

EN

*Case No IV/M.129 -
DIGITAL / PHILIPS*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 02.09.1991

*Also available in the CELEX database
Document No 391M0129*



PUBLIC VERSION

MERGER PROCEDURE -
ARTICLE 6(1)b decision

Registered with advice of delivery

To the notifying party

Dear Sirs,

Subject: Case no. IV/M129 - DIGITAL/PHILIPS
Notification of 30.7.1991 pursuant to Article 4 of
Council Regulation No. 4064/89.

1. On 22.7.1991, Digital Equipment International Limited (DEIL), a wholly owned subsidiary of Digital Equipment Corporation (DEC), and Philips Electronics N.V. (Philips) entered into an agreement, according to which DEIL will acquire most of the activities of Philips' Information Systems Division (ISD), including certain related assets and liabilities.
2. After examination of the notification, the Commission has concluded that the notified transaction falls within the scope of Council Regulation No. 4064/89 (Merger Regulation) and does not raise serious doubts as to its compatibility with the common market.

I. COMMUNITY DIMENSION

3. The notified transaction has a Community dimension. The aggregate worldwide turnover and the respective Community-wide turnover of DEC and of the parts of Philips' ISD which are the object of the transaction⁽¹⁾ exceed the thresholds in Article 1(2) of the Merger Regulation. The worldwide turnover of the DEC Group for the financial year ending 30.6.1990 was 10.583 million ECU and of the ISD activities to be transferred for the year ending 31.12.1990 was

⁽¹⁾ Article 5(2) of the Merger Regulation.

[deleted] million ECU. The Community-wide turnover of both parties was above 250 million ECU, and the parties did not achieve two thirds or more of their Community-wide turnover in one and the same Member State.

II. CONCENTRATION

4. Philips and DEIL have agreed, respectively, to sell and buy the ISD business described below and to implement the proposed transaction at the latest on 31.12.1991. The transaction has been approved by the Board of Management and the Supervisory Board of Philips and the Management Board of Digital.
5. Upon completion of the proposed transaction, DEIL will be acquiring control of parts of the ISD business within the meaning of Article 3(1)(b) of the Merger Regulation by ownership and/or right to use and manage all of the activities and related assets and liabilities which will be transferred from Philips ISD to DEIL.

III. THE PARTIES

6. The DEC Group's line of products ranges from personal computers (PC's) to mainframe systems, each supported by software. Its principal business activities are the design, manufacture, sale and service of networked computer systems, associated peripheral equipment and related network, communication and software products.
7. Philips is one of the world's largest electronic companies and develops, manufactures and sells, inter alia, lighting, consumer electronics, components, semi-conductors, PC's and communication systems.

The principal activities of Philips' ISD, which are the object of the proposed transaction, are the marketing of small and medium-sized computers, financial workstations and peripherals for these machines as well as for such automatic teller machines (ATM's) which are produced by third parties, but distributed by ISD. Also included in the proposed transaction are ISD's development and licensing activities of software applications and manufacturing and development activities of peripherals in Sweden, as well as its hardware maintenance service.

Excluded from the transaction are the following ISD activities: the development, production, marketing and after-sales service of smart card products and dictation equipment and all ISD real estate and manufacturing activities and other liabilities and assets related thereto with the exception of those located in Sweden.

Philips' PC activities have been transferred to another division within the organisation and are, therefore, not covered by the pro-posed transaction.

VI. COMPATIBILITY WITH THE COMMON MARKET

The relevant markets

8. The main impact of the concentration on competition will be with the following products and services which must be analysed separately:
- small multi-user computers;
 - medium sized multi-user computers;
 - financial workstations;
 - software products;
 - hardware maintenance services.
9. According to the notifying party, small and medium sized computers as well as workstations can be defined and differentiated from each other as follows:
- Small and medium sized computers are both general purpose computer systems and can support more than two terminals. They are differentiated almost exclusively by price. For example, small computers may cost up to \$ 100,000, whereas medium sized computers are priced within the range of \$ 100,000 and \$ 1,000,000;
 - Workstations have emerged as a distinct product group out of PCs and small multi-user computers. They can be described as high performance PCs operating with industry standard software and very often supporting more than one terminal. Workstations were originally designed for technical applications. Nowadays they are also designed for commercial applications in the distribution and utilities industries (retail workstations) as well as in banking and other financial services (financial workstations).

The Commission sees no reason not to accept this definition for the purpose of the present decision.

10. The definition of the geographical reference market can be left open, since even on the basis of national markets the market shares of the parties do not indicate that the proposed concentration could lead to the creation or strengthening of a dominant position significantly impeding competition.

The market position of the parties

11. DEC is one of the world's largest suppliers of networked computer systems, software and related services. Its market position has been assessed by the Commission in the context of the concentration with Kienzle²⁾, which affected in particular small and medium sized computers and workstation markets. DEC has since acquired the maintenance activities and related personnel of C.S.C. NV/SA (Belgium). Basically, the Digital Group remains more or less the same. In comparison with DEC, Philips' ISD is a relatively small vendor. Its turnover amounts to approximately [deleted]*) of the turnover of DEC.

²⁾ See Commission Decision, 22.2.1991, Digital/Kienzle.

