertise) of the audit services offered in this national territory in which it is located. Indeed it appears that even a fairly strong position in a particular country and in a particular industry for the audit of subsidiaries of foreign companies may well be accompanied by a relatively weak position in the audit of companies operating in the same industry and incorporated in the same country.

(d) **Decisive national market characteristics**

(62) The Commission, having taken into account all the above factors in its analysis of the geographic scope of the relevant product market in the present case, identified in particular the following 'national market' characteristics:

(a) national regulatory requirements which affect both the demand (statutory audit requirements) and supply side (professional qualifications of the audit staff and restrictions on the freedom to establish audit firms in the particular Member States);

(b) the need on the part of the audit service provider for a local presence, with the necessary professional qualified personnel and the required depth of expertise (including regulatory knowledge) and the related 'brand' recognition/reputation in each of the countries in which the audit and accounting service is to be provided.

(e) **Conclusion**

(63) Given the abovementioned 'national market' characteristics and having taken all the other above-described elements into consideration, the Commission considers national markets to be the relevant geographic markets for the purposes of assessing the competitive effects of the present operation on the markets for the provision of audit and accounting services.

2. ***Tax advisory and compliance services***

(64) Given the specific requisites at the level of professional qualifications and expertise which exist at a national level, and given that tax laws are also specific to each country, the Commission considers national markets to be the relevant geographic markets for the purposes of assessing the competitive effects of the present operation on the market for the provision of tax advisory and compliance services.

3. ***Management consultancy services***

(65) Management consultancy services are provided to a wide range of corporate and public-sector customers. The parties contended that the only factor limiting the ability to participate in this kind of market is the need to have the appropriate skills and resources demanded by clients, some of whom have purely national or local needs whilst others, of a multinational nature, have needs across several national locations. In this context, the parties contended that the market had both a national and an international dimension with a range of suppliers competing at both levels, including specialist boutiques (at a national/local level), accounting firms and consulting firms (at both levels).

(66) The Commission's market investigation broadly confirmed the above contentions of the parties. However, given that the operation does not lead to the creation or strengthening of a dominant position on any alternative geographic market, as can be seen in the assessment at paragraph 69 *et seq*., the Commission has decided to leave the precise definition of the relevant geographic market for the provision of management consultancy services open in the present case.

4. ***Insolvency services***

(67) The parties described the provision of insolvency services as regulated by national laws. While insolvency may occur on an international basis, the appointment of a liquidator occurs on a national basis according to the rules of each national jurisdiction. Furthermore, the Commission's market investigation has confirmed the national nature of this market. Thus, the Commission considers national markets to be the relevant geographic markets for the purposes of assessing the competitive effects of the present operation on the market for insolvency services.

5. ***Corporate finance advisory services***

(68) Corporate finance advisory services were found by the Commission in a previous decision of 30 August 1993 (BHF/CCF/Charterhouse — Case IV/M.319) [1] to be provided in national markets. Nonetheless, the parties contended that for some transactions the market is international and the Commission's market investigation confirmed the existence of both national and international aspects to the provision of these services. However, given that the Commission in its assessment below has concluded that the present operation does not lead to the creation or strengthening of a dominant position on any alternative market for the provision of these services, it has decided not to delineate any further the relevant geographic market in the present case.

C. ASSESSMENT

1. ***Market characteristics***

(a) **Big Six accounting firms' activities**

(69) Each of the Big Six now has a substantial business in all of the relevant product markets, as the following table indicates (data for management consultancy, corporate insolvency and corporate finance services are combined under 'other').

Worldwide revenues 1996 (estimated)

(billion USD)

	Total	Audit/account-ing	Tax	Other
AA	9,5	2,9	1,7	4,9
KPMG	8,1	4,5	1,6	2,0
E & Y	7,8	3,5	1,6	2,7
C & L	6,8	3,6	1,3	1,9
DTTI	6,5	3,6	1,3	1,6
PW	5,0	2,4	1,1	1,5

Source: International Accounting Bulletin.

(70) The following table shows the percentage of overall revenues (based on the figures above) which each of the Big Six firms earns from the main product lines.

Percentage of total revenues earned

(%)

	Audit/accounting	Tax	Other
AA	30,5	17,9	51,6
KPMG	55,6	19,8	24,7
E & Y	44,9	20,5	34,6
C & L	52,9	19,1	27,9
DTTI	55,4	20,0	24,6
PW	48,0	22,0	30,0

[1] OJ C 247, 10. 9. 1993, p. 4.

(71) Although each of the Big Six is active in each of the relevant markets, defined above under market definition, it is to be noted that, in respect of each market, apart from the Big Six audit and accounting market for large companies, the Big Six face competition from a range of other service providers:

— in respect of tax advisory and compliance services, the Big Six compete with other accounting firms, law firms and banks,

— in respect of management consultancy services, the Big Six compete with numerous consultancy providers such as McKinsey, Boston Consulting Group, IBM, EDS, Bain & Co., etc.,

— in respect of corporate finance services, the Big Six compete with numerous investment banks and other institutions, including Goldman Sachs, Morgan Stanley, SBC Warburg Dillon Read, etc.,

— in respect of corporate insolvency services, the Big Six compete with law firms.

