

***Case No IV/M.1113 -  
NORTEL / NORWEB***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 18/03/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.03.1998

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

**Subject: Case No IV/M.1113 - Nortel/NORWEB**

Notification of 17.02.1998 pursuant to Article 4 of Council Regulation N 4064/89

1. On 17 February 1998 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No. 4064/89 by which Nortel plc. (Nortel) and NORWEB plc. (NORWEB) will establish a joint venture, NOR.WEB DPL Ltd.

**I THE PARTIES**

2. Nortel is a wholly owned subsidiary of a Canadian corporation Northern Telecom Limited (NTL). Nortel is engaged in the business of designing, manufacturing and selling telecommunications equipment, systems and networks. The company's product range includes public and private telecommunications switching equipment, transmission equipment and mobile telephony equipment.
3. NTL is a large manufacturer of telecommunications products, systems and networks on a global basis. 51.3 % of the shares of Nortel are held by BCE Inc (BCE).
4. BCE is Canada's largest telecommunications company. It is a large telecommunications operating company and a large manufacturer of telecommunications equipment through NTL.
5. NORWEB plc. is a wholly owned subsidiary of United Utilities plc. (United Utilities). NORWEB supplies electricity and telephone services principally in the North-West of England. NORWEB has developed the technology for broadband data transmission via power lines.

6. United Utilities is a British water and electricity supplier and telecommunications company.

## **II THE OPERATION**

7. Nortel and NORWEB will transfer their activities in products for the transmission of data and/or voice communications over power lines (“Digital Power Line Products” or “DPL Products”) to the joint venture NOR.WEB DPL Limited. The nature of the joint venture’s business will be the design, development, manufacture, sale, support and maintenance of DPL products, and the sale and marketing of integrated telecommunications networks incorporating such DPL products.
8. The parties will retain an interest in DPL technology only for transmission over electrical power conductors at frequencies below 1 MHz. At present it is not technologically possible to conduct broadband transmission over power lines below 1 MHz, which will be the business of the joint venture. However, signals which are used for the management of power networks are currently transmitted below 1 MHz via power conductors, but this is a completely different area from, where the joint venture will not be active.

## **III THE CONCENTRATION**

9. The operation will constitute a concentrative joint venture within the meaning of article 3(2) of the Merger Regulation.

### Joint control

10. The parties will exercise joint control over the joint venture. Each party will hold 50% of the share capital of the joint venture. The Board will comprise 8 persons. Each party shall nominate 3 non-executive directors to the Board. The remaining two members of the Board will be the Chief Executive and the Finance Director, who will be appointed by the Board. Matters which require unanimous shareholder approval include: approval of the business plan and budget, changes in the nature and scope of the business, the incurring of any material liabilities, investment in any other company, disposal of material assets, borrowing by the company. Consequently, the joint venture will be jointly controlled by Nortel and NORWEB.

### Full function on a lasting basis

11. The joint venture will have sufficient financial and other resources in order to operate on a lasting basis. The joint venture will have an initial staff of approximately 40 people. The principal areas for the start-up of the company are sales, marketing, finance and technical services. The joint venture will own its own premises in London and in the North West of England. These premises will comprise offices and research laboratories.
12. The joint venture will rely on the parent companies for certain activities. Some administrative services (e.g. payroll, treasury, tax and financing) will be provided for a transitional period by the parties, but it is anticipated that the joint venture will secure its own resources for these services over time. Initially the joint venture will

subcontract the manufacture of DPL products to Nortel, but this will be on an arm's-length and non-exclusive basis. The sale of DPL products will be conducted by the joint venture directly or through distributors which may include Nortel. However, where Nortel is appointed a distributor, this will be on a non-exclusive arm's length basis, and the joint venture is free to appoint other distributors than Nortel.

13. In conclusion, for the above reasons the joint venture will be a full function joint venture established on a lasting basis.

