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*Case No IV/M.258 -  
CCIE / GTE*

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 25.09.1992

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Brussels 25.09.1992

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)b DECISION

Registered letter with  
advice of delivery

To: the notifying party

Dear Sirs,

Subject: Case No. IV/M.258 - CCIE / GTE  
Your notification pursuant to Article 4 of Council  
Regulation (EEC) No. 4064/89 ("the Regulation")

1. The notified operation concerns the buy-out led by Citicorp (with temporary support from Siemens) of GTE's International Lighting Division ("IL"), comprising GTE's non-North American lamps and lighting fixtures business.

**I. THE PARTIES**

2. EDIL International Lighting B.V. ("EDIL" - to be renamed Sylvania Lighting International B.V.) is a shell company which will effect the acquisition. It is controlled by Citicorp Capital Investors Europe Limited ("CCIEL") which is a wholly-owned subsidiary of Citicorp.
3. GTE Corporation is a US company whose main activity is the manufacture and supply of telecommunications equipment and services. It announced in September 1991 its intention to sell its lighting business in order to concentrate on telecommunications. The lighting business comprised of the North American Lighting Division ("NAL") and the International Lighting Division ("IL") which is the object of this transaction. GTE wished to dispose of its two lighting divisions simultaneously. IL manufactures and sells general purpose lamps, some specialty non-automotive lamps

and non-residential lighting fixtures and represents one third of GTE's global sales in lighting. Both divisions use the trade name "Sylvania".

4. Siemens AG is a German company whose main activities are in the fields of power generation and distribution, electronics, communications equipment, information technology and electrical engineering. Osram GmbH is its wholly-owned subsidiary which manufactures a full range of general purpose lamps.

## II. THE OPERATION

5. CCIEL intends to buy the shares of IL's subsidiaries from GTE through EDIL. Osram will simultaneously acquire NAL. The two transactions are mutually dependent as to completion.

### CITICORP'S ACQUISITION OF IL

6. CCIEL is committed to providing a little under [...] <sup>1</sup> of the purchase price by way of equity. In order to facilitate its own acquisition, Siemens agreed to provide debt financing for the buy-out of IL and will provide bridging finance for nearly [...] <sup>2</sup>. The balance will be funded by GTE in the form of a promissory note issued by EDIL.
7. CCIEL's share of voting rights in EDIL will not exceed 19% either before or after the transaction. Currently the balance of voting rights is held by an independent investment banking firm which has delegated its management powers to two employees (the "Representatives") of Citicorp Venture Capital Limited (a wholly-owned Citicorp subsidiary).

Both shareholders hold a veto over all board decisions, although their approval is not required for the actions of the Representatives. Furthermore, the independent investment banking firm has undertaken not to obstruct completion of the transaction. CCIEL thus has the right to manage EDIL's affairs within the meaning of Article 5(4)c and is an "undertaking concerned" within the meaning of Article 5.

8. Following completion CCIEL will hold [...] <sup>3</sup> of the voting rights, the balance being held by other investors [...] <sup>4</sup> and management [...] <sup>4</sup>. CCIEL will have a permanent seat on EDIL's board and will appoint the Chairman and CEO. Other investors will together have only one seat on the board. The CCIEL director's prior written approval will be required for all significant decisions (such as appointments and removal of board members, engagement and dismissal of senior employees, material capital expenditure, disposal of significant assets and approval of the annual budget). The parties state that this veto right will also apply to shareholder meetings and will be provided for in a new shareholders' agreement. CCIEL will thus continue to control EDIL following completion.

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<sup>1</sup> Business secret - less than half

<sup>2</sup> Business secret - more than half

<sup>3</sup> Business secret - a minority

<sup>4</sup> Business secret

9. Citicorp's acquisition of EDIL constitutes therefore a concentration within the meaning of Article 3(1)b.

FINANCING AND COMMERCIAL AGREEMENTS WITH SIEMENS

10. Siemens will provide bridge-financing for the buy-out in the form of a loan to EDIL, 75% of which will fall due within three years and the balance in the fourth year. The rate of interest on the loan will increase with time and it will be secured on the assets acquired by EDIL. Until the principal amounts fall due Siemens will not have the usual creditor right to put EDIL into bankruptcy or accelerate repayment of the loan, only to sue for unpaid interest. EDIL may prepay the loan without penalty.

