

***Case No COMP/M.3583 -  
FLEXTRONICS /  
NORTEL***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 28/10/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.10.2004

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PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties:

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Dear Sir/Madam,

**Subject: Case No COMP/M.3583 - Flextronics/Nortel  
Notification of 27.09.04 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 24.09.2004, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Flextronics Telecom System Ltd. (Mauritius) belonging to the group Flextronics International Ltd. ("Flextronics", Singapore) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of parts of the undertaking Nortel Networks Limited ("Nortel", Canada) by way of purchase of assets.

#### **I. THE PARTIES**

2. Flextronics, a stock company under Singapore law listed on NASDAQ, is a global provider of Electronics Manufacturing Services ("EMS") to Original Equipment Manufacturers ("OEMs") in the telecommunications, networking, consumer electronics, computer, and medical device industries. Flextronics' activities are expanding from its core business consisting of the assembly of printed circuit boards,

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

to cover an increasing number of operations in the product chain, i.e. development and design, servicing, packaging and logistics of electronic products.

3. Nortel, a stock company listed at the Toronto and New York stock exchanges, is a supplier of “networking solutions”: products and services that support the Internet and other public and private data, voice and multimedia communication networks using wireline and wireless technologies.

## **II. THE OPERATION**

4. The proposed transaction involves the acquisition by Flextronics of some of Nortel’s manufacturing assets, employees and related supply chain activities as well as some assets and employees relating to hardware and software design for optical networking products (“the target business”). The parties have also entered a four years [...] agreement according to which Nortel will source [...] of its manufacturing requirements from Flextronics.

## **III. CONCENTRATION**

5. As the transaction implies the acquisition by Flextronics of control of parts of the undertaking Nortel, it is a concentration within the meaning of Article 3(1)(b) of the Council Regulation 139/2004.

## **IV. COMMUNITY DIMENSION**

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Flextronics, Euro 12,845,134, 371, Nortel business, Euro [...]). Each of Flextronics and the part of Nortel business being transferred have a Community-wide turnover in excess of EUR 250 million (Flextronics, Euro [...], Nortel business, Euro [...]) but 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.

## **V. THE RELEVANT PRODUCT AND GEOGRAPHIC MARKETS**

7. The transaction relates to the markets for EMS for OEM. EMS include the whole range of services involved in the production of electronics products for OEMs from the design of the product, component selection and procurement, prototyping, product assurance, production, assembly, testing, failure analysis, logistics, distribution and after-sales services. These services are outsourced by OEMs active in the consumer electronics, telecommunications, computer, medical, and automotive industries.
8. According to the notifying party, the product market includes at least all EMS sales to OEMs. Indeed, different electronic products are manufactured using similar production processes (assembly of printed circuit boards). Production equipment is not product specific and can be easily and cheaply re-programmed to manufacture different products. Testing equipment, which tends to be product specific, is usually owned by the OEM customer and is made available to EMS-providers only for the duration of the manufacturing contracts. According to the notifying party, the product market could be

even wider if captive production by OEMs is included, or if services offered by original design manufacturers (“ODM”) are taken into account<sup>2</sup>.

9. The views collected by the Commission in its market investigation are mixed. Some respondents doubt that there may be a segmentation of the market due to the fact the equipment that is used in the production process for the different electronics products, as well as the technical skill, are identical. Moreover, the time for changing the production line from the manufacture of one product to another for the same or different customer is usually possible at low cost within limited time. Other respondents, instead, confirm that over the last years EMS providers have reached a certain degree of specialisation, as a result of which the market for EMS to OEMs can be broken down in a number of segments, such as, inter alia, i) computer, ii) consumer, iii) networking, iv) peripherals, v) servers and storage, vi) telecommunications, vii) automotive, viii) medical.
10. Past Commission decisions<sup>3</sup> have left the product market definition open between all EMS to OEMs and a narrower definition that would subdivide EMS into specific electronic product segments, according to the final product/service in which EMS are incorporated (i.e the “end use destination”).
11. For the purposes of the assessment of the present transaction, it is not necessary to precisely delineate the relevant product market as, in any event, the proposed transaction does not raise serious doubts as to its compatibility with the common market under any possible product market definition.
12. The notifying party states that the relevant geographic market is worldwide, due to low transport costs, low customs duties and the increased level of sourcing by OEMs from various countries around the globe. Previous Commission decisions<sup>4</sup> have concluded that the relevant geographic market is at least EEA-wide.
13. For the purposes of the assessment of the present transaction, it is not necessary to precisely delineate the relevant geographic market as, in any event, the proposed transaction does not raise serious doubts as to its compatibility with the common market under any possible product market definition.

## **V. COMPETITIVE ASSESSMENT**

14. The market for EMS sales to OEMs is fast growing, with forecast compound annual growth rates in excess of 10% in the period 2003-2007. The focus of EMS services is on the manufacturing of various types of electronic products on an outsourcing/procurement basis. OEMs are the primary customers for EMS.
15. At worldwide level and considering all EMS sales to OEMs, the notifying party estimates that the transaction would increase Flextronics’s market share by [0-5%],

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<sup>2</sup> Traditionally, ODMs would focus on the design and redesign of electronic systems for personal computers for OEMs. Over the years, they have expanded their offer to cover other electronic devices and services usually associated with EMS-providers. In fact, the markets for ODM services and EMS are converging.

<sup>3</sup> Case No COMP/M.1841-Celestica/IBM (EMS), Case No COMP/M. 2479 - FLEXTRONICS/ALCATEL, Case No COMP/M.2629 FLEXTRONICS / XEROX.

<sup>4</sup> See footnote above.

strengthening its leadership. Post-merger, Flextronic would indeed reach a combined market share in 2003 of something in the range of 10-15% (market shares estimates somehow vary across the industry) ahead of Solectron (8.5-12%), Sanmina (7.7-11.3%) and Foxconn (7.2-12%).

16. The notifying party has also provided market shares for narrower product and geographic market definitions, based on the downstream products and services in which Nortel is specialised, [...]. In particular, for “EMS for public and private telecommunications and equipment”<sup>5</sup>, Flextronics world-wide market share would increase from [15-20%] to [20-25%] post-transaction. EEA-wide, the market share would be [20-25%]. For “EMS for data networking systems and equipment”<sup>6</sup> Flextronics world-wide market share would increase from [5-10%] to [5-10%] post-transaction. EEA-wide, the market share would be [5-10%].
17. Whatever the market definition, the transaction does not give rise to any competition concern. While Flextronics has gained the leadership in the market for EMS to OEMs as a whole, as well as in some of the narrower segments - especially those relating to telecoms - there are a number of credible competitors, such as, inter alia, Solectron, Sanmina, Foxconn and others, with significant market shares. Finally, in house capacity that some OEMs still retain is an additional competitive constraint to EMS providers.
18. No vertical concern would arise from the transaction, as Nortels market share in the downstream global markets (sale of public and private telecommunications systems and equipment and sale of data networking systems and equipment) is well below [0-10%].

## VI. CONCLUSION

19. 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 (EC) No 139/2004.

For the Commission  
*(signed)*  
Mario MONTI  
Member of the Commission

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<sup>5</sup> Includes EMS for the production of switching, wireline transmission, access equipment, radio mobile network equipment, private automatic branch exchanges, key telephone systems and communication terminals.

<sup>6</sup> Includes switches, routers and remote access concentrators.