(b) **Audit and accounting services market**

(72) As can be seen from the table provided above, audit and accounting services provide about half of the total revenues earned by each of the Big Six (apart from AA, which is more weighted towards the provision of management consultancy services).

(73) In the Community (as well as countries such as the USA), the laws as to audit requirements are generally well-developed and sophisticated and the market for provision of audit services is a relatively mature one.

(74) The length of time for which audit appointments are made varies from country to country (one year in the UK for example; several years in other Member States). The norm is for audit appointments to be renewed, and therefore the auditor-client relationship is often long-term, lasting many years or even decades. The Commission's investigation has revealed that one reason for this is that a change of auditor may damage a corporate client's reputation or stock market rating, since the investment community may suspect that there have been disputes over financial reporting, and that there may be a problem with the company's accounts; another reason is that it takes a considerable amount of time, training, and other resources for a client to ensure that a new auditor is sufficiently familiar with his business assets and operations to be able to carry out a satisfactory audit with risks to shareholders that remain within acceptable limits.

(75) In selecting an auditor, large companies generally use a competitive tender process. Ordinarily, a client will invite several firms (generally no more than three or four) to submit initial proposals. Based on these initial proposals, the client will make the final selection. In selecting among these firms, the client attaches importance to non-price factors, as well as to the audit fee. The most important of these factors are the strength of the firm's network, the quality of its work, its reputation, the manner in which it proposes to perform the work (including, for example the use of technology), and the experience and expertise of the staff who will have responsibility for the audit.

(76) Even after a long-term relationship, a client may decide to put out its audit contract to competitive tender because it feels it can get better value elsewhere or in order to constrain a threatened price increase by its incumbent auditor, or when it is itself involved in a situation of change, such as a merger or acquisition. Therefore the price of audit and accounting services is determined by competitive tenders which occur over time.

(77) The historic growth in demand for audit and accounting services in most Member States has been due to the implementation of Community directives requiring certain companies to have their accounts audited. Future growth in demand is expected to come from increased demand for non-statutory audit and accounting services as well as structural changes such as privatisation and increased use of the capital markets for the raising of finance.

(78) Minimum requirements concerning professional qualifications, personal integrity and independence to be met by persons carrying out statutory audits are laid down by the Eighth Company Law Directive (Council Directive 84/253/EEC) [1]. However, that Directive does not contain any specific guidance on many other questions that surround the audit function. Some of the issues concerned are regulated at national level or are the subject of self-regulation by the accountancy profession. The issues typically covered by self-regulation can be grouped in two main areas: professional behaviour rules (independence, competence, quality, professional secrecy), and working and reporting rules.

[1] OJ L 126, 12. 5. 1984, p. 20.

It is true that the matters covered by self regulation vary throughout the Community. The actual rules also vary from one country to another. However, there is a growing tendency to adopt at national level the rules which are elaborated at international level, particularly by the International Federation of Accountants (IFAC). At European level, the 'Féderation des Experts Comptables Européens' (FEE) is also involved in promoting the adoption of international standards in Member States.

(79) Membership of national self-regulating institutes is typically exercised on an individual basis. But even there, accountancy firms often play an important role in the process of self-regulation because they can afford the time and effort to participate in working groups which prepare the rules. This is even more so at international level. It is evident that the largest market players can therefore play a more influential role in IFAC and thus in the setting of standards at international level. As national standards tend to be in line with IFAC standards and as the same firms will often intervene in the standard setting process at national level, the influence of the large accountancy firms in the process of standard setting cannot be underestimated.

(80) The Commission's Green Paper on 'the role, the position and the liability of the statutory auditor in the EU' ([1]) raises a number of questions concerning audit regulation in the Community. The issue of how to monitor self-regulation by the profession at Community level will become more relevant when the Community moves in the direction of a Single Market on auditing, and in view of the increased concentration of the sector.

2. *Audit and accounting services — small and medium-sized clients*

(81) The Commission's investigation has revealed that small and medium-sized companies do not require the same level of resources (depth of expertise, geographic spread, etc.) from their auditors as do large companies. Thus, although they may in some cases avail themselves of the services of the Big Six, they are also served to a large extent by smaller, 'second-tier' firms of auditors, which later provide strong competition for the Big Six as far as small and medium-sized companies are concerned. The Commission has therefore concluded that the operation does not give rise to any competition concerns on the market for audit and accounting services to small and medium-sized companies.

3. *Audit and accounting services — large company clients*

(82) The Commission considers that the relevant product market is the Big Six market for large companies in audit and accounting services, and that such a market is national in geographic scope (see under paragraph 19 et seq.)

(83) The fact that the relevant market is already highly concentrated in that only the Big Six are able to meet big company requirements in each Member State, makes it appropriate for the Commission to consider the possibility, as well as of the creation or strengthening of a single dominant position, of the creation or strengthening of an oligopolistic dominant position as a result of the proposed merger between PW and C & L.

(84) In assessing the possible creation or strengthening of dominance in this market the Commission has used published data provided by the parties which includes all clients of whatever size. The Commission considers this approach to be methodologically correct, since the relative proportions of fee income are very similar from one member of the Big Six to the other, both on this 'all client' basis, and on an exclusively 'large company' basis.

