

***Case No COMP/M.5300 -
GORES GROUP
LLC/SIEMENS
ENTERPRISE
COMMUNICATIONS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/09/2008

***In electronic form on the EUR-Lex website under document
number 32008M5300***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.9.2008

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

SG-Greffe(2008) D/205556
C(2008) 5391

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.5300 – The Gores Group LLC/ Siemens Enterprise Communications
Notification of 14 August 2008 pursuant to Article 4 of Council Regulation No 139/2004¹**

I. INTRODUCTION

1. On 14 August 2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("Merger Regulation") by which the Gores Group LLC ("Gores") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the Siemens Enterprise Communications business ("SEN") by way of purchase of shares.

II. THE PARTIES AND THE CONCENTRATION

2. Gores is a private equity investor focused on acquiring controlling interests in mature and growing businesses, primarily in the technology, telecommunications, business services and industrial sectors, primarily in the United States and Western Europe.
3. SEN develops, manufactures and distributes communication products, services and solutions for companies and institutions. SEN's portfolio includes voice communication platforms (or private branch exchanges ("PBXs")) using time division multiplex ("TDM"), IP converged and pure IP technologies, unified communications applications

¹ OJ L 24, 29.1.2004, p. 1.

and solutions, data network components, end-user devices, as well as associated services.

4. The proposed transaction concerns Gores' acquisition of sole control over SEN through a number of steps which involve transferring SEN and two other companies controlled by Gores (Enterasys and SER Solutions) to a special purpose newly formed company, Enterprise Networks Holdings B.V. ("the Company"), in which Gores will hold 51% of the equity and voting rights. Siemens will sell and transfer SEN to the Company, in which it will retain 49% of the equity and voting rights post-merger. Siemens will however not have the ability to appoint or remove management, veto the annual budget or business plan or otherwise exercise decisive influence over the Company.
5. The transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The undertakings concerned have combined aggregate worldwide turnovers for the year 2007 of more than EUR 5 000 million (EUR [...] million for Gores and EUR [...] million for SEN). The undertakings concerned each have a Community-wide turnover for the year 2007 in excess of EUR 250 million (EUR [...] million for Gores and EUR [...] million for SEN). The undertakings concerned do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.
7. The notified operation therefore has a Community dimension pursuant to Article 1(2) of the Merger Regulation.

IV. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

8. The proposed transaction concerns the IT and telecommunications equipment sector, particularly PBXs.

PBXs

9. SEN derives approximately [80-90]% of its turnover from the development, manufacture and supply of PBXs and related services (installation, maintenance etc.). PBXs are private telecommunications switches used for switching incoming and outgoing calls.
10. The market for PBXs was first defined by the Commission in *EADS*², as part of a wider market for fixed telecommunications equipment, and then applied in a number of subsequent cases³.
11. The Commission has considered in the past that the market for PBXs is national in scope⁴ because distribution of the equipment is usually structured on a national basis

² Case COMP/M.1745 *EADS* at §37.

³ Cases COMP/M.1840 *KKR/Bosch Telekom Private Networks* at §18 and COMP/M.3995 *Belgacom/Telindus* at §18.

⁴ Case COMP/M.1745 *EADS* at §40 and COMP/M.3995 *Belgacom/Telindus* at §19.

and because the equipment had to receive national technical approval. The notifying party submits that the definition in *EADS* is outdated because, according to the Radio Equipment and Telecommunications Terminal equipment (RTTE) Directive⁵, manufacturers of PBXs self-certify their equipment which in turn is mutually recognized across the EU. Accordingly, they submit that the geographic market is at least EEA-wide.

12. For the purposes of the present decision, the exact delineation of the PBX market can be left open, as the proposed transaction does not raise any competition concerns, under any alternative product and/or geographic market definition.