^{*)} Between 5% and 10%.

12. For the following reasons the proposed concentration will not lead to the creation or strengthening of a dominant position significantly impeding competition in any of the 5 product markets under consideration:

a) Small multi-user computers

13. As a result of the proposed concentration, DEC's share of this market will increase to about 18% on a Community level. In three Member States, its market share will increase to more than 20%, namely in the Netherlands (from 17,5% to 26,4%), in Belgium (from 15,2% to 22,5%) and in Germany (from 14,8% to 21,3%). DEC will take the first place on this market ahead of IBM and Siemens/Nixdorf, the shares of which are respectively about 15% and 13%. A number of other major undertakings are also present in this market such as Unisys, Bull and AT&T/NCR.

14. Although DEC will become the market leader, there are several other strong players present in the market. Moreover, most of the proprietary product lines of Philips/ISD - with the exception of Megadoc - have arrived at their life-end and will be gradually phased out.

b) Medium sized multi-user computers

15. With a Community market share of 16,5%, DEC is second to IBM, the share of which is about 20%. There are a number of other competitors on this market, such as Bull, Unisys, Siemens/Nixdorf and Fujitsu/ICL.

16. The proposed concentration will not change the position of DEC on this market. Philips' ISD's market share is insignificant through-out the Community.

c) Financial workstations

17. The workstations market is a fairly new, developing market which shows a high annual growth rate (more than 30%). DEC which is one of the three leading players on this market (together with Hewlett Packard and Sun Microsystems) has had an average market share in the last three years of 22%.

18. High market shares on high growth markets involving modern technology are not extraordinary, and they do not necessarily indicate market power. In fact the development of the market shares of the three leading companies over a period of time shows the dynamic nature of this market. There has been constant change including a change of market leadership.

19. By acquiring Philips' ISD, DEC acquires a minor player in the financial workstations market. The increase of market share will be insignificant. Philips' ISD is selling financial workstations such as banking terminals and ATMs, the latter being bought from [deletede]**).

**) [from a third party supplier].

20. With ATMs, Philips' ISD has achieved in market shares of $\pm 20\%$ in four Member States (Belgium, Ireland, Netherlands and UK). The agreement with [deleted]***) was, however, terminated on July 1, 1991, and the rights pursuant to the agreement expire for ATMs on July 1, 1992, and for spare parts on July 1, 1999. Therefore, Philips' ISD has no longer a developing presence on this particular market. Moreover, DEC does not distribute ATM products.
21. Philips' ISD sells banking terminals which have been recently developed. DEC does not today offer retail banking products to any significant extent, but distributes the larger back office systems. The economic advantages resulting for DEC from this vertical aspect of the concentration are nevertheless unlikely to have a significant effect on competition, because the share of the parties' activities in these markets is limited.

d) Software products

22. Until recently Philips' ISD has had proprietary products running on its own operating systems. The most recent generations of its computers have started to move away from these. The Philips' ISD application software has been designed for these proprietary products. There is therefore no major overlapping in Philips' and DEC's activities in this field. The main software products of Philips' ISD are automation application for vertical sectors such as, inter alia, banking, printing and hotels, or horizontal sectors like accounting and document handling, whilst DEC is essentially present in the engineering and research fields in which DEC benefits from numerous applications developed by users.
23. In view of the above and on the basis of the information currently available to the Commission concerning these markets, the potential benefits to DEC resulting from the proposed concentration are not significant.

e) Hardware maintenance services

24. It is not necessary in the circumstances to define whether specific markets exist for the different types of hardware maintenance services. The notified concentration will lead to a limited increase of market shares. Philips' ISD is a small player with a share below 3% of the overall market. DEC will become second on this overall market with a share of 11%, representing half of the market share of IBM.

V. ANCILLARY RESTRICTIONS

25. Section VII of the agreement contains a non-competition clause which prohibits Philips to compete for 5 years in the field of those ISD businesses to be transferred under the proposed trans-action, whereby DEIL ensures that Philips cannot re-enter the product markets before DEIL has had a chance to gain the loyalty of the customers and to exploit

***) [from a third party supplier]

the transferred know-how. In these circumstances, the Commission finds the non-competition clause to be directly related and necessary to the implementation of the transaction, and therefore covered by the present decision.

26. The same applies to the supply agreements which are foreseen in the agreement, Section IV. According to DEIL, these agreements concern certain ISD computer series covered by the transaction, their add-ons and spare parts, the manufacturing facilities of which are not included in the transaction (Small and medium sized computers: P 4000, P 6000, P 7000, P 9000 and the [deleted]). The agreements are necessary to enable DEIL to supply the acquired customer base with additions and spare parts, until the products are phased out whereafter it can supply DEC equipment. The duration of these supply agreements will be directly linked to the phasing out of these products. According to the information available to the Commission, it is expected that Philips will phase out the computer and [deleted] manufacturing activities by the end of 1992.

VI. FINAL ASSESSMENT

27. Based upon the above findings, the Commission has come to the conclusion that the proposed transaction does not create or strengthen a dominant position which raises serious doubts as to its compatibility with the common market.

*
* *
*

For the above reasons, the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission