

***Case No COMP/M.4910 -
MOTOROLA / VERTEX***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/12/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21-XII-2007

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.4910 – Motorola/ Vertex
Notification of 16/11/2007 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 16 November 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 ("Merger Regulation") by which the undertaking Motorola Inc. ("Motorola", USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Vertex Standard ("Vertex Standard", Japan) by way of purchase of shares. Motorola is hereinafter referred to as "the notifying party"; Motorola and Vertex Standard are referred to as "the parties".
2. After examining the notification, the Commission found that the notified transaction falls within the scope of the Merger Regulation and that it did not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I. THE PARTIES

3. **Motorola**, the acquiring party is a US-based corporation active in wireless and broadband communications technologies and embedded electronic products. In 2006 Motorola had worldwide sales of approximately €35.9 billion, [5-15]% of which was attributed to the EU. Through its Enterprise Mobility Solutions business unit, Motorola

¹ OJ L 24, 29.1.2004 p. 1.

is also active in designing, manufacturing, and selling two-way radios. Motorola's two-way radio business represents approximately [5-15]% of its EU sales.

4. **Vertex Standard** is a Japanese company active in the design, manufacture and sale of various two-way radio products and related infrastructure. In its last financial year, Vertex Standard had worldwide sales of approximately €150 million. In 2006 their sales revenue in the EEA amounted to less than €16 million.

II. CONCENTRATION AND THE REFERRAL

5. The proposed transaction amounts to a concentration within the meaning of Article 3(1)(b) of the Merger Regulation as Motorola will acquire 80% of the voting rights in and therefore sole control of Vertex Standard.
6. The transaction does not have a Community dimension as defined in Article 1(2) or Article 1(3) of the Merger Regulation, given that Vertex Standard's EEA revenue falls well short of the thresholds. The parties filed a reasoned submission (Form RS) for referral request pursuant to Article 4(5) of the Merger Regulation. Since no member states expressed their disagreement the case was automatically referred to the Commission.

III. RELEVANT MARKETS

A. Relevant Product Markets

Two-way radios

7. The notified transaction concerns Motorola's and Vertex Standard's activities in the area of two-way radios. A two-way radio is a radio that can both transmit and receive, unlike a broadcast receiver which can only receive content but cannot send it.
8. According to the notifying party, the following segmentation of two-way radios is recognised within the industry: (i) Amateur Radio², (ii) Marine Radio³, (iii) Airband radio⁴ and (iv) Land mobile radio (LMR)⁵. These segments would have different

² Often called "ham" radio, amateur radio equipment would be used mainly by hobbyists and radio enthusiasts, usually with a high level of technological sophistication, in order to communicate with one another for recreation, public service and self-training purposes. Many amateur radio operators often communicate over huge distances (spanning countries or even continents).

³ Marine radio equipment is installed on virtually all large ships and most motorised small watercraft, including pleasure craft of all sizes. It would be used for a wide variety of purposes, including ship-to-ship communications, communicating with harbours and marinas and summoning rescue services. Marine radios operate in the VHF (very high frequency) range, between 156 and 174 MHz, and on standard, international channels.

⁴ Airband radio refers to the radio communications equipment used in commercial and general aviation, radio-navigational aids, air traffic control and other uses. Airband radio is prevalent in privately owned aircraft; major passenger and freight carriers employ a different technology. Airband radios operate in the VHF range, between 108 and 137 MHz.

characteristics and products (in terms of ranges, frequencies used, layout and key features, etc.).

LMR terminals

9. The notifying party further considers that LMR terminals market covers two main categories of users: consumer and professional.

Consumer LMR terminals

10. Consumer LMR terminals (also called family radios in the United States) are basic LMR terminals typically purchased by individuals and groups of individuals for private purposes related to leisure, recreational or group activities⁶. Consumer LMR terminals sold today are based exclusively on analogue technology and in the vast majority of cases do not require the user to have a license. Consumer LMR terminals are sold through retail consumer channels.

