

***Case No COMP/M.4766 -
FLEXTRONICS /
SOLETRON***

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**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 28/08/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28/08/2007

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4766 - Flextronics/ Solectron
Notification of 23.7.2007 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 23/07/2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004, by which the undertaking Flextronics International Ltd. ("Flextronics", Singapore) acquires, within the meaning of Article 3(1)(b) of the Council Regulation, control of the whole of Solectron Corporation ("Solectron", USA) by way of purchase of shares.

I. THE PARTIES

2. *Flextronics* is a global provider of electronic manufacturing services ("EMS") to original equipment manufacturers ("OEMs"). It provides end-to-end, vertically integrated, global supply chain services, through which it designs, builds and ships a complete packaged product for its OEM customers. Its services include printed circuit board and flexible circuit fabrication; systems assembly and manufacturing; logistics; after-sales services; design and engineering services; original design manufacturing services; and components design and manufacturing.

¹ OJ L 24, 29.1.2004 p. 1.

3. *Solectron* provides EMS to OEMs. Its services include product design; collaborative design; product launch/new product introduction; design for manufacturability (DFX) services; printed circuit board assembly and subsystem manufacturing; systems integration and test; parts management; inventory management; forward/reverse logistics; repair; recovery/remarketing; and feedback to design and manufacturing for quality/serviceability.

II. THE OPERATION

4. The operation concerns the acquisition of *Solectron* by *Flextronics* via *Saturn Merger Corp.* (“*Saturn*”, a newly organized, wholly-owned subsidiary of *Flextronics*). Pursuant to an agreement dated June 4, 2007 *Saturn* will merge with and into *Solectron*, which will survive the merger and become a wholly-owned, direct subsidiary of *Flextronics*.

III. CONCENTRATION

5. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (*Flextronics* 14,650 million; *Solectron* 8,582 million)². Each of them have a Community-wide turnover in excess of EUR 250 million (*Flextronics* [...] million; *Solectron* [...] million), 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.

V. COMPETITIVE ASSESSMENT

A. Product and geographic market definitions

7. The notifying party submits that the relevant product market for purposes of this notification is worldwide EMS by and for OEMs, which includes both in-house and third-party EMS. However, in line with constant Commission practice that in-house production is not taken into account for the purpose of market definition, the notifying party has also provided data with respect to the narrower market for provision of EMS to OEMs by non-OEMs (merchant market).

Product market

8. The transaction concerns the market for provision of EMS to OEMs. EMS include the whole range of services involved in the production of electronics products for OEMs from the design of the product, component selection and procurement, prototyping, product assurance, production, assembly, testing, failure analysis, logistics, distribution and after-sales services.

² 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).

9. In past decisions³ the Commission has considered the existence of certain specific electronic product segments divided according to the final product/service in which EMS are incorporated (i.e. the “end use destination”), such as for instance computers or consumer goods. However, the exact extent of the product market and the question whether it encompasses provision of all EMS to OEMs or whether the EMS should be subdivided into narrower segments for the purpose of market definition was left open.
10. The notifying party considers, that in the area of EMS, the existence of strong supply-side substitution means that it is not, from a market-definition point of view, appropriate to examine different EMS industry or product segments as separate product markets. It is the norm in the industry that EMS providers can and do easily shift equipment, production processes and staff because they use generic production lines that can be employed to produce and assemble products for different industries. Such production switching can happen at short notice and at low cost. Indeed, within one same day the same line can be used at different time to produce very different products for very different applications. However, the precise extent of the product market definition can be left open since, as further explained below, the transaction will not give rise to any competition concerns irrespective of the market definition retained.

Geographic market

11. The notifying party submitted that the relevant geographic market is worldwide, due to low shipping costs representing approximately [...] % of the selling price, provision of products and services from facilities located around the world and substantial trade flows from an in the EEA (Indeed, for the FY 2007⁴, [...] % of the products that Flextronics sold to customers in the EEA was produced outside the EEA; and [...] % of the products that Flextronics produced within the EEA was sold to customers outside the EEA. Similarly, during FY 2006, [...] % of the products that Solectron sold to customers in the EEA were produced outside the EEA; and [...] % of the products that Solectron produced within the EEA were sold to customers outside the EEA).
12. Previous Commission decisions⁵ have concluded that the relevant geographic market is at least EEA-wide but the exact scope of the market was left open.
13. Likewise, it is not necessary for the purpose of the present case to define the precise scope of the relevant geographic market, since, as further explained below, the transaction will not give rise to any competition concerns irrespective of the market definition retained.

B. Assessment

14. Both Flextronics and Solectron are active on the global market for the provision of EMS to OEMs. At worldwide level the transaction leads to a combined market share of

³ Case No COMP/M.1841-Celestica/IBM (EMS), Case No COMP/M. 2479 - FLEXTRONICS/ALCATEL, Case No COMP/M.2629 FLEXTRONICS/XEROX, Case No COMP/M. 3583 FLEXTRONICS/NORTEL.

⁴ The figures provided by Flextronics refer to the fiscal year 2007 which ended March 31, 2007.

⁵ See footnote above.

[10-20]%⁶. On the narrower EEA-wide market the transaction amounts to a combined market share of [5-15]%.

15. On the basis of narrower product markets⁷, on a worldwide market for all EMS sales to OEMs by non-OEMs, the combined market share of the parties in each of these segments is below the threshold of 15%, except for the communications and consumer segments where the post-transaction market shares of the new entity reach [15-25]% and [15-25]% respectively. On a narrower EEA-wide market, the respective figures would be [20-30]% and [10-20]% for communications and consumer segments.
16. According to the notifying party, there is around one thousand of non-OEM EMS providers around the world amongst which 90 are globally active companies vigorously competing for supply contracts which are generally of short duration. The biggest ones are Foxconn (the biggest non-OEM EMS provider which grew substantially over the past years and which will remain market leader with [10-20]% of worldwide sales and [10-20]% EEA-wide sales), Sanmina-SCI, Celestica, Jabil Circuit, Quanta Computer, Elcoteq.⁸
17. Furthermore, customers (OEMs) drive the demand and the scope of EMS through their in-house production and outsourcing decision thereby placing a powerful competitive constraint on any party active in the provision of EMS to OEMs, both at worldwide and EEA-wide levels. Indeed, OEMs procure EMS from a variety of sources, including most importantly from their own in-house production (over 75% of their EMS requirements); from other OEMs; and from various other, third-party EMS providers, including Flextronics and Solectron. Deciding whether to outsource EMS depends on the value proposition of in-house versus external EMS, and accordingly the two options are constantly in competition. When making such a decision the OEMs take mainly into account price and efficiency parameters. Thus the threat of switching supplier or switching to in-house production is a constant competitive constraint.
18. In view of the above, and in particular of the existence of competitive constraints exerted by the competitors and significant buyer power of OEMs, it is unlikely that the proposed concentration would significantly impede effective competition on the common market.

⁶ The figure varies depending on the different surveyors' estimate of the total market. IDC estimates total market to be EUR 189.33 billion whilst ETP estimates total market of EUR 170.2 billion.

⁷ The segments for which the notifying party provides market shares were defined by Electronic Trend Publications ("ETP") and include automotive, communications, computer, consumer, industrial and medical segments.

⁸ *ETP 2006* at 4-77 - 4-78.

VI. CONCLUSION

19. 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 (EC) No 139/2004.

For the Commission
signed
Neelie KROES
Member of the Commission