

***Case No COMP/M.4979 -
ACER / PACKARD BELL***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 27/02/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27-II-2008

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4979 – Acer/ Packard Bell
Notification of 23/01/2008 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 23.01.2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Acer Inc. ("Acer", Taiwan) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Packard Bell B.V. ("Packard Bell", the Netherlands) by way of purchase of shares.

I. THE PARTIES

2. Acer is a global supplier of personal computers (PCs) and related products. Acer's products include mobile and desktop personal computers, servers and storage, liquid crystal display (LCD) monitors and high-definition televisions, projectors, and handheld/navigational devices for business, government, education and home users.
3. Packard Bell is a European supplier of desktops, notebooks and digital entertainment solutions (MP3 players, home networking, global positioning systems ("GPS") and storage) for home users.

¹ OJ L 24, 29.1.2004 p. 1.

II. THE OPERATION

4. The proposed concentration is an indirect acquisition by Acer Inc. of PB Holding Company Sarl, a private limited liability company organized under the laws of Luxembourg and the parent company of Packard Bell. It is contemplated that Acer will acquire sole control over PB Holding by way of purchase of (i) all its outstanding shares of capital stock, and (ii) all convertible preferred equity certificates held by the Seller. In addition, Acer will acquire, on a pro rata basis of the purchase price, the remaining convertible preferred equity certificates that are currently held by NEC Corporation, a company organized under the laws of Japan.

III. CONCENTRATION

5. As a result of the proposed transaction, Packard Bell will be wholly owned and solely controlled by Acer. The operation therefore constitutes a concentration within the meaning of article 3(1)b of the EC Merger Regulation.

IV. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion². Each of them have a Community-wide turnover in excess of EUR 250 million, 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. COMPETITIVE ASSESSMENT

7. The transaction will create horizontal overlaps in the markets for the manufacturing and sale of PCs, PC monitors, Portable Navigation Devices PNDs, LCD branded flat screen televisions and after sales services for PCs. However, in view of the very limited overlaps in parties' activities in the markets for LCD branded flat screen televisions and after sales services for PCs (the parties' combined market shares amount to less than 1% in Western Europe and in the EEA, respectively), these markets will not be further assessed below. With regard to these two markets and for the purpose of the present transaction, the exact product and geographic market definitions can be left open, since, even on the basis of the narrowest possible market definitions, the transaction will not raise any competition concerns.

(1) THE RELEVANT MARKETS

A. Relevant product markets

Personal computers

8. PCs are general purpose, single user computer systems, which could be desktop computers, laptop computers (also called "notebooks") and workstations. Desktops and workstations are stand-alone computers of which the use is usually restricted to a fixed place, notebooks are compact computers with an integrated keyboard, a flat screen, a storage hard disk, a battery and are designed for either private or commercial mobile users, and, as such, are highly transportable.

² 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, p25).

9. The notifying party submit that there is demand and supply side substitutability between workstations, desktop and laptop PCs (comparable performance, declining price premium paid for laptop, suppliers active on both desktops and laptops). PCs would have become increasingly standardized; notebook sales are increasing at the expense of desktops sales. This contention would also stem from the Commission's investigation in HP/Compaq³.
10. The market investigation has provided some mixed indications in this respect. In recent years, the increasing capabilities of laptop computers have enabled them to replace desktops in many instances, but this seems a one-way process, since replacement in the opposite direction is limited especially where mobility is a purchase driver. This could be seen readily in many offices as workers now have laptops where they used to have desktops in the past and in homes where historical PC purchases were virtually all desktops. In the industry, manufacturers consider the mix of laptop-to-desktop, and this mix has steadily increased towards laptops in recent years (and has overtaken desktops in some countries). This trend results in laptops growing at double-digit annual volume growth rates compared to relatively flat or shrinking growth for desktop sales⁴.
11. However, it is uncontested and recognised by respondents in the market investigation that those two form factors have different characteristics and usage, desktops (fixed) and laptops (mobile), hence would not perfectly compete head to head with each other, while price competition is rather a pattern taking place within each range separately from the other (that is to say, within desktops and within laptops separately from each other).
12. In its HP/Compaq decision, the Commission indicated that the PC market could be further subdivided between two customer segments, consumers and professionals, because these two types of customers showed different purchasing patterns and product requirements.
13. The parties believe that such distinction today is obsolete given that PCs for consumers would have similar performance characteristics as PCs for commercial customers. In addition, there would be significant supply-side substitutability between "consumer" and "commercial" (professional) PCs, given that both are manufactured from the same third party Original Design Manufacturers ("ODMs"). Therefore, there would not be significant barriers to repositioning between the consumer and professional segment.
14. Theoretically, it could be true that consumer and professional use is not always the determinant factor for the purchase of a PC and that the OEM categorization as "consumer" or "commercial" PC is not as such relevant for the users. Certain businesses may regard some "consumer" PCs as substitute and equally there are many consumers who may regard certain "business" PCs as acceptable alternatives.
15. However, the market investigation' findings mitigate this element. Consumer PCs do not compete with commercial (professional/business) PCs due to differences in customers and their feature/functionality needs (for example, features facilitating gaming applications for the consumer market, or networking for the professional market are not relevant in the