#### Absence of coordination

14. Each of the parties have agreed to a non-compete clause for so long as it or any member of its group is the holder of any shares in the joint venture. This non-compete clause reflects the lasting withdrawal of the parents from the supply of DPL products and is, therefore, an integral part of the operation (see also section VI below).
15. Moreover, neither United Utilities or NORWEB manufacture internet access products or other telecommunications equipment. Only Nortel and the joint venture are, therefore, active in the supply of telecommunications equipment.
16. Consequently, for the above reasons, the joint venture is concentrative.

#### Conclusion

17. For the above reasons the transaction is a concentration within the meaning of article 3(2) of the Merger Regulation.

### **IV COMMUNITY DIMENSION**

18. The undertakings concerned have a combined aggregate world-wide turnover of more than 5000 million ECU. Both undertakings have a Community-wide turnover in excess of 250 million ECU. Only NORWEB achieves more than two-thirds of its Community-wide turnover in one member country. The notified operation therefore has a Community dimension according to Article 1 (2) of the Merger Regulation.

### **V COMPATIBILITY WITH THE COMMON MARKET**

#### **A. Relevant product markets**

19. The joint venture will be active in the development, manufacture, and the sale of DPL products which allow data signals to be transmitted over electricity lines in frequencies above 1 MHz. The Commission has in previous decision identified separate relevant product markets for transmission equipment, and for public switching equipment (IV/M.468 Siemens/Italtel.). Furthermore, in the industry a distinction is normally made between access transmission and trunk transmission equipment.

20. The main activity of the joint venture will be to supply DPL products, which enable the existing electricity distribution network to act as a data transmission access-loop to the home or office. The main aim of the joint venture is to sell DPL products. However, the joint venture will to a minor extent also offer data transmission DPL networks including an asynchronous transfer mode data switch (“ATM switch”) as the link to backbone network. To this extent the public switching market is marginally affected by the operation. However, no further examination of the market for public switching equipment is necessary, since the operation will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it.
21. DPL products are made up of (i) end-user equipment which is installed in the end-user’s premises and separates the data signal from the electrical current and (ii) base-station equipment, which combines the data signal with the electrical supply and transmits it down the low-voltage power cable to the end-user’s premises. [...]<sup>1</sup>. The main application for DPL products is, therefore, expected to be mainly internet access, where instead of using the traditional telephone lines, DPL products will use existing electricity lines as the local access loop.
22. Currently a number of other access technologies for internet access exist or are in the process of being developed. The usual access technology for the internet is the traditional telephone copper cable. However, there are technological limits to the transmission speed over traditional telephone connections. This is a major drawback for internet access, which require and will require even higher data transmission capabilities in the future than those which can be offered over a normal telephone connection. A host of new technologies have therefore, or are in the process of being developed in order to solve this problem. These new technologies include fast modems, ADSL (asymmetric digital subscriber line), HDSL (hierarchical digital subscriber line), which are designed to operate on an existing copper telephone wire. Cable modems have been developed, which allow to use a cable TV network as the access loop. Furthermore, wireless broadband technologies via satellites or stationary ground stations are being developed, which will eventually allow, for example, internet access via a cellular telephone.
23. The parties have submitted that DPL products should not be considered a separate relevant product market distinct from other access technologies. In particular the parties have argued that the price of DPL products will be constrained by the price of other access technologies and that DPL products are equivalent in the relative cost and performance characteristics of standard access technologies. In any case it is not necessary to finally decide on the market definition for the purpose of the present case, since the operation will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it.

## **B. Relevant geographic markets**

24. According to the parties the relevant geographic market comprises at least the EEA but is possibly world-wide. The parties submit that the technical standards related to e.g. switching products do not vary considerably from one country to another

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and the products can be adapted relatively easily for use in different countries. The parties also say that DPL products are compatible with existing telecommunications networks and can be deployed throughout most of the world. Supporting this, according to the parties, the joint venture's first customers are likely to be in [...]<sup>2</sup>. However, for the purpose of the present case it is not necessary to define whether the relevant geographic market is the EEA or world-wide, since the operation will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it.

