EN

Case No IV/M.1358 - PHILIPS / LUCENT TECHNOLOGIES (DECONCENTRATION)

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 06/01/1999

Also available in the CELEX database
Document No 399M1358

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06.01.1999

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sirs,

Subject: Case No IV/M.1358 - Philips/Lucent Technologies (II)
Notification of 25.11.1998 pursuant to Article 4 of Council Regulation (EEC) N° 4064/89

1. On 25 November 1998, the Commission received a notification of a proposed transaction pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the notifying undertaking Royal Philips Electronics N.V ("Philips"), has agreed with Lucent Technologies Inc. ("Lucent") to disengage from their world-wide joint venture Philips Consumer Communications L.P. "(PCC"), and that Philips re-acquire a majority of the joint venture's assets. Lucent holds a 40% share and Philips a 60% share in PCC.

I THE PARTIES' ACTIVITIES

2. Koninklijke Philips Electronics N.V. is the parent company of the Philips Group of companies. Philips is active in the areas of lighting, semiconductors and components, professional products and systems, consumer products and systems, and software and software services. Its Business Electronics division is also active in the field of corded and cordless PABX's (Private (Analogue) Branch Exchange) and related specific equipment, including in house phones.

3. Lucent builds, manufactures and delivers a wide range of public and private service network communications and telephone systems for both the consumer and business. Its consumer products unit manufactures, sells, services and leases communication products for consumer and small office use, including corded and cordless telephones, cellular telephones and answering machines.

Rue de la Loi 200, B-1049 Bruxelles/Wetstraat 200, B-1049 Brussel - Belgium
Telephone: exchange 299.11.11
Telex: COMEU B 21877. Telegraphic address: COMEUR Brussels.

4. PCC provides for the development, design, production, marketing, distribution, lease and sale of consumer communication terminal devices (consisting of corded, cordless and cellular telephones, answering machines and pagers). The Memorandum of Understanding for the creation of the joint venture was signed on 17 June 1997 and notified to the Commission on 14.07.1997. The creation of PCC was assessed under the Merger Regulation and authorised under Article 6(1)(b) of that Regulation by Commission decision of 20 August 1997.[1]

5. The commercial performance of PCC has since been disappointing for both parties. In less than a year, they decided that PCC was not able to maintain itself on the market. Philips claims that there was a decrease in PCC's market shares in [….]. On 21 October 1998, the parties decided to disengage from the joint venture, by signing the Disengagement Agreement Term Sheet ("Agreement") of the same date.

6. This decision by the parties was publicly announced on 22 October 1998. In accordance with this Agreement, the parties will both re-acquire the businesses that they originally contributed to the Joint Venture. They will also divide the assets obtained by the joint venture during its existence according to their shares in PCC. Accordingly, Philips will, through its subsidiary Philips Consumer Communications International B.V., re-acquire its wireless businesses, which is mainly GSM, its wired business outside North America and its paging and stand alone answering apparatus business. Philips will regain sole control over these and aims to re-integrate these operations in its other businesses and will thus reappear on the Western European market. Philips will also re-acquire its share of the joint assets of PCC (mainly liabilities and intellectual property rights).

7. In view of the exceptional nature of the case and in order to enable the parties to disengage from the joint venture without delay, the Commission by decision of 27.11.1998 granted a derogation from the obligation to suspend the operation, pursuant to Article 7(4) of Council Regulation (EEC) N° 4064/89.

8. According to information supplied by Philips, Lucent will re-acquire its US-based wired business and its wireless TDMA and CDMA (both terms referring to U.S. wireless technologies) business. Lucent has publicly announced that upon re-acquisition, they will either close or sell these businesses.

II THE OPERATION

9. The acquisition by Philips of its original business from the joint venture constitutes a concentration, within the meaning of Article 3 of the Merger Regulation, in that Philips acquires sole direct or indirect control over these assets, and thus over part of another undertaking.

