

***Case No COMP/M.2136 -
SCHRODER VENTURES
/MEMEC***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/09/2000

*Also available in the CELEX database
Document No 300M2136*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.09.2000
SG(2000)D/107032

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

Subject: Case No COMP/M.2136 –Schroder Ventures/Memec

Notification of 28.08.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 25 August 2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Council Regulation (EEC) No. 4064/89 (“the Merger Regulation”) by which Cherrybright Ltd. (“Cherrybright”) a special purpose vehicle belonging to the Schroder Ventures Group (“Schroder”) acquires sole control of the whole of the Memec Group (“Memec”) of VEBA Electronics.
2. Following examination of the notification, the Commission has concluded that the notified operation falls within the scope of the said Council Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I. THE PARTIES

3. Cherrybright is a special purpose vehicle solely controlled by funds advised by Schroder Venture European Fund Managers II LP, which is part of the Schroder Ventures Limited group of companies. Schroder provides management, advisory and consultancy services to buy-outs and venture capital funds.
4. Memec is a specialist wholesale distributor of electronic components and systems, active in Europe, America and Asia and is one of the operating divisions of VEBA Electronics, which is in turn a wholly owned subsidiary of E.ON AG (created by a merger between VEBA AG and VIAG AG).

II. THE OPERATION

5. The proposed transaction arises in the context of the acquisition of the whole of the VEBA Electronics components and systems distribution group by a three-party consortium consisting of Cherrybright, Avnet Inc. and Arrow Electronics Inc. The consortium members have agreed to acquire separate divisions of the VEBA Electronics distributions group. Schroder through Cherrybright is to acquire the whole of Memec, Arrow is to acquire the group's business in the USA and Avnet the remaining European Veba Electronics business.
6. As a result of the current transaction Schroder, through Cherrybright, will have sole control of the whole of Memec and all the issued share capital held by E.ON AG Group and some of its subsidiaries in Memec. Thus, this operation constitutes a concentration within the meaning of Article 3 (1) (b) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion¹ (Schroder Ventures Ltd: [...]; Memec: [...]). Each of them have a Community-wide turnover in excess of EUR 250 million (Schroder Ventures Ltd: [...]; Memec: [...]), but they do 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.

IV. COMPETITIVE ASSESSMENT

Relevant product markets

8. It has been stated in the notification that there are no affected markets due to the proposed concentration. However, the parties have indicated that there are potential vertical links between one company in the Schroder group and Memec.
9. Memec is active in the wholesale distribution of electronic components and systems. In particular, it specialises in the distribution of proprietary semiconductor devices. In Case COMP/M.1700 – *Avnet/Eurotronics* and later Case COMP/M.1871 *Arrow Electronics/Tekelec*, the Commission indicated that there is a separate market for the provision of wholesale distribution of electronic components, which *inter alia* include semiconductors. However, in this transaction, the relevant market definition can be left open, given that irrespective of the market definition chosen the transaction would not create or strengthen a dominant position. This is further developed below.
10. Schroder exercises control over Austria Mikro Systems International AG (“AMS”) which develops and produces application-specific integrated circuits (ASICs) and ASSPs (application-specific standard products), which are chips designed for specific products/purposes. Other types of chips exist such as DRAMs, SRAMs, and EPROM. ASICs/ASSPs are available from manufacturers directly and through wholesalers. In

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

general however, large customers such as mobile phone manufacturers tend to purchase their ASICs directly from the chip manufacturer, whereas smaller equipment manufacturers such as hospital and navigation equipment manufacturers tend to use ASSP wholesalers. AMS supplies its products directly to its customers.

11. The parties have indicated that they do not support a narrow product market definition which would divide the relevant market into a market for mixed-cell based integrated circuits or ASICs/ASSPs only but would prefer a broader market definition. In any event, the relevant product market definition can be left open in this case, given that irrespective of the market definition chosen the transaction would not create or strengthen a dominant position as set out in the assessment below.