(a) **Single dominance**

(85) From Annex I it can be seen that the merged firms' share of the market would not exceed 40 % in any Member State. The three highest combined shares are 38,6 % in Germany, 35,1 % in the UK, and 34,1 % in Ireland, where the nearest competitor (KPMG) has 31,9 %, 22,7 % and 23,6 % respectively. (At the European level the merged entity would have 31,7 %, whilst its nearest competitor, KPMG, has 25,9 %). Therefore, within any national market, the merged firm would not enjoy a market position such as to confer excessive market power vis-a-vis its competitors or its clients.

(86) Moreover, as has already been mentioned under paragraph 69 et seq., the norm is for an audit appointment to be renewed over many years and to be long-term, even lasting several decades. This lack of market fluidity means that in addition to market shares relating to a single year, it is necessary to examine tender offers and bidding data over a longer period in order to appraise more fully the nature and extent of the competitive process in the Big Six market for large companies.

([1]) OJ C 321, 28. 10. 1996, p. 1.

(87) The Commission's investigation has revealed that although tender offers are not a frequent occurrence, when a client does decide that a change of auditor may be appropriate and launches a tender process, there is competition in the form of bids from other members of the Big Six. Clients are well-informed buyers and are well aware of price, quality and value in relation to the service offered. The fact that normally three or four members of the Big Six make offers when tenders are launched makes it clear that to an extent clients are able to use the implicit threat of going to tender to constrain the power of their incumbent auditor.

(88) An analysis of recent tender offers gives the following results

Big Six wins and losses: EEA 1994-97

	Wins (1)	Losses (2)	Net Wins/ Losses (3)	Net Ranking (4)
AA	44	20	24	1
KPMG	45	25	20	2
C & L	36	23	13	3
E & Y	26	22	4	4
PW	18	17	1	5
DTTI	18	20	−2	6

Source: Deloitte Touche.

(89) The above figures include switches of clients both between the Big Six themselves and between the Big Six and 'second-tier' auditors. They indicate that there are over a period of time, significant client switches between audit firms and that on a 'net win/loss' basis C & L and PW ranked only third and fifth respectively as far as the Big Six were concerned.

(90) A further analysis of the total wins (column l) indicated in the above table gives the following ranking of Big Six firms in terms of wins from other members of the Big Six.

Intra-Big-Six wins: EEA 1994-97

	Wins from other Big Six (1)	Ranking (Column 2) (2)
AA	22	1
KPMG	17	2
C & L	17	3
E & Y	13	4
PW	8	5
DTTI	8	5

Source: Deloitte Touche.

(91) For the period in question, C & L and PW ranked only second equal and fifth equal respectively as far as the Big Six were concerned.

(92) As an example of switching at the Member State level, the following data are available for the UK.

Number and direction of intra-Big-Six auditor changes 1993-97 for top UK 1600 companies

FROM \ — TO —	CL	PW	KPMG	E & Y	DTTI	AA	TOTAL
CL	—	2	6	1	6	4	19
PW	3	—	2	2	1	—	8
KPMG	4	5	—	1	—	7	17
E & Y	3	2	1	—	—	4	10
DTTI	1	3	2	—	—	1	7
AA	1	3	3	1	—	—	8
TOTAL	12	15	14	5	7	16	69

(Source: UK OFT)

(93) It can be seen that as far as wins are concerned, PW (with 15) and C & L (with 12) ranked second and fourth respectively. C & L was the firm that suffered the greatest number of losses (19). A ranking by net wins (= wins minus losses) gives the following results.

Points	Firm	Net wins
1	AA	+8
2	PW	+7
3	DTTI	0
4	KPMG	−3
5	E & Y	−5
6	C & L	−7

Conclusion

(94) From the above data concerning both market shares and the outcome of Big Six bidding activities over a period of years, it is clear that the merged firm will be constrained by the competitive behaviour of the remaining four large accounting firms. It can therefore be excluded that the merger would create or strengthen a position of single dominance within any of the national Big Six markets for large companies in audit and accounting services within the EU.

(b) **Oligopolistic dominance**

(i) *Existing collective dominance*

(95) In an oligopolistic market the pre-existing characteristics which would raise the issue of collective dominance have been described in previous Community merger decisions, such as Commission Decision 97/26/EC (Case IV/M.619 — Gencor/Lonrho) [1].

[1] OJ L 11, 14. 1. 1997, p. 30, at paragraph 141.

(96) On the demand side, there is moderate growth and inelastic demand. The supply side is highly concentrated with high market transparency for a homogeneous product, mature production technology, high entry barriers (including high sunk costs) and suppliers with structural links. These supply side characteristics make it easy for suppliers to engage in parallel behaviour and provide them with incentives to do so.

(97) Some of these elements characterise the Big Six audit and accounting market for large companies.

(aa) Stagnant demand

(98) According to the notification submitted by the parties, the demand for audit services is 'growing throughout the EEA, but more slowly than the demand for some other professional services'. The parties estimate that 'future growth in demand is projected to come from increased demand for non-statutory audit and accounting services. By comparison, very strong growth is predicted for management consultancy services in Europe as a whole'. It is clear that the Big Six audit and accounting market for large companies is not going to enjoy strong growth rates in the foreseeable future, and that anyway, given the very large individual size of the companies which constitute the client base, the latter is not of a kind such as will generate growth by virtue of an increase in the population of the client base itself. It may therefore be concluded that demand in the relevant market is likely to remain, at best, slow-growing.

