

***Case No IV/M.1271 -  
PIRELLI / SIEMENS***

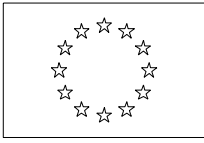
Only the English text is available and authentic.

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

---

Article 6(1)(b) NON-OPPOSITION  
Date: 30/09/1998

*Also available in the CELEX database  
Document No 398M1271*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30/09/1998

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

**Subject: Case No IV/M.1271 – Pirelli/Siemens**

Notification of 31 August 1998 pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ('the Merger Regulation'), as last amended by Council Regulation (EC) No 1310/97.

1. On 31 August 1998 Pirelli S.p.A, ("Pirelli") notified an operation by which Pirelli would acquire all the activities of Siemens Aktiengesellschaft ("Siemens") in respect of the business of developing, producing, marketing, distributing, selling, servicing, installing and maintaining cables for the transmission and distribution of electric power, and relevant accessories.

**I THE PARTIES**

2. Pirelli S.p.A is the operating company of the Pirelli Group. It controls Pirelli Tyre Holding NV, which oversees the group's activities in the tyres market, and Pirelli Cavi e Sistemi S.p.A which is the group's operating company for its production activities in respect of cables and cable systems.
3. Siemens is a publicly owned German industrial and electronics company, and the ultimate parent of the Siemens group of companies, active in sectors such as electrical engineering and electronics, communication, transportation, medical engineering, and others.

## **II THE OPERATION AND THE CONCENTRATION**

4. The operation represents the acquisition of sole control by Pirelli of certain companies and business assets currently owned by Siemens, and referred to in the notification as 'the SK business'. The choice between sale of a company and sale of assets depends on how the activities concerned are currently grouped within Siemens' existing corporate structure. (The package also includes a copper communications cable business ('the NK business') operated by Siemens' Turkish subsidiary. As the products of the NK business are not imported into Europe, and the acquisition will have little or no impact on the European market, this aspect of the transaction has not been investigated further.)
5. The sale will take place by transfer of the shares held by Siemens in the relevant companies, the sale of all assets, liabilities, contractual relationships and employees of the Siemens companies operating wholly or primarily in the relevant businesses, and related trademarks and intellectual property rights.

## **III COMMUNITY DIMENSION**

6. The world-wide turnover of Pirelli in 1997 was in excess of ECU 5 800 million and its Community-wide turnover was in excess of ECU 2 800 million. Although Siemens earned more than two-thirds of its Community-wide turnover in Germany, Pirelli did not, and the two-thirds criterion is not satisfied. The notification does not fall to be treated as an EFTA co-operation case.

## **IV COMPATIBILITY WITH THE COMMON MARKET**

### *A. Relevant product markets*

7. The notifying party argued that energy cables constitute a distinct market within a total cable market, and that within the category of energy cables, two different segments could be identified; general wiring, and power cables.
8. The market for 'general wiring' covers a wide variety of medium and low voltage cables used, for example, for building and industrial applications and for power and signal supply of mobile devices, as used in mines, railways, petrochemical installations etc. Such cables are mainly sold through electrical wholesalers and cable distributors, or directly to installers and original equipment manufacturers.
9. 'Power cables' on the other hand comprise a separate segment. This covers low, medium and high voltage cables of the type used mainly for the transmission of power, as well as power cables used by the energy utilities in the distribution of electricity. The main customers are national electricity boards or private customers.
10. Most respondents agreed there was a distinction between power cables and general wiring. A number suggested that the market for power cables could be further subdivided, into low, medium and high voltage segments. It was said for example that, whilst a manufacturer of high voltage cables might be able to switch easily to the manufacture of medium or low voltage cables, the converse was not necessarily true, as specialised manufacturing techniques and skills were needed for the manufacture of high voltage cables. The notifying party did not accept a segmentation below the level of power cables, arguing that Siemens' relevant operating division produced

and marketed all three types of cable. However, as the case did not give rise to competition concerns even on this narrowest market definition, it was not necessary to resolve this issue.

*B. Geographic markets*

11. The notifying party argued that the markets for general wiring are wider than national and should be considered as European. It was pointed out, for example, that harmonisation of cable standards had advanced to the point where general wiring cable capable of meeting the standards for sale in any one member state could be sold in any other. Moreover the commercial policy of electrical distributors was to source on a Europe-wide basis. This view was echoed in the responses made by a number of third parties consulted.
12. For power cables, the notifying party argued that the markets had traditionally operated along national lines, because national utilities bought from their own national cable suppliers, who supplied cable according to the particular specification(s) demanded by the utility concerned. In such a relationship the buyer is in a relatively strong position, and even a supplier with a high market share would have difficulty in abusing its position. However, it was said that in recent years a number of factors had conspired to widen the relevant geographic markets, including privatisation of electricity suppliers, the obligations from the public procurement directive on public utilities to open up their tenders to a wider range of bidders, the tendency towards harmonisation of technical standards across Europe, and cost pressures on utilities forcing them to look beyond traditional suppliers. Inquiries of third parties did not necessarily help to resolve the issue of geographic extent, as different respondents had different views. In the event however it was unnecessary to reach a conclusion on the point, as even if the case were assessed on the basis that the markets concerned might still be national, no competition concerns would have arisen.

*C. Competitive assessment*

13. If markets for general wiring and power cables were European, then the combined shares arising from the operation would be below 20% in both markets. Moreover there are at least two other significant players in a market defined at this level (Alcatel and BICC). Like Pirelli and Siemens they produce a full range of products across the relevant sectors. Accordingly, the transaction would not give rise to concerns of dominance by Pirelli.

a. General wiring

14. If however the markets for general wiring were taken as national, Table A below shows market shares in each of the countries of the European countries in which either Pirelli or Siemens is active.

