

***Case No COMP/M.3911 -  
BENQ / SIEMENS  
MOBILE***

Only the English text is available and authentic.

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

---

Article 6(1)(b) NON-OPPOSITION  
Date: 07/09/2005

***In electronic form on the EUR-Lex website under document  
number 32005M3911***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07-IX-2005

SG-Greffe(2005) D/204914

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.3911 –BenQ / Siemens Mobile  
Notification of 04/08/05 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On the 4 August 2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking BenQ Corporation (“BenQ”, Taiwan, Republic of China) acquires, within the meaning of 3(1)(b) of the Council Regulation, control of the mobile device business of Siemens AG (“Siemens device business”, Germany) by way of purchase of assets, and in respect of Germany and the UK, also by purchase of shares.

## **I. THE PARTIES**

2. **BenQ** is active in the communication and multimedia device business. Within this business it is active in the areas of digital displays, scanners and keyboards, mobile telephones (including communication devices like GSM mobile phones), digital projectors, storage devices, wireless technologies and electronic components. In the area of mobile telephones, BenQ sells its products mainly to other producers of telephones but also to a small extent under its own brand label to retailers and network operators.
3. **Siemens mobile device business** is a part of the Siemens group and comprises the activity of several Siemens companies active in the research, development, production and sale of mobile devices incorporating cellular communication technology including

---

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

mobile telephones; accessories; related services; and spare parts. The Siemens mobile device business does not include the Siemens business relating to dual mode products and any wireless communication modules.

## II. CONCENTRATION

4. The concentration involves the acquisition of sole control over the Siemens mobile device business by BenQ and will be effected by means of an acquisition of assets, and in respect to Germany and the UK, also of shares (relating to the subsidiaries Symbian Limited, and Product Visionaires). Hence, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
5. In addition, Siemens will exclusively license the Siemens trademark to BenQ for a period of up to five years, in relation to cellular mobile communication terminals. For an interim period, BenQ will, moreover, not gain control over the assets owned by Siemens Shanghai Mobile Communications Limited (“SSMC”). At closing of the proposed transaction, and during this interim period, Siemens and BenQ will enter into a contract manufacturing agreement relating, inter alia, to the manufacturing of mobile telephones by SSMC. BenQ is furthermore obliged to purchase the SSMC mobile device business by way of an asset deal as soon as possible, and at the very latest at the time the contract manufacturing agreement terminates. The contract manufacturing agreement is still subject to negotiations [...].

## III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>2</sup> (EUR [...] for BenQ, EUR [...] for Siemens mobile device business in 2004). Both BenQ and Siemens mobile device business have a Community-wide turnover in excess of EUR 250 million (BenQ: EUR [...], Siemens mobile device business: EUR [...] in 2004), 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.

## IV. COMPETITIVE ASSESSMENT

### A. Relevant markets

#### *Relevant Product Market*

##### *Branded mobile telephones*

7. Mobile telephones are sold to operators of mobile telephone networks and to retailers of mobile telephones. They are offered for several communication standards, such as the European standard - GSM and the North American standard - CDMA.
8. The Commission has, in its previous decisions<sup>3</sup>, left open whether the market should be further subdivided into the markets for the various communication standards. It has

---

<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, p 25).

<sup>3</sup> Case No COMP/M.1836 Siemens/Bosch Telecom, para.10.

however taken the view that these standards have become increasingly interchangeable and many mobile phones are capable of using more than one communication standard. Since the market shares of both parties for all standards together and for GSM separately only differ on a global market and only to a marginal extent ( $<5\%$ ), this question may be left open.

*Original Design Manufacturing of mobile telephones*

9. BenQ (but not Siemens mobile device business) is active as an Original Design Manufacturer (“ODM”) of mobile telephones, which is the upstream market for the sale of branded mobile telephones. Unlike on the market for branded products, customers on this market are not operators of networks or retailers, but other producers of mobile telephones who then resell the purchased telephones under their own brand name.
10. The parties consider ODM services as being part of a wider market for general Electronic Manufacturing Services (“EMS”). While ODM mostly refers to design services, EMS covers the mere manufacturing and the assembly of parts. Moreover, EMS would not only comprise the manufacturing and assembly of mobile phones but also of other electronic products. In a previous decision<sup>4</sup>, the Commission has taken the view that although traditionally EMS and ODM were two separate markets; they are currently converging due to the blurring borders between these two fields. However, even under the smallest market definition (ODM for mobile telephones) the merger does not give rise to competition concerns.