(bb) Price inelasticity of demand

(99) The price elasticity of demand in the market in question is low. This is due to the fact that clients are statutorily obliged to purchase the service, that costs are incurred in switching between suppliers (see above) and that in any event audit and accounting fees constitute a minute proportion of the total costs of Big Six clients, given the size of these client companies; price is cited by clients as the least important criterion for choosing suppliers. (Nevertheless, demand is to some extent price elastic, as is evident from the fact that some switching does occur when tender offers are made, as indicated at paragraph 88.)

(cc) Homogeneity of products, market transparency, and low rate of innovation

(100) Audit services are relatively homogeneous, in that any audit performed will involve standard checks, analyses, reports, and other relevant elements as provided for by national regulations and institutional self-regulation. The Commission's investigation has revealed that the vast majority of clients consider all members of the Big Six to be interchangeable. Again, the Commission's investigation has revealed a significant degree of price transparency, in that the hourly rates charged for audit services are reasonably transparent between members of the Big Six. Costs are transparent between members of the Big Six, in that salaries and labour costs, which constitute well over half of total costs, are transparent from recruitment publicity and inter-firm personnel transfers. Again, transparency will be increased in some countries by additional factors, such as the publication of the level of audit fees in the clients' annual report in the UK, and the statutory requirement for dual auditors in other countries. Furthermore the methodology of audit and accounting services changes little over time, and is characterised by a low rate of innovation.

(dd) Structural links between suppliers

(101) The existence of economic or structural links between suppliers may contribute to the existence of oligopolistic dominance. Such links exist in the audit and accounting sector, since the sector is professionally self-regulated via institutions of which the audit firms are members (see paragraphs 78, 79 and 80). Accounting firms are represented in the institutions responsible for matters of self-regulation, and their representatives will meet on a regular basis to discuss and decide self-regulation issues which are of crucial importance to all concerned. Since the largest firms will have a particularly influential role in the setting of the standards concerned (see paragraph 79), they are in a position to use such influence to develop a system of standards which may in practice contribute to the creation of oligopolistic or collective dominance between themselves.

(102) It is clear therefore that the Big Six audit and accountancy market for large companies is to an extent characterised by elements which could contribute to a situation of collective dominance.

(103) However, the Commission has found no conclusive proof that such dominance exists at present in the Big Six market. The Commission's investigation revealed no indication that Big Six large company audit clients believe that collective dominance prevails at present. From a general viewpoint, collective dominance involving more than three or

four suppliers is unlikely simply because of the complexity of the interrelationships involved, and the consequent temptation to deviate; such a situation is unstable and untenable in the long term. More specifically, as has been demonstrated above, the current Big Six market for large companies seems to be competitive over time, in that clients do put out tenders, and intra-Big Six switches do occur.

(104) Furthermore, the judgment of the Court of 31 March 1998 in Joined Cases C-68/94 and C-30/95, France v. Commission and SCPA and EMC v. Commission [1], concerning the Kali und Salz/MdK/Treuhand case (IV/M.308) [2] has emphasised that there is a strong burden of proof on the Commission in the case of an oligopolistic market which the Commission holds to be subject to collective dominance.

(105) The Court held that a high level of concentration in an oligopolistic market is not in itself a deciding factor as to the existence of collective dominance. In addition, the Court's judgment implies that evidence of the lack of effective competition between a group of suppliers held to be collectively dominant must be very strong, as must evidence of the weakness of competitive pressure from other suppliers (if there are any such in the market in question).

(106) In view of the above, the Commission considers that there is no conclusive evidence that the present concentration strengthens a situation of pre-existing oligopolistic dominance in the Big Six market for large companies.

(ii) *Creation of collective dominance*

(107) The Commission has considered whether the level of post-merger supply concentration would be such as to create a situation of collective dominance.

(aa) Dual-merger market structure (PW/C & L plus KPMG/E & Y)

(108) The possibility of the creation of collective dominance in the Big Six audit market for large companies was investigated by the Commission under a 'dual-merger scenario', after KPMG and E & Y on 23 December 1997 jointly notified to the Commission their intention to merge worldwide. The Commission found it appropriate to analyse the proposed PW/C & L concentration within the context of the KPMG/E & Y operation, since under the Merger Regulation the effects of merger operations are assessed in a perspective which is projected into the future of the market, taking into account not only the changes brought about by the merger itself but also making allowance for future development such as new entrants, liberalisation, product innovation and so on, and since the KPMG/E & Y agreement was a well-known fact in the market place.

(109) Under this 'dual merger' scenario the combined shares of the biggest two firms in the relevant market would have been very substantial indeed at national, Community and world levels. Moreover, the two merged entities would have been the two biggest firms in all but two Member States, with very significant gaps with respect to the market shares of the remaining suppliers.

(110) In view of the high combined market shares which would be held by the two merged firms and also of the characteristics of the market in question as enumerated in paragraphs 98-101, the Commission reached the preliminary view that the PW/C & L merger would create a level of supply concentration which, taken together with the KPMG/E & Y merger, would be consistent with a hypothesis of collective dominance. However, on 13 February 1997 KPMG and E & Y publicly announced that they had jointly agreed to terminate their merger plans.

