

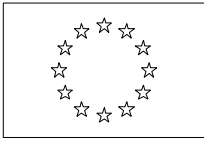
***Case No IV/M.1226 -
GEC / GPTH***

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

Article 6(1)(b) NON-OPPOSITION
Date: 27/07/1998

*Also available in the CELEX database
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.07.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject: Case No IV/M.1226-GEC/GPTH

Notification of 25.06.1998 pursuant to Article 4 of Council Regulation No 4064/89.

1. On 25.06.1998 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ by which the General Electric Company ("GEC") acquire, within the meaning of Article 3 (1) (b) of Council Regulation 4064/89, control of the whole of GPT Holdings Limited ("GPTH").
2. After examination of the notification the Commission has concluded that the notified operation falls within the scope of application of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market or with the functioning of the EEA agreement.

¹ OJ L 395, 30.12.1989 p. 1; corrected version OJ L 257 of 21.9.1990, p. 13, as last amended by Regulation (EC) No 1310/97, OJ L 180, 9.7.1997, p. 1, corrigendum in OJ L 40, 13.2.1998, p. 17.

I. THE PARTIES AND THE OPERATION

3. GEC is an international group with activities in the following fields: electronic systems and defence, telecommunications and information technology, consumer goods, electronic metrology, inkjet printing, medical equipment and industrial apparatus. GEC is publicly quoted on the London Stock Exchange.
4. GEC carries out its telecommunications activities through its holding in GPT Holdings Limited (**GPTH**), and through its wholly-owned subsidiaries Marconi S.p.A. (Italy) and GEC Marconi Communications Limited.
5. GPTH is a UK company. It is the holding company of the GPT Group (**GPT**). 60% of the shares in GPTH are held by GEC and 40% are held by a wholly owned subsidiary of Siemens AG (**Siemens**).
6. GPT is principally engaged in the design, development, manufacture and marketing of telecommunications equipment and systems. More particularly, it manufactures and sells transmission equipment and public switching equipment. GPT sells telecommunications systems in many countries including Australia, Russia, Italy, France, Sweden, Belgium, Czech Republic, Portugal, North Korea and China.
7. GEC will be acquiring the entire share capital of GPTH not already owned by it.

II. THE CONCENTRATION

8. GPTH is currently jointly controlled by GEC (which holds 60% of its share capital) and Siemens (a wholly owned subsidiary of which holds the remaining 40%). The GPTH Shareholders' Agreement dated 9 March 1990 (the **GPTH Agreement**) requires joint shareholder approval over a number of key matters including approval of the business plan, budget and any material change in the nature or scope of the business.
9. The acquisition by GEC of Siemens' 40% shareholding in GPTH will result in a change of control of GPTH from joint control to sole control by GEC (the **Acquisition**). The operation is a concentration according to Article 3 (1) (b) of the Merger Regulation.

III. COMMUNITY DIMENSION

10. GEC and GPTH have a combined aggregate world-wide turnover in excess of ECU 5,000 million (GEC: ECU [...]²; GPTH: [...]³. The Community-wide turnover of each of GEC and GPTH exceeds 250 million (GEC:[...]⁴; GPTH:[...]⁵). GPTH realises more than two-thirds of its Community-wide turnover in the UK. GEC did

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not realise more than two-thirds of its Community-wide turnover in any one Member State. The concentration therefore has a community dimension.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. RELEVANT PRODUCT/GEOGRAPHIC MARKET

11. The concentration is in the field of the manufacture and sale of public telecommunications equipment (including transmission and public switching equipment) in the EEA and world-wide.
12. The notifying party present in its notification two distinct markets: the market for transmission equipment and the public switching market.

a) Transmission equipment

13. The function of telecommunications transmission equipment is to enable network operators to send telecommunications signals (either voice or data) from a specified source to a specified destination with maximum efficiency, reliability and control. Analogue transmission systems have been progressively replaced over the last years by digital transmission technology. The PDH standard for transmission is now largely being replaced by the new SDH standard. The principal advantage of SDH is that it offers a common standard for multi-vendor interworking and greatly enhanced network management under software control.
14. GEC considers that the relevant geographic market for the assessment of the proposed concentration is at least the EEA, if not the world. GEC' contention is based on liberalisation, the application of the public procurement directives, increased standardisation and a number of other factors such as comparison in the prices of transmission equipment between the EEA States; transport costs within the EEA, trade flows in the EEA. and imports/exports of transmission equipment into and from the EEA.
15. For the purpose of the present assessment, however, the precise scope of the relevant product and geographic market can be left open since, in any event, the concentration will not lead to the creation or strengthening of a dominant position which could significantly impede effective competition in the Community or in the EEA or any substantial part of it.

b) Public switching

16. Public switching systems allow the interconnection of services; switched services include voice, data, video and text. As with transmission equipment, public switching equipment based on analogue technology is being gradually replaced by digital based switching equipment, with new extensions to telecommunications networks in the digital standard.
17. GEC considers that the relevant geographic market for the manufacture and sale of public switching equipment is at least the EEA, if not the world. In addition to liberalisation , GEC outlines the importance of the introduction of ATM switching technology and the significance of trade flows in the EEA, imports of switching equipment into the EEA and exports by EEA-based suppliers to third countries.