Should EDIL not prepay the loan within two years of completion, Siemens is entitled to receive an amount equal to 5% of the value of EDIL on its sale or listing. Siemens will not have any representation on EDIL's board or have access to confidential business information of EDIL.

11. EDIL will also sign various intellectual property right, supply and R&D agreements with Osram. Prior to the transaction IL had access to the R&D of the North American part of the GTE Lighting business ("NAL") which also provided it with some engineering support services and certain manufacturing apparatus. IL also had access, through NAL, to Osram's technical information and patents because of existing reciprocal patent licensing and technical information exchange agreements between Osram and GTE. On completion, agreements between EDIL and Osram will guarantee continued access for EDIL to:

- Osram technical information resulting from Osram (and thus NAL) R&D, production engineering and manufacturing activities;
- certain Osram engineering support services at cost;
- Osram manufacturing apparatus at cost; and
- licences or sub-licences of Osram and NAL patents on a royalty free basis. NAL (as opposed to Osram) patents will for five years be licensed on an exclusive basis.

These agreements will last ten years, although in each of the last three years EDIL will have to pay a [...] <sup>1</sup> contribution to Osram's R&D expenses and [...] <sup>2</sup> of EDIL turnover generated from patents granted in years 8, 9 and 10 must be paid to Osram following the end of the agreement. The effect of these agreements and of the first of the supply agreements described below is substantially to recreate IL's position prior to the operation by assuring EDIL temporary access to R&D expertise for a transitional period.

Osram will also enter certain non-exclusive, arms-length supply agreements with EDIL guaranteeing EDIL supplies of lamp parts formerly supplied to IL by NAL. In addition, EDIL will be able to order from Osram, for a maximum of four years in each case within the overall term of the agreement, new lamps and lamp parts at a price, according to the contracts, which will enable "EDIL to be competitive (including with Osram Group) in the market place ..." The purpose of this last agreement is to ensure that, should it become necessary, EDIL can temporarily fill any gaps in its lamp

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<sup>1</sup> Business secret - nominal amount

<sup>2</sup> Business secret

range in the period in which it is building up its own R&D capability. EDIL will be free to procure supplies in both cases from other sources.

12. The links created by these agreements are all temporary, and the agreements themselves contain economic incentives for EDIL to develop its own in-house technical R&D capability. These are also one-way agreements which do no more than guarantee EDIL continued access to intellectual property and technical assistance to the extent needed. As such they represent a safety-net for the buy-out as it builds up its own financial resources, in-house R&D capability and develops new lines of supply. The parties maintain that Siemens has agreed to these terms purely in order to facilitate its own acquisition of NAL. While these agreements may afford Siemens some limited influence over EDIL this influence will neither be permanent and long-lasting or decisive. Siemens/Osram will thus not control EDIL within the meaning of Article 3(3).

### III. COMMUNITY DIMENSION

13. The 1991 combined worldwide "turnover" of IL and Citicorp (calculated in accordance with Article 5(3) in respect of Citicorp) is ECU 18,024 million (ECU 17,506 million for Citicorp and ECU 518 million for IL). EC turnover for both Citicorp and IL thus exceeds ECU 250 million and the parties do not achieve more than two thirds of their EC turnover in one and the same Member State. The concentration therefore has a Community dimension.

### IV. COMPATIBILITY WITH THE COMMON MARKET

#### PRODUCT MARKETS

14. IL's activities in the Community are centred in the areas of lamps for general purpose lighting and lighting fixtures for non-residential use.
15. Lamps for general purpose lighting can be further divided in the following product groups according to the basic technology used and the broad characteristics of the lamp (eg. energy consumption and properties of the light produced): incandescent, halogen, fluorescent, compact fluorescent and high intensity discharge lamps (HID). The general purpose lighting market excludes lamp products designed specifically for outside use, such as street and railway lighting and floodlights. It also excludes lamps for specialty applications, such as vehicle lights, sun tanning lights etc. Whether the relevant market is that of lamps for general purpose lighting or that of individual types of lamp can be left open since it will not affect the subsequent competition analysis.
16. Lighting fixtures for non-residential use include architectural fixtures and industrial/commercial fixtures. IL also has a small number of sales of fixtures for residential use in France under the brand name Le Dauphin.