**General wiring: market shares 1997 (%) by country**<sup>1</sup>

Country	Pirelli	Siemens	Total
France	15-25	less than 10	15-30
Italy	15-25	less than 10	15-30
Spain	25-35	less than 10	30-40
UK	10-20	less than 10	10-30
Austria	less than 10	25-40	25-40
Belgium	less than 10	less than 10	less than 20
Denmark	less than 10	less than 10	less than 20
Germany	less than 10	10-30	20-30
Netherlands	less than 10	less than 10	less than 20
Norway	less than 10	less than 10	less than 20
Sweden	less than 10	less than 10	less than 10

15. The only markets in which the concentration gives rise to combined market shares of over 30% are in Spain and Austria. However, in Spain the increment [...]<sup>2</sup> is relatively low, and the overall combination of [...]<sup>3</sup> is not high enough to lead to serious concerns. In Austria the combined market share is [...]<sup>4</sup>, but the increment is very low at only [...]<sup>5</sup>. No competition concerns therefore would arise on a market defined at this level .

b. Power cables

**Power Cables: market shares (%) by country**<sup>6</sup>

Country	Pirelli	Siemens	Total
<b>France</b>	25-35	less than 10	25-35
<b>Italy</b>	30-40	less than 20	40-55
<b>Spain</b>	15-25	less than 10	15-30
<b>UK</b>	10-20	less than 10	10-25
<b>Austria</b>	less than 10	25-40	25-45
<b>Belgium</b>	less than 10	Less than 10	less than 20
<b>Denmark</b>	less than 10	Less than 10	less than 10
<b>Germany</b>	less than 10	10-30	10-30
<b>Netherlands</b>	less than 10	Less than 10	less than 10
<b>Norway</b>	less than 10	Less than 10	less than 10
<b>Sweden</b>	less than 10	Less than 10	less than 10

<sup>1</sup> Deleted for publication: all numbers initially shown in this table have been replaced by ranges

<sup>2</sup> Deleted for publication – less than 10%

<sup>3</sup> Deleted for publication – between 30-40%

<sup>4</sup> Deleted for publication – between 25-40%

<sup>5</sup> Deleted for publication – less than 10%

<sup>6</sup> Deleted for publication: all numbers initially shown in this table have been replaced by ranges

16. The table above shows that the only market in which the combination would give rise to market shares over 30% is in Italy, where a combined share of [...] <sup>7</sup>, with an increment of [...] <sup>8</sup>, would result. It was noted in the earlier discussion on market definition that previously national markets for power cables were widening in geographical extent. However, insofar as the Italian market remains national, the combined entity would face the considerable buying power of ENEL. Some [...] <sup>9</sup> of Pirelli's business in Italy is with ENEL and the equivalent figure for Siemens in Italy is about one-third. The combined entity will therefore be heavily reliant on ENEL for its business. ENEL could, at any time, turn to one of the competing suppliers to fulfil its needs if Pirelli attempted to raise its prices. Moreover, with more opportunities for customers in this market to look outside their national boundaries, there is little likelihood of the combined entity being able either to achieve dominance or to sustain it.
17. If the market is further segmented into high, medium and low voltage cables, at national level the only market in which the parties would have an overlap in excess of 40% is in Italy, where the shares would be broadly similar to those on a market for power cables as a whole (high voltage: [...] <sup>10</sup>, medium voltage [...] <sup>11</sup>, and low voltage [...] <sup>12</sup>). As to whether this share gives rise to concerns, the same broad arguments as were applied to a market for power cables generally would also apply to markets defined at this level. The transition from national to European markets would need to be taken into account. Furthermore, Pirelli's dependence on ENEL would still be as strong: [...] <sup>13</sup> of Pirelli's high voltages sales, [...] <sup>14</sup> of its medium voltage and [...] <sup>15</sup> of its low voltage sales would be to ENEL. Siemens has a similarly high level of dependence: although it has no high voltage sales in Italy, [...] <sup>16</sup> of its medium voltage and just over [...] <sup>17</sup> of its low voltage power cable sales were to ENEL.

*D. Collective dominance*

18. An earlier decision in this sector under the Merger Regulation (Case No IV/M.165 – Alcatel/AEG Kabel) discussed whether the concentration addressed in that notification might give rise to an issue of collective dominance. The Commission considered this issue again in the context of the current case, but its investigations

---

<sup>7</sup> Deleted for publication: between 40-55%

<sup>8</sup> Deleted for publication: less than 20%

<sup>9</sup> Deleted for publication: above 80%

<sup>10</sup> Deleted for publication: between 40-55%

<sup>11</sup> Deleted for publication: between 40-55%

<sup>12</sup> Deleted for publication: between 40-55%

<sup>13</sup> Deleted for publication: above 80%

<sup>14</sup> Deleted for publication: above 60%

<sup>15</sup> Deleted for publication: above 80%

<sup>16</sup> Deleted for publication: above 50%

<sup>17</sup> Deleted for publication: above 50%

suggested that, while this acquisition would inevitably give rise a some degree of further market concentration, the level of concentration had not yet reached the point where concerns about collective dominance might arise.

## **V ANCILLARY RESTRAINTS**

19. The notification asked for the following non-compete clause to be assessed:

“SIEMENS undertakes for a period of four years not to manufacture, distribute or render world-wide any products or services competing with the products or services manufactured, distributed or rendered by the Companies or the assets transferred to PIRELLI under the Agreement. The same applies to the Turkish copper communications as currently operated...”

20. This clause is considered to be directly related and necessary to the implementation of the concentration.

## **VI CONCLUSION**

21. In view of the above 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 No 4064/89, and Article 57 of the EEA Agreement.

For the Commission,