Professional LMR terminal

11. Professional LMR terminals, sometimes referred to as Professional mobile radio (PMR)⁷ terminals, are typically purchased by companies and organisations for professional use related to mission-critical or business-critical tasks. They are typically more powerful and with greater range than Consumer LMR terminals. In most cases they require the user to obtain a license. The user may be assigned specific channel(s) for communications within a designated area, or channels may be shared. Although Professional wide-area LMR networks in Europe are exclusively digital⁸, Professional local/on-site networks are still mostly based on analogue technology.
12. Professional LMR terminals are normally sold through specialised distributors and dealers and are also sold direct to large end users (mostly through bidding processes). Examples of buyers of Professional LMR terminals include public safety organisations, public utilities, municipalities, airports, and a wide range of private businesses (taxi companies, hotels, private security, construction, manufacturing, health care, retail, etc.).
13. The notifying party also identifies a further distinction between Professional LMR terminals used in wide-area networks and Professional LMR terminals used in local/on-

⁵ LMRs would be designed to allow two-way radio communication between two or more land-based users. For example, fire-fighters in a burning building, police officers, hotel or airport security personnel, employees in a large department store, etc.

⁶ Consumer LMR terminals would have restricted power (typically less than 0.5 watts) and limited range (generally between 500 metres and 5 kilometres).

⁷ This terminology was used, for example, in the Commission's decision in *EADS/Nokia*.

⁸ Some wide-area LMR networks in North America are analogue.

site networks ("Professional local area LMR terminals")⁹. Nevertheless, in this respect, the parties contend that this does not warrant the delineation of further separate markets.

14. In light of the above, the parties' position is that there are distinct markets for LMR, amateur radio, marine radio and airband radio. As Motorola essentially supply LMRs, while Vertex Standard is mainly active in the supply of Amateur radio and have more limited activities in LMR, the area in which both Motorola and Vertex Standard are present and needs to be assessed is LMR.
15. Within LMR, the parties consider that there are distinct relevant markets for: (i) LMR terminals, (ii) LMR infrastructure¹⁰ (e.g. radio base stations, switching and control nodes, dispatch consoles, applications and interface elements), (iii) LMR accessories (e.g. headsets, microphones, carrying cases and batteries) and (iv) LMR services (e.g. maintenance and repair). However, LMR terminals are the only affected markets in this case.

Market Investigation

16. The market investigation largely confirmed the view of the notifying party that Amateur Radio and LMR constitute separate markets. They are considered completely different in intended use, requirements of the user license (personal license vs frequency license), price and features.
17. With regard to LMR terminals, there is some overlap between the categories of Professional local area LMR and Consumer LMR terminals. The market investigation showed that in principle, Consumer LMR terminals serve different purposes from Professional local area LMR terminals. Users of Consumer LMR terminals do not need advanced functions; thus the terminals are simpler and prices correspondingly lower. However, the market investigation also revealed that Professional local area LMR and Consumer LMR terminals compete to some extent with each other, mainly in small cost oriented systems. Some professional consumers, such as small private companies, may opt for a cheaper Consumer LMR system rather than a professional one.
18. Within Professional LMR terminals, the parties argue that the fact that TETRA and other digital technologies are now also used for Professional local area LMR terminals further blurs any potential distinction between Professional LMR terminals for wide-

⁹ Wide-area network/local networks (within Professional LMRs): Professional LMR terminals used in wide-area networks generally involve more complex solutions that typically require more sophisticated planning and technology development than LMR terminals used in local/on-site networks. Professional LMR terminals used in wide-area networks in the EEA are always digital-based, mainly based on TETRA or Tetrapol technology, require extensive infrastructure and typically operate in networks covering an entire country or at least a large region. On the other hand, Professional LMR terminals used in local/on-site networks remain mostly analogue-based (although there is an ongoing migration to digital, especially to small TETRA systems with local coverage, such as a site, a city or at most a small region). They are generally less infrastructure-intensive and operate in networks covering a smaller area.

¹⁰ It would appear that there is no infrastructure for amateur, marine or airband radios as there is for LMR.

area networks and Professional local area LMR terminals. Although the former remain exclusively digital, the latter may be either analogue or digital (the parties contend that this is increasingly the case due to the gradual migration from analogue to digital). For example, Motorola estimates that it currently devotes approximately [70-80]% of its R&D in the area of Professional LMR terminals for local/on-site networks to digital solutions (approximately USD [...] million of a total expenditure of approximately USD [...] million in 2007), compared to only [15-25]% for analogue solutions. The market investigation would appear to support the view of the parties that the importance of analogue technology for professional LMR terminals is decreasing, in particular for wide-area but also for professional local area LMR terminals. However it cannot be excluded on this basis that a separate market would exist for Professional local area LMR terminals.

