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*Case No IV/M.165 -
ALCATEL / AEG
KABEL*

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

Article 6(1)(b) NON-OPPOSITION
Date: 18.12.1991

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Brussels 18.12.1991

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

To the notifying party

Dear Sirs,

Re. : Case No IV/M.165 - Alcatel/AEG Kabel
Notification of 5 November 1991 pursuant to Article 4 of
Council Regulation No 4064/89

1. The proposed concentration consists of the acquisition by Alcatel Cable S.A. of AEG Kabel, the cable business subsidiary of AEG AG. The entire cable business of AEG AG will be transferred, subject to a prior spin-off of the cable harness activity (motor vehicle cables) which will be retained by AEG AG. Alcatel Cable will acquire 96.8 % of the shares of AEG Kabel.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 4064/89 (the Regulation) and does not raise serious doubts as to its compatibility with the common market.

Concentration

3. Alcatel Cable S.A. ("Alcatel") is 66,66 % owned by Alcatel NV and represents 28 % of the total activities of the latter. Its ultimate parent company is Alcatel Alsthom. It operates through major divisions and subsidiaries in France and through subsidiaries or controlling interests in Germany (Kabelmetal Electro), Belgium, Italy, Spain, the UK, Greece, Ireland, Australia, Scandinavia and the USA. In most of these

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countries it holds a significant market position. At the world level Alcatel is the market leader in the telecommunications and power cables sectors.

4. AEG Kabel is the cable business subsidiary of AEG AG, its ultimate parent company is Daimler-Benz AG. Its operations are largely concentrated in Germany.
5. The core business of Alcatel NV is focused on communication systems and cables. AEG Kabel's principal activities are the design, manufacture and sale of power and telecommunication cables and general and speciality wiring.
6. By the above mentioned transaction Alcatel acquires control of the whole of AEG Kabel. Therefore, the operation is a concentration within the meaning of Article 3(1)(b) of the Regulation.

Community Dimension

7. For the 1990 financial year, the combined turnover of Alcatel NV and AEG Kabel was Ecu 14,367 million. The Community-wide turnover of Alcatel NV and AEG Kabel both exceeded Ecu 250 million. The parties did not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. Thus, the operation has a Community dimension within the meaning of Article 1(2) of the Merger Regulation.

Request for referral

9. On 28 November 1991 the Commission received a communication from the German Bundeskartellamt under Article 9 of the Regulation. The Bundeskartellamt took the view that the German markets for telecommunication cables and power cables represent distinct markets that the proposed concentration would create or strengthen a dominant position for Alcatel/AEG Kabel in these two markets which would be held by the merging companies and two other companies which together would form an oligopoly.
10. The Commission concluded that there is no distinct German market for telecommunication cables and that although there is a distinct German market for power cables, the proposed concentration will not threaten to create or strengthen a dominant position as a result of which effective competition would be significantly impeded in that market. The request for referral of the case to the German authorities has consequently been rejected.

The product markets

11. A cable can be defined as a conductor of copper, aluminium or optical fibre together with an insulant which in turn is often sheathed or armoured. Despite this general definition, a key feature of cable making is the sheer variety of materials and cable designs, each of which will correspond to the particular environment in which the cable will be installed and to the transmission it has to assure.

The general cable market can be divided into several different markets. The notifying party has used the segmentation generally accepted in the industry distinguishing the following markets : telecommunication cables and wires, power cables, overhead aluminium bare conductors, installation cables and wires, and enamelled and winding wires.

a) The telecommunication cables and wire market :

This market is composed of cables which are used for the transmission of information and data. It includes optical and metallic external and internal telephone cables, data-network cables, instrument cables and high performance cables used by the defence industry.

Certain factual elements indicate that copper cables and optical cables form part of the same market. There is a clear trend indicating that metallic cables are being replaced by optical fibre cables. This substitution is being carried out at present for the main networks. The subscriber networks are still mainly metallic and the rate at which they will be replaced and the technological events that will make the replacement cost effective are not easily predictable. Producers, at least the big ones, generally consider that it is necessary for them to be active in both kind of cables to answer the needs of their customers.

b) Power cables

This market comprises in particular high-voltage power cables used for the transmission of power as well as medium and low-voltage power cables used by the energy utilities in the distribution of electricity. The main customers are the national electricity boards or private equivalents, as well as railway companies and some large industrial groups.

c) Overhead aluminium bare conductors

Aluminium overhead conductors are not insulated and are usually not classified as cables. The notifying party does not include them in the power cables market. Producers in this field are often linked to aluminium producers. These cables constitute a separate market in which both parties are active. AEG Kabel's activities in this field will be transferred to Alcatel. This market is therefore relevant for the assessment of the present concentration.

d) Installation cables and wires

This market includes a wide variety of low-voltage electrical cables for building and industrial applications. These cables are sold through electrical wholesalers and cable distributors.

e) Enamelled wires and winding wires

These wires are used in the manufacture of electric motors, transformers and domestic appliances. They consist of copper conductors generally insulated with enamel. Textile, paper or other materials are also used for the insulation.

