EN

Case No COMP/M.4003 - ERICSSON / MARCONI

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 20/12/2005

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4003 – Ericsson/Marconi
Notification of 15 November 2005 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 15/11/2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Telefonaktiebolaget LM Ericsson ("Ericsson", Sweden) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of parts of the undertaking Marconi Corporation plc ("Marconi", United Kingdom) by way of purchase of assets.

I. THE PARTIES

2. Ericsson provides globally telecommunications equipment and related services to mobile and fixed network operators.

3. Marconi provides equipment and services to telecommunications service providers and other telecommunications network operators.

II. THE CONCENTRATION

4. Most of the businesses presently operated by Marconi are subject to the transaction. Specifically Ericsson will acquire from Marconi the optical network business, most of the access network business, the data network equipment and services based

[1] OJ L 24, 29.1.2004 p. 1.

predominantly in North America, the international services business including the non-UK telecommunication services activities, the value added services activities in the Middle East, the wireless software services business, the Marconi trade mark as well as other trade names, and other intellectual property rights related to the aforementioned businesses (together "the Marconi acquired businesses"). Marconi Corporation, which will be renamed telent plc, will retain the UK telecommunications services, the payphones business, the time division multiplexing (TDM) switch business and the UK and German value added services businesses with the exception of wireless network planning software and services.

5. The proposed transaction is therefore a concentration within the meaning of Article 3 of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The combined aggregate worldwide turnover of Ericsson (€14 463 million) and that of the Marconi acquired businesses (€1 963 million) exceeded €5 000 million in 2004, and each of the undertakings had turnover in the Community of more than €250 million (Ericsson €4 645 million, the Marconi acquired businesses €[…] million) without achieving more than two-thirds of their respective aggregate Community-wide turnover within one and the same Member State. The proposed operation meets the thresholds of Article 1(2) of the Merger Regulation and is therefore a concentration with a Community dimension.

IV. COMPETITIVE ASSESSMENT

7. The Marconi acquired businesses (products for fixed networks including the fixed elements of mobile networks) complement those of Ericsson (products mainly for mobile networks) rather than overlap. However, there are horizontal overlaps in the following markets.

A. Relevant product markets

Point-to-Point microwave radio transmission equipment (PTP)

8. PTP is used for trunk transmission, providing a wireless connection between two (generally) fixed points at various distances and at certain bandwidths. PTP varies according to function: long-haul (up to 100 Km[2]) for long distance transmission that tends to link large areas and short-haul (up to 40 Km) for shorter distance transmission and smaller areas. It can vary also according to the technology used.[3] Prices for the various products also vary (i.e. high capacity PTP being more expansive). However, there is no need in the present case to delineate the relevant product market as the proposed concentration will not result in any adverse effect on competition irrespective of which of the possible market definition is retained.

Point-to-Multipoint microwave radio transmission equipment (PMP)

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[2] Ericsson is not active in the long haul PTP segment.

[3] The parties cite two technologies: plesiochronous digital hierarchy (PDH) operating between 2 mbit/s to 34 mbit/s or synchronous digital hierarchy (SDH) operating at speed over 155 mbit/s. Ericsson is not active in the PTP SDH segment ; Marconi is not active in the PTP PDH segment.

9. PMP enables transmission by microwave radio to or from multiple base stations to or from one point. PMP products include local multipoint distribution system (LMDS operating at 10 GHz and above) and broadband wireless access products (below 10GHz). Although the exact product market definition has so far been left open, previous Commission decisions[4] suggested possible distinction by urban/rural and fixed/mobile networks. The parties consider that this distinction is not justified anymore and irrelevant in the present case as only Ericsson is present in mobile networks. The notifying party considers that PMP products constitute a single relevant product market. The notifying party also states that PTP and PMP products constitute separate markets as, from the demand-side, they perform different function (PTP products are used for transmission of voice and data, whereas PMP products are used for both access and transmission purposes).

10. In any event, the exact product market definition can be left open since no competition concerns arise under any possible market definition.

Digital subscriber loop access multiplexers (DSLAMs)

11. DSLAMs are products that enable customers to access the Internet through broadband technology. This product terminates the DSL connections (broadband over copper communication) in the operators' local exchange sites. The uplinks from DSLAMs connect into a metro network, which aggregates a lot of broadband traffic to the IP Core network. Asynchronous Transfer Mode (ATM) has mainly been used in the aggregation network but as the average bandwidth from each user increases and more traffic needs to be aggregated, IP/Ethernet technology is increasingly being used because of its superior price/performance to ATM. The notifying party explains that both technologies can be used interchangeably, as networks can be upgraded from ATM-based DSLAMs to IP/Ethernet DSLAMs without substantial re-engineering, and both ATM-based and IP/Ethernet-based DSLAMs can co-exist in the same network. For the purposes of the competitive assessment of the present case, it is not necessary to decide whether the market for DSLAMs should be further segmented on the basis of the technology used (ATM vs. IP/Ethernet), as under any product market definition the transaction would not give rise to competition concerns[5].