Switching and routing equipment

13. Enterasys (a Gores subsidiary) develops and supplies data and multi-media switches as well as routers. Switches are devices that channel incoming data from an input port to the specific output port that will take the data to its intended destination. Routers are devices that forward and transmit data packets along networks from source to destination by controlling the path along which the packets are sent.
14. The Commission has examined transactions involving suppliers of switching and routing equipment in a number of prior decisions⁶ and, in particular, has considered to what extent the relevant product markets should be segmented on a product-by-product basis or instead encompass multiple products (i.e. "traditional" Time Division Multiplexing ("TDM") switches and Asynchronous Transfer Mode ("ATM") switches vs. softswitches for IP-based networks) . In the past, the Commission has also considered whether this sector might be categorised according to a segmentation by activity (manufacture, distribution and offering of integrated solutions)⁷. The Commission has however left open the exact product market definition in these earlier decisions, although it recognised the growing multi-functionality and convergence between switches and routers.
15. In the past, the Commission has left open whether the supply of switching and routing equipment has an EEA-wide or worldwide geographic scope⁸.
16. For the purposes of the present decision, the exact product and geographic market definition for switching and routing equipment can be left open, as the proposed transaction does not raise any competition concerns, under any alternative market definition.

WLAN equipment

17. Both Enterasys and SEN develop, manufacture and supply access points and controllers for Wireless Local Area Network ("*WLAN*").

⁵ Directive 1999/5/EC of the Parliament and the Council.

⁶ Cases COMP/M.4297 *Nokia/Siemens* at §33, 34 and 41, COMP/M.4214 *Alcatel/Lucent Technologies* at §35, COMP/M.4003 *Ericsson/Marconi* at §12 and COMP/M.1908 *Alcatel/Newbridge Networks* at §9.

⁷ Case COMP/M.1745 *EADS* at §35 and 36.

⁸ Cases COMP/M.4297 *Nokia / Siemens* at §51 and COMP/M.4214 *Alcatel/Lucent Technologies* at §38.

18. In previous cases⁹, the Commission has identified the provision of data networking equipment as a separate product market, with a possible distinction between WLAN and local area network ("*LAN*") products as well as single components of the respective systems.
19. In the past, the Commission has left open whether the supply of WLAN equipment has an EEA-wide or worldwide geographic dimension¹⁰.
20. For the purposes of the present decision, the exact product and geographic market definition for switching and routing equipment can be left open, as the proposed transaction does not raise any competition concerns, under any alternative market definition.

Communications Terminal Devices / Cordless Handsets

21. Sagem Communications (another Gores subsidiary) designs and produces cordless handsets.
22. In past decisions, the Commission has left open whether there is a single relevant product market for electronic consumer communications terminal devices including corded, cordless analogue and digital telephones with or without answering machines¹¹.
23. The Commission has previously considered that the geographic dimension of such market could be at least EEA-wide¹².
24. For the purposes of the present decision, the exact product and geographic market definition for cordless handsets can be left open, as the proposed transaction does not raise any competition concerns, under any alternative market definition.

IT Services

25. Gores is in the process of acquiring Dolmen Computer Applications, N.V. ("*Dolmen*"), a Belgian-based provider of IT services which occasionally sells PBX hardware to its clients in Belgium and Luxembourg in the course of supplying IT services.
26. The Commission has recently considered the scope of the relevant product market for IT services, noting that a number of segmentations of the market are possible and leaving the exact market definition open¹³.
27. The Commission has noted that the IT services markets display some characteristics of both national and EEA-wide markets, in that some competitors operate principally in

⁹ Cases COMP/M.4415 *Motorola/Symbol* at §14 and COMP/M.3995 *Belgacom/Telindus* at §18.

¹⁰ Case COMP/M.4415 *Motorola/Symbol* at §30.

¹¹ Case COMP/M.1358 *Philips / Lucent Technologies* §11 and 12.

¹² Case COMP/M.1358 *Philips / Lucent Technologies* §13 and 14.

¹³ Case COMP/M.4871 *KPN/Getronics* at §7 to 12.

one or a limited number of jurisdictions, while the larger competitors operate on an international, if not global, basis¹⁴.

28. For the purposes of the present decision, the exact product and geographic market definition for IT services can be left open, as the proposed transaction does not raise any competition concerns, under any alternative market definition.

Call (or contact) center solutions

29. Gores (through its subsidiary SER Solutions) provides software-based solutions and related services designed to increase the efficiency of out-bound calls to contact centres. SEN provides hardware and software that work with PBXs to manage and increase the efficiency of in-bound calls to contact centres.
30. There are no market definition precedents in this regard. However, in the past, the Commission has considered that the geographic scope of related products markets such as those for (i) business software, and (ii) fixed communications network equipment are at least EEA-wide¹⁵.
31. For the purposes of the present decision, the exact product and geographic market definition for call (or contact) centre solutions can be left open, as the proposed transaction does not raise any competition concerns from an EEA-wide perspective.