³ Case N° COMP/M.2609 – HP/Compaq, 31/01/2002.

⁴ It is estimated that the PC market globally adds around 30M units per annum and that in 2007 more than 80% of these additional units were notebooks/portables, and in 2008 100% of the additions will be notebooks.

professional and consumer segments, respectively). PCs sold to businesses thus would have different product features, development requirements, and, most importantly, different distribution channels compared to those sold to consumers.

16. In particular, distribution via larger retailers is the most important and indispensable route to market for consumer PCs (whether desktop or notebooks). In respect of the distribution through retailers of PC for consumers, the market investigation has in particular indicated that PC manufacturers may face an important hurdle in that retailers, in their normal course of business, use to make large volume purchases (sometimes thousands of units in a single order) from PC manufacturers in order to get volume discounts. This may inter alia entail that retailers and PC manufacturers are in a varying negotiating position depending, in turn, on the scale of their PC sales in the marketplace.
17. By contrast, sales of PCs to business customers are made through direct sales, operated by sale account teams within PC manufacturers who will continually work with the business customers to satisfy their specific requirements.
18. For the purpose of the present transaction, the exact product market definition can however be left open, since, even on the basis of the narrowest possible market definition, the transaction will not raise any competition concerns.

PC monitors⁵

19. In its decision TPV/Philips (monitor)⁶, the Commission held that the market for branded monitors constitutes a separate product market as opposed to monitors manufactured by OEMs. The branded sale of monitors is downstream to that of OEM computer monitors. As cathode ray tube (CRT) monitors represent a very small portion of the overall (including the liquid crystal display LCD) monitor market in the EEA (3% of monitor sales) and none of the parties is active in this segment, the assessment will focus on the LCD segment.

Portable Navigation Devices PNDs

20. Portable navigation devices are portable stand-alone units designed for use mostly in automobiles. They typically use Global Positioning System (“GPS”) to acquire position data to locate the user on a road in the unit's map database. Using the road database, the unit can give directions to other locations along roads also in its database.

B. Relevant geographic markets

Personal computers

21. In line with the Commission’s decision in HP/Compaq, the parties submit that the relevant geographic market for PCs is at least EEA-wide, given that transport costs are small relative to price (<3%). PCs have similar specifications, many significant PC suppliers have activities in all Member States and in all product segments, and PC suppliers charge similar prices across Member States. Moreover, at the supply-side

5 None of the parties are manufacturers of monitors. They outsource the entire production of the monitors sold under their brand names to Original Equipment Manufacturers (“OEMs”).

6 Case n° C OMP/M.3693 – TPV/Philips, 05/08/2005.

level, PC suppliers would lead negotiations with their clients internationally or at a broad regional level (there would be international marketing agreements providing for the development of pan-European stock keeping units and advertising campaigns which increase the similarity of Acer's products' commercialization among European countries). The market investigation has provided mixed indications in this respect. Responses to the Commission's inquiry do not show homogeneous purchasing policies, while prices at national level may have to factor in significant differences due to taxes regimes and also due to different competitive conditions prevailing at national level.

