EN

Case No COMP/JV.6 - ERICSSON / NOKIA / PSION

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 11/08/1998

Also available in the CELEX database
Document No 398J0006

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.08.1998

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties,

Dear Sirs,

Subject: Case No IV/JV.6 - ERICSSON/NOKIA/PSION
Notification of 7 July 1998 pursuant to Article 4 of Council Regulation No. 4064/89

1. On 7 July 1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89[1] by which Telefonaktiebolaget LM Ericsson ("Ericsson"), Nokia Corporation ("Nokia") and Psion PLC ("Psion") will establish a joint venture company, Symbian Limited ("Symbian") for the development of an operating system for use in wireless information devices.

I PARTIES

2. Ericsson is a Swedish corporation that designs, develops, manufactures and markets advanced systems and related terminals for wired and mobile telecommunications in public and private networks. It has worldwide operations in more than 130 countries. The company is divided into three business areas: Mobile Systems, Infocom Systems and Mobile Phones and Terminals sharing a common core technology and providing each other with products and services.

3. Nokia is a Finnish telecommunications systems and equipment company, which is active worldwide. Its core business includes the development and delivery of operator-driven infrastructure solutions and end-user-driven mobile phones and terminals. Nokia's principal areas of business are Nokia Telecommunications,

1 OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; as last amended by Regulation (EC) No 1310/97, OJ L 180, 9. 7. 1997, p. 1, corrigendum in OJ L 40, 13.2.1998, p. 17.

Rue de la Loi 200, B-1049 Bruxelles/Wetstraat 200, B-1049 Brussel - Belgium
Telephone: exchange 299.11.11
Telex: COMEU B 21877. Telegraphic address: COMEUR Brussels.

Nokia Mobile Phones, Nokia Multimedia Network Terminals, Nokia Industrial Electronics and Nokia Research Centre.

4. Psion is an UK corporation that develops, engineers, manufactures and markets handheld portable computers and software. Psion's business activities are divided into Psion Software PLC (now re-named Symbian Limited which will become the joint venture following the operation), Psion Computers PLC, Psion Industrial PLC and Psion Dacom PLC.

II THE OPERATION

5. The joint venture's primary business will according to the parties be the development and licensing of EPOC operating systems designed for use in wireless information devices, although Symbian will continue to support the development of the operating system for handheld computers. The joint venture will develop six to eight application platforms differentiated by the sophistication of the product. Each application platform will be optimised in terms of input methods and display size and will include core software, user interfaces, application frameworks, and application and development tools. The product platforms can be broadly divided into two categories: (i) information centric products or communicators which are devices in which data functions are pre-eminent although they have voice capability; and (ii) voice centric products, which are seen be the parties as primarily voice devices but which have information capability. In each instance, it is anticipated that the operating system will operate alongside a wireless operating system selected or developed by the terminal manufacturer. According to the parties, the product platforms do not include any products, which have only voice capability, e.g. cellular phones. The joint venture will not itself manufacture, sell or market wireless information devices.

6. The joint venture's aim is to licence software to as many terminal manufacturers as possible. However, the joint venture's parents will not benefit from any preferential licensing terms and, therefore, whether or not a licensee chooses to take a stake in Symbian will not impact on the joint venture's commercial relationship with the licensee. In addition, according to the parties, [...].

III CONCENTRATION

A Joint Control

7. The proposed transaction will involve a change in control over Symbian which will change from a wholly owned subsidiary of Psion to an jointly controlled company by Psion, Ericsson and Nokia. The joint control will arise from Psion selling and Symbian issuing shares to both Ericsson and Nokia so that Ericsson and Nokia will hold 30% of the shares each and Psion will hold the remaining 40% in the new joint venture.

8. Three boards will govern Symbian. The Operational Board will manage the Business of the Company. Decisions by the Board shall be taken by a simple majority of the relevant directors. The Chairperson of this board is the CEO of Symbian and the board consist of five to seven senior executives from Symbian. The Supervisory Board will oversee management of the company and consist of two representatives from each of the three principal owners in addition to the CEO of

Symbian. There will also be a Technology Committee which will act as an advisory board made up of one person from each of the principal owners as well as representatives of Symbian's principal customers.

9. Pursuant to the Shareholders' Agreement (Clause 8.3.), the appointment of *inter alia* the CEO, approval of the annual business plan and budget and admission of further shareholders requires a Special Majority Consent (prior written consent) of shareholders holding in aggregate no less than 75% of the shares in issue at the relevant time. Accordingly, all key strategic decisions need the approval of the representatives from all three shareholders. Ericsson, Nokia and Psion therefore will jointly control Symbian.

B Full function entity

10. The joint venture will be of unlimited duration. It will consist essentially of the free-standing Symbian which will have the necessary assets in terms of employees, premises, intellectual property rights and finance to function as an independent entity on the market. In addition, Nokia and Ericsson will contribute further financial resources, employees, intellectual property rights and, possibly, other assets to the joint venture.

11. According to the Shareholders' Agreement, the joint venture will licence its products on uniform and arms-length commercial terms to shareholders and third parties alike. It will continue to operate independently in the marketplace.