## GEOGRAPHIC MARKETS

### Lamps

17. The parties have submitted in their notification that competition in the overall lamp market takes place at a Community-wide level because of the absence of technical barriers to trade, low transport costs, centralized production, the large volume of intra-EC shipments (60% of the total lamp market), and the presence of major producers throughout the EC. EC tariffs for lamps range between 4.9-6% and imports from outside EC account for under 10% of the market.
18. However, marketing and pricing remain organized essentially at national level. The Commission's investigations have shown that the pricing and marketing policies of at least two of IL's competitors are decentralized. Each national sales organization is responsible for the fixing and publication of prices and for the negotiation with customers of conditions of sale and discounts within their respective State. Equally, major customers also organize their purchases at a national level.
19. Given the national organization of both wholesalers and manufacturers, markets could be viewed as national, in the sense that different pricing policies and price levels could be applied in each Member State. However, the absence of barriers to trade and the significance of trade flows, the high degree of product standardization and the existence of EC wide distributors for more than half of the total sales of lamps indicate that perhaps substantial price differences and divergent price tendencies could not be sustained for a long period of time. The precise geographic market definition can be left open since it would not alter the competition assessment below.

### Fixtures

20. In respect of fixtures, the parties submit that markets are national in scope. The bulk of production of fixtures is accounted for by a large number of small, specialised companies operating generally on a national basis at most. National consumer tastes and preferences are in all probability particularly important in this market.

## ASSESSMENT

21. The acquisition of control of IL by the venture capital company CCIEL does not create or strengthen a dominant position either on the markets for fixtures or on the markets for general purpose lamps.
22. The fixtures market is characterized in all Member States by its low degree of concentration. A large number of small producers account for 66% of the overall EEC market and up to 80% in certain Member States. Even the combined market shares of IL and Siemens are below 25% in all Member States, therefore these agreements will not create or strengthen a dominant position in this market.
23. The markets for general purpose lamps are throughout the Community concentrated with Philips and Siemens holding a combined market share of more than 50% and the leading four firms, including IL, having a total share of around 90%. The balance of the market comprises some small European producers and imports from US, the Far East and Eastern Europe. Imports from the US and Far East tend to be of higher-value added products benefiting from the trend to miniaturisation, while those from Eastern Europe are of more basic lamps. It is in the higher-value added products that imports have

had the greatest impact<sup>1</sup>. IL achieves its strongest market positions in France, Spain and Belgium where its market share is [...]².

Market concentration is basically the same with regard to the five different product groups, although some manufacturers are stronger in one product group than in others. Traditional fluorescent and incandescent lamps for example represent a greater percentage of IL's sales than the average for the industry.

24. The overall market for general purpose lamps is growing moderately in value terms (approx. 4%). New or improved lamp products are growing fastest, whereas sales of incandescent and fluorescent lamps are stagnating. Compact fluorescent lamps and halogen lamps, for example, have shown an annual growth rate of more than 20% and more than 10% by value respectively in the years 1986-90. The prices of incandescent and fluorescent lamps are broadly stagnant while those of newer lamp technologies are falling in real terms.
25. There exist substantial barriers to entry to the general purpose lamp market in respect of economies of scale and technology. Although the base technology is accessible for all interested companies, a significant and viable competitor in the market needs its own research and development facility and engineering capability in order to participate in the competition for new or improved lamps. In addition, most major lamp manufacturers appear to have entered into cross-licensing arrangements and a new entrant without its own research to trade would have difficulty in gaining access to others' patents, at least on a royalty-free basis.
26. Major manufacturers also cooperate in manufacturing components. The joint venture Emgo, for example, which manufactures glass bulbs, is jointly owned by Philips and Osram. GTE itself has 49% in a joint venture with GE in Italy (SIVI). Moreover, there are similar deliveries of parts across the industry.
27. The demand side is widely dispersed. Electrical wholesalers hold the largest share of demand (approximately 50%), followed by modern distribution chains (17%), public procurement (16%) as well as contractors, OEMs and other purchasers (together 17%).
28. Apart from price, a key competitive parameter in this industry is innovation. R&D effort is mainly concentrated on the higher-margin products such as HID, compact fluorescent and halogen lamps. Although new products may serve as a partial substitute for lamps manufacturers' existing sales, they may be able to receive a higher price for the new product and gain additional sales from clients of other competitors. An ability to innovate appears to be necessary for a producer's long-term market credibility. There is also a certain pressure from customers that their principal

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<sup>1</sup> Council Regulation (EEC) No. 117/91 of 16.01.1991 imposed a definitive anti-dumping duty on imports of certain linear halogen lamps originating from Japan.