22. Also, the notifying party considers that some national specificities could be taken into account (different volumes, different product configurations such as different operating systems, manuals and keyboards depending on the language). As regard the demand-side, for some retailers negotiation happens at a national level (even sometimes for retailers who have a wider than national reach). Moreover, marketing strategy could be and are effectively developed for each Member State, rendering crucial sales marketing force in every country where products are sold. In the professional segment, as for the consumer segment, the market conditions would be different from one market to the other: competitors' landscape is different from one Member State to another; and even a retailer/distributor being active in more than one Member State would not automatically show identical purchase patterns. Hence purchases happen to take place on a country level as well.
23. The geographic market definitions can be left open given that whatever the geographic market definition (EEA or national), the transaction will not raise any competition concerns.

PC monitors

24. In the decision TPV/Philips (monitor), the Commission held that the geographic scope of the branded PC monitor market is generally narrower than EEA and most probably national. The parties consider that the branded PC monitor market is at least EEA-wide in scope due to low transportation costs, low trade barriers, global product standards and global active suppliers.
25. The geographic market definitions can be left open given that whatever the geographic market definition (EEA or national), the transaction will not raise any competition concerns.

Portable Navigation Devices PNDs

26. The parties submit that the relevant geographic market is at least EEA-wide and possibly worldwide given that transport costs are small relative to price, products show similar specifications, PND suppliers have activities in all Member States and PND suppliers charge similar prices across Member States.

(2) ASSESSMENT

Personal computers

Non coordinated effects

27. The market shares (based upon Gartner, in value at the EEA-wide level would be as follows (1st semester 2007):

%	Acer	Packard Bell	Combined	Competitors
All PCs	[10-20]	[0-10]	[10-20]	Hewlett-Packard (HP) [10-20]; Dell [10-20]; Fujitsu Siemens [0-10]; Toshiba [0-10]; Lenovo [0-10]
Desktops	[0-10]	[0-10]	[10-20]	HP [10-20]; Dell [10-20]; Fujitsu Siemens [0-10]; Lenovo [0-10]
Desktops consumers ⁷	[10-20]	[0-10]	[10-20]	HP [10-20]; Dell [10-20]; Fujitsu Siemens [0-10]; Medion [0-10]; Apple [0-10]
Desktops professionals ⁸	[0-10]	[0-10]	[10-20]	HP [20-30]; Dell [10-20]; Fujitsu Siemens [0-10]; Apple [0-10]
Notebooks	[10-20]	[0-10]	[10-20]	HP [10-20]; Dell [0-10]; Toshiba [10-20]; Fujitsu Siemens [0-10]; Lenovo [0-10]; Asus [0-10]
Notebooks for consumers ⁹	[10-20]	[0-10]	[20-30]	HP [10-20]; Toshiba [10-20]; Fujitsu Siemens [0-10]; Sony [0-10]; Asus [0-10]; Medion [0-10]
Notebooks for professionals ¹⁰	[10-20]	[0-10]	[10-20]	HP [10-20]; Dell [10-20]; Toshiba [10-20]; Fujitsu Siemens [0-10]; Apple [0-10]

28. At the EEA level, the combined share of the merged entity on the overall PCs market and on the basis of markets considered per each segment remains below 25%. The same applies at the level of each EU Member States, except (i) in Italy where their combined share after the transaction will be [20-30]% in volume in first semester 2007 on the overall PCs market (Acer [20-30]%; Packard Bell [0-10]%), (ii) in France with a combined market share of [20-30]% in volume (Acer [10-20]; Packard Bell [0-10]%), and (iii) in Spain with a combined share of [20-30]% in value (Acer [20-30]; Packard Bell [0-10]%).

29. When considering desktops and notebooks separately, the only Member States where the combined market share is above 25% in value is Italy and Spain with [20-30]% (Acer [20-30]%; Packard Bell [0-10]%) and [30-40]% (Acer [20-30]%; Packard Bell [0-

⁷ For Western Europe Q1-Q2.

⁸ For Western Europe.

⁹ For Western Europe.

¹⁰ For Western Europe.

10]%) for notebooks, respectively (both for consumer and professional use taken together).