(111) The merger of PW and C & L could in principle lead to the creation of a dominant oligopoly, involving parallel behaviour between most or all of the resulting 'Big Five', or a dominant duopoly, in which the two largest firms would engage in parallel behaviour, whilst coercing the remaining smaller firms.

(i) *Oligopolistic dominance*

(112) The risk of the creation of oligopolistic dominance arises in large part from the existence of the general characteristics described in paragraphs 98-101. The risk is enhanced by a further characteristic which is specific to this market, which is that, as was described earlier (paragraph 74), relationships between auditors and clients tend to be long-term. Although a client may in principle have a choice of six large auditing firms, for the reasons given earlier, it may often not be convenient or propitious to switch auditors during a considerable period of time; indeed, most clients have indicated that, in practice, when they decide that the time is appropriate to put out their audit contract to tender, at that particular juncture only three or four suppliers are usually considered suitable, rather than all six. Therefore any reduction in the number of suppliers in the Big Six audit market for large companies constitutes a further element which might be conducive to collective dominance.

[1] (1998) ECR I-1375.
[2] Commission Decision 94/449/EC (OJ L 186, 21. 7. 1994, p. 38).

(113) However, the Commission's investigation has not led to the conclusion that the merger would create a situation of oligopolistic dominance. As was explained (paragraph 103), collective dominance involving more than three or four suppliers is too complex and unstable to persist over time. Again, there seems to be competition in the existing Big Six market in the form of tenders, although tenders are fairly rare and, as said above, only three or four of the Big Six usually participate in any one tender. It is not likely that competitive tender offers would disappear or be drastically reduced with a reduction from six to five suppliers. This situation differs from the structure that would have resulted from a 'dual merger' scenario (like the one initially assessed by the Commission), where the number of Big Six normally seen as suitable for invitation to each individual tender would have been further reduced from the current figure of three or four to a figure leaving very limited, if any, effective choice for the client.

(ii) *Duopolistic dominance*

(114) Annex II indicates, at national, European, and worldwide levels, the pre- and post-merger (PW/C & L only) shares of the biggest two auditing firms of the market in question. Following the merger the combined market shares reach 57,6 % for the Community, 50 % worldwide, and between 51,1 % and 70,5 % for individual Member States.

(115) The Commission's investigation has not, however, led to the conclusion that the PW/C & L merger within the existing market structure would create a position of duopolistic dominance.

(116) Although the merged entity, PW/C & L, is one of the two biggest firms in every Member State except Austria, the other of the biggest two firms varies considerably throughout the Community. Of the 15 countries in which PW/C & L would be one of the two biggest firms, the other would be KPMG in eight countries, E & Y in three countries, AA in three countries, and DTTI in one country (see Annex II).

(117) As can be seen from Annex III, the post-merger gap between the market shares of the second and third biggest firms is not of significant size, being over 10 % in only two Member States (Germany and Spain), just over 10 % at the Community level as a whole, and 3 % at world level. The proximity in market shares between the second and third largest firms makes it impracticable for the merged PW/C & L entity to pursue a strategy of duopolistic dominance, which would involve coercing or squeezing out the third largest and smaller firms.

(118) Moreover, even though each country constitutes a separate geographic market for the supply of audit and accounting services (see under paragraph 19 *et seq.),* it would not be feasible for PW/C & L to adopt parallel behaviour in each country when such parallelism would need to be with one of several different firms (KPMG, AA, E & Y or DTTI), according to the country in question. It is not realistic to suppose that a firm would accept the possible benefits of parallel behaviour in one country when it would be aware that parallel behaviour between PW/C & L and a different firm would be operating to its own detriment in another country. Such a 'multi-firm' parallel behaviour would not be stable, certainly not over a period of time.

(iii) *Conclusion*

(119) In view of the continued post-merger existence of no fewer than five suppliers, of the likely continued participation of these five suppliers in the tender offers which constitute the competitive process in the relevant markets, and of the non-emergence of any two clear leading firms following the merger; the Commission has found no conclusive proof that the merger would create or strengthen a position of oligopolistic or duopolistic dominance within any of the national Big Six markets for audit and accounting services for large companies within the Community.

4. ***Tax advice and compliance services, management consultancy services, corporate insolvency services and corporate finance services***

(a) **Tax advice and compliance services**

(120) Accounting firms face strong competition from each other and from law firms and banks in this market. If market shares are calculated on a basis which includes all suppliers, the only Member States where combined market shares will exceed 15 % are Spain (19,2 %) and Ireland (18,6 %).

(b) **Management consultancy services**

(121) Combined market shares will not exceed 15 % in any Member State. Competitors in this sector include other accounting firms and world-renowned specialist companies such as McKinsey, Bain and Co., Boston Consulting Group, and so on.

(c) **Corporate insolvency services**

(122) The only Member State where combined market shares exceed 15 % is the UK (25,8 %). Competitors include lawyers and other firms, as well as accountants.

(d) **Corporate finance advice**

(123) Combined market shares are well below 15 % in all Member States, and the notifying parties compete with the major commercial and investment banks.

