

***Case No COMP/M.4063 -
CISCO / SCIENTIFIC
ATLANTA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 22/02/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.02.2006

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.4063 – Cisco/Scientific-Atlanta
Notification of 18.01.2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 18 January 2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Council Regulation (EC) No 139/2004 on control of concentrations between undertakings (“the Merger Regulation”) by which the US company Cisco Systems Inc. (“Cisco”) intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of the US company Scientific-Atlanta, Inc. (“Scientific-Atlanta”).
2. The transaction was referred to the Commission under Article 4(5) of the Merger Regulation.
3. After an 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 the functioning of the EEA Agreement.

¹ OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES

4. Cisco is a publicly listed company and globally active in networking products for the Internet. In particular, Cisco manufactures routers, switches and other standards-compliant data networking products, as well as DSL and cable broadband equipment, VOIP telephony products and network management software. These products are sold primarily to communications services providers (telecom and cable operators) and enterprises and government institutions.
5. Scientific-Atlanta is a publicly listed company and a global provider of digital interactive set-top boxes used by cable television subscribers to receive video programming, as well as video distribution networks and video system integration. These products are mainly sold to cable TV providers, broadcasters and programmers, who typically purchase set-top boxes and other subscriber equipment in bulk and distribute that equipment to cable subscribers.

II. THE OPERATION AND CONCENTRATION

6. Cisco and Scientific-Atlanta signed an Agreement and Plan of Merger (“Merger Agreement”) on 18 November 2005. Pursuant to the Merger Agreement, Cisco will acquire sole control over Scientific-Atlanta through a newly created wholly-owned subsidiary Columbus Acquisition Corp., which will merge with Scientific-Atlanta and cease to exist after the concentration is completed.
7. The proposed concentration concerns the acquisition by Cisco of the whole business of Scientific Atlanta.
8. The proposed concentration, therefore, constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

9. The concentration does not have a Community dimension within the meaning of Article 1(2) of the Merger Regulation as each of Cisco and Scientific-Atlanta does not have a Community-wide turnover in excess of EUR 250 million (Cisco: EUR [...] in 2005; Scientific-Atlanta: EUR [...] in 2005). Nor do the companies meet the thresholds under Article 1(3) of the Merger Regulation. The Commission acquired jurisdiction to review the notified operation by means of referral under Article 4(5) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

A. Relevant product markets

10. The business sector concerned by the proposed transaction is the manufacturing of broadband communications equipment².
11. According to the notifying party, out of several product categories that the parties are offering, there is only a very limited overlap in the two companies’ activities with

² Broadband communication equipments are those devices that enable and carry out the delivery of video, voice and data content over broadband networks such as cable, IP or wireless networks.

respect to certain optical transmission products, certain cable modem products, certain set-top boxes and certain wireless mesh network products.

12. Therefore, the notifying party defines six relevant product markets under the narrowest scenario: (i) the market for cable modems³, (ii) the market for cable gateways⁴, (iii) the market for EMTAs (Cable modem with Embedded Multimedia Terminal Adaptor)⁵, (iv) the market for optical transmission products, (v) the market for wireless mesh network products⁶, and (vi) the market for certain digital set-top boxes⁷. Further to these, the notifying party has also provided data on the cable modem termination systems (CMTS) product but has not defined it as a relevant market, due to the lack of overlap between Cisco's data routing devices and Scientific-Atlanta's video focused QAM devices.
13. In the case of the first three product lines (i.e. cable modems, cable gateways and cable EMTAs) the notifying party further suggests broader market definitions based on industry reports⁸. Namely, Cisco takes the view that these three products would constitute the market for cable customer premises equipments (CPEs), or even more generally to be part of the wider broadband CPEs market.
14. In light of the fact that end customers seek functionalities, not products, and that (i) cable modems, (ii) cable gateways and (iii) cable EMTAs commonly have the function to provide internet termination over cable network but at the same time they may not have the function to provide termination over other broadband networks, Cisco considers cable CPEs as the most appropriate market definition for the three products in question.
15. The market investigation examined the appropriateness of the proposed market definitions under both the narrower and broader scenarios.
16. Some market participants considered that in the information and communication sector in general a number of products are supplied either separately or as integrated products. In some cases where the products perfectly complement each other in serving a common function, and where manufacturers produce them jointly and operators purchase them jointly, it may be justified to define a broader product category. Majority of market participants responding to the market investigation agreed with the notifying party's view and pointed towards an overall cable CPE market comprising cable modems, cable gateways and cable EMTAs.

³ Cable modems are primarily used to deliver broadband internet access, taking advantage of unused bandwidth on a cable television network.

⁴ Cable gateways combine a cable modem and a residential router and act as a gateway between the external cable data network and the consumer's various internal home data services.

