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*Case No IV/M.133 -
ERICSSON / KOLBE*

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

Article 6(1)(b) NON-OPPOSITION
Date: 22.01.1992

*Also available in the CELEX database
Document No 392M0133*

PUBLIC VERSION

MERGER PROCEDURE -
ARTICLE 6(1)b DECISION

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To the notifying parties

Dear Sirs,

Re. : Case No IV/M.133 Ericsson / Kolbe
Your notification pursuant to Article 4 of Council
Regulation No 4064/89 (Merger Regulation)

1. The proposed operation, notified on the 12th December 1991, concerns a joint venture (JVC) between a Swedish company, Telefonaktiebolaget LM Ericsson AB (Ericsson), and a German company, Hans Kolbe & Co. (HK).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation, and that it does not raise serious doubts as to its compatibility with the common market.

The Parties and the Operation

3. Ericsson and HK propose to form a joint venture (JVC), Ericsson Fuba Telekom GmbH. Ericsson is a major manufacturer of telecommunications equipment, producing mainly systems and products for wired and mobile communications in private and public networks. HK produces mainly radio and television broadcast equipment and is also a wholesaler of related electronic products. The JVC will mainly be engaged in the field of public digital transmission, especially digital cross-connect (DXC) technology, in the Federal Republic of Germany.
4. HK will transfer to the new company all of its fixed assets and inventory relating to its digital transmission systems and equipment business. Additionally, all of its intangible assets associated with that business, such as trademarks, trade names, patents, human resources and know-how, will be transferred to the JVC.
5. Ericsson will not transfer any assets to the JVC. Ericsson will acquire a 51 % stake in the new company and the balance will be held by HK.

I. COMMUNITY DIMENSION

6. The operation has a Community dimension. The worldwide turnover of the two undertakings concerned, Ericsson and HK, amounts in their respective last financial year, to Ecu 6,145 million and to Ecu 294 million.

The aggregate Community-wide turnover of Ericsson and HK is Ecu 2,541 million and Ecu 264 million respectively. They do not achieve more than two-thirds of their Community turnover in one and the same Member State.

II. CONCENTRATION

Joint control

7. The joint venture agreement between the parties provides for joint control in the sense that the agreement of both parents is required in respect of fundamental decisions, regarding the structure and the management of the JVC.
8. The JVC agreement provides that unanimity is required in the shareholder's meeting for the adoption of decisions, inter alia, relating to any budget (including investment and financial plans and cashflow forecasting), conclusion of licence agreements with major third competitors, and guidelines for the General Manager(s).

Full function JV

9. The JVC will continue HK's activities in the area of public digital transmission equipment. In addition, it will be engaged in the adaptation of Ericsson transmission equipment for the German market, and in R&D on assignment from Ericsson.

HK will withdraw permanently from the production of digital transmission equipment and will in essence retain a financial interest in the JVC. Ericsson will remain active in digital transmission technology as part of its worldwide telecommunication activities.

10. The newly formed company is a joint venture that will perform on a lasting basis all the functions of an autonomous economic entity.

This follows already from the fact that the JVC will carry on HK's former activities in the field of digital transmission equipment. The assets transferred to the JV enable it to carry on a viable economic activity in a manner functionally distinct from its parents.

The eventual licensing of the JVC's industrial property rights to Ericsson, for use for any purpose including manufacturing outside of Germany, demonstrates the capability of the JVC in generating its own technologies and know-how. The presence of HK as shareholder in the JVC guarantees the transparency of the pricing of the JVC's products sold either to Ericsson or via Ericsson to third parties, which contributes to the financial independence of the JVC.

Absence of risk of coordination

11. HK will not retain any activities in the field of digital transmission equipment systems after the transfer of this business to the JVC. HK's divestiture of its know-how and experience relating to digital transmission will preclude it from re-entering this market. Given the significant financial resources necessary to undertake the relevant research and development to be an effective competitor in this area, it would be commercially unreasonable for HK to abandon the technological advantages that it now holds and to re-enter the market later when the technology is further developed. HK's primary area of expertise is broadcasting and receiving equipment and not digital transmission or telecommunications.
12. Ericsson will remain a competitor of the JVC as Ericsson will not withdraw from the transmission markets and will continue to take part in the Flexnode-project, having overall responsibility for the consortium (see paragraphs 17 and 18 where DXC systems and the Flexnode-project are explained). Ericsson and the JVC have developed digital cross-connect systems which differ in technology and performance. Since Ericsson will supply the German Bundespost with "the DXC 4/1 Crossconnect System", whilst the JVC will supply the same customer with its "DXC 4/4 System", the competitive relationship between Ericsson and the JVC is likely to remain unchanged.
13. Furthermore, it appears that Ericsson will assume the overall industrial responsibility for the JVC, since HK's interest in the JVC will in fact become financial rather than commercial in nature over time.

In such circumstances it would appear that there is no room for the coordination of the competitive behaviour of undertakings which remain independent in the sense of Art. 3 (2) of the Regulation.