19. The market investigation showed that in order to be sold in the EEA all Professional LMR terminals (whether analogue or digital and regardless of whether they are intended for use in wide-area networks or local/on-site networks) have to comply with a number of EU Directives. LMR terminals offered for sale are required to comply with detailed manufacturing specifications and contain specific characteristics with respect to health and safety, electromagnetic compatibility, the use of the radio spectrum and re-cycling.
20. LMR terminals are required to conform with the following EU directives: the *R&TTE Directive*¹¹ which specifies standards with respect to voice and data transmission and electromagnetic compatibility limits; the *Electromagnetic Compatibility (EMC) Directive*¹² which requires that LMR terminals do not interfere with other equipment; the *Low Voltage Directive*¹³ which requires compliance with health and safety standards of low voltage equipment; the *RoHS Directive*¹⁴ which restricts the use of certain hazardous materials in electrical equipment; the *ATEX Directive*¹⁵ which stipulates standards for electrical equipment used in potentially explosive environments; the *WEEE Directive*¹⁶ which makes manufacturers responsible for the collection, treatment and recovery of electrical equipment sold in the EU; the *Packaging Directive*¹⁷ which contains provisions on the prevention of packaging waste and the re-use of packaging of all kinds of products including LMR terminals.

¹¹ Directive 1999/5/EC OJ L 91, 7/4/1999, p. 10–28.

¹² EMC Directive 2004/108/EC, OJ L 390 31/12/2004, p. 24.

¹³ Low Voltage Directive 2006/95/EC, OJ L 374 of 27/12/2006, p. 10-19.

¹⁴ The RoHS Directive 2002/95/EC, OJ L 37, 13/02/2003, p. 19-23.

¹⁵ ATEX Directive 94/9/EC, OJ L 100, 19/04/1994, p. 1.

¹⁶ WEEE Directive 2002/96/EC, OJ L 037, 13/02/2003, p. 24-39.

¹⁷ Packaging Directive 94/62/EC OJ L 365, 31/12/1994, p. 10-23.

21. These regulations differ between the EU, the US and other parts of the world and are often stricter in the EEA than in other parts of the world. EEA and non-EEA manufacturers therefore make sure already at the design stage that their products are fully compliant with all EU requirements. Manufacturers are obliged to declare that their LMR terminals comply with the relevant EU Directives by clearly labelling them with the "CE" mark (hereinafter referred to as "CE compliant"). These CE compliant products are the only products which are shipped within the EEA and sold to EEA customers whether by EEA based manufacturers or by non-EEA based manufacturers.
22. For the purpose of this decision, the exact product market definition can be left open, since, on the basis of markets for all LMR terminals; all Professional LMR terminals, or narrower markets encompassing Professional local area LMR and Consumer LMR terminals together, or Professional local area LMR terminals, the assessment will not change. In any event, for the reasons explained above, the assessment for all these categories will focus on CE compliant products.

B. Relevant Geographic Markets

23. The notifying party submits that all the relevant product markets listed above are EEA-wide. This statement is in line with a decision adopted in 1994 (M.496 – Marconi/Finmeccanica) where the Commission found that there were strong indications that the PMR market (Professional LMR terminals) was EEA-wide, even though the precise geographic market definition was left open. The market investigation in EADS/Nokia (M. 3803) broadly confirmed that PMR markets are EEA-wide, and possibly worldwide excluding North America. The APCO P25 technology was found to constitute a strong barrier to entry in the North American market.
24. According to the notifying party, there are a number of factors that show that the relevant geographic market clearly is not national: (i) the main suppliers of LMR terminals are the same throughout the EEA, (ii) the same technologies and standards apply throughout the EEA, (iii) transport costs within the EEA are minimal (on average approximately 1%), (iv) prices are generally similar and (v) there is significant cross-border trade.
25. Similarly, the notifying party submits that there are a number of differences between the EEA and other regions indicating that the relevant geographic market is not worldwide: (i) there are considerable price differences between the US, Europe and Asia, (ii) there are different prevailing technologies in the EEA than in other parts of the world, most notably North America, (iii) standard technical specifications differ between the EU, the US and other parts of the world and (iv) the market positions of suppliers differ in different regions.