⁵ EMTAs combine a high-speed data modem or a home gateway device with a multi-media adaptor embedded in the device EMTAs enable cable operators to offer advanced VoIP services and high-speed data services using only one CPE device.

⁶ Mesh is an emerging application of wireless technology that involves the creation of networks with multiple access points and special high-speed wireless links between them to create wireless networks over large areas such as university campus, neighbourhood or an entire city.

⁷ Digital set-top box is a device that enables a television set to receive and decode digital television broadcast signals.

⁸ Infonetics Research Report on *"Broadband Modems, Routers, Gateways; Quarterly world-wide market shares and forecast for 3Q05"*.

17. However, some of the respondents expressly contested a definition of a wider broadband CPE market on the basis that digital set-top boxes and optical transmission products have very different characteristics and functionalities. Even if through further product consolidation digital set-top boxes were integrated into other cable CPE category, this would not constitute a broadband CPE product market but digital set-top boxes would rather be regarded as part of the cable EMTA product line.⁹
18. Finally, it must be noted that Cisco disputes the existence of an overall end-to-end triple play solution market at this point on the basis that the integrated triple play equipment solution market is still at its initial phase. The underlying equipment for the triple play services already offered by communication service operators on the market is not yet the integrated end-to-end solution but a set of different networking products. Some of the largest IT equipment producers, such as Microsoft/Alcatel, Siemens, Samsung, and Thomson Multimedia, have only very recently turned towards this potential market segment.
19. The market investigation confirmed that it is too early to view triple play solution market as a distinct product market. Although the demand for these integrated products is still low, this rapidly emerging market is already developing and further market consolidation is expected to intensify competition in this segment.
20. For the purpose of the present transaction, the exact product market definition for all six proposed product markets may, however, be left open, since in all alternative market definitions, the operation does not seem to raise competition concerns.

B. Relevant geographic markets

21. In line with the Commission's previous decisional practice¹⁰, the notifying party proposes that all the markets in question are at least EEA-wide, if not world-wide, in scope due to the international features of the sector: existence of several global standards for these products, low transport costs, no significant difference in prices and in trade-flow patterns and the fact that all major players are active globally or at least Europe-wide.
22. All respondents to the Commission's questionnaires supported the view of the notifying party that the relevant geographic markets are at least EEA-wide, if not worldwide, in scope for all the relevant products except for digital set-top boxes. In addition, it appears that large manufacturers tend to use several sales channels to distribute their products of which large multi-national wholesale distributors take a very significant part. As digital set-top boxes distributed within the Community must conform to a European standard the market for digital set-top boxes would need to be defined as being EEA-wide at the widest.
23. It can be, therefore, concluded that the geographic scope of the markets of cable modems, cable gateways, cable EMTAs, optical transmission products, wireless mesh network products is at least EEA-wide, and for digital set-top boxes is EEA-wide.

⁹ The emergence of a single multimedia residential gateway equipment (for e.g. IP TV) has been envisaged by one of the large customers in the future that might lead to a genuine broadband CPE market.

¹⁰ See Case COMP/M.2851 – *Intracom/Siemens/STI* and Case COMP/M.651 – *AT&T/Philips*.

C. Assessment

24. Cisco and Scientific-Atlanta both provide products for the delivery of content over networks. Cisco primarily provides equipment for IP-enabled delivery of voice and data content (Internet networking) and most of its sales are achieved in routers and switches. Scientific-Atlanta principally provides equipment for the delivery of video broadcast content over cable networks (cable TV) and realises most of its sales in set-top boxes and head-end video equipment.
25. The notifying party takes the view that the proposed concentration does not raise competition concerns due to the very limited overlaps between the activities of Cisco and Scientific-Atlanta and the small increment in terms of market share resulting from the transaction. According to the notifying party, the transaction does not involve any vertically affected market. Moreover, the combined entity would continue to face strong competitors and due to the low level of concentration in the relevant markets, Cisco considers that it is unlikely that the parties and their competitors will have any incentive or be able to co-ordinate their actions successfully.
26. As to the potential broader market for cable CPEs, and based on a recent industry report¹¹, the combined market share of Cisco and Scientific-Atlanta amounts to 12% at a world-wide level (Cisco 2% and Scientific-Atlanta 10%). According to the estimate of the notifying party, the total market for cable CPE in the EEA in 2005 amounted to approximately EUR [...] million in terms of value and [...] units in terms of volume. Cisco estimates that in the EEA, the merged entity's combined market share for cable CPEs amounted to approximately [10-15%] by volume (Cisco [0-5%] and Scientific-Atlanta [10-15%]) and [15-20%] by value (Cisco [0-5%] and Scientific-Atlanta [15-20%]). The notifying party also provided its best estimates on the parties' market shares on a national basis. Even though the combined market share of Cisco and Scientific-Atlanta exceeds 15% in several Member States¹², the market share increment in each case is limited (i.e. around or less than [0-5%]) due to Cisco's weaker market position in the EEA. Its main competitors in cable CPEs include Motorola, Thompson and Arris.
27. Alternatively, considering narrower market definitions by sub-dividing cable CPE products, the notifying party identified potentially affected markets with respect to cable gateways and EMTAs.
28. On the potential market for cable gateways, the parties' estimated combined world-wide market share in 2005 amounted to approximately [25-30%] by volume (Cisco [5-10%] and Scientific-Atlanta [10-15%]) and [20-25%] by value (Cisco [5-10%] and Scientific-Atlanta [15-20%]). According to the estimate of the notifying party, the total market for cable gateways in the EEA in 2005 amounted to approximately EUR [...] million in terms of value and [...] units in terms of volume. At the EEA level, the notifying party estimates that Cisco obtained a market share of less than [0-5%] ([...]) and Scientific-Atlanta [5-10%] in the potential market for cable gateways both by volume and value. Its main competitors in cable gateways include Motorola, Netgear and Thompson.