12. Symbian will thus perform, on a lasting basis, all the functions of an autonomous economic entity.

IV COMMUNITY DIMENSION

13. The combined aggregate worldwide turnover of Ericsson (ECU 17.7. billion), Nokia (ECU 8.9 billion) and Psion (ECU 205.1 million) exceeds ECU 5 billion. The aggregate Community-wide turnover of Ericsson [...] and Nokia [...] is more than ECU 250 million. None of the parties achieve more than two-thirds of their Community-wide turnover in one and the same Member State.

14. The notified operation does not constitute a concentration to which the co-operation procedure provided for in Articles 57 and 58 and Protocol 24 of the EEA Agreement applies.

V PRODUCT MARKET

15. The joint venture will be developing and marketing a operating system (EPOC) for wireless information devices.

16. The relevant product market is the market for operating systems for wireless information devices. Aside from the joint venture a number of cellular phone or IT companies have also launched or are further developing operating systems including Microsoft (Microsoft CE), Sun Microsystems (JavaOS), GeoWorks (GEOS operating system), Sharp (Synergy operating system), Motorola with its LexOS and 3Com (PalmOS).

VI GEOGRAPHIC MARKET

17. The relevant geographic market for the wireless information devices operating system to be developed by the undertakings subject to the notification has to be considered as being world-wide as the operating system can be used world-wide in various types of wireless information devices.

VII COMPETITIVE ASSESSMENT

A Dominance

18. The creation of the joint venture will not necessarily lead to high market shares for the EPOC operating system. A number of competing operating systems are currently being developed, including Windows CE, JavaOS, GEOS and Synergy. In addition it is unclear whether there will be a significant market in these wireless information devices, and if there is, whether any one operating system will become an industry standard for them.

19. In contrast to the PC industry, where one operating system has become a de-facto standard, the main information which will be shared between wireless information devices is largely supported by industry standards (fax, voice, email). As such, it is likely that there will be less of a demand by users for a single standard operating system. To the extent that there is such a demand, the parties will face a very significant competitor in Microsoft, with its Windows CE operating system.

20. [...]. Even if they had, there is no automatic translation of the parent companies' current market shares on the mobile phone market into the wireless information device market and consequently neither would this necessarily lead to a significant position on the operating system market.

B Co-ordination of competitive behaviour

Definition of candidate markets for co-ordination

Relevant product market

21. The parties have identified a number of possible product categories which are downstream or neighbouring to that of the joint venture, namely: mobile phones, wireless information devices (such as the Nokia Communicator) and handheld computers (such as the Psion products). In addition, wireless information devices are likely to encompass a range of products with varying degrees of functionality. These wireless information devices are new and developing products which aim to bridge the gap between communications devices (mobile phones) and data handling devices (handheld and, possibly, portable computers).

22. Taking the narrowest possible market definition, the three major categories of products – mobile phones, wireless information devices and handheld computers - identified by the parties each have distinct characteristics and intended uses – voice communications, data and voice communications, and basic application handling respectively. It is possible that, although there will clearly be an overlap in demand between these different products, they should be regarded as occupying separate markets. If they are regarded as separate markets, then the handheld computer

market cannot be regarded as a candidate market as only Psion is present on this market.

23. On the other hand, depending on developments in the three main products – mobile phones, wireless information devices and handheld computers - it may prove inappropriate to maintain a distinction between them for the purposes of market definition.. It is conceivable that all mobile phones will include data handling devices, and that all handheld computers will contain communications capabilities. On this basis, differentiating between the different product markets would no longer be justifiable, the three products merging into a single information devices market.

24. Market definition is therefore difficult to determine. As indicated below, however, no competition problems arise on any of the possible market definitions, and it is therefore not necessary to determine which is the most appropriate definition.

Relevant Geographic Market

25. Whichever product market definition is chosen, the appropriate geographic market appears to be world-wide, or, at least, pan-European. The reasons for this are broadly common to all of the products discussed above. Transport costs do not appear to be a significant factor and do not give rise to any barriers to trade in any of the product markets identified. Similarly tariff barriers do not appear to be a significant factor for world trade in the products.

26. Handheld computers are marketed without substantial modification in the US and Europe, and within Europe, there is no difference between the mobile phone terminals produced by Nokia and Ericsson as they conform to the GSM standard. However there are technical differences between US and EU mobile phone models and the parties expect these differences to apply to wireless information devices also. It is unnecessary to determine whether these differences are such as to separate the geographic markets, since the analysis would not change were the market determined to be global or pan-European.

27. The principal suppliers of handheld computers and mobile phone terminals operate world-wide and there is a relatively stable market share of the suppliers within the Western Europe as compared to the world-wide market shares. Finally, the European prices for handheld computers and mobile phone terminals are generally similar throughout Western Europe and it is anticipated that ex-factory prices for wireless information devices will be the same throughout Western Europe.

28. On the basis of the above, the relevant geographic market will be at least pan-European and possibly global, no matter which of the product market definitions is chosen.