Market Investigation

26. The market investigation showed that there are a number of elements that point to a EEA-wide market, in particular:
 - a) *Regional distributors/local dealers*: As explained above, Professional LMR terminals, in particular local area terminals, and Consumer LMR terminals are normally sold through specialised distributors. Most of these distributors have a

regional focus (e.g., France, Poland, UK, Iberia or Scandinavia). Having professional sales channels, in particular experienced and well connected local dealers, is recognised as a necessary condition to enter the market. A number of customers mention after sales service and support as a reason to buy locally;

- b) *Technical standards* (e.g., CE marking, WEEE¹⁸ and ROHS¹⁹ directives and ETSI²⁰ standards) and *regulatory restrictions* (e.g., frequency spectrum, types of modulations, etc.). As explained above (see pars 19 to 21) a number of these standards and regulatory restrictions are specific to the EEA and differ with those prevailing in other parts of the world; and
- c) *Customers' specifications*. Some distributors mention customers' specifications, needs and requirements as a reason for buying from a certain Member State and/or EEA-wide.

27. The market investigation also showed, however, that some customers and distributors buy directly from manufacturers outside the EEA, in particular from Japan. They purchase worldwide provided that the manufacturers can meet the EEA requirements (both technical and regulatory), i.e., that they are CE compliant.

28. In light of the above, the Commission has assessed the effects of the transaction on a hypothetical world-wide market. For the reasons stated above, the assessment in particular focuses on the segment of CE compliant LMR terminals. The shares of sales at the EEA level are the best proxy for assessing the competitive impact of the transaction at the worldwide level with regard to CE compliant LMR terminals. For the reasons explained below, the Commission found that, whatever the geographic market definition (EEA or world-wide), the concentration will not significantly impede effective competition in the common market or in a substantial part of it.

IV. COMPETITIVE ASSESSMENT

A. Market Shares

29. The tables below show the parties' shares of the markets in those areas of two-way radios (LMR terminals) where their activities overlap and where the transaction would give rise to affected markets.

¹⁸ Waste Electrical and Electronic Equipment

¹⁹ Restriction Of the use of certain Hazardous Substances in electrical and electronic equipment

²⁰ European Telecommunications Standards Institute

LMR terminals: World-wide market shares

Table 1: LMR Terminals: Worldwide % Market Shares by Value					
Suppliers	All LMRs²¹	Consumer LMRs²²	Professional LMRs		Consumer and Local/On-Site LMRs
			All²³	Local/On-Site²⁴	
Motorola	[50-60]%	[0-10]%	[50-60]%	[50-60]%	[45-55]%
Vertex Standard	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	[50-60]%	[5-15]%	[55-65]%	[55-65]%	[50-60]%
Sepura	[0-5]%		[0-5]%	[0-5]%	[0-5]%
EADS	[0-5]%		[0-5]%	[0-5]%	[0-5]%
Kenwood	[5-15]%		[5-15]%	[10-20]%	[10-20]%
iCOM	[0-10]%		[0-10]%	[0-10]%	[0-10]%
M/A Com	[0-10]%		[0-10]%		[0-5]%
Giant		[40-50]%			[0-10]%
Midland		[5-15]%			[0-5]%
Uniden		[0-10]%			
Radio Shack		[0-5]%			[0-5]%
Audiovox		[0-5]%			[0-5]%
Selex					
HYT	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Teltronic					
Tait	[0-5]%		[0-5]%	[0-5]%	[0-5]%
Cleartone					
Kirisun					
Topcom		[0-5]%			[0-5]%
Cobra		[5-15]%			[0-5]%
CTE International					
Brondi		[0-5]%			[0-5]%
Binatone		[0-5]%			[0-5]%
Doro		[0-5]%			[0-5]%
Oregon					
Others					

30. On a worldwide level – including also non CE compliant products – the parties' combined share would be higher than at the EEA level. In particular, their combined share would be significant as regards all LMR terminals with [50-60]% ([0-5]% increment), as regards all Professional LMR terminals with [55-65]% ([0-5]% increment), as regards Professional local area LMR terminals with [55-65]% ([0-5]% increment) and as regards Professional local area LMR and Consumer LMR terminals together with [50-60]% ([0-5]% increment).

²¹ Source: Form CO Annex 7.3 p. 4.

²² Source: Form CO Annex 7.3 p. 11.

²³ Source: Form CO Annex 7.3 p. 7.

²⁴ Source: Form CO Annex 7.3 p. 16.

31. However, as only CE compliant products can be sold in the EEA, the impact of the transaction in the EEA is focused on these LMR terminals. The market shares below reflect the sales of CE compliant terminals in the EEA. Since, as demonstrated above, the technical standards within the EEA are the highest world wide regarding many aspects, it is likely that the production costs for CE compliant equipment is higher than for non CE compliant equipment. Most sales of CE compliant equipment, therefore, will be directed to the EEA. The EEA sales data hence are the best proxy for the world wide sales of CE compliant equipment, regardless of the geographical location of the supplier.

Market shares for CE compliant LMR terminals (sales in the EEA)

Table 2: CE compliant LMR Terminals: EEA % Market Shares by Value					
Suppliers	All LMRs²⁵	Consumer LMRs²⁶	Professional LMRs		Consumer and Local/On-Site LMRs
			All²⁷	Local/On-Site²⁸	
Motorola	[30-40]%	[25-35]%	[35-45]%	[40-50]%	[40-50]%
Vertex Standard	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	[35-45]%	[25-35]%	[35-45]%	[40-50]%	[40-50]%
Sepura	[10-20]%	-	[10-20]%	[0-10]%	[0-10]%
EADS	[10-20]%	-	[10-20]%	[0-5]%	[0-5]%
Kenwood	[5-15]%	-	[5-15]%	[10-20]%	[5-15]%
iCOM	[5-15]%	-	[5-15]%	[5-15]%	[5-15]%
Selex	[0-5]%	-	[0-5]%	[0-5]%	[0-5]%
HYT	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Teltronic	[0-5]%	-	[0-5]%	[0-5]%	[0-5]%
Tait	[0-5]%	-	[0-5]%	[0-5]%	[0-5]%
Cleartone	-	-	[0-5]%	-	-
Kirisun	-	-	[0-5]%	-	-
Topcom	-	[15-25]%	-	-	[0-5]%
Cobra	-	[5-15]%	-	-	[0-5]%
CTE International	-	[5-15]%	-	-	[0-5]%
Brondi	-	[0-10]%	-	-	[0-5]%
Binatone	-	[0-10]%	-	-	[0-5]%
Doro	-	[0-5]%	-	-	[0-5]%
Oregon	-	[0-5]%	-	-	[0-5]%
Others	-	-	-	-	-

32. The above table shows that post-merger, the combined entity would remain the market leader for CE compliant terminals in the EEA (with regard to the categories: all LMR terminals, Consumer LMR terminals, all Professional LMR terminals, local/on site Professional LMR terminals and Professional local area LMR and Consumer LMR terminals together).

²⁵ Source: Form CO pp. 38, 65.

²⁶ Source: notifying party submission of 7 December 2007 p. 2.

²⁷ Source: Form CO pp. 62, 66.

²⁸ Source: Form CO pp. 63, 66; notifying party submission of 7 December 2007, p 2.

33. On an overall market for all LMR terminals, post-merger, the parties' combined market share amounts to [35-45]% in terms of value, Vertex Standard representing an incremental market share of [0-5]%. On a product-by-product basis, as presented by the parties, their position would largely be the same in the supply of all Professional LMR terminals with a combined market share of [35-45]% (Motorola [35-45]%; Vertex Standard [0-5]%), somewhat weaker in the supply of Consumer LMR terminals with a combined market share of [25-35]% (Motorola [25-35]%; Vertex Standard [0-5]%) and somewhat stronger in the supply of Professional local/on-site LMR terminals with a combined market share of [40-50]% (Motorola [40-50]%; Vertex Standard [0-5]%). The parties' position on a hypothetical market for Professional local area LMR and Consumer LMR terminals, would be approximately equal to their position on Professional local/on-site LMR terminals with a combined EEA market share of [40-50]% (Motorola [40-50]%; Vertex Standard [0-5]%).

B. Assessment of Competitive Conditions

34. As seen above, Motorola is already the clear market leader in most markets for LMR terminals. Due to Vertex Standard's limited presence in all the relevant markets the merger will not significantly change the current situation, neither EEA nor on a global level. Indeed, Vertex only represents an addition of market share that ranges from [0-5]% to [0-5]% of the relevant EEA market. Moreover, Vertex Standard's market shares for CE compliant LMR terminals within the EEA have been decreasing in recent years (see 46 below).

35. It is worth reiterating that as only CE compliant products can be sold in the EEA, non-EEA manufacturers make sure already at the design stage that their products are fully compliant with all EU requirements when they want to target and sell to EEA customers. This entails that, as regards CE compliant LMR terminals, regardless of the geographic scope of the markets at stake, EEA and non-EEA manufacturers compete for the same customers in the EEA.

36. The market investigation revealed that there is little concern among customers in relation to the merger. In particular, it appears that there is still a sufficient choice of LMR terminals manufacturers post-merger; that Vertex Standard's LMR terminals are not a close substitute of Motorola's and that there is a sufficient degree of buying power to ensure competitive conditions being offered to customers in these markets.

37. First of all, post-merger, a number of large, well-established multinational LMR terminals manufacturers would remain, including iCOM, Kenwood, EADS, Sepura, as well as a number of local LMR terminals manufacturers, such as Selex and Teltronic.

38. Many of these competitors, such as EADS, Selex and Kenwood, are very large companies with the means to devote significant resources to their LMR business. Moreover, competing manufacturers, in some cases including smaller "fringe" players, are teaming together to become more competitive. For instance, in March 2007, Kenwood, iCOM and several smaller LMR suppliers (Fylde Micro, CTE International and CML Microcircuits) entered into an agreement to jointly support and promote the dPMR standard and further develop this digital protocol.

39. There do not appear to be significant barriers that prevent manufacturers that already sell LMR terminals in Europe from increasing their output. Moreover, the parties submit

that a number of manufacturers that currently sell Professional LMR terminals for wide-area networks, such as Matsushita, Hitachi, Mitsubishi and Toshiba, could easily enter the market for Professional LMR terminals for local/on-site networks or increase their presence in this market if, for whatever reason, it were to become less competitive. These companies have substantial resources, know-how and brand recognition that would allow them to become significant players in Professional LMR terminals for local/on-site networks. The same applies to certain Consumer LMR terminals manufacturers, such as Uniden, which once sold Professional LMR terminals for local/on-site networks and thus could easily re-enter this market; Giant, the world's leading supplier of Consumer LMR terminals; and Midland and Cobra, the world's second and third largest suppliers of Consumer LMR terminals.

40. The parties also argue that Motorola and Vertex Standard face stiff competition from up-and-coming recent market entrants, especially Asian manufacturers, such as HYT, Kirsun and Unier, which mainly offer low-priced alternatives for the lower end LMR terminals of Motorola and Vertex Standard. According to the parties, barriers to entry are low with a number of possibilities to outsource the design and manufacturing process to third party manufacturers.
41. The market investigation confirmed that a number of companies (in particular from Asia) have recently entered the market, both with regard to professional wide area LMR terminals (e.g., Teltronic, Sepura, Selex, FWK, Unimo, HYT), Professional local area LMR terminals (e.g., Kirsun, HYT, Eneas, e-tech) and Consumer LMR terminals (e.g., SPC Telecom, Alan, Binatone, Brondi, Carrefour, Decathlon).
42. Secondly, Motorola and Vertex Standard's LMR terminals are not each other's closest substitutes. Motorola tends to focus on the mid to high tier (i.e., Professional LMR terminals for wide-area networks and the more sophisticated Professional LMR terminals for local-area networks), whereas Vertex Standard focuses on lower, entry level tier. Indeed, the parties claim that one of Motorola's key rationales for acquiring Vertex Standard is to fill gaps in its current (analogue) product range.
43. This claim is supported inter alia by the fact that Motorola estimates that it currently devotes approximately [70-80]% of its R&D in the area of Professional LMR terminals for local/on-site networks to digital solutions (see above under relevant product market). By contrast, Vertex Standard has indicated that the vast majority of its R&D spending in Professional LMR terminals for local/on-site networks is focused on analogue technology. The difference in focus between Motorola and Vertex Standard is further illustrated by the fact that, in the past 24 months, Motorola has introduced some 38 new models of Professional LMR terminals for local/on-site networks, of which all but 4 were based on digital technology. By contrast, the clear majority of the new models Vertex Standard has introduced in recent years have been based on analogue technology.
44. Within Professional LMR terminals for local/on-site networks, the parties claim that Motorola's main competition comes from suppliers such as Kenwood and iCOM, not Vertex Standard. This is because Kenwood and iCOM tend to compete to a greater extent than Vertex Standard in the mid to high tier of Professional LMR terminals for local/on-site networks. This is reflected in their average prices, which are significantly higher than those of companies such as Vertex Standard, HYT, etc., which mainly

