

***Case No COMP/M.2851 -
INTRACOM / SIEMENS
/STI***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 10/02/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10/02/2003

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

Dear Sir/Madam,

**Subject: Case No COMP/M.2851 – Intracom/Siemens/STI
Notification of 08.01.2003 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 08.01.2003, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the Greek undertaking Intracom S.A. (“Intracom”) and the German undertaking Siemens AG (“Siemens”) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the Greek Company Siemens Tele Industrie A.E. (“STI”), currently solely controlled by Siemens.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with EEA Agreement.

I. THE PARTIES

3. Intracom is a manufacturer of hardware and software systems for advanced telecommunications, electronics and data processing applications. Its main activities

¹ 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).

comprise public telephone networks, payphones, integrated business networks, satellite applications, Internet applications, energy management and defence systems.

4. Siemens is active predominantly in electrical engineering and electronics. It sells products and services mainly in the fields of energy, industry, transportation, medical engineering, lighting, information and communication, automotive and building technologies.
5. STI is active in the manufacturing of telecommunications and electronic equipment. Its activities include the supply of digital switching systems, transmission exchanges, fiber-optic cables and the provision of access network solutions and intelligent networks.

II. THE OPERATION

6. The proposed operation concerns the acquisition of joint control in a full-function joint venture within the meaning of article 3(2) of the Regulation 4064/89. At present, Siemens owns 70% of STI's shares and solely controls STI. The National Bank of Greece ("NBG") holds a 30% stake but does not have any veto rights on strategic decisions. Intracom intends to acquire approximately 41% of STI's shares from Siemens and NBG. Siemens and Intracom will exercise joint control over STI, as they will both have the right to veto strategic decisions concerning the budget, the business plan and major investments.
7. The transaction will not change control of Hellascom International, a Greek telecom infrastructure company active in the Balkans, Eastern Europe and the Middle East. Although both Intracom and Siemens hold a 15% stake, Hellascom International will remain under sole control of the Greek incumbent telecom operator OTE (51.4%).
8. STI now operates as an autonomous economic entity in the market. It will continue to have all the necessary financial resources, staff and production facilities to maintain its independence and economic viability [...] STI is thus a full-function joint-venture.
9. The joint control of STI by Siemens and Intracom is not limited in time. [...]

III. CONCENTRATION

10. Consequently, the proposed transaction constitutes a concentration within the meaning of Article 3 (1) (b), (2) of Regulation 4064/89.

IV. COMMUNITY DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (Siemens EUR 87,000 million; Intracom EUR 770 million). Each of them has a Community-wide turnover in excess of EUR 250 million (Siemens [...] million; Intracom [...] million). Siemens does not achieve more than two-thirds of its aggregate Community-wide turnover within the same Member State. The notified operation therefore has a Community dimension.

² Turnover calculated in accordance with Article 5(1) of the Regulation No 4064/89 and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

V. COMPETITIVE ASSESSMENT

A. THE RELEVANT PRODUCT MARKETS

12. The notifying parties distinguish the following relevant product markets for telecom equipment:

- public switching systems,
- transmission systems (cable/wireline and point-to-point digital radio transmission)
- access network equipment (local loop products and wireless access)
- terminal equipment.

1. *Public switching systems*

13. Public switching systems allow the interconnection of service users. The switched services can cover voice, data, image and text. In previous decisions the Commission found that there are three main types of network switching nodes: local switching functions (which interconnect end-users), transit exchanges (interconnecting transmission links), and international transit exchanges (for international services).³ In recent years, public switching systems have gradually been digitised.

14. Although the notifying parties propose a relevant market for “public switching systems”, the exact definition of the relevant product market can be left open for the purpose of this case because the present concentration does not give rise to competition concerns under any of the possible market definitions.

2. *Transmission systems*

15. Transmission systems provide the transport of traffic between local central switching offices and transit central switching offices, and the transport of traffic on leased lines.⁴ According to the notifying parties, the function of telecommunications transmission is to enable network operators to send telecommunications signals, either voice or data, from a specified source to a specified destination with a maximum of efficiency, reliability and control. Analogue transmission systems have been progressively replaced by digital transmission technology including SDH⁵ and WDM.⁶

16. The notifying parties consider that the transmission systems equipment can be subdivided into two relevant markets, depending on whether the transmission is made through cables or wireless through airwaves.

a. Cable/wireline transmission

³ Cf. Commission Decisions of 17/02/1995, Case IV/M.468 – Siemens / Italtel, para. 16; and of 05/02/1996, Case IV/M.651 – AT&T / Philips, at V.A.1.

⁴ Cf. Commission Decision of 19/01/2000, Case COMP/M.1800 – Marconi / Bosch Public Network, para. 9.

⁵ SDH = Synchronous Digital Hierarchy.

⁶ WDM = Wavelength Division Multiplexing.

17. According to the notifying parties, this market comprises products that ensure wireline transmission, both through copper wires and through optical fibres. They argue that telecommunications operators are generally indifferent to the type of cable transporting the information but rather focus on functionality.

b. Point-to-point digital radio transmission

18. Point-to-point digital radio transmission provides an alternative to cables for information transport.⁷ According to the notifying parties, these products are indiscriminately suitable for both fixed and mobile telephony networks.