III COMMUNITY DIMENSION

10. The notified concentration has a combined aggregate world-wide turnover in excess of ECU 5000 million (Philips: ECU 34.751 million, and the part of PCC to be acquired by Philips: ECU […]. Each of the parties has an aggregate Community-wide turnover in excess of ECU 250 million (Philips: ECU […] million and the part of PCC to be re-

---

[1] Case M. 966, OJ C 274, 10.09.1997, p. 7

acquired by Philips: ECU […] million). They do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension, meeting the thresholds of the Merger Regulation, as laid down in Article 1(2), and does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

IV COMPETITIVE ASSESSMENT

A. Relevant product markets

11. In its decision of 20 August 1997, the Commission stated that the relevant product market could consist of electronic consumer communication terminal devices, being corded, cordless and cellular telephones, answering machines and pagers. However it would appear possible that, given the different technologies employed in these products, their varying characteristics, prices and intended uses, they may form five different relevant product markets.

12. The Commission did not find it necessary to conclude whether the relevant product market was that of electronic consumer communication terminal devices or, instead, that of the five individual relevant product markets indicated above. Considering the short time that has passed since PCC started operating and the relatively insignificant changes of market conditions, there is no reason to alter this point of view. In addition, in all alternative market definitions considered, in the absence of horizontal overlaps between Philips and PCC on any of those product markets, competition would not be affected in the EEA or in any substantial part of that area.

B. Relevant geographic market

13. Philips submits that the relevant geographic market appears to be world-wide or, at least, Europe-wide. Although it is not possible to use any one product in all countries, because of differing technical standards, it is possible to identify certain regions where corded, cordless and cellular telephones, together with answering machines and pagers, may be employed without regard to national boundaries. Such is the case in Europe for analogue and digital cordless telephone technology. Similarly GSM cellular telephones may be used throughout Europe. Furthermore manufacturers, such as Philips market their products throughout the EEA, and some have gone as far as establishing a European-wide sales price structure.

14. For these reasons the geographic market would appear to be at least as wide as the EEA. However it is not necessary to conclude that this is the case because, in all alternative market definitions considered, effective competition would not be affected in the EEA or in any substantial part of that area.

C. Affected markets

Horizontal markets

15. The parties submit that there were no affected horizontal markets because of the fact that Philips does not currently produce or sell any of the joint venture’s products within the EEA territory. Philips would thus take over the joint venture’s market share within the EEA. In view of the above, it can be concluded that in none of the above mentioned

product markets, competition is affected by the re-acquisition by Philips of its business from the joint venture.

Vertical relationships

16. Philips is active in the areas of passive Liquid Crystal Displays ("LCD's") and LCD modules for the car and mobile telecommunications industry and of Integrated Circuits/Semiconductors ("IC's") used for telecommunications equipment, including telephones. For LCD's Philip's market share exceeds 25 % (approximately […] %) and may therefore constitute an affected market. However, the re-acquired business will be one of the intra-group purchasers of LCD's within the Philips group having a similar position as before the joint venture was entered into. In 1998 the PCC purchases of LCD's accounted for only […] % of Philips' sales (down from […] % in 1997). In addition, Philips claims that there are many suppliers active in this market and the proposed transaction is not likely to affect the position of these third party suppliers, nor that of customers, since it will not create any entry barriers to customers or suppliers.

17. In the sector of IC's, no substantial changes have occurred since the formation of PCC and the business to be re-acquired will be, as it was before, one of the many IC purchasers from Philips. Philips' EEA market share for IC's used in communication equipment is less than 25 % in 1997. Thus, there would be no vertically affected market for IC's.

18. Finally, there is an overlap in the field of PABX's; however Philips' market share being less than 25 % ([…] %), this does not constitute a vertically affected market either.

19. Given that the re-acquired business will be one of the intra-group purchasers of all of the above products within the Philips group and will have a similar position as before the joint venture was entered into, the Commission can conclude that as a result of the operation no vertically affected markets exist.

V CONCLUSION

20. 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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,