Relevant geographic market

12. The notifying parties have indicated that the relevant geographic market for the wholesale distribution of electronic components is at least EEA wide. In *Avnet/Eurotronics* and *Arrow Electronics/Tekelec*, the Commission indicated that the market for the provision of wholesale distribution of electronic components is national in scope. However, given that even with the possible narrowest market definition, the transaction would not lead to a creation or strengthening of a dominant position, the relevant market definition can be left open.
13. According to the parties the relevant geographic market for mixed-cell based integrated circuits is at least EEA wide and possibly global given the low transport costs and the extent of the global distribution. However, it is not necessary to define the relevant geographic markets for these products described above as whatever the definition may be, the concentration does not give rise to competitive problems.

Assessment

14. It has been stated in the notification that the transaction does not lead to any affected markets. It has also been stated in the notification that no company controlled by Schroder is active on the same product markets as Memec. In addition, Memec is not a distributor for AMS products and according to the information provided is not likely to become a distributor either due to proprietary and other issues arising out of such relationship. However, given that AMS is a producer of ASICs and ASSPs, there is a potential vertical link between Memec and AMS even though Memec does not currently act as a distributor for AMS.
15. Nevertheless, given that neither Memec nor AMS (either separately or in combination) has a market share of more than 25% even on the narrowest possible market definition, and in any event both parties face a number of significant and larger competitors in their respective markets, there are consequently no competition concern stemming from this potential vertical link.
16. As a result, the proposed transaction is not susceptible to present any competitive problems on the markets concerned by the operation. Thus, the notified operation does not lead to any creation or strengthening as a result of which effective competition would be significantly impeded in the common market and the EEA or in a substantial part thereof.

V. ANCILLIARY RESTRAINTS

17. The notifying parties have identified five clauses that they have requested to be treated as ancillary to the proposed transaction.

Sale Purchase Agreement

18. Clause 7.5.a. of the SPA provides, that for a period of [...] years after the Closing Date, the Sellers (including all of the E.ON Group of companies from time to time) have agreed not to compete directly or indirectly with any business which is competitive with the business of any of the divested companies. Exempt from the Covenant are activities of the E.ON Group which are carried on at Closing and consist only of interests or securities which do not exceed 10% in any other company or entity, or acquisition of less than a 10% equity interest in an entity carrying out such activities provided that this would not entail any significant influence in such company; the acquisition of controlling or non-controlling interest in any entity or group which is not primarily involved in competing business; and any activities of any division of Veba Electronics retained by the Sellers in the event that and as long as the sale of any such division is not consummated.
19. Clause 7.5.b. impose an obligation on the Seller that they will not solicit or contact any employee of the divested companies with a view to employ such employee(s) for a period of [...] years from the closing date.
20. Clause 7.5.c. impose on the Sellers not or cause other companies that are part of the E.ON group from time to time, to use any trade name or name intended or likely to be confused with such trade name used by the divested group of companies.
21. The above clauses represents the protection of the buyer (Cherrybright) from a decision by the Sellers to continue activities, which would decrease the value of Cherrybright's investment and to protect the value of the assets purchased. The Commission therefore considers that the above clauses can be considered as directly related and necessary to the implementation of the operation.
22. Clause 7.6 of the SPA provides that for a period of [...] years, the Sellers shall keep confidential and not disclose to any third party any business secret or trade secret of any divested businesses other than those which have become publicly known through the fault of the Sellers.
23. Inasmuch as this clause represents a restriction of competition, it can be considered as necessary and directly related to the transaction for their respective duration.

Consortium Agreement

24. Cherrybright (as Memec) and Arrow (as purchaser of the remaining European electronics business from Veba) have signed a side letter to the Consortium Agreement pursuant to which they undertake not to employ or engage for [...] from signing the services of any person who was a member of the groups or divisions that each one bought.
25. This prohibition is aimed at guaranteeing the break of the respective assets the two purchasers will acquire from Veba. Thus, the clause is directly related and necessary to implement the transaction for its duration.

VI. CONCLUSION

26. 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
(Romano PRODI, President)