Conclusion transmission systems

19. For the purpose of this case, however, the exact definition of the relevant product market for transmission systems can be left open because the present concentration does not give rise to competition concerns under any of the possible market definitions.

3. Access network equipment

20. The access network, also known as the ‘last mile’ or the ‘local loop’, connects subscribers and the premises of enterprises with the local network exchange. According to the notifying parties, the access network accounts for approximately 50% of the investments in telecommunications networks. The notifying parties submit that access network equipment can be further subdivided into two markets, namely (wireline) local loop products and wireless access (point-to-multipoint).

a. Wireline local loop products

21. According to the notifying parties, the market for (wireline) local loop products comprises all fibre, copper and coaxial cable access network systems. In previous decisions, the Commission found that the local loop products market comprises a wide range of electronic media connecting homes/premises to the network.⁸

b. Wireless access (point-to-multipoint)

22. According to the definition provided by the notifying parties, wireless access means that the last-mile subscriber connections are implemented completely without wires by radio. They submit that radio access can cater for the whole spectrum of users, from a high concentration of subscribers in office buildings to very low subscriber density in sparsely populated regions. The notifying parties consider different forms of radio wave access as mutually substitutable and as suitable for both fixed and mobile telephony networks. However, in previous cases, the Commission found indications for a distinction between urban and rural applications. Furthermore, mobile radio networks have been considered as potentially constituting a separate product market.⁹

Conclusion access network equipment

⁷ Cf. Commission Decision of 05.02.1996, Case IV/M.651 – AT&T / Philips, at V.A.3.

⁸ Cf. Commission Decisions of 05.02.1996, Case IV/M.651 – AT&T / Philips, at V.A.4; of 18/03/1998, Case IV/M.1113 – Nortel / Norweb, para. 29; and of 19/01/2000, Case COMP/M.1800, para. 10.

⁹ Cf. Commission Decisions of 18.02.1995, Case No IV/M.468, Siemens/Italtel, para. 16; and of 05.02.1996, Case IV/M.651 – AT&T / Philips, at V.A.7.

23. For the purpose of this case, however, the exact definition of the relevant product market for access network equipment can be left open because the present concentration does not give rise to competition concerns under any of the possible market definitions.

4. Customer premises equipment

24. The notifying parties define customer premises equipment as consisting of “*terminal and associated equipment, and inside-wiring located at a subscriber’s premises*”. They consider that a distinction between network operator-owned equipment and user-owned equipment, as proposed by the notifying party in the AT&T-Philips case, is no longer appropriate because today virtually no customer premises equipment is owned by the network operator.
25. For the purpose of this case, however, the exact definition of the relevant product market for customer premises equipment, and particularly the question whether the different types of terminal equipment constitute separate product markets, can be left open because the present concentration does not give rise to competition concerns under any of the possible market definitions.

B. THE RELEVANT GEOGRAPHIC MARKETS

26. The notifying parties contend that all relevant markets are worldwide or at least EEA-wide. They base their assessment on market characteristics such as world-wide liberalisation trends, international harmonisation of product standards, trade-flows patterns, low transport costs, the lack of significant price differences between different geographical areas, and the lack of local supply requirements.
27. For the purposes of this decision, the geographical scope of all the relevant product markets can be considered together, as the competition conditions prevailing are similar for all telecommunication equipment. The whole sector of telecommunication equipment is subject to a high degree of harmonisation, especially at a European level, as has been confirmed by the Commission’s market investigation.
28. The Commission’s practice in defining markets of telecommunication equipment shows a successive widening of the geographic scope.¹⁰ In recent cases, the Commission considered some of the telecommunication equipment markets as being wider than national, and at least EEA wide¹¹. However, in view of the notifying parties’ very high market shares in Greece, the Commission’s investigated whether the notifying parties’ high market shares could be an indicator of a national market. However, the investigation showed that their strong position in Greece was mainly due to long-term supply contracts with the incumbent Greek operator OTE. These supply agreements have expired at the end of 2002. In its response to the Commission’s questionnaire OTE stated that it does not plan to renew these framework supply contracts.

¹⁰ Cf. Commission Decision of 05.02.1996, Case IV/M.651 – AT&T / Philips as compared with Commission Decision of 18.02.1995, Case No IV/M.468, Siemens/Italtel.

¹¹ For instance concerning the cable/wireline transmission equipment, Commission decision 19.01.2000, case No COMP/M.1800 *Marconi/Bosch Public Network*, para. 12. See also Commission Decision of 19.05.2000, Case No COMP/M.1908 – Alcatel / NewbridgeNetworks, para 10, concerning the market for DSL equipment.

