

***Case No IV/M.1263 -
NORTEL / BAY***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/08/1998

*Also available in the CELEX database
Document No 398M1263*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21/08/1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1263 – Nortel/Bay (Legal deadline:24.08.1998)

Notification of 22.07.1998 pursuant to Article 4 of Council Regulation (EEC) No 4064/89.

1. On 22.07.1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Northern Telecom Limited (“Nortel”) will acquire control of the whole of Bay Networks Inc. (“Bay”).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. Nortel is active in the manufacture and supply of telecommunications and data-networking products, systems and services. This includes engineering, installation, maintenance and support services packaged with these products.
4. BCE is Canada’s largest telecommunication company and a manufacturer of telecommunications equipment through Nortel. BCE owns 51.14% of Nortel.
5. Bay is active in the manufacture and supply of data networking products and services which are distributed directly or through its subsidiaries. Bay is a public

company with ordinary shares listed on the New York Stock Exchange and is not controlled by any other undertaking.

6. The proposed operation consists in the acquisition of Bay by Nortel through its subsidiary Sub Inc., which will merge with and into Bay. Immediately thereafter the shares will be converted so that Nortel owns and controls 100% of Bay's shares.

II. CONCENTRATION

7. The notified operation constitutes a concentration within the meaning of article 3(1) (b) of the Merger Regulation.

III. COMMUNITY DIMENSION

8. The combined aggregate worldwide turnover of the undertakings concerned exceeds ECU 5 billion (Nortel ECU 13.7 billion, Bay ECU 1.8 billion, in 1997). The aggregate Community-wide turnover of each party exceeds ECU 250 million (Nortel ECU 2500 million, Bay ECU 397 million). They do not achieve more than two-thirds of their aggregate Community-wide turnover within in one and the same Member State. The notified operation, therefore, has a Community dimension according to Article 1(2) of the Merger Regulation. It does not qualify for co-operation with the EFTA Surveillance Authority pursuant to the EEA Agreement.

IV. THE RELEVANT MARKETS

A. Relevant product markets

9. The relevant product markets concerned by the proposed operation relate to a range of products used in data networks. The data networking sector as a whole comprises products used to transmit data through local area networks ("LAN") and wide area networks ("WAN"). These include inter alia modems, shared media hubs, routers, network switches, LAN operating systems, interface cards, network management systems, X.25 switches.

Product segmentation

10. For this purpose the parties submit that data networking products can be put into narrower sub-categories. Within the data networking sector a distinction can be made between LAN products, such as Shared Media LAN Hubs, LAN switches, routers, and WAN products, such as Frame Relay Access Devices, Network switches, X.25 switches. From a customer point of view, both product categories differ significantly in their application. LAN products are typically used in enterprises to interconnect users and to provide shared access to centralized computing resources. The key issue is to achieve a high throughput of data. For most LAN products, the underlying technology is the Ethernet protocol, which focuses mainly on fast data transmission but is not convenient for transporting data over long distances. WAN products, to the contrary,

interconnect typically LANs or segments of LANs over long distances. For example, an enterprise that has subsidiaries at different geographical locations would require WAN products to link the local LANs together. In this context it is worth noting that service providers, such as public or private telecommunication companies, usually offer long distance connectivity. WAN products run on various underlying technologies, such as ATM or Frame Relay. These technologies focus mainly on secure data transmission and long distance connectivity, but offer low data transmission speeds.

11. However, the parties consider that data networking products can be further categorized according to standard industry practice and customer purchase patterns and identify the following product categories concerned by the proposed operation:

- Shared Media LAN Hub (“SMLH”)
- LAN Switch
- Router
- Remote Access Concentrator (“RAC”)
- Frame Relay Access Device (“FRAD”)
- Network Switch
- Data-over-cable Modem
- X.25 Switch

12. The parties submit that each product category mentioned above provides unique distinct functions. However, competitors and customers, who responded to the Commission’s investigation, expressed the view that particular functions overlap in many of these product categories. For example, LAN switches have been considered to take over functions of SMLHs, with the possible consequence that SMLHs as a product category could disappear entirely in the near future. Routers begin to integrate some functions of LAN switches in order to offer the setup of more flexible LAN structures. Furthermore, a number of product categories, in particular in the LAN sector, can already be configured in a way that allow to use them as substitute for other product categories.

