

***Case No COMP/M.1968 -  
SOLECTRON / NORTEL***

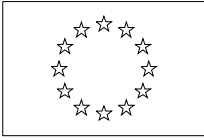
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**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 31/05/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, **31.05.2000**

**SG(2000)D/**

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

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Dear Madam/Sir,

**Subject**: **Case No COMP/M.1968 - Solectron/ Nortel**  
Notification of 26/4/2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 26 April 2000 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/891 by which Solectron Corporation ("Solectron") of the United States, acquires within the meaning of Article 3(1)(b) of the Council Regulation control of parts of the Canadian company Nortel Networks Corporation ("Nortel"), by way of purchase of assets.
2. Following examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

## **I. THE OPERATION AND THE PARTIES**

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<sup>1</sup> OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

3. The proposed transaction consists of the acquisition of sole control by the U.S. undertaking Solectron Corp. (“Solectron”) of part of the Canadian company Nortel Networks Corporation’s (“Nortel”) electronics production resources for printed circuit boards (“PCBs”). The assets to be transferred are located in France, Ireland, and the UK, in addition to Canada, Mexico, the United States, and Turkey (the “Target Assets”). The transaction includes physical assets as well as related leases, contracts and employees.
4. Solectron is a global undertaking in the electronics industry providing manufacturing solutions to original equipment manufacturers (“OEMs”), most particularly in the computer, network equipment and telecommunications industries. Within these areas, printed circuit board assembly (“PCBA”) accounts for 80% of Solectron’s turnover. The company provides physical design, component engineering, test programme development and prototype building for PCBA, which is increasingly outsourced to third parties by the OEMs. Solectron operates 41 facilities world-wide. 19% of its €7.6bn turnover was derived from Europe in 1999.
5. The seller, Nortel, is a global supplier to corporate customers of networking solutions and services that support voice, data and video transmission over wireless and wireline technologies. Nortel’s network solutions provide the infrastructure for the internet and other public and private networks.

## **II. CONCENTRATION OF A COMMUNITY DIMENSION**

6. The operation will result in the acquisition by Solectron of sole control over the target and thus constitutes a concentration within the meaning of Article 3.1(b) of the Merger Regulation.
7. Solectron and the target have a combined aggregate worldwide turnover in excess of €5 billion (Solectron alone €7.56 billion). Both Solectron and the target have a Community-wide turnover in excess of €250 million (Solectron, €1,5 billion and the target, €17.3 million), and they do not both achieve more than two-thirds of their respective aggregate Community-wide turnovers within one and the same Member State. The notified operation, therefore, has a Community dimension.

## **III. COMPATIBILITY WITH THE COMMON MARKET**

### **A. Relevant markets**

8. Solectron’s main activity concerns PCBA, for which it provides physical design, component engineering, test programme development and prototype building. PCBs are used in network equipment, among other products, as provided by Nortel. Through the concentration, Solectron will acquire the Target Assets’ PCB production resources.
9. Although both Solectron and Nortel manufacture PCBs, the parties submit that there are no horizontally affected markets, because the Target Assets at present only produce for Nortel’s self-consumption and do therefore not compete with Solectron. However, the question, whether or not outsourced PCBA services constitute a market affected by the transaction, can be left open as no competition concerns would arise in either case.
10. On a vertical plane, Solectron will, through the operation, acquire Nortel’s downstream activities of PCBA. As the products concerned have been destined strictly for internal consumption by Nortel, the activities being acquired have not been generating turnover

directly on any market. Consequently, their acquisition does not in itself entail any market share acquisition downstream by Selectron, but rather an acquisition of additional capacity. Selectron will, according to the parties, remain free to offer its services to other OEMs. Thus the particular nature of the operation does not allow for the creation of any vertically affected market.

## **B. Conclusion**

11. Hence, the only immediate effects of the operation comprise, on the one hand, an expansion of the scale and geographic scope of Selectron's manufacturing capacity and, on the other hand, an internal streamlining by Nortel of its manufacturing activities, in the context of its on-going strategy of outsourcing non-core activities ("virtually-integrated" firm concept).
12. Even if the market for outsourced PCBA services was considered a market affected by the operation, Selectron's EEA market share (11%, according to the parties) would at present not create any dominant position.
13. In the circumstances, the operation does not give rise to any competition concerns, either on a horizontal or a vertical plane.

## **IV. ANCILLARY RESTRAINTS**

14. Selectron's four-year non-exclusive Purchase/ Supply Agreement with Nortel can be considered ancillary to the concentration, given the need, during a four-year transitional period, for Nortel, for its part, to be assured continuity in the supplies which were previously integrated in its own company. For Selectron, for its part, the four year term is intended to create a sufficient window to recoup its investment in the manufacturing assets and the assumption of employee obligations.
15. Nortel and Selectron have further agreed on a limited ten-year non-compete clause that prohibits Nortel to affect the value of the divested assets by manufacturing and selling to Selectron's main customers any competing products in the same locations as the divested assets. As such, it appears to act essentially as a safeguard for Selectron against ex-post opportunistic behaviour by Nortel and can thus be considered ancillary to the operation. However, in the absence of evidence to the contrary, four years, rather than ten, appear to constitute a sufficient term to protect Selectron's interests. Only a duration of four years, in line with the Purchase/ Supply Agreement, can be considered a restriction that is related to and necessary for the implementation of the concentration.
16. The parties have further agreed as part of the transaction on confidentiality clauses covering specific information related to the transaction with unlimited duration, non-solicitation clauses (up to 24 months) and a shared services agreement covering a one-year period. As so far as these clauses contain restrictions on competition, they can be considered as related to and necessary for the implementation of the concentration. Concerning the confidentiality agreement, a duration of four years, in line with the Purchase/ Supply Agreement, can be considered as related to and necessary for the implementation of the concentration.

## V. CONCLUSION

17. 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,  
**Mario Monti**  
**Member of the Commission**