(e) **Conclusion**

(124) It is out of the question that the merger would create or strengthen a dominant position in the four abovementioned markets within the Community.

VI. **CONCLUSION**

(125) It can accordingly be accepted that the proposed transaction will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in a substantial part of the common market. Pursuant to Article 2(2) of the Merger Regulation and Article 57 of the EEA Agreement, therefore, the transaction should be declared compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The proposed concentration between Price Waterhouse and Coopers and Lybrand, notified on 11 December 1997, is declared compatible with the common market and with the operation of the EEA Agreement.

Article 2

This Decision is addressed to:

Coopers & Lybrand
1, Embankment Place
London WC2N 6NN
United Kingdom

Price Waterhouse
Southwark Towers
32, London Bridge Street
London SE1 9SY
United Kingdom

Done at Brussels, 20 May 1998.

For the Commission
Karel VAN MIERT
Member of the Commission

ANNEX I

(%)

	Estimated percentage revenue share							Market structure before C & L-PW merger		Market structure after C & L-PW merger	
	Coopers & Lybrand	Price Waterhouse	**C & L + PW**	Ernst & Young	KPMG	Arthur Andersen	Deloitte Touche	Pre-merger share of biggest		Post-merger share of biggest	
Austria	10,0	10,6	**20,6**	23,1	31,6	8,9	15,8	31,6	KPMG	31,6	KPMG
Belgium	17,6	11,1	**28,7**	26,4	19,5	12,1	13,2	26,4	Ernst & Young	28,7	C & L + PW
Denmark	17,9	8,6	**26,5**	13,8	29,3	8,5	21,9	29,3	KPMG	29,3	KPMG
Finland	29,2	3,5	**32,7**	15,1	29,5	14,9	7,8	29,5	KPMG	32,7	C & L + PW
France	14,3	11,2	**25,5**	13,3	34,5	15,7	11,0	34,5	KPMG	34,5	KPMG
Germany	33,5	5,1	**38,6**	11,4	31,9	9,5	8,6	33,5	Coopers & Lybrand	38,6	C & L + PW
Greece	18,9	8,1	**27,0**	15,7	17,2	27,3	12,8	27,3	Arthur Andersen	27,3	Arthur Andersen
Iceland	10,2	0,0	**0,0**	N/C	> 20	10,2	10,2				
Ireland	14,5	19,6	**34,1**	14,8	23,6	13,4	14,0	23,6	KPMG	34,1	C & L + PW
Italy	16,1	12,6	**28,7**	18,7	16,5	25,1	11,1	25,1	Arthur Andersen	28,7	C & L + PW
Liechtenstein	< 10	N/A	**0,0**	N/A	N/A	N/A	N/A				
Luxembourg	19,0	11,0	**30,0**	15,0	13,0	8,0	23,0	23,0	Deloitte Touche	30,0	C & L + PW
Netherlands	23,1	3,0	**26,1**	25,0	26,6	2,9	19,4	26,6	KPMG	26,6	KPMG
Norway	20,6	6,9	**27,5**	23,6	16,1	17,0	15,8	23,6	Ernst & Young	27,5	C & L + PW
Portugal	17,7	14,8	**32,5**	26,3	13,0	22,1	6,1	26,3	Ernst & Young	32,5	C & L + PW
Spain	12,5	18,6	**31,1**	16,1	14,0	31,7	7,1	31,7	Arthur Andersen	31,7	Arthur Andersen
Sweden	30,0	4,0	**4,0**	23,0	27,0	5,0	11,0	30,0	Coopers & Lybrand	30,0	Coopers & Lybrand
United Kingdom	19,3	15,8	**35,1**	16,6	22,7	13,1	12,5	22,7	KPMG	35,1	C & L + PW
Europe	21,9	9,9	**31,7**	15,7	25,9	13,8	12,7	25,9	KPMG	31,7	C & L + PW
World	18,0	12,0	**30,0**	17,0	20,0	17,0	16,0	20,0	KPMG	30,0	C & L + PW

Source: IAB figures cited in form CO, p. 34.

ANNEX II

(%)