¹¹ Infonetics Research Report on "*Broadband Modems, Routers, Gateways*."

¹² The combined market share amounts to approximately [45-55%] in Sweden, [40-50%] in France, [25-35%] in Spain and Portugal respectively, [15-25%] in Hungary, and [10-20%] in the Netherlands, Luxembourg, Denmark and Estonia, respectively.

29. On the potential market for EMTAs, the parties combined world-wide market share in 2005 amounted to [25-30%] by volume (Cisco [5-10%], Scientific-Atlanta [20-25%]) and [30-35%] by value (Cisco [5-10%], Scientific-Atlanta [25-30%]). According to the estimate of the notifying party, the total market for EMTAs in the EEA in 2005 amounted to approximately EUR [...] million in terms of value and [...] units in terms of volume. Based on the best estimate of the notifying party, the parties' combined EEA-wide market share amounted to approximately [25-30%] (Cisco around [0-5%], Scientific-Atlanta around [25-30%]) in the potential market for EMTAs. Its main competitors in EMTAs include Arris and Motorola.
30. The results of the market investigation did not raise any particular competition concerns as regards the cable CPEs, cable gateways and EMTAs in particular.
31. The combined entity will continue to face a number of strong competitors, such as Motorola, Arris and Thomson, which have similar market position to the merged entity in cable CPE markets. According to the results of the market investigation, for more standardised products, such as EMTAs, cable modems and cable CPEs switching occurs relatively frequently and appears to be comparatively easy and cost neutral. Nevertheless, for broadband equipment in general a number of market participants also raised the issue of interoperability between the products of different manufacturers, which can lead to technical problems and delays, as a factor affecting a potential switch of suppliers. Furthermore, market participants generally took the view that there are no significant barriers to entry to the markets for cable modems, cable gateways and cable EMTAs.
32. Finally, Cisco and Scientific-Atlanta have certain more limited overlapping activities. Cisco and Scientific-Atlanta both supply optical transmission products¹³ in the EEA (Cisco [5-10%] and Scientific-Atlanta around [0-5%] market share) and are active in certain IP-enabled set-top boxes. Scientific-Atlanta markets and sells digital set-top products under the brand name "Explorer"¹⁴ and Cisco, through its recent acquisition of KiSS Technologies, has acquired technology for an IP set-top box for use over DSL. Cisco has not, realised any sales in this segment. IP set-top boxes appear to still be a nascent business representing only [5-15%] of all set-top boxes. Similarly, for wireless mesh network products, Scientific-Atlanta has not yet achieved sales [...] and Cisco has recently started to supply its product, yet only outside the EEA.
33. The market investigation did not reveal any competition concerns the proposed transaction would have in optical transmission, digital set-top boxes or wireless mesh networks. The market participants generally took the view that there are no significant barriers to entry to these markets.¹⁵
34. Under the broadest alternative product market definition, i.e. the market for broadband CPE products, the assessment would result in a similar conclusion as the analysis under the narrowest market definitions above. In any event, no market player raised any competitive concern with regard to the broadband CPE product market.

¹³ Both Cisco and Scientific-Atlanta offer Metro Optical Transport Systems.

¹⁴ Sales achieved primarily in [...].

¹⁵ One of the competitors addressed the issue that the parties' combined market position in CMTS product market (which has only been mentioned as a possible relevant market in paragraph 12 but not defined as such) could rise with further integration in the industry, but no genuine concern was expressed.

35. In the light of the above, the Commission has come to the conclusion that the notified concentration would not significantly impede effective competition within the common market and the EEA.

V. CONCLUSION

36. 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