

*Case No IV/M.1440 -
LUCENT
TECHNOLOGIES /
ASCEND
COMMUNICATIONS*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 06/04/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06.04.1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party.

Dear Sirs,

Subject: Case No IV/M. 1440 – Lucent Technologies / Ascend Communication

Notification of 01.03.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 01.03.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking Lucent Technologies Inc. (“Lucent”) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Ascend Communication Inc. (“Ascend”) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89¹ and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

¹ As amended by Council Regulation (EC) No 1310/97

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. Lucent and Ascend are both USA-based companies active in the field of equipment for communication networks. Lucent develops, manufactures and services telecommunication networking systems, including equipment, software and associated services. Ascend mainly offers solutions for data networks, and especially Wide Area Networks (“WAN”).
4. Ascend will merge with a subsidiary of Lucent, with Ascend shareholders receiving Lucent stock in exchange for their shares.

II. COMMUNITY DIMENSION

5. With Ascend’s Community-wide turnover being below ECU 250 million, the parties do not meet the thresholds set forth in Article 1(2) of the Merger Regulation. However, the thresholds set forth in Article 1(3) of the Merger Regulation are met. First, the parties combined worldwide turnover is greater than EUR 2 500 million [...]. Second, each of Lucent and Ascend has a Community-wide turnover in excess of EUR 100 million [...]. Thirdly, the individual 1997 turnover of both Lucent and Ascend exceeded EUR 25 million in [three Member States]. And finally, in those three Member States, their combined turnover was in excess of EUR 100 million. Finally, the parties did not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension. It does not constitute a cooperation case under the EEA Agreement.

III. COMPETITIVE ASSESSMENT

A. Relevant product markets

6. The relevant product markets concerned by the operation relate to data networks. As was indicated in the *Nortel/Bay* decision², data networking as a whole may be divided into products used to transmit data through local area networks (“LAN”) and products used to transmit data through wide area networks (“WAN”). Both product categories differ in their applications, in their technologies and, in most cases, in their customers.
7. Since Ascend mainly engages in WAN products, the horizontal overlaps between Lucent and Ascend are located in that sector.
8. As was suggested in the *Nortel/Bay* decision, WAN and LAN products can be further segmented into individual product categories according to standard industry practice and customer purchase patterns, provided that each product category provides unique distinct functions. Given the evolutionary nature of the information business, these categories can change rapidly.
9. In view of the above, the notifying party submits that the following product categories constitute the relevant product markets concerned by the proposed operation :
 - Frame Relay Switches
 - ATM WAN switches
 - IP Routers

² See Case No IV/M.1263 – Nortel/Bay

- Backbone routers
- Branch Office/Small Office Routers (BOSO routers)
- Personal Routers
- Remote Access Servers (RAS)
- Remote Access Concentrators (RAC)

10. The results of the investigation carried out by the Commission, along with the product market definitions used in past decisions³, suggest that some of the above segments could be combined into broader product markets. For instance, ATM switches and Frame Relay switches could be considered to form part of a broader product market for WAN switches. Similarly, RAS and RAC might be included into a market for aggregation devices. Some of the competitors and customers who responded to the Commission's investigation even indicated that, in their opinion, switches and routers are converging to create a single product market for data transport.
11. However, it is not necessary to further delineate the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

B. Relevant geographic markets

12. The notifying party states that the relevant geographic markets are at least EEA-wide. They consider that this is indicated by the fact that customers are large companies or distributors, who tend to purchase equipment from suppliers anywhere in the world, that most data networking equipment follows international technical standards, and that both Lucent and Ascend have Europe-wide price lists.
13. The Commission has found in previous decisions² that the relevant geographic market appears to be at least EEA-wide. This view has been confirmed by most of the competitors and customers who responded to the investigation carried out by the Commission. However, for the purpose of this case, it is not necessary to further delineate the relevant geographic market, as in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of it.

C. Assessment

Horizontal aspects

14. There is no overlap between Lucent and Ascend in Frame Relay switches and ATM switches, as Lucent currently does not manufacture such products.
15. As far as routers are concerned, the operation does not give rise to any affected markets. The only overlap between Lucent and Ascend takes place in personal routers, where the combined market shares of the parties do not exceed 15%. At the more general level of Access Routers, which also include Branch Office/Small Office routers, or the even more general level of routers (which comprise Branch Office/Small Office routers, backbone routers and possibly IP routers), the combined market shares of the parties are below [5-10%].

³ See, *inter alia*, IV/M.1263 – Nortel/Bay, IV/M.651 – AT&T/Philips, IV/M.648 - Siemens/Italtel

16. The operation does not raise competitive issues on RAS either, as the combined market shares of Lucent and Ascend in Europe do not exceed [5-10%].
17. In 1997, the parties accounted for [25-30%] of sales of RAC in the EEA and [35-40%] of volumes in terms of shipments. However, it appears that the parties face strong competition from other suppliers, such as Cisco or 3Com, as Lucent and Ascend's combined market shares have steadily decreased from [50-55%] in 1996 (in terms of value) to [20-25%] in the first half of 1998. Moreover, the parties remain submitted to the threat of an entry by non-European (and mostly USA-based) competitors already active in RAC, or of the entry on the market for RAC by other equipment manufacturers, as took place in 1996-1997 when Bay and ACC began supplying RAC.
18. In the first half of 1998, Cisco, 3Com and the parties accounted together for [70-75]% of the sales of RAC in Europe, and the market share of the next competitor, Bay, was less than [0-5%]. However, the notified concentration does not appear to raise risks of oligopolistic dominance on this market. First, the operation will not significantly affect the structure of the market, as Lucent's share never exceeded [0-5%]. Second the market positions of Cisco, 3Com and the parties are significantly dissimilar, as Cisco accounted for [35-40%] of sales, the parties for [20-25%] and 3Com for [10-15%]. Third, there appears to be strong and effective competition between these companies, as, over the last three years, Cisco has constantly gained market share to the expense of Ascend. And finally, the market for RAC is a new and technology-driven market, which expands rapidly and where technologies and products change constantly, and which therefore provides few incentives for collusion or for conscious parallel conduct.
19. Consequently, the horizontal aspects of the proposed concentration do not lead to the creation or the strengthening of a dominant position as a result of which effective competition in the EEA or any substantial part of that area.

Conglomerate aspects

20. Lucent is a major supplier of equipment and systems for telecommunications networks, and supplies a wide range of products. The proposed concentration will expand its product portfolio and deepen its ability to offer complete and integrated data network solutions to its customers.
21. However, other competitors (such as Nortel) also have broad product portfolios. Furthermore, it appears that the tendency on the part of clients to seek suppliers who can furnish integrated solutions is still in the state of emergence, and that system sales currently account for no more than [5-10%] of Lucent's European turnover. Finally, customers who ask for integrated solutions usually are large companies with significant buying power, and they generally require that the vendor offer the "best in class" components even from other manufacturers. They even sometimes impose the offer to include products from a specific supplier.
22. In the light of the above, and given the rapid technological evolution of data networks, the conglomerate aspects of the notified concentration do 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.

IV. CONCLUSION

23. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,