30. On a possible national market for notebook for consumers, the highest market shares of the new entity would be [20-30]% in Belgium (Acer [10-20]%; Packard Bell [10-20]%), [30-40]% in Czech Republic (Acer [20-30]%; Packard Bell [0-10]%), [20-30]% in France (Acer [10-20]%; Packard Bell [0-10]%), [20-30]% in the Netherlands (Acer [10-20]%; Packard Bell [10-20]%), [30-40]% in Spain (Acer [20-30]%; Packard Bell [10-20]%) and [20-30]% in Sweden (Acer [10-20]%; Packard Bell [10-20]%)¹¹.
31. On a possible national market for notebook for professionals, the highest market shares of the new entity would be [20-30]% in Italy (Acer [20-30]%; Packard Bell [0-10]) and [30-40]% in Spain (Acer [20-30]%; Packard Bell [0-5]%)¹².
32. Without relying on any of these market shares, a minority of customers has stated that the transaction would raise competition concerns that could be summarized as follows. On the desktop for consumer market, the transaction could be seen as a 4 to 3 merger, with only Hewlett-Packard, Fujitsu-Siemens and the new entity remaining as suitable suppliers, and for the notebook consumer market as a 5 to 4 merger (Toshiba, Sony, Asus, Fujitsu-Siemens and the new entity), within the same price ranges and types of brand. It has also been stated that Packard Bell would constrain Acer and Hewlett-Packard in the consumer laptop and desktop markets. It has finally been put forward that the combined entity would enjoy an increased negotiation power vis-à-vis retailers enabling it to resist demand for price discounts and influence the extent to which retailers list their suppliers.
33. The analysis of the Commission, supported by the majority of responses to the market investigation (gathering the views of both customers and competitors of the parties to the transaction), has led to disregard these concerns for several reasons described below.
34. Firstly, the majority of the market players and of respondents consider the transaction as non-problematic. Competition stemming from a number of established suppliers characterises the sector in general as well as within each PC category/segment. The short product life-cycles and fast technological development continuously bring improved products to the market, while there are various efficient channels available to the market, including indirect channel distribution (i.e. retailers), direct retail and direct end-user internet sales. Manufacturing can also be outsourced and there appears to be available capacity to doing so.
35. Secondly, for every envisaged segment there are a number of credible suppliers already active, who are able to constrain the merged entity. This is confirmed when considering the market shares indicated above. It is also confirmed when assessing the suppliers currently and actually supplying retailers/distributors. For instance, on the desktop for professional and for consumer segments, Hewlett-Packard, Lenovo, Fujitsu-Siemens,

¹¹ Based upon IDC report in value, the merged entity would have market shares in excess of 25% also in Denmark (Acer [15-25]%; Packard Bell [0-10]%), Finland (Acer [15-25]%; Packard Bell [0-10]%), Italy (Acer [20-30]%; Packard Bell [0-5]%) and Romania (Acer [20-30]%; Packard Bell [0-5]%) (but not in Sweden).

¹² Based upon IDC report in value, the merged entity would have market shares in excess of 25% also in Czech Republic (Acer [20-30]%; Packard Bell [0-5]%).

Medion and Apple are available alternatives for retailers/distributors/customers. On the notebook for professional and for consumer segments, Hewlett-Packard, Toshiba, Fujitsu-Siemens, Samsung, Lenovo, Asus, Sony and Apple are also alternatives for customers. These market players are active throughout the EEA. Furthermore, Dell has recently started selling its products indirectly (it has so far sold its products mainly through direct sales to its final customers) and is already listed by major retailers/distributors in several Member States, adding another credible competitor in the retail channel to the parties to the transaction.

36. It is worth noting that the presence of local suppliers is also a competition constraint in some Member States on the desktop segment at a national level, such as: Medion in German speaking countries, Osborne and Wings in France, Priminfo and BMx Computers in Belgium, Lynx, TS Bohemia, Triline, Autocont and Comfor in Czech Republic, Albacomp and Fefo in Hungary. Furthermore, it cannot be disregarded that retailers themselves develop and supply their own branded PC products (such as DSG International who commercializes its own branded PCs (Advent, Ei System) in the EEA in competition with the branded suppliers especially for the lower price bands¹³. Finally, ODMs are continuously improving their manufacturing capabilities¹⁴ and could also feed the competitive constraint from other market players.
37. Thirdly, when asked about the closest competitor of each of the parties to the transaction, the vast majority of the respondents does not consider Acer or Packard Bell as the relevant ones. This is not to say that they are not competing against each other as there are some overlaps within their product range. However this actual competition between them does not mean that each one is the direct competitive constraint upon the other. As perceived by the market investigation, the closest competitors of Acer are Hewlett-Packard, Dell, Toshiba, Packard Bell, Asus, Lenovo, Fujitsu-Siemens, Sony, Samsung. The closest competitors of Packard Bell are Hewlett-Packard, Dell, Toshiba, Fujitsu-Siemens, Medion, Gericom, Acer, Lenovo, Asus and local “white box” manufacturers.
38. Even though both Acer/Gateway and Packard Bell are predominantly focused on the consumer segment, in terms of brand positioning, Acer/Gateway and Packard Bell do not focus on the same price bands. For desktop, Acer achieves [50-65]% of its revenues within the range \$500-\$799 whereas Packard Bell achieves [50-65]% in the range above \$1000. For notebook, Acer achieves more than [70-85]% of its revenues in the range above \$1000 whereas Packard Bell achieves [40-55]% within the range \$500-\$999). Acer does not appear therefore to be perceived as the closest brand compared to Packard Bell.
39. As regard the increased bargaining power of the new entity, post merger large retail customers and resellers could likely offset any possible adverse effects, should the merged entity try to profit from its presumed market power¹⁵. The combined firm relies