Stand-alone power supplies

32. Lineage Power (another Gores subsidiary) develops, produces and distributes stand-alone power supplies that can be used to provide electric power to PBXs.
33. The Commission has defined in the past a separate product market for stand-alone power systems which is at least EEA-wide¹⁶.
34. For the purposes of the present decision, the Commission takes the view that the relevant market is the market for stand-alone power systems, which is at least EEA-wide.

Other electronic components: PLLs and hybrid (ceramic) line protectors

35. Lineage Power also produces phase lock loop ("PLLs") control systems that are used in PBXs to adjust and match the frequency and phase required for the equipment, as well as hybrid (ceramic) line protectors. Phase-locked loops are widely used in radio, telecommunications, computers and other electronic applications. Hybrid (ceramic) line protectors are devices to protect the electronic circuitry of high performance equipment.

¹⁴ Case COMP/M.4871 *KPN/Getronics* at §13 and 14.

¹⁵ For business software, see Case COMP/M.3216 *Oracle/Peoplesoft* at §176 to 178 or Case COMP/M.5080 *Oracle/BEA* at §13 to 15. For fixed communications network equipment see Case COMP/M.1745 *EADS* at §39.

¹⁶ Case COMP/M.1854 *Emerson Electric / Ericsson Energy*, §6 and 7.

36. There are no market definition precedents in this regard. However, in the past, the Commission has considered that the geographic scope of related products markets such as passive and electromechanical components¹⁷ is at least EEA-wide.
37. For the purposes of the present decision, the exact product and geographic market definition for PLLs and hybrid line protectors can be left open, as the proposed transaction does not raise any competition concerns at EEA level.

V. COMPETITIVE ASSESSMENT

38. The transaction will lead to horizontal overlaps between the parties in relation to (i) switches and routers, (ii) WLAN equipment, and (iii) call (or contact) centre solutions. However, none of these markets is affected by the proposed transaction as the parties' combined market shares always remains below 15% under any alternative market definition.
39. If the market for PBXs is defined as national, the transaction will give rise to vertically-affected markets in relation to the link between SEN's activities in PBXs and each of the following areas in which some Gores portfolio companies are active: (i) IT services, (ii) cordless handsets, (iii) stand-alone power supplies; and (iv) PLLs and hybrid protectors. The proposed transaction does not however give rise to any competition concerns, as the parties' market position in all these markets is not such as to create any risk of input or customer foreclosure post-merger.

Horizontal assessment

Switching and routing equipment

40. Gores (through Enterasys) designs and produces switches and routers. SEN does not produce switches and routers but makes retail sales of third party data network switches and routers to some of its clients, as a system integrator (SEN assists customers to design the data networks and installs the equipment). SEN generated EEA revenues of approximately EUR [...] million in 2007¹⁸.
41. In a previous case¹⁹, the Commission has appraised the merger of two companies which, *inter alia*, re-sell networking equipment (e.g. switches, modems, routers) whereby one of the parties also manufactured some types of that equipment. On that occasion, the Commission considered that there was an overlap between the parties in relation to the market for networking equipment and analysed the market (and a number of segments thereof such as LAN Hardware, PBXs, switching and routing etc.) on a horizontal basis.
42. From a production perspective, on the basis of an independent survey (the Dell'Oro report²⁰) which provides only production data, and therefore, does not take into account

¹⁷ See Commission decisions in Cases COMP/M.4892 *Infineon/Siemens/JV*, COMP/M.3316 *Celestica/MSL* paragraphs 11 and 12, COMP/M.2968 *Jabil/Phillips Contract Manufacturing Services*, paragraphs 10 and 11.

¹⁸ In 2007, SEN purchased switching and routing equipment from Enterasys to the value of EUR [...] million.

¹⁹ Case COMP/M.3995 *Belgacom/Telindus* at §17 to 24.

²⁰ Dell'Oro *Ethernet Switch Report*, May 2008.

any retailing margin, Enterasys' EEA market share for the production and supply of switches and routers was [0-5]% in 2007, out of a market size of EUR [...]. The market is led by Cisco ([70-80]%), HP ([5-10]%) and Nortel ([0-5]%).