12. The Commission therefore considers that the following five product markets are affected by the concentration :

- telecommunication cables and wires,
- power cables,
- overhead aluminium bare conductors,
- installation cables and wires,
- enamelled wires and winding wires.

The geographic reference markets

13. Cable markets in the Community are at a transitional stage, shifting from national markets to one that is Community-wide. But the transition has not yet been completed and progress varies between product markets.

14. Several elements contributed to the existence of national markets :

- Imports have been hindered by the different cable specifications required in each Member State. For many years, each national certification body enforced its own standards;
- Obtaining approval to supply power and communication cables could be a lengthy process due to the technical specifications;
- The national technical standards created adaptation costs for non-domestic suppliers;
- PTT's, as well as public utilities in all Member States, traditionally gave their orders for equipment to national suppliers.

15. The factors which accounted for national markets in the past are now disappearing :

- cable specifications are under the process of harmonization through several European organisations, such as the European Committee for Electrotechnical Standardisation ("CENELEC") and the European Telecommunication Standards Institute ("ETSI").
- changes in procurement policies have already occurred or are expected to occur due, in particular, to the implementation of the Council Directive 90/531/EEC¹⁾ on public procurement which will contribute to breaking down the traditional national policies in the cables field. Most Member States including Germany have to implement this Directive at the latest by January 1993.

16. The opening up of the markets as a result of this liberalisation process will not be hindered by transport costs which are not significant in the relevant product markets and which therefore do not constitute a trade barrier.

¹⁾ OJ N° L 297, 29.10.1990, p.1.

17. Taking into account the above mentioned elements, the present situation appears to be as follows in the different product markets :

- The communication cables market is well on the way to opening up. The process of harmonization of standards made under the auspices of ETSI is well advanced in this field and applies throughout the Community. National trade barriers are disappearing and the conditions necessary for a single Community-wide market are now in place. There is already a significant degree of import penetration in Germany and some other Member States. Deutsche Telekom has recently switched over to publishing its procurement procedure on an international basis and to inviting undertakings from other EEC and from non-EEC countries to tender. This new buying practice of Deutsche Telekom, which is by far the most important buyer on the telecommunication market in Germany, will lead to a full opening up of the German market.

The development towards a Community-wide market has progressed at different speeds in the various Member States. In this context, a primary factor is the extent to which network operators in the various Member States are already applying a Community-wide purchasing policy. Whilst in those Member States where network operators have not yet adopted a Community-wide purchasing policy the market may still be considered to be a national market; in other Member States, such as Germany where Deutsche Telekom - the only significant network operator - has already implemented a Community-wide purchasing policy, the market is open to Community-wide competition.

Since AEG Kabel has only limited sales of telecommunication cables outside Germany, the center of gravity of the concentration lies in Germany. However, because of the Community-wide purchasing policy in Germany, the competitive position resulting from the proposed concentration has to be evaluated on the basis of Community-wide competition to which Alcatel and AEG Kabel are subject. Given the attained level of technical standardisation, for those Member States where the network operators have already implemented a Community-wide purchasing policy, the geographic reference market will extend to the whole Community since all suppliers wherever located in the Community compete for tenders of the respective network operators. Consequently, the relevant geographic market in the present case is the Community market.

- The power cables market still has the characteristics of a national market. It can be noted that the process of harmonization of standards is much less advanced in this field than in the others. Although important efforts are being made, significant differences between national specifications will remain for the foreseeable future, obliging producers to meet different national specifications. At present, the existence of a national market in Germany is reflected in the very limited level of imports (representing less than 7 % of the total market).
- With regard to the market for overhead aluminium bare conductors on which there is limited value added, there are no national specifications. This market - which is of small

importance compared with that for power cables - is open to non-domestic manufacturers and can be considered to be a Community-wide market.

- Installation power cables and enamelled wires are the two product markets which have moved furthest towards a Community market. Standardised specifications have encouraged the free flow of products between Member States. The geographic market for these two products can therefore be considered to be a Community-wide market.