Conclusion

13. The Commission agrees with both the parties and their competitors that individual product categories are appropriate to define the relevant product market. However, one should not overlook the evolutionary nature of the information technology business, in so far that data networking products change rapidly as new technologies could offer potential benefits, and, therefore, could result in new, more highly integrated, flexible data networking products for enterprise businesses and service providers.

14. In any event, the exact definition of the relevant product market can be left open for the purpose of this case, since, even on the narrowest possible scope, the notified operation would not lead to the creation or strengthening of a dominant position within the EEA or any substantial part of it.

B. Relevant geographic market

15. The parties submit that the relevant geographic market is a worldwide market. Customers tend to buy data networking products from multiple sources on a

worldwide basis. As many vendors operate subsidiaries in almost each part of the world, transport cost plays no important role. Furthermore, most data networking products are sold in a unique form, but can be quickly adapted to local customer needs.

16. The Commission has found in previous decisions¹ that the relevant geographic market is at least an EEA-wide market reasoning that products differ to some extent in the EEA in comparison with other regions. For the purpose of this case, however, it is not necessary to further delineate the relevant geographic market, since, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of it.

V. ASSESSMENT

17. The following table shows the market shares of data networking products of the parties separated by various product categories in the EEA and on a global basis in 1997.

Product categories	World-wide Nortel	World-wide Bay	EEA Nortel	EEA Bay	Comb. market share (EEA)
Data networking products	[<10] ² %	[<10]%	[<10]%	[<10]%	[<10]%
LAN/WAN products					
LAN products	[<10]%	[<10]%	[<10]%	[<10]%	[<10]%
WAN products	[5-15]%	[<10]%	[20-30]%	---	no overlap
Individual product categories					
SMLHs	---	[20-30]%	---	[20-30]%	no overlap
LAN Switches	---	[5-15]%	---	[5-15]%	no overlap
Routers	[<10]%	[5-15]%	[<10]%	[<10]%	[5-15]%
RACs	[<10]%	[<10]%	[<10]%	[<10]%	[5-15]%

¹ IV/M.651 AT&T/Philips, IV/M.468 Siemens/Italtel, IV/M.963 - Compaq/Tandem

² Market shares or other figures considered as business secrets have been replaced by ranges in square brackets []. Text considered as business secret has been replaced by square brackets [].

Data-over-cable Modems	---	[40-50]%	---	[40-50]%	no overlap
FRADs	[30-40]%	---	[15-30]%	---	no overlap
Network Switches	[15-30]%	[<5]%	[30-40]%	---	no overlap
X.25 Switches	[40-50]%	---	[40-50]%	---	no overlap

18. According to the product categories and the parties' market shares given above, there is no significant overlap. Nortel's product range focuses on WAN products that offer telecommunications solutions to public and private telecommunication service providers, such as PTTs, private telecoms. Bay, on the other hand, targets with its product range mainly the enterprise market for local area network solutions. Furthermore, whatever the geographic dimension of either data networking products or narrower sub-categories, the parties' combined market share will not amount to 15%, as measured within the EEA, or EU as a whole.
19. In view of a number of strong competitors (Cisco, 3Com, Hewlett Packard, Ascend, Shiva), some of which enjoy higher market shares than the parties' operations, the operation will not have a significant impact on competition in the EEA. This has been confirmed by competitors and customers. Consequently, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

VI. CONCLUSION

20. For the above reasons, the Commission decides 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.

For the Commission,