### C. Competitive assessment

25. As the product in question is new, there is no market for DPL products at present and, accordingly, there are no market shares either. The joint venture, once it commences its operations, may, therefore, have 100 per cent of the sales of DPL products for a transitory period. However, this should not be interpreted as the creation of a dominant position, since there are several resourceful multinational telecommunications and other manufacturers, which could or are already in the process of developing access technologies including DPL technology.
26. The parties have or are in the process of applying for patents for their DPL technology in several parts of the world. According to the parties, there are two main categories of intellectual property rights that are directly related to the development and manufacturing of products: first, patents relating to the transmission of signals at frequencies of [...]<sup>3</sup> over external electricity and power lines and, second, patents relating to the transmission of data over power lines coupled to a broad band telecommunications network.
27. [...]<sup>4</sup> NORWEB has been granted patents in the UK, Hong Kong, Australia and the United States. These patents will expire in 2013. NORWEB has also pending applications [...]<sup>5</sup> NORWEB has been granted patents in New Zealand [...]<sup>6</sup>. Nortel has one pending patent application [...]<sup>7</sup>. Both NORWEB and Nortel will licence patents connected with the DPL technology to the joint venture on an exclusive basis. The parties, as is normal in this sector, also have a number of other patents, for example relating to the manufacture of telecommunications equipment and components, which are not specific to DPL products. However, this is similar to the situation for all the main competitors to Nortel and NORWEB.
28. The patents of NORWEB and Nortel are already in existence and as such are not affected by this operation. For the assessment of the competitive impact of the joint venture, the question is only, therefore, whether the combination of the DPL patents of NORWEB and Nortel in the joint venture could foreclose a market for DPL products, thereby leading to the creation or strengthening of a dominant position for DPL products. Having examined the patents of NORWEB and Nortel the Commission has concluded that this is not the case. In particular, the

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Commission has noted that the patents of NORWEB are fundamental patents, potentially of a blocking nature, which would be very difficult for competitors to bypass. However, the Nortel patent, in contrast, [...] and is not a blocking patent. Consequently, while the NORWEB patents alone could potentially have a foreclosure effect on a market for DPL products, this is not a result of the establishment of the joint venture. In other words, the same foreclosure effect could also occur if NORWEB were to exploit its patents alone or in a joint venture with some other company than Nortel. In conclusion, the combination of the patents of NORWEB and Nortel in the joint venture does not lead to the creation or strengthening of a dominant position.

29. Finally, in assessing the possible market dominance by the joint venture it should be taken into account that in enabling the existing electricity distribution network to act as a local loop, DPL technology provides an alternative to the existing traditional local telecommunications access loop and that there are still several other alternative solutions available. The findings of the Commission also suggest that the alternative access technologies mentioned above such as fast modem, cable modem, ADSL, HDSL and wireless should provide strong alternatives to DPL technology.

## **VI ANCILLARY RESTRAINTS**

30. The joint venture will be granted certain licenses and intellectual property rights on an exclusive basis from each of Nortel and NORWEB. In particular, as mentioned above, NORWEB has been granted patents for DPL products in the UK, Hong Kong, Australia, New Zealand and the United States. NORWEB has also pending applications [...]<sup>9</sup>. Nortel has one pending patent application [...]<sup>10</sup>. Both NORWEB and Nortel will licence patents and other intellectual property rights directly related to the DPL technology to the joint venture on an exclusive basis. These patents and intellectual property rights are necessary for the implementation of the joint venture, and are, therefore, ancillary to the operation.
31. Each of the parties have agreed to a non-compete clause for so long as it or any member of its group is the holder of any shares in the joint venture and for a period of two years thereafter (see section III above). The extension of the non-compete clause to the two years following a possible termination of the joint venture, relates to a possible future operation, which is not part of the current transaction. This two year extension of the non-compete clause is, therefore, not covered by the present decision.

## **VI CONCLUSION**

32. For the above reasons the Commission 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 (EEC) No. 4064/89.

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For the Commission