

***Case No COMP/M.1854 -  
EMERSON ELECTRIC /  
ERICSSON ENERGY  
SYSTEMS***

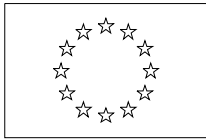
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**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 15/03/2000

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## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.03.2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 COMP/M.1854-Emerson Electric/Ericsson Energy Systems  
Notification of 14.02.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 14.02.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>1</sup> by which Emerson Electric Co ('Emerson') acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of Ericsson Energy Systems ('EES') from Ericsson AB ('Ericsson') by way of purchase of shares and assets.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

### I. THE PARTIES AND THE OPERATION

3. Emerson (U.S.A.) manufactures a broad range of products for process control, automation, air conditioning, and other applications. It has agreed to purchase EES from the Swedish telecommunications manufacturer Ericsson. EES manufactures energy systems for the telecommunications sector. It has factories in Sweden, and also in Latin America, the Far East and elsewhere, from which products are sold to telecommunications manufacturers and operators worldwide.

### II. CONCENTRATION

4. The operation is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation, since it consists in the acquisition by Emerson of EES.

### III. COMMUNITY DIMENSION

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<sup>1</sup> OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

5. The combined aggregate worldwide turnover of Emerson and EES exceeds EUR 5000 million<sup>2</sup>. Each of Emerson's and EES's 1998 EU-wide turnovers exceeded EUR 250 million but it was not the case that more than two thirds of the aggregate EU-wide turnover of both undertakings was achieved within one and the same Member State. The notified operation therefore has a Community dimension. It does not constitute a cooperation case under the EEA agreement.

#### IV. COMPETITIVE ASSESSMENT

6. Relevant product markets

The parties identify three relevant product markets:

Embedded power supplies: these are items such as AC/DC converters, which are sold to telecoms manufacturers for integration into the telecoms equipment itself.

Power systems: these are stand-alone systems, functionally similar to embedded systems, which are sold to telecoms operators.

Climate systems: these provide the refined temperature and humidity control required in telecoms or informatics operating installations.

The Commission's Article 11 investigation has confirmed that this product market definition is correct.

7. Relevant geographic market

The parties argue that the geographic markets for all three types of product are at least EEA wide, in view of the fact that manufacturers tend to locate their factories in a limited number of locations from which they ship their products throughout the EEA or the world, in view of significant intra-EEA trade flows, and in view of relatively low transport costs (less than 3% of product value). The Commission's Article 11 investigation has confirmed that the relevant geographic market for all three products is at least EEA-wide.

8. Assessment

Embedded power supplies: combined EEA shares are estimated at about [5-15%]. However about [75-100%] of EES's current production is consumed in-house by Ericsson; post-acquisition this production would be offered on the 'free' market to customers by Emerson and these customers would include Ericsson which would have the option to choose between Emerson and other suppliers. Thus the transaction would increase 'free' market supply.

Power systems: combined EEA shares are estimated at about [2-10%]. About [40-60%] of EES's current production is consumed in-house by Ericsson, so again the proposed transaction would increase 'free' market supply.

Climate systems: combined EEA shares are estimated at about [less than 40%], but the increment is small, i.e. Emerson about [less than 40%] plus EES less than [3%].

The EEA markets for the relevant products are relatively fragmented, but include strong competitors such as Lucent, Alcatel and Marconi. Customers include companies such as Vodaphone, Telefonica and Cable and Wireless, who should be able to exercise a significant degree of buying power. The Commission's Article 11 investigation has elicited no complaints about the proposed transaction from either competitors or customers.

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<sup>2</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

## 9. Conclusion

In light of the above information, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market and in the EEA or in a substantial part of it.

## V. ANCILLARY RESTRAINTS

10. The Transaction Agreement includes a clause that states that Ericsson will not, for a period of [not more than six years] after completion, participate in any business which competes with EES. The objective of the non-compete clause is to protect Emerson's legitimate interests in securing the full value of its investment, which, in addition to the acquisition of physical assets and intellectual property rights, also involves the transfer of substantial amounts of goodwill and know-how. Accordingly this clause is directly related to and indispensable to the implementation of the concentration.

The Transfer Agreement also contains an undertaking from Ericsson for an initial period of [not more than five years] years from completion of the transaction, to purchase from EES the same combined relative share of energy products as purchased from EES during 1999, provided that the products are offered to Ericsson on competitive conditions ("the purchase obligation"). The objective of the purchase obligation is to ensure, during an initial transitional period, the continuity of EES's business. Prior to the transaction, EES and Ericsson have been vertically integrated for a very long period of time. EES's sales to Ericsson represent around [50-75%] of all products produced by EES, which corresponds to approximately [60-80%] of Ericsson's total purchase of energy supply products. Thus, EES has been, and will continue to be during a transitional period, dependant on Ericsson's purchases. Accordingly the purchase obligation is directly related to and indispensable to the implementation of the concentration.

## VI. CONCLUSION

11. In view of the above the proposed concentration does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA agreement. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,  
Mario MONTI, Member of the Commission