13 In addition, the parties argue that "white-box" manufacturers (who assemble PCs without any brand) also constitute a source of supply of desktops for retailers. White-box manufacturers mix and match components to produce desktops from parts.

14 Estimated to be 20% in the portable sector in 2008.

15 The parties achieve the majority of their EU turnover through the retail channel.

on relatively few large retailers which represent a significant percentage of its turnover ([...] represent [15-25]% of Acer's sales in 2006; [...] represents [15-25]% of Packard Bell's sales in 2006). These distributors are therefore an indispensable intermediary whose reseller-reach is of crucial importance for the parties. These retailers typically carry a variety of PC vendors in order to give consumers a large choice and to promote price competition amongst those vendors. Retailers use this multi-source strategy to play PC suppliers off against each other. Given the merged entity's market position, retailers would be able to discipline any attempt to enforce price increases or other adverse effects by changing the allocation of their shelf space and the levels of their marketing/sales support or by varying their volume of purchase. In this respect, the switching of suppliers is not a far-fetched possibility as switching barriers are relatively low. Therefore it can be expected that the retail customers will assort and position different players in their stores also post-merger. Given the competitive constraints, it is therefore unlikely that the parties will be able to displace competitors' brands away from retail customers as well as distributors.

Coordinated effects

40. The leading PC vendors are unlikely to be able to reach a common understanding on the terms of coordination post-merger (there will remain numerous competitors, with asymmetric market shares, products are differentiated, the industry is very dynamic, none of the parties could be considered as an innovator or price maverick). There is no sufficient transparency (supply agreements are negotiated individually) and customers or competitors could jeopardize any coordination attempt.

Conclusion for Personal Computers

41. Given the above, the proposed transaction is not likely to impede effective competition in respect of Personal Computers overall, as well as in each relevant market based on different product segments and users, neither at the EEA level nor at the level of individual Member States.

PC monitors

42. The market shares (based upon Context, in volume) at the EEA-wide level would be (1st semester 2007) in the LCD monitor segment:

%	Acer	Packard Bell	Combined	Competitors
LCD monitor	[0-10]	[0-10]	[10-20]	Samsung [10-20]; Dell [0-10]; Hewlett-Packard [0-10]; LG [10-20] Fujitsu [0-10]; Lenovo [0-10]

43. At the national level, the combined firm share remains below 25% in all EU Member States (with a maximum [15-25]% in Italy) and an increment always below 3% ([0-3]% in Italy).
44. Post-merger, there will remain many other competitors with no significant barriers to expansion and repositioning. As is the case for PCs, the PC monitor segments are highly standardized and the widespread availability of third party manufacturers would facilitate entry and expansion into these market segments. Large retailers would represent another constraint on the parties' ability to raise prices or restrict outputs.

Portable Navigation Devices PNDs

45. The market shares (based upon Canalys, in volume) at the EEA-wide level would be (2006):

%	Acer	Packard Bell	Combined	Competitors
PND	[<1]	[<2]	[<3]	TomTom [40-50]; Garmin [10-20]

46. Given the de minimis presence of Acer/Gateway and Packard Bell in the PND segment both worldwide and in the EEA, the proposed transaction is not likely to impede effective competition in the EEA.

VI. CONCLUSION

47. 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