14. The other activities of Ericsson and HK do not overlap except for cellular telephones. Ericsson manufactures and distributes analog cellular telephone and terminal equipment, whereas HK only distributes these products. Their respective turnover is (*) and (**). HK, however, markets its products in Germany where Ericsson is not present. Since national standards for that kind of equipment still exist, it can be said that Ericsson and HK do not compete in the same geographic area as a result.

It is unlikely that the creation of this JVC will have any effect on Ericsson's decision whether or not to enter the German market in the future.

15. In view of the above, there are no grounds to believe that the establishment and operation of the JVC will result in a coordination of competitive behaviour.

Thus, the notified operation constitutes a concentration within the meaning of Article 3 of the Merger Regulation.

III. COMPATIBILITY WITH THE COMMON MARKET

Relevant Product Market

16. The JVC will develop and produce digital cross-connect (DXC) systems which are a new product in the area of telecommunications, more specifically in the line transmission sector.

17. Digital cross-connect transmissison is an emerging technology, still in a development stage, which enables network operators to optimize the use of the existing telecommunications infrastructure by looking for unused or under-used lines. DXC technology permits, from a remote central location, the engagement of those unused or underused lines in the transmission of telecommunication signals.

Optimization is especially important for the transmissison of significant amounts of data signals which occurs, for example, when data is transmitted for the remote printing of newspapers.

DXC technology also allows the automatic re-routing of signals if a communication is cut off due to failure. The current technology permits only re-routing via manual intervention by a network operator.

18. The Flexnode Consortium is one of the three consortia commissioned by the Deutsche Bundespost Telekom, through its project "Netzknoten 2000", to develop and supply digital cross-connect technology in Germany. It consists of Ericsson, HK and Deutsche Telefon Werke (DeTeWe).

The other two consortia are :

- Siemens and PKI (Philips Kommunikations-Industrie)
- Alcatel/SEL and ANT

(*) Business secrets - greater than Ecu 10 million

(**) Business secrets - below Ecu 10 million

Ericsson has the overall responsibility for the Flexnode contract under which the JVC will supply (replacing HK) the DXC 4/4 System, Ericsson the DXC 4/1 System and DeTeWe the DXC 1/0 System. These systems undertake eventually the same function but with different speeds : the HK's system has the highest transmission rate, DeTeWe's the lowest.

19. The notifying parties state that DXC transmission technology falls into the product market of line transmission technology systems and equipment as defined in the Alcatel/Telettra case.⁽¹⁾ They say that the line transmission sector may be further split up into multiplexing/demultiplexing equipment, digital cross-connect systems, fiber-optic transmission product, SDH/SONET broadband transmission products.
20. It can be left open whether the suggestion of the parties is correct, because even on the basis of a narrower product market definition, ie. DXC systems, the operation does not raise serious doubts.

Geographic Reference Market

21. Up to now, telecommunication markets in the EC have been largely fragmented into national markets. A process of liberalisation and deregulation of the telecommunications sector has been initiated in the framework of the achievement of the single market. The Commission's Directives on liberalisation of telecommunication services, on public procurement and on mutual recognition of terminal equipment, are examples of measures to open up national markets.

Although it is anticipated that in the medium term technical barriers will become less significant, the actual pace of change of the commercial policy of the network operators varies substantially from one Member State to another.⁽²⁾

22. The JVC has a significant impact on competition in the transmission markets in Germany, taking into account that the German Bundespost is the first telecommunications operator in Europe to equip its telecommunications network with DXC systems.

It can be left open whether Germany is the relevant geographic market, or whether the relevant geographic market is larger, because the proposed operation does not raise serious doubts on the basis of even a narrower geographic market definition.

Dominance

23. THE JVC will not create or strengthen a dominant position on the DXC market in Germany.

According to the figures supplied by the notifying parties the market for DXC in Germany is estimated at DM 2-3 billion over a five to six year period.

⁽¹⁾ Commission Decision of 12 April 1991, OJ L 122/48.

⁽²⁾ See Alcatel/Telettra above.

At present, market shares in the business of digital cross-connect transmission technology can only be based on the first contract awarded by the German Bundespost. The Flexnode Consortium received 1/3 of that amount which was split more or less evenly among the three participants.

Thus, even the combination of the market shares of Ericsson and the JVC would not lead to a market share that would indicate a dominant position in the DXC market in Germany.

24. In addition, the companies present in the other two consortia are strong players with the know-how and the necessary resources to guarantee an effective competitive environment in the DXC market in Germany. Potential competition from telecommunication equipment manufacturers such as AT&T, Northern Telecom/STC, Fujitsu and NEC is also very likely (the entry costs are estimated at between DM 200 and 300 million).

IV. ANCILLARY RESTRAINTS

25. The joint venture agreement contains a non-competition clause under which HK is prohibited from conducting, directly or indirectly, operations in competition with the business of the JVC, as long as HK is bound by the joint venture agreement, but in any event during a period of at least five years.

This non-competition clause is seen as a restriction directly related and necessary to the implementation of the concentration and therefore covered by this decision.

V. FINAL ASSESSMENT

26. Based on the above findings, the Commission has come to the conclusion that the proposed operation does not raise serious doubts as to its compatibility with the common market.

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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 Council Regulation No 4064/89.

For the Commission,