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***Case No IV/M.1095 -
NEC / BULL / PBN***

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

Article 6(1)(a) INAPPLICABILITY
Date: 006/02/1998

*Also available in the CELEX database
Document No 398M1095*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06.02.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(a) DECISION

To the notifying parties:

Dear Sirs,

Subject : Case No IV/M.1095 - NEC/BULL/PBN

Notification of 06.01.1998 pursuant to Article 4 of Council Regulation N° 4064/89

1. On 6 January 1998 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ("the Merger Regulation") by which the undertakings NEC Corporation ("NEC") and Compagnie des Machines Bull ("Bull") would, according to the parties, acquire joint control of the undertaking Packard Bell NEC Inc. ("PBN"), within the meaning of Article 3(1)(b) of the Council Regulation. After examination of the notification, the Commission has concluded that the notified operation does not fall within the scope of application of the Merger Regulation.

I THE PARTIES

2. NEC, Bull and PBN are all active in the manufacturing and in the distribution of computers.

II THE OPERATION

3. The notified operation continues investments of Bull and NEC in PBN which started respectively in 1993 and 1995. At the time PBN was called Packard Bell Electronics Inc. ("PB"). To complete the joint image Packard Bell's name was changed to PBN. The current structure of PBN shows three different groups of shareholders: on the one hand, there are four PB/PBN founders holding together 59,7% of the voting capital, on the other hand, NEC and Bull hold respectively 20,6% and 19,6 % of the voting capital. The acquisition of these participations by NEC and Bull in the past has been

considered by the services of the Commission falling outside the scope of the Merger Regulation.

4. The current proposed operation involves an increase of NEC's shareholding in PBN's voting capital to 49,0% in recognition of financial support brought to PBN. Hence, Bull's share will decrease to 12,6% and the founders' share will decrease to 38,4%.

III ABSENCE OF CONCENTRATION

ABSENCE OF JOINT CONTROL

5. The notifying parties state that NEC and Bull will acquire joint control over PBN which, in their opinion, is currently solely controlled by the founders. After the transaction, NEC will have the power to appoint three members of the Board; Bull two members; and the founders the remaining four. According to the parties, Nec and Bull, both having long term common interests as external investors in PBN, should be treated for the purposes of this notification as voting in concert on the Board of Directors and also as shareholders in General Meetings. However, the concerted voting in the future by NEC and Bull is a pure assumption by the notifying parties which is not sufficient, in the absence of stronger legal or factual elements, to prove the existence of a situation of joint control within PBN.

IV CONCLUSION

6. For the above reasons the Commission concludes that the notified operation does not constitute a concentration within the meaning of Article 3 (1) (b) of the Merger Regulation and consequently does not fall within the scope of this Regulation. This decision is adopted in application of Article 6 (1) (a) of the Merger Regulation.
7. The Commission will treat the notification as an application for negative clearance from, or a notification to obtain an exemption from Article 85 of the Treaty of Rome as requested by the parties in their notification.

For the Commission,