<sup>2</sup> Business secret - no more than 25%

suppliers be able to provide the whole range of lamp products including new high-tech products which may only constitute a small proportion of turnover. Such products are nonetheless therefore necessary to achieve sales of maturer products (incandescent and fluorescent lamps typically represent well in excess of half of a manufacturer's turnover).

The two major product innovations in the last ten years are said to have been Philips' compact fluorescent lamp and GE's low-voltage halogen lamp, both of which launched new product families on the market. Since there exists the practice of cross-licensing in the market, most major manufacturers probably use the same or similar basic research data, but compete in terms of quality, product characteristics, designs, attributes and efficiency of production. IL's major contribution in recent years seems to have been the introduction of a miniature version of the existing compact fluorescent lamp (the "Mini-Lynx"). Current trends are towards environmentally more friendly lamps, increased length of life of lamps and their further miniaturization.

29. The proposed financial and commercial arrangements between Siemens and IL will not fundamentally change the present conditions of competition:

Loan agreement

30. The bridge financing arrangements afford Siemens neither shareholder (at any time) nor customary creditor rights (at least before the loan reaches maturity). The parties have stated that following their transaction, EDIL will be less reliant on debt than the existing IL is. This together with the three-year grace period should help to prevent EDIL's debt service burden in its early years from compromising its ability to compete. The financing is also structured to include an increasing interest rate which will provide an incentive for EDIL to refinance the loan earlier than would otherwise be the case. Notwithstanding the protection for EDIL embodied contractually in the terms of the financing agreement any inhibition EDIL might still feel because of the loan in its competitive relationship with Osram would be short-lived and last a maximum of four years.

Research and development agreement

31. The terms of the agreement mainly entitle EDIL to have access to Siemens' R&D. It is basically a one-way flow of technical information. The agreement is limited in time and includes built-in economic incentives to encourage EDIL to develop its own capacity for R&D. Since the agreement partly replaces a pre-existing R&D arrangement between Siemens and GTE its impact on competition is limited. It may further weaken competition between Siemens and EDIL, but will not lead to either a fundamental or a lasting structural change of conditions of competition, since it will only have an appreciable effect until IL has become a fully independent company with its own research and development facilities.



The supply agreements

32. The supply agreements with Siemens appear to serve the same purpose as the research and development agreement. They entitle EDIL to have access to Siemens' supplies for a limited period of time. Since the agreements will also only cover a relatively small part of EDIL's supplies, they will not have a substantial impact on EDIL's position on the markets for general purpose lamps. Being non-exclusive they will not prevent other businesses from supplying EDIL.

#### **VI. ANCILLARY RESTRAINTS**

33. The above agreements are substantial and both directly related and necessary to the implementation of the concentration and form an integral part of it. Their evaluation forms part of the Article 2 assessment of compatibility with the common market made above.

#### **VII. FINAL ASSESSMENT**

34. On the basis of the above findings, the Commission has come to the conclusion that the proposed acquisition and the financial and commercial arrangements will not lead to the creation or strengthening of a dominant position in the common market or a substantial part thereof. The envisaged concentration will therefore not raise serious doubts as to its compatibility with the common market.
35. It should be noted, however, that this conclusion is based on the terms of the financial and commercial arrangements between Siemens and IL as submitted in the notification. Any change in these terms, in particular any prolongation of the agreements, would affect the conclusion and might require a new notification under Council Regulation (EEC) No. 4064/89 or Regulation No. 17. Furthermore, this decision deals only with those agreements between Siemens/Osram and EDIL notified as part of this operation and should not be interpreted to cover agreements entered into by Siemens and GTE prior to the notification of this operation.

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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,