29. Furthermore the results of the market investigation have confirmed that the geographical markets are wider than national. The vast majority of the responding companies consider the relevant markets as at least EEA-wide, mainly due to international standardisation. Current trends in the telecommunication equipment sector confirm this view since the standards established by ETSI¹² are applied throughout and beyond Europe. Any equipment manufacturer complying with these standards may bid for supply contracts in Greece, regardless of its country of establishment. Public procurement rules provide that calls for tenders cannot be limited to Greek suppliers. Further strong arguments for at least EEA wide markets are the lack of significant transport costs, the European and global trade-flows, and the presence of large telecom equipment manufacturers in the different EEA Member States.
30. Therefore, it can be concluded that these markets are clearly wider than national and are at least EEA wide. However, it is not necessary to define whether the scope of the relevant geographic markets is wider than the EEA since even on the basis of an EEA-wide market the present concentration does not give rise to competition concerns under any of the possible market definitions.

C. DOMINANCE ASSESSMENT

31. The acquisition of joint control of STI will only slightly increase the market position enjoyed by Siemens and STI on the relevant EEA telecom equipment markets. The parties will face competition from important manufacturers such as Alcatel, Cisco, Ericsson, Lucent, Marconi, Nortel, etc.

1. Public switching systems

32. On the EEA market for public switching systems, Intracom will add [0-10]% to the combined share of Siemens and STI of [20-30]%. Following the transaction the parties will thus have a combined market share of [25-35]% in the EEA. Given the small market share held by Intracom the operation will not give rise to competition problems on any of the other possible markets. The most important competitors are Alcatel, Ericsson and Lucent.

2. Cable/wireline transmission systems

33. On the EEA market for cable/wireline transmission, Intracom currently has a market share of [0-10]%. Following the operation the parties will have a combined market share of [10-20]% in the EEA. There are important competitors such as Alcatel, Marconi, and Lucent.

3. Point-to-point digital radio transmission

34. On the EEA market for point-to-point digital radio transmission, the market share of Intracom is approximately [0-10]%. Siemens and STI have a combined share of [10-20]%. Following the proposed transaction the parties' combined market share will be [15-25]% in the EEA. The most important competitors are Nokia, NEC and Alcatel.

¹² ETSI=European Telecommunications Standards Institute

4. Wireline local loop products

35. On the EEA market for wireline local loop access network equipment, Intracom achieved a market share of [0-10]% in 2001, [...]. Siemens' and STI's combined market share was [30-40]% in 2001, [...]. The parties combined EEA market share will be [30-40]%. There are strong competitors such as Alcatel, Lucent and Cisco.

5. Wireless access (point-to-multipoint)

36. On the EEA market for wireless access, Intracom's market share is below [0-10]%. STI only entered this market in 2002, generating EUR [...] million (approximately [0-10]% of the market). Siemens has a market share of [20-30]% and the parties' combined EEA market share will thus be [25-35]%. Important competitors include Alcatel, Ericsson, Lucent and Marconi.

6. Customer premises equipment

37. Intracom only entered the market for customer premises equipment in 2002 and so there are no historic market figures available. STI and Siemens had a combined EEA market share of [25-35]%. There are strong competitors such as Alcatel, Cisco and Siemens.

7. Conclusion

38. In view of the small increments arising from the addition of Intracom's market shares, the proposed concentration will not, on any of the possible relevant markets, lead to the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded.

D. CO-ORDINATION OF COMPETITIVE BEHAVIOUR

39. Pursuant to Article 2 (4) of the Merger Regulation, the Commission must assess whether the creation of this joint venture has as its object or effect the co-ordination of the competitive behaviour of undertakings that remain independent.

40. [...]

41. All relevant markets discussed above are candidate markets for a potential co-ordination between Siemens and Intracom since both parent companies (and the joint venture STI) are active on these markets. As shown above, the parties' maximum combined market shares reach [25-35]% (wireless access) and [30-40]% (wireline local loop products).

42. However, the acquisition of joint control of STI by Intracom is very unlikely to lead to the co-ordination of Siemens' and Intracom's competitive behaviour since both the market structure and the lack of incentives appear to prevent co-ordination.

43. With respect to the market structure, the relevant markets are characterised by the presence of a large range of strong competitors. Moreover, telecom network operators enjoy substantial countervailing buyer power and are highly price-sensitive. In addition, innovation, and particularly in information technology, plays an increasingly important role in the telecom equipment markets with more and more IT companies entering these markets.

44. The notifying parties, and especially Siemens, do not have any incentive to co-ordinate their competitive behaviour. First, the relative size of STI is too small since STI's EEA

wide sales amount to [0-10]% of Siemens' EEA wide sales. Second, Intracom's and Siemens' asymmetry in size is not incentive for co-ordination since Siemens' sales in the relevant EEA telecom equipment markets are approximately 9 times higher than Intracom's. Third, the geographical scope of STI's parent companies' activities is not incentive for co-ordination: whilst Intracom achieves more than 90% of its EEA wide turnover in Greece, Siemens has significant sales across the EEA. Therefore, market sharing with Intracom would be irrational for Siemens. This analysis is also confirmed by the economic rationale of the transaction. [...].

45. Therefore the acquisition of joint control of STI by Intracom is not likely to lead to the co-ordination of Siemens' and Intracom's competitive behaviour.

VI. CONCLUSION

46. 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

(signed)
Mario MONTI
Member of the Commission