Compatibility with the common market

a) Telecommunications cables and wires

18. In the Community market which is the relevant geographic market as defined in point 17 above, Alcatel has a market share of 15 % and AEG Kabel would add with its activities based mainly in Germany only 3 %. There are other strong competitors such as BICC, Pirelli and Siemens with significant market shares. The concentration therefore will not give rise to a dominant position of Alcatel/AEG Kabel.

b) Power cables

19. On the German market the parties' combined market share will be 25 % (Alcatel 12 %, AEG 13 %) which normally would not indicate a dominant position on the part of the merging undertakings.
20. However, the Bundeskartellamt points out that the market is highly concentrated and that the three most important manufacturers of power cables in Germany, namely the parties to this concentration together with Siemens (23 %) and Felten & Guillaume (10 %) account for more than 50 % of total sales. The balance is held by a great number of undertakings with small market shares. The Bundeskartellamt considers that conscious parallel behaviour by the main manufacturers is likely in the future as far as prices and other conditions are concerned.
21. Furthermore according to the Bundeskartellamt there are additional features of the power cables market which would support the oligopoly argument :
 - It is a mature market with rather limited new technical developments.
 - There is high transparency in relation to product characteristics as there exists a uniform specification imposed by the public utilities.
 - Demand has been stagnant over a long period of time.
22. The question of whether Art. 2 of the Regulation applies to situations of joint dominance can be left open since in the present case the proposed concentration would not create or strengthen a dominant position among the three main competitors mentioned above as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

If the hypothesis were adopted that a dominant oligopoly falls within the field of application of the Regulation, it must be observed that in contrast to the German law on restrictive practices (Section 23a, paragraph 2 GWB) EC merger control does not contain a legal presumption of the existence of a collective dominant oligopoly as soon as certain companies attain a certain combined market share. Where three companies have a combined market share exceeding 50 % there is a legal presumption under German law that no substantial competition exists between these companies and that consequently they form a dominant oligopoly. Under the Regulation such a presumption which amounts to a reversal of the burden of proof does not exist. On the contrary, the Commission would have to demonstrate in all cases that effective competition could not be expected on structural grounds between the leading companies in a highly concentrated market.

23. There exist no indications which would allow the conclusion that currently, no effective competition exists between the leading companies on the German market for power cables, i.e. prior to the proposed concentration. On the contrary, the specific demand structure as outlined in point 26 below and the fact that in Germany prices for power cables have fallen by about 20% in the last 10 years, are indicative of effective competition.
24. The question therefore arises whether the current conditions of competition will be altered by the proposed concentration to such an extent that it must be considered that in the future there will be a lack of effective competition between the leading cable suppliers. The Commission does not consider that this is the case. It is true that the proposed concentration leads to the disappearance of a significant competitor and to a certain increase of the degree of concentration in the affected market. However, with regard to the overall market structure, it cannot be expected that the increase in the supply side concentration will lead to a situation where in the future effective competition between the leading companies will cease to exist. Neither from the information available to the Commission, nor from the arguments put forward by the Bundeskartellamt in this procedure do material indications arise that the conditions of competition on the power cables market would be fundamentally changed through the concentration in this way. Under the framework of EC Merger control, such a change in the market structure (currently, the concentration ratio for the top three companies is 48 %, after the concentration this will rise to 58 %) does not on its own imply the disappearance of effective competition.
25. An important characteristic of this market is the strength of the demand-side, where about 80 % of power cables is purchased by about 20 important public utilities. In fact, because of the considerable differences in the demand volume of these customers, the demand side concentration is considerably higher for the top group of these companies. Given this bargaining power on the demand side it is unlikely that the suppliers would be able to engage in conscious parallel behaviour in setting prices or other conditions. This specific structural element of the market has to be taken into account in the evaluation of the future behaviour of the leading suppliers.

26. There is a further aspect that the Commission has to take into account. This is the purchasing behaviour of public utilities in Germany. To date open public bids were not the most frequent purchasing method of German public utilities. The entry into force of the Public Procurement Directive will have a strong impact on the behaviour of the public utilities as regards their purchasing policy. Given that almost all the relevant orders for cables from German public utilities are above 400,000 Ecu, the principles of the Directive would be applicable to most procurement procedures. In other circumstances, a change in the procurement procedure alone might not be considered as an important step towards a competitive environment, but given the strong bargaining power on the demand side the changes imposed by the Directive will reduce the possibility of conscious parallelism on the part of the suppliers.
27. Given the particular structure of the demand-side and the imminent change in procurement procedures, the present concentration cannot be considered to create or strengthen a dominant position held by the parties to this concentration either alone or jointly with other undertakings as part of an oligopoly.
- c) Overhead aluminium bare conductors
28. Alcatel has a market share of 19 % in the Community. AEG Kabel's sales outside Germany are very small (1.9 million Ecu) which is about 1 % of the total EEC market. In Germany the combined market share of Alcatel and AEG would be 11 %. The market position of Alcatel/AEG would not give rise to a dominant position.
- d) Installation power cables and wires
29. The parties would have a combined market share of 15 % in the Community. They cannot be considered as having a dominant position.
- e) Enamelled wires and winding wires
30. The parties would have a combined market share of 21 % in the Community. There are other important producers in this market. The concentration would not result in the parties having a dominant position.

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31. *It follows from the above findings that the concentration will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.*
32. *For the above reasons the Commission has decided not to oppose the concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.*

For the Commission