populate the lower tier. Indeed, it is estimated that while Vertex Standard's average price worldwide for Professional LMR terminals for local/on-site networks is around € [...] /unit, and even lower for some of its best selling models, the average price for each of Motorola, iCOM and Kenwood for Professional LMR terminals for local/on-site networks is well above \$ [...] /unit. The high market shares of Motorola in value across the board of the LMR spectrum would be inter alia explained to a large extent by the fact that Motorola's products have higher prices than (inter alia) those of Vertex.

45. The view of the parties has, by and large, been confirmed by the market investigation. Motorola and Vertex are seen to compete with each other, in particular in professional LMR terminals. However, the market investigation indicates that they are not each others' closest substitutes. Motorola's strong brand name is considered a competitive advantage, in a market where brand is important. Motorola is recognised rather as high tier and Vertex as low. Motorola's portfolio of professional high-end radios is seen rather to be complemented with Vertex mid-and-low end radios.
46. There are no indications in the market investigation, either, that Vertex Standard would be an aggressive player in the LMR terminals market. According to the parties, Vertex Standard's market share has declined slightly since 2004 for all LMR terminals in the EEA (from [0-5]% in 2004 to [0-5]% in 2006 (based on value)), for all Professional LMR terminals (from [0-5]% in 2004 to [0-5]% in 2006 (based on value)) and for Professional LMR terminals for local/on-site (from [0-5]% in 2004 to [0-5]% in 2006 (based on value)). Also the parties claim that Motorola has lost market shares in the past three years; from [40-50]% in 2004 to [30-40]% in 2006 with regard to Professional LMR terminals and from [45-55]% to [40-50]% with regard to Professional LMR for local/on-site networks. By contrast, according to the parties, the Chinese company HYT, despite just recently entering the European market, has managed to achieve a market share equal to or greater than that of Vertex Standard (including in professional local area LMR terminals).
47. Thirdly, both in their direct sales to end-customers (mostly of Professional LMR terminals for use in wide-area networks) and in their sales to distributors (mostly of Consumer LMR terminals and Professional LMR terminals for use in local/on-site networks), the parties argue that LMR terminals manufacturers face powerful customers that exert considerable buying power. According to the parties, important discounts, frequently as high as [...] % off list price, sometimes even more, show that large distributors have a strong bargaining position vis-à-vis suppliers of Professional LMR terminals, in particular of Professional LMR terminals for local/on-site networks.
48. Moreover, as distribution agreements for LMR terminals are mostly non-exclusive, the parties submit that nothing prevents a distributor from switching suppliers (in whole or in part). For example, in 2002, US distributor Bearcom focused its distribution efforts on iCOM Professional LMR terminals for local/on-site networks and, as a direct result, substantially reduced its purchases of these products from Motorola. According to the parties, in Europe alone, there are many significant distributors that have taken a decision not to carry Motorola's Professional LMR terminals for local/on-site networks and to instead carry competing brands, e.g., Amcom (Benelux), Marcucci (Italy), Orga (Turkey), Swedish Radio Supply (Sweden), Sysoco (France), Teletekno (Finland) and Thicom (Germany).

49. The market investigation indicates that in particular distributors of Professional LMR terminals consider themselves as having certain negotiating power vis-à-vis the manufacturers. The market investigation showed that these are often large distributors, active in regions covering one or several Member States.
50. Based on the above, the transaction does not bring about any significant impediment to effective competition in the provision of LMR terminals.

V. CONCLUSION

51. 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