	Estimated percentage revenue share							Market structure before C & L-PW merger				Market structure after C & L-PW merger			
	Coopers & Lybrand	Price Water-house	**C & L + PW**	Ernst & Young	KPMG	Arthur Andersen	Deloitte Touche	**Pre-merger share of biggest 2**	First market share	Second market share		**Post-merger share of biggest 2**	First market share	Second market share	
Austria	10,0	10,6	**20,6**	23,1	31,6	8,9	15,8	**54,7**	31,6 KPMG	23,1	Ernst & Young	**54,7**	31,6 KPMG	23,1	Ernst & Young
Belgium	17,6	11,1	**28,7**	26,4	19,5	12,1	13,2	**45,9**	26,4 Ernst & Young	19,5	KPMG	**55,1**	28,7 C & L + PW	26,4	Ernst & Young
Denmark	17,9	8,6	**26,5**	13,8	29,3	8,5	21,9	**51,2**	29,3 KPMG	21,9	Deloitte Touche	**55,8**	29,3 KPMG	26,5	C & L + PW
Finland	29,2	3,5	**32,7**	15,1	29,5	14,9	7,8	**58,7**	29,5 KPMG	29,2	Coopers & Lybrand	**62,2**	32,7 C & L + PW	29,5	KPMG
France	14,3	11,2	**25,5**	13,3	34,5	15,7	11,0	**50,2**	34,5 KPMG	15,7	Arthur Andersen	**60,0**	34,5 KPMG	25,5	C & L + PW
Germany	33,5	5,1	**38,6**	11,4	31,9	9,5	8,6	**65,4**	33,5 Coopers & Lybrand	31,9	KPMG	**70,5**	38,6 C & L + PW	31,9	KPMG
Greece	18,9	8,1	**27,0**	15,7	17,2	27,3	12,8	**46,2**	27,3 Arthur Andersen	18,9	Coopers & Lybrand	**54,3**	27,3 Arthur Andersen	27,0	C & L + PW
Iceland	10,2	0,0	**0,0**	N/A	> 20	10,2	10,2								
Ireland	14,5	19,6	**34,1**	14,8	23,6	13,4	14,0	**43,2**	23,6 KPMG	19,6	Price Water-house	**57,7**	34,1 C & L + PW	23,6	KPMG
Italy	16,1	12,6	**28,7**	18,7	16,5	25,1	11,1	**43,8**	25,1 Arthur Andersen	18,7	Ernst & Young	**53,8**	28,7 C & L + PW	25,1	Arthur Andersen
Liechtenstein	< 10	N/A	**0,0**	N/A	N/A	N/A	N/A								
Luxembourg	19,0	11,0	**30,0**	15,0	13,0	8,0	23,0	**42,0**	23,0 Deloitte Touche	19,0	Coopers & Lybrand	**53,0**	30,0 C & L + PW	23,0	Deloitte Touche
Netherlands	23,1	3,0	**26,1**	25,0	26,6	2,9	19,4	**51,6**	26,6 KPMG	25,0	Ernst & Young	**52,7**	26,6 KPMG	26,1	C & L + PW
Norway	20,6	6,9	**27,5**	23,6	16,1	17,0	15,8	**44,2**	23,6 Ernst & Young	20,6	Coopers & Lybrand	**51,1**	27,5 C & L + PW	23,6	Ernst & Young

(%)

	Estimated percentage revenue share							**Market structure before C & L-PW merger**				**Market structure after C & L-PW merger**			
	Coopers & Lybrand	Price Water-house	**C & L + PW**	Ernst & Young	KPMG	Arthur Andersen	Deloitte Touche	**Pre-merger share of biggest 2**	First market share		Second market share	**Post-merger share of biggest 2**	First market share		Second market share	
Portugal	17,7	14,8	**32,5**	26,3	13,0	22,1	6,1	**48,4**	26,3	Ernst&Young	22,1 Arthur Andersen	**58,8**	32,5	C & L + PW	26,3	Ernst&Young
Spain	12,5	18,6	**31,1**	16,1	14,0	31,7	7,1	**50,3**	31,7	Arthur Andersen	18,6 Price Water-houise	**62,8**	31,7	Arthur Andersen	31,1	C & L + PW
Sweden	30,0	4,0	**4,0**	23,0	27,0	5,0	11,0	**57,0**	30,0	C & L Suède	27,0 KPMG	**57,0**	30,0	C & L Suède	27,0	KPMG
United Kingdom	19,3	15,8	**35,1**	16,6	22,7	13,1	12,5	**42,0**	22,7	KPMG	19,3 Coopers & Lybrand	**57,8**	35,1	C & L + PW	22,7	KPMG
Europe	21,9	9,9	**31,7**	15,7	25,9	13,8	12,7	**47,8**	25,9	KPMG	21,9 Coopers & Lybrand	**57,6**	31,7	C & L + PW	25,9	KPMG
World	18,0	12,0	**30,0**	17,0	20,0	17,0	16,0	**38,0**	20,0	KPMG	18,0 Coopers & Lybrand	**50,0**	30,0	C & L + PW	20,0	KPMG

Source: IAB figures cited in form CO, p. 34.

ANNEX III

(%)

