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*Case No IV/M.292 -
ERICSSON /
HEWLETT-PACKARD*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 12.03.1993

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

Registered with advice of delivery

To notifying parties

Dear Sirs,

Subject: Case No. IV/M.292 - Ericsson/Hewlett-Packard
Notification of 11.02.1993 pursuant to Article 4 of Council Regulation No.
4064/89

1. Telefonaktiebolaget LM Ericsson ("Ericsson") and Hewlett-Packard Company ("HP") notified on 11.02.1993 their intention to form a joint venture for the supply of telecom network management products serving "multi-vendor network environments", i.e. networks comprising equipment from more than one supplier.

I. THE PARTIES

2. Ericsson is a Swedish supplier of telecommunications equipment and systems for wired and mobile communications and for both public and private networks. Ericsson also manufactures electronic components and cables for power supply and distribution and airborne electronic defence systems.
3. HP is an international manufacturer of measurement and computer products, including the equipment and systems used for design, manufacturing, office automation and information processing, hand-held calculators, computer peripherals (e.g. printers), medical electronic equipment, analytical instrumentation and certain electronic components (microwave semi-conductor and optoelectronic devices).

II. THE OPERATION

4. Under the terms of a Joint Venture Agreement, Ericsson will set up a company under Swedish law ("the JV") to which it will transfer and sell all assets and goodwill pertaining to its multi-vendor telecom network management systems ("TNM"s). HP will purchase a 40% stake in the new joint venture company, the balance being held by Ericsson. At the same time, Ericsson will sell to HP a 40% beneficial ownership right to certain software and other technology in the field of telecom network management systems. This intellectual property will then be made available to the JV by means of a licence entitling HP to 40% of royalty payments and Ericsson 60%.

III. COMMUNITY DIMENSION

5. The combined worldwide turnover of Ericsson (6,178 million ECU) and HP (12,912 million ECU) in their respective last financial years exceeded 5,000 million ECU while both parties' Community-wide turnover exceeded 250 million ECU. The undertakings involved do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.

IV. CONCENTRATION

Joint control

6. Ericsson will hold 60% and HP 40% of the JV's capital and four out of seven of the directors on the JV's board will be nominated by Ericsson (although HP will have the right to be consulted about the identity of the General Manager). Decisions in both board and shareholder meetings are by simple majority, except for important issues requiring unanimity: major expenditure loans or disposals; change in company statutes; distribution of profits; merger or winding up of the JV; appointment of auditors; approval of accounts and the approval of any business plan or budget. Given this last point, both HP and Ericsson will have to agree on fundamental business decisions and the JV's commercial and competitive strategy. Each thus exercises joint control with the other over the JV.

Joint Venture performing on a lasting basis all the functions of an autonomous economic entity

7. Ericsson is to transfer to the JV its existing activities in multi-vendor TNMs, including both tangible and intangible assets. The joint venture agreement provides for Ericsson's existing personnel to be offered employment with the JV and for the JV to be endowed with substantial capital resources as well as authorisation to raise debt finance in the usual way.

Under a separate licensing agreement the parents will license their intellectual property relating to technology and software in the TNMS field to the JV on an irrevocable basis.

Furthermore, the duration of the joint venture is effectively indefinite. The JV will thus have the resources at its disposal to be a durable full function joint venture engaging in product development, manufacturing, marketing and maintenance.

Absence of risk of coordination

8. HP is active in the area of computer networking systems but it does not produce management systems for telecom networks. Ericsson will place its activities relating to multi-vendor TNM systems in the JV whilst retaining its proprietary TNM business. The end use of proprietary TNM systems is clearly distinct from that of multi-vendor TNM systems, and as the market evolves, users of the two different products are likely to become increasingly distinct as well.

Co-ordination would thus only arise were either parent to enter the JV's market independently of the joint venture. This would not, however, appear a commercially reasonable step for either parent to take. Having made a sizeable investment in the JV, there would appear to be little motivation for either parent to establish an independent rival to the joint venture. Such independent entry would thus seem neither reasonable nor likely.

V. COMPATIBILITY WITH THE COMMON MARKET

Relevant product market

9. Until recently, operation support systems for telecom networks were essentially limited to, and designed as an integral part of, individual network elements such as switches or transmission systems. These systems were in general proprietary, developed by public operators or equipment suppliers, and unable to interact with other network elements. Against a background of deregulation and technological advances in telecommunications, new network operators and suppliers have emerged. There is now a need for flexible TNM systems which can support and integrate equipment from a range of manufacturers, and it is this market for which the JV is intended to cater.

Relevant geographic market

10. The JV's potential customers are telecommunication network operators across the globe. Customer contracts being transferred from Ericsson to the JV include ones in several European countries and in Asia and South America. The relevant geographic market is thus at least the Community if not the world, although the precise definition can be left open since it does not influence the competition analysis.

Assessment

11. The worldwide market for multi-vendor TNM systems is in its infancy. The parties estimate that total investment by all public telecom operators in TNM systems will amount to approximately [...] (*) billion ECU in 1993. The major part, however, of this investment is likely to be spent in-house on proprietary system development and maintenance and on systems embedded in network elements. The accessible part of this total investment for multi-vendor systems is estimated to be between 20% and 30% but is expected to increase to 50% over a period of five years.

(*) Precise figure deleted.

12. The parties were unable to provide market share figures for Ericsson's multi-vendor business given the early stages of development of the market but there is, in any case, no overlap between the parent companies and thus no change in market share arising from the concentration. Furthermore, the proposed concentration does not create any significant vertical or conglomerate links between the parent companies and the joint venture.
13. The concentration will not, therefore, create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the common market or in a substantial part of it.

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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 Council Regulation No. 4064/89.

For the Commission