*Accessories, related services and spare parts*

11. The parties claim that the sale of accessories, related services and spare parts, should be regarded as a part of the sale of mobile telephones and therefore do not constitute separate markets. In this case, accessories, related services and spare parts could be regarded as parts of the branded mobile telephones market and the ODM mobile telephones market respectively or as separate markets. As the present case does not exhibit competition concerns when examined either according to a broad definition of the entire market, or more narrowly defined, subdivided markets, the precise delineation can be left open.
12. The parties further claim that accessories should not be further subdivided, because customers generally purchase accessories in bundles, e.g. car kit, batteries and cases. Since the assessment of the transaction does not change, the question as to whether this market should be further subdivided into specific product categories, for, can be left open, as either market definition will give no rise to competition concern.

***Relevant Geographic Market***

13. Regarding the branded mobile telephone devices, the parties consider that the market for the production and sale of branded mobile telephones is global due to low transport costs, supply side substitutability with respect to the regionally differing communication standards and similar prices worldwide. In any case, the definition of the relevant geographic market can be left open as the proposed concentration does not give rise to competitive concerns under either possible delineation.

---

<sup>4</sup> Case No COMP/M.3583 Flextronic/Nortel, para. 8.

14. The parties consider that the ODM market for mobile telephones is global as customers source their supplies globally, especially when they require high volumes. Both parties have manufacturing sites in all world regions and transportation costs are low relative to price.
15. In previous decisions<sup>5</sup>, the Commission has considered, confirmed by market investigations, the at least EEA-wide scope of the EMS market which is related to the ODM market. However, the market definition can be left open since the concentration does not lead to differing results irrespective of whether a global or an EEA-wide market is assumed.
16. The parties consider that should separate markets for accessories, related services and spare parts exist, they would be of global nature. For the purpose of the present case it is not necessary to conclude whether the market is narrower because in all alternative market definitions there are no competition concerns.

### **B. Competition analysis**

17. The proposed concentration will lead to a small overlap in the production and sale of branded mobile telephones. Furthermore, BenQ is also active as an ODM on the upstream product market for designing and manufacturing mobile telephones for other producers of telephones. The mobile phone businesses of both companies also have a connected after/related sales market comprising accessories, related services and spare parts.

#### *Branded mobile telephones*

18. Since BenQ is only active to a very minor extent in the market for branded mobile telephones, the transaction will mainly result in BenQ taking over the market position established by Siemens mobile device business. Even if Siemens mobile device business enjoys a strong market position in respect of the production and sale of branded mobile phones in specific Member States (higher than 15% in: Austria – [35-45]%, Germany – [15-25]%, Netherlands – [15-25]%, Slovenia – [25-35]%, Spain – [25-35]%), the transaction will not result in a significant increase in market shares because BenQ is only marginally active there (in all of the above mentioned countries <1%). On an EEA-wide basis, Siemens has a market share of [15-25]% and BenQ of [<5]%. On a global market, the combined market share will be below 15%. BenQ will face competition from strong, well-established, competitors, e.g. Nokia ([30-40]% EEA-wide) and Samsung ([5-15]% EEA-wide) and to some extent Sony Ericsson ([5-15]% EEA-wide).

#### *ODM mobile telephones*

19. On the ODM market for mobile telephones, only BenQ is active. However, no vertically affected market arises from the merger since BenQ's market shares are below 25% on an EEA-wide as well as on a global basis.

#### *Accessories, spare parts and related services*

---

<sup>5</sup> Case No COMP/M.1841 Celestica/IBM; Case No COMP/M.2479 Flextronics/Alcatel; Case No COMP/M.2629 Flextronics/Xerox; Case No COMP/M.3583-Flextronics/Nortel, para 8.

20. While Siemens only sells accessories on the branded goods level, BenQ also delivers accessories to its ODM customers. Since both Siemens and BenQ only produce accessories for their own mobile telephone devices, the market shares are necessarily closely related to the ones in the corresponding mobile telephone markets and do not exceed those. Since there are, moreover, numerous competitors who also supply such devices for both the Siemens and BenQ mobile telephones, the parties' market share for accessories is very likely to be even lower than that for the respective mobile telephones.
21. In the light of this, BenQ's market share addition on a potential market for accessories (in total or split into different components) for branded mobile telephones would be even smaller than in the respective mobile telephones market and therefore negligible. On a potential ODM market for accessories, only BenQ is active. Its market shares would not exceed the threshold for an affected market.
22. With respect to the related services, such as replacement and/or exchange of defect parts or software updates, and spare parts, the parties submit that [>90]% of Siemens's original revenue in this business is charged back to Siemens through the service centres providing warranty-service/exchange/replacement to the consumer. Thus, the effective revenue with spare parts and related services is in total only [...] Euro in the non-warranty business. BenQ does not have separate sales in respect of spare parts for mobile telephones and related services. Sales of spare parts for mobile telephones of BenQ (and related services) generally occur in connection with service and repairs within the mobile telephone warranty period. There is therefore, on the markets for spare parts and related services beyond warranty services no overlap. Consequently, the concentration will not give rise to competition concerns.

## V. CONCLUSION

23. 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)  
Neelie KROES  
Member of the Commission