	Estimated percentage revenue share							Market structure before C&L-PW merger					Market structure after C&L-PW merger				
	Coopers & Lybrand	Price Waterhouse	**C&L + PW**	Ernst & Young	KPMG	Arthur Andersen	Deloitte Touche	**Pre-merger share of biggest 3**	First market share	Second market share	Third market share		**Post-merger share of biggest 3**	First share market	Second market share	Third market share	
Austria	10,0	10,6	**20,6**	23,1	31,6	8,9	15,8	**70,5**	31,6 KPMG	23,1 Ernst & Young	15,8 Deloitte Touche		**75,3**	31,6 KPMG	23,1 Ernst & Young	20,6 C&L + PW	
Belgium	17,6	11,1	**28,7**	26,4	19,5	12,1	13,2	**63,5**	26,4 Ernst & Young	19,5 KPMG	17,6 Coopers & Lybrand		**74,6**	28,7 C&L + PW	26,4 Ernst & Young	19,5 KPMG	
Denmark	17,9	8,6	**26,5**	13,8	29,3	8,5	21,9	**69,1**	29,3 KPMG	21,9 Deloitte Touche	17,9 Coopers & Lybrand		77,7	29,3 KPMG	26,5 C&L + PW	21,9 Deloitte Touche	
Finland	29,2	3,5	**32,7**	15,1	29,5	14,9	7,8	**73,8**	29,5 KPMG	29,2 Coopers & Lybrand	15,1 Ernst & Young		**77,3**	32,7 C&L + PW	29,5 KPMG	15,1 Ernst & Young	
France	14,3	11,2	**25,5**	13,3	34,5	15,7	11,0	**64,5**	34,5 KPMG	15,7 Arthur Andersen	14,3 Coopers & Lybrand		**75,7**	34,5 KPMG	25,5 C&L + PW	15,7 Arthur Andersen	
Germany	33,5	5,1	**38,6**	11,4	31,9	9,5	8,6	**76,8**	33,5 Coopers & Lybrand	31,9 KPMG	11,4 Ernst & Young		**81,9**	38,6 C&L + PW	31,9 KPMG	11,4 Ernst & Young	
Greece	18,9	8,1	**27,0**	15,7	17,2	27,3	12,8	**63,4**	27,3 Arthur Andersen	18,9 Coopers & Lybrand	17,2 KPMG		**71,5**	27,3 Arthur Andersen	27,0 C&L + PW	17,2 KPMG	
Iceland	10,2	0,0	**0,0**	N/A	> 20	10,2	10,2	**0,0**									
Ireland	14,5	19,6	**34,1**	14,8	23,6	13,4	14,0	**58,0**	23,6 KPMG	19,6 Price Waterhouse	14,8 Ernst & Young		**72,5**	34,1 C&L + PW	23,6 KPMG	14,8 Ernst & Young	
Italy	16,1	12,6	**28,7**	18,7	16,5	25,1	11,1	**60,3**	25,1 Arthur Andersen	18,7 Ernst & Young	16,5 KPMG		**72,5**	28,7 C&L + PW	25,1 Arthur Andersen	18,7 Ernst & Young	

(%)

	Estimated percentage revenue share							Market structure before C&L-PW merger				Market structure after C&L-PW merger			
	Coopers & Lybrand	Price Waterhouse	**C&L + PW**	Ernst & Young	KPMG	Arthur Andersen	Deloitte Touche	**Pre-merger share of biggest 3**	First market share	Second market share	Third market share	**Post-merger share of biggest 3**	First share market	Second market share	Third market share
Liechtenstein	< 10	N/A	**0,0**	N/A	N/A	N/A	N/A	**0,0**							
Luxembourg	19,0	11,0	**30,0**	15,0	13,0	8,0	23,0	**57,0**	23,0 Deloitte Touche	19,0 Coopers & Lybrand	15,0 Ernst & Young	**68,0**	30,0 C&L+PW	23,0 Deloitte Touche	15,0 Ernst & Young
Netherlands	23,1	3,0	**26,1**	25,0	26,6	2,9	19,4	**74,7**	26,6 KPMG	25,0 Ernst & Young	23,1 Coopers & Lybrand	77,7	26,6 KPMG	26,1 C&L+PW	25,0 Ernst & Young
Norway	20,6	6,9	**27,5**	23,6	16,1	17,0	15,8	**61,2**	23,6 Ernst & Young	20,6 Coopers & Lybrand	17,0 Arthur Andersen	**68,1**	27,5 C&L+PW	23,6 Ernst & Young	17,0 Arthur Andersen
Portugal	17,7	14,8	**32,5**	26,3	13,0	22,1	6,1	**66,1**	26,3 Ernst & Young	22,1 Arthur Andersen	17,7 Coopers & Lybrand	**80,9**	32,5 C&L+PW	26,3 Ernst & Young	22,1 Arthur Andersen
Spain	12,5	18,6	**31,1**	16,1	14,0	31,7	7,1	**66,4**	31,7 Arthur Andersen	18,6 Price Waterhouse	16,1 Ernst & Young	**78,9**	31,7 Arthur Andersen	31,1 C&L+PW	16,1 Ernst & Young
Sweden	30,0	4,0	**4,0**	23,0	27,0	5,0	11,0	**80,0**	30,0 C&L Suède	27,0 KPMG	23,0 Ernst & Young	**80,0**	30,0 C&L Suède	27,0 KPMG	23,0 Ernst & Young
United Kingdom	19,3	15,8	**35,1**	16,6	22,7	13,1	12,5	**58,6**	22,7 KPMG	19,3 Coopers & Lybrand	16,6 Ernst & Young	**74,4**	35,1 C&L+PW	22,7 KPMG	16,6 Ernst & Young
Europe	21,9	9,9	**31,7**	15,7	25,9	13,8	12,7	**63,5**	25,9 KPMG	21,9 Coopers & Lybrand	15,7 Ernst & Young	**73,3**	31,7 C&L+PW	25,9 KPMG	15,7 Ernst & Young
World	18,0	12,0	**30,0**	17,0	20,0	17,0	16,0	**55,0**	20,0 KPMG	18,0 Coopers & Lybrand	17,0 Ernst & Young	**67,0**	30,0 C&L+PW	20,0 KPMG	17,0 Ernst & Young

Source: IAB figures cited in form CO, p. 34.