Softswitches

12. A switch is a device which connects calls from one phone line to another. There are two principal types of digital switching technology: Time division multiplexing (TDM) switching which involves reserving time slots for the transmission of voice and data (suitable for circuit-switched networks requiring switching to be done physically through the hardware) and softswitch solutions for newer IP-based networks where the same can be achieved through computer software. The notifying party and some competitors consider that the two are not substitutable, both from a demand- and supply-side perspective, and that accordingly softswitches constitute a separate product market. For the purposes of the competitive assessment of the present case, there is no need to decide whether the relevant product market includes softswitches and TDM

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4 See Case COMP/M.2851 Intracom/Siemens/STI, 10 February 2003; Case IV/M.561 AT&T/Philips, 5 February 1996.

5 Ericsson does not supply ATM-based DSLAMs; Marconi does not supply IP/Ethernet-based DSLAMs.

switches as under any definition the proposed concentration will not significantly impede effective competition[6].

Optical networks products

13. Optical networks are high-capacity telecommunications transmission networks used for long distance. Optical networks products can be divided by network function into three segments: aggregation (optical switches or multiplexers which sit on the edge of the optical network and are used to aggregate customers into the core network); bandwidth management (optical switches or multiplexers which sit at the core of the optical network); and wavelength division multiplexing (WDM) equipment (transmission technique employing wavelengths to transmit multiple signals on optical networks). For the purposes of the competitive assessment of the present case, there is no need to decide whether the market for optical networks products should be further segmented on the basis of the network function (aggregation, bandwidth management, wavelength division multiplexing), as under any definition the proposed concentration will not significantly impede effective competition.

Wireless network planning software WNPS

14. WNPS is a software tool used by telecommunications operators to plan the placing of network infrastructure to achieve the best coverage and network function (in terms of volume of data), taking into account forecasts of traffic density and load, the overall requirements for capacity, the routing and overall layout. For the purposes of the competitive assessment of the present case, there is no need to delineate the relevant product market as under any product market definition the transaction would not give rise to competition concern.

B. Relevant geographic markets

15. In a previous decision[7], the Commission found the markets for telecommunications equipment to be at least EEA-wide, but noted that it was not necessary in that case to determine whether the markets were wider than the EEA. The Commission also noted that its practice in defining geographic markets in this area had shown a successive widening of their geographic scope. The notifying party states that the markets under consideration are all global markets for the following reasons: the liberalization of downstream markets for telecommunications services has created upstream product markets worldwide for telecommunications equipment, telecommunications equipment must increasingly meet internationally established standards to ensure compatibility, telecommunications equipment is shipped worldwide, and transport costs are low, there are no significant price differences between different regions of the world and contracts to supply telecommunications equipment are global.

16. In the present case it is not necessary to decide whether the telecommunication equipment markets identified above are larger than EEA-wide as the conclusions of the competitive analysis would remain unchanged.

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6 telent will retain its TDM switch business; therefore the only overlap between the parties is in softswitches.

7 Case COMP/M.2851 Intracom/Siemens/STI, 10 February 2003.

C. Competitive assessment

17. The tables below show the parties' shares of the markets where their activities overlap and where their combined market share is above 15%.

Market shares in 2004[8]

PTP	Worldwide	Competitors	EEA	Competitors[9]
Ericsson	[20-30]	Alcatel [10-20]	[20-30]	Alcatel [10-20]
Marconi	[0-10]	NEC [10-20]	[0-10]	Siemens [10-20]
Combined	[20-30]	Siemens [10-20]	[30-40]	NEC [10-20]
				Nokia [0-10]

Short haul PTP	Worldwide	Competitors	EEA	Competitors[10]
Ericsson	[20-30]	Siemens [10-20]	[20-30]	Siemens [10-20]
Marconi	[0-10]	NEC [10-20]	[0-10]	NEC [10-20]
Combined	[20-30]	Alcatel [10-20]	[30-40]	Nokia [10-20]
				Alcatel [10-20]

PMP	Worldwide	Competitors	EEA	Competitors[11]
Ericsson	[0-10]	Alvarion [20-30]	[0-10]	Alvarion [20-30]
Marconi	[0-10]	Alcatel [0-10]	[10-20]	Alcatel [10-20]
Combined	[0-10]		[10-20]	

DSLAM	Worldwide	Competitors	EMEA[12]	Competitors
Ericsson	[0-10]	Alcatel [40-50]	[0-10]	Alcatel [40-50]
Marconi	[0-10]	Huawei [0-10]	[0-10]	Siemens [0-10]
Combined	[0-10]		[0-10]	

8 Source: PTP: Skylight Research; Short Haul PTP: Skylight Research and parties' estimates; PMP: Skylight Research and parties' estimates; DSLAM: Infonetics Research and parties' estimates; Softswitches: Infonetics Research; Optical network and WNPS: parties' estimates. The market shares presented by the notifying party have been confirmed by the market investigation.