Assessment under Article 2(4)

29. Irrespective of the market definition chosen there is no significant likelihood of co-ordination of the competitive behaviour of the parties. The following analysis takes the narrowest set of product market definitions and then the wider market definition.

Wireless information devices

30. There does not appear to be a likelihood of co-ordination on this market for a number of reasons.

31. First, the cost of the operating system is likely to be relatively low as an overall proportion of the costs of the equipment [...]. As such, the parties will not be able to use the price of the operating system as a means of co-ordinating prices on the equipment market. In addition, if the parties were to attempt to raise the price of the operating system in the short term as a means of co-ordinating prices on the equipment market, this would risk damaging the prospects of the operating system becoming a successful product used by third parties.

32. Second, the joint venture will not sell or market wireless information devices. Both Nokia and, more recently, Ericsson already compete in the market for data enabled wireless information devices. Nokia's Communicator was the only unitary product available in 1997 and Nokia therefore had a market share of 100% for that year. Since then, however, two new products have since been introduced, the Ericsson MC 12/16 and Alcatel's One Touch Com and it is anticipated that Philips and others will soon introduce products. It is likely that there will be a number of different competitors on this market, and there appears to be no necessary link between the relatively high market shares of Nokia and Ericsson on the mobile phone market and the possibility of a high market share on the market for wireless information devices.

33. In addition, given that these products are currently in development and significant further development can be expected, it does not appear realistic to suggest that the technical development of Nokia's and Ericsson's products will be co-ordinated.

34. Thirdly, the design of the operating system itself would reduce the likelihood of co-ordination given that the operating system does not include the graphical user interface. As such, the operating system will allow branding of the terminal equipment interface by individual manufacturers. The product platform will not specify specific placement of buttons or specific device sizes or otherwise force manufacturers to follow a reference design, and the devices will bear the manufacturers' own trademarks. There will therefore be little or no end-user recognition of the Symbian product. However, the relevance of this point must be treated cautiously as this is an issue which could well change over time.

35. More importantly, however, manufacturers will retain the incentive to develop competitive advantages by adding increased functionality to the operating system and developing their own applications which will run on top of the joint venture's user interface framework.

36. On the basis of the above, there appears to be no likelihood of co-ordination of competitive behaviour on this market.

Mobile phones

37. To the extent that this will remain a separate market it will be unaffected by the joint venture, as the operating system which is the subject of the joint venture will not be included in the mobile phones, and there is no direct connection between the joint venture and the technology used in mobile phones. Nokia and Ericsson are both currently active in the market, with market shares of approximately [...] each in

Western Europe in 1997, and are in competition with major industrial competitors including Motorola, Siemens, Phillips, Bosch, Panasonic and NEC. Basic prices of mobile phones have decreased steadily over the past five years.

38. The volumes and revenues in this market are too important for Ericsson and Nokia to allow their commercial conduct in respect of terminals to be influenced by co-operation in the joint venture. In 1997 Nokia and Ericsson earned world-wide sales revenues of ECU 4.7 and 4.9 billion respectively. Both companies expect revenue for wireless information devices to be substantially less than that. Revenue from the joint venture will be extremely small in proportion to this overall revenue.

39. On the basis of the above, there appears to be no likelihood of co-ordination of competitive behaviour on this market.

Wider market definition

40. If the wider market definition were to be used, there still appears to be no likelihood of co-ordination of competitive behaviour. The reasoning is the same as that set out under the Wireless Information Devices market, above.

41. In the light of the above analysis, using either market definition, there appears to be no likelihood of co-ordination on any candidate market and it is therefore not necessary to establish a causal link between the creation of the joint venture and the behaviour of the parent companies outside the joint venture on any closely related market.

VIII ANCILLARY RESTRAINTS

41. The parties have identified two restrictions which they are requesting to be treated as directly related to and necessary for the implementation of the proposed concentration and therefore be assessed in conjunction with the concentration itself.

42. A covenant obliging Psion to conduct Symbian’s business in the ordinary course prior to completion in order to preserve the status quo of Symbian’s business during the period between the signing of the Agreements and their completion. The purpose of the obligation is to ensure that the company, which is the vehicle of the joint venture, does not differ significantly from that with which Ericsson and Nokia agreed to form the joint venture. Irrespective of whether this is a restriction of competition, this covenant concerns the stage before the establishment of control within the meaning of Article 3, paragraph 1 of the Regulation. It is therefore not directly related to the implementation of the concentration and is not covered by the present decision.

43. A confidentiality clause in the Investment Agreement which provides that the parties would not divulge confidential information to each other or to the joint venture if there were a danger that such information could be divulged to a third party. The obligation does not relate to information that is in the public domain. Such a limitation can be considered as directly related and necessary to the implementation of the concentration. Thus, it can be considered as a restraint ancillary to the concentration.

IX CONCLUSION

45. In the light of the above information, the proposed concentration does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA agreement.

The Commission therefore has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA agreement. This decision is adopted in application of Article 6 (1) b of Council Regulation No 4064/89 and Article 57 of the EEA Agreement.

For the Commission,