18. For the purpose of the present assessment, however, the precise scope of the relevant product and geographic market can be left open since, in any event, the concentration will not lead to the creation or strengthening of a dominant position which could significantly impede effective competition in the Community or in the EEA or any substantial part of it.

B. ASSESSMENT

19. Irrespective of the product/geographic market definition there will be no increase in GEC/GPTH's share of any telecommunications market. In any case, the present transaction can not increase GPT's potential to strengthen its position in the market. Furthermore, Siemens' exit from GPTH will release another strong competitor in particular in the UK where Siemens has an established UK business. This view has been confirmed by the competitors, customers and suppliers contacted by the Commission. In addition, there is significant competition from Alcatel, Ericsson, Nortel and other major equipment manufacturers.
20. Therefore, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the Community or in the EEA or in any substantial part of that area.

V. ANCILLARY RESTRICTIONS

21. The parties have in their notification identified the following possible ancillary restrictions in the Share Purchase Agreement:

• a) *Clause 4.1 (pre-completion undertakings).*

22. The pre-completion provisions are standard commercial undertakings aimed to ensure that the full value of the transferred business is maintained. To the extent that these standard commercial undertakings can be viewed as restrictions, they are ancillary, being necessary pre-completion provisions to ensure that the values of the relevant businesses are maintained pending completion of the transaction.

• b) *Clause 6.4 (transfer restrictions):*

23. For two years following completion GEC is precluded, without Siemens' consent, from (directly or indirectly) selling, assigning, transferring or disposing any shares in GPTH (or any holding company of GPTH) to any international manufacturer of a broad range of telecommunications equipment which competes with Siemens. This restriction ensures that another competitor of Siemens should not immediately gain control of GPT, therefore benefiting from a business and technology that Siemens helped to create, either as a potential competitor of Siemens or otherwise.
24. GEC refers to point IV.4 of the Commission's Notice on ancillary restrictions to justify this restriction as ancillary and necessary to the concentration. However, the above-mentioned point of the Notice relates to the evaluation of ancillary restrictions in the case of a joint acquisition. However, Clause 6.4 would amount to a non-compete clause which benefits the vendor. Normally these prohibitions of competition are imposed on the vendor and could be justified in order to guarantee the transfer to the acquirer of the full value of the assets transferred. On the contrary, Point III.A.6 of the Commission's Notice sets out that any protection of the vendor is not normally an ancillary restriction and is therefore to be examined under Article

85 and 86 of the EEC Treaty. The Commission considers that the notifying party has not sufficiently justified how the restriction to compete imposed upon GEC should be regarded as necessary to the implementation of the concentration. Therefore, clause 6.4 is not covered by the present decision.

• c) *Clause 6.8 (Cosmic Challenge)*:

25. For a better understanding of this Clause it has to be explained first that BT is intending to place a major contract with GPT for SDH equipment with Siemens as the principal sub-contractor. To this end, in 1997 BT issued two invitations to tender for the manufacture and supply of ATM and Switched Multimegabit Data Service (SMDS) equipment. In order to fulfil any contractual commitments entered into with BT for products included in these tenders, during a limited transitional period [...] ⁶ following completion of the Acquisition GEC and Siemens have agreed in Clause 6.8 that Siemens will only supply these products to BT through supply sub-contracts with GPT and GPT will only purchase (for the purposes of meeting any such contractual commitments with BT) products manufactured by Siemens. [...] ⁷
26. GEC argues that this arrangement ensures that GPT's most important customer, BT, continues to receive its supply of products without any disruption resulting from the Acquisition.
27. The Commission considers that these provisions are necessary to ensure that the division of businesses between GEC and Siemens takes place under reasonable conditions and during an orderly transition period. In the absence of these provisions, neither GEC nor Siemens could be guaranteed the full value of the transferred businesses. These provisions do not exceed in scope and duration what the implementation of the Acquisition reasonably requires. Insofar that these provisions can be viewed as restrictions, they are directly related and necessary to the implementation of the concentration.

VI. CONCLUSION

28. The Commission decides not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6 (1) (b) of Council Regulation N°4064/89.

For the Commission,

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