9 Competitors' market shares are provided for EMEA (Europe Middle East Africa), as there are no reliable independent source of information and the parties were therefore not able to provide safe estimates for competitors' market share at the EEA level. However the combined market share of the parties are not materially different at the EEA and at the EMEA level.

10 Id.

11 Id.

12 EMEA stands for Europe Middle East and Africa

Softswitches	Worldwide	Competitors	EMEA	Competitors
Ericsson	[0-10]	Nortel [30-40]	[10-20]	Italtel [20-30]
Marconi	[0-10]	Siemens [0-10]	[0-10]	Nortel [10-20]
Combined	[0-10]	Alcatel [0-10]	[10-20]	Alcatel [10-20]

18. In the total market for optical networks products in EEA, although Marconi has a market share of [10-20]%, being the number 2 player after Alcatel, Ericsson has a *de minimis* activity (revenue of less than £[..] million). The same applies if the markets are to be defined according to individual segments, as Ericsson's market share will still be insignificant (aggregation: Marconi [10-20]%, with the increment below [<5]%; bandwidth management and WDM: no overlap, as Ericsson is not active).

19. In the WNPS market, Marconi holds a market share of [10-20]% in the EEA, whereas Ericsson' market share is *de minimis* ([<5]%). Post-merger, Aircom ([30-40]%) and Forsk ([20-30]%) will remain larger players than the merged entity.

Assessment

20. It appears from the tables above that for all but two of the markets concerned the increment in market share remains relatively low (below 5 % at both the EEA and worldwide levels) and the overall market share does not exceed 30% in these cases.

21. The sole exceptions are the EEA market for PTP (overlap of [0-10]%, with a combined market share of [30-40]%) and the EEA market for short haul PTP (overlap of [0-10]% with a combined market share of [30-40]%).

22. However, post transaction, there will remain credible competitors such as Alcatel, Siemens or NEC with comparable size to that of the parties in all possible markets. There are also numerous smaller competitors active and able to exert effective competitive pressure in the relevant markets.

23. In the large majority of cases, the market investigation has pointed out that customers award contracts through tender processes, and that the contracts awarded are often frame contracts (guaranteeing no business) with a short duration, and thus that current market shares may not indicate real market power.

24. In order to assess whether Ericsson and Marconi were each other's closest competitor, Marconi has provided a win/loss database, which covers contracts with a value of over £100,000 (earliest bid entered into the database has a decision date of 3 November 1999; the latest bid entered has a decision date of 27 June 2005). There are a total of [700-800] contract bids recorded. Both Marconi and Ericsson are identified as bidders in only [<100] contracts. Of those contracts, the majority were bids made by Marconi, Ericsson and at least three other competitors. [<20] contracts were bid for by Marconi, Ericsson and two other competitors and [<10] were bid for by Marconi, Ericsson and one other competitor. There are only [<5] entries in the database where only Marconi and Ericsson are identified as the sole competing bidders ([<5] of these entries relate to the same contract). All these bids took place before November 2002. In the course of the market investigation both competitors and customers have confirmed that Marconi and Ericsson were not each other's closest substitutes.

25. Because of the complementary structure of each party's product range (rather than overlapping), it has been investigated whether the transaction could affect competition

as a result of the new entity becoming the only provider left to customers who need a complete solution (i.e. a system, either a 2G, 3G or fixed telephone system which includes transmission equipment). The market investigation has led to the conclusion that these customers will still be able to source their procurements from various manufacturers.

26. In this respect it is worth noting that a large majority of the customers purchase individual equipment rather than a complete solution, resulting in the fact that a complete product portfolio is rarely required together. Large scale operators with significant technical resources (like telecommunications incumbents) typically purchase equipment from different vendors, as they have dual or multi vendors supply arrangements, thus promoting competition amongst vendors. Only some small telecommunications operators, mostly alternative operators, require complete end-to-end systems. For this category of customers only being a supplier with a complete product portfolio could provide a competitive advantage.

27. However, other competitors such as Alcatel, Siemens or NEC are already able to provide complete solutions. The transaction will increase the number of market participants able to provide complete solutions rather than removing a direct competitor to these aforementioned companies as regards such solutions.

28. The market investigation has furthermore confirmed that standardization of interfaces in telecommunication networks by international standards bodies[13] enables interoperability between components from different suppliers. Therefore, customers are not locked in with their existing suppliers but can benefit from competition between suppliers, be it for individual equipment or complete solutions.

29. The competitive behaviour of the merged entity will therefore be sufficiently constrained by competitors including as regards customers requiring complete solutions.

30. In light of the foregoing, it can be concluded that the proposed transaction will not significantly impede effective competition in the common market or in any substantial part of it, in particular as a result of the creation or strengthening of a dominant position.

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[13] Such as for instance European Telecommunications Standards Institute (ETSI) and the Association of Radio Industries and Businesses (ARIB).

V. CONCLUSION

31. 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