43. From a distribution perspective, the parties submit that the market is fragmented into thousands of integrators and resellers and that, in the absence of any reliable independent surveys, they are unable to provide market shares for their competitors. Enterasys generated only EUR [...] million in direct sales to final customers in the EEA in 2007 and re-sales by SEN of third-party equipment (EUR [...] million) amounted to [5-10]% of the production-based market size. Therefore, the transaction does not give rise to a horizontally-affected market.

WLAN equipment

44. The transaction gives rise to a horizontal overlap but no to an affected market in relation to WLAN equipment. According to Dell'Oro, the share of supply of each of the parties in the EEA in 2007 are *de minimis* (SEN: less than [0-5]%, Enterasys: less than [0-5]%) for WLAN equipment overall as well as for WLAN access points only. The market is led by Cisco ([60-70]%). Other players include Aruba ([5-10]%) and Motorola ([5-10]%).

Call and contact centres

45. The transaction creates a horizontal overlap but not an affected market in relation to the supply of hardware and software to call and contact centres in the EEA. According to an external report from the Gartner Group²¹, the EEA market share of SEN in this sector in 2007 was [0-5]% and that of Gores does not exceed [0-5]%. Leading players in this area include Avaya ([30-40]%), Genesys ([10-20]%), Cisco ([10-20]%) and Nortel ([10-20]%).

Vertical assessment

PBXs/IT Services

46. Upon closing its acquisition of Dolmen, Gores will be active in the supply of IT Services in France, Belgium and Luxembourg, especially in the areas of network design and integration and managed services. In particular, Dolmen supplies IT services relating to unified communications applications and a small volume of PBXs which it buys from third parties. SEN supplies PBXs and associated application software (e.g. unified communications software) but is not active in the provision of IT services. SIS, another subsidiary of Siemens unrelated to the proposed transaction, is a global supplier of IT services. Accordingly, the proposed transaction does not give rise to any horizontal overlap.
47. However, there would be a vertical link to the extent that Dolmen is a buyer of PBXs for use in IT services projects and SEN designs, produces and supplies PBXs that can be acquired by IT services suppliers when they need to supply PBX functionality within (or integrated into) a broader IT service contract.

²¹ Gartner *Contact Centres* report

48. According to the Dell'Oro report, the share of supply of SEN in the PBX market in the EEA in 2007 was [10-20]% out of a market size of [...] lines. As regards the countries where Dolmen is active, SEN estimates that it has a market share of [10-20]% in Belgium and of [50-60]% in Luxembourg (out of a market size of, respectively, 450,000 and 27,000 lines).
49. In 2007, Dolmen's purchases of PBXs amounted to [...] lines in Belgium (amounting to around [0-5]% of the supply of PBXs in Belgium) and less than [...] lines in Luxembourg (amounting to approximately [0-5]% of the supply of PBXs in Luxembourg). Dolmen [...] PBXs from SEN in 2007.
50. Dolmen's estimated share in the EEA market for IT services in 2007 amounted to less than [0-5]% out of a market size of EUR 180 billion. In particular, Dolmen estimates that its market share for IT services in Belgium and Luxembourg was less than [0-5]% (sales of EUR [...] out of a market size of EUR 390 million) . The main players in this market include IBM ([10-20]%), Cap Gemini ([10-20]%) and Atos Origin ([10-20]%).
51. Accordingly, the proposed transaction would give rise to a vertically-affected market in Luxembourg because this is the only country in which Dolmen is active and SEN's share of supply of PBX is above 25%. However, the proposed transaction does not give rise to a risk of customer foreclosure as Dolmen is not a significant purchaser of PBXs in Luxembourg (approximately [0-5]% of PBX lines supplied in 2007). There is also no risk of input foreclosure for Dolmen's competitors on the downstream market of IT services, as the merged entity will not have any incentive to reduce SEN's current share of supply in Luxembourg ([50-60]%), which is derived from sales to other companies.

Cordless Handsets / PBXs

52. Sagem Communications (another Gores subsidiary, "Sagem") designs and produces cordless handsets. The transaction creates a vertical link because SEN is a purchaser of cordless handsets in order to supply PBXs including cordless handsets when customers request so. SEN currently procures all its needs of cordless handsets from another Siemens subsidiary (Siemens Home and Office Communication Devices GmbH & Co. KG).
53. While many of the handsets produced by Sagem are PBX-compatible, they are primarily designed and sold for residential use. Sagem does not produce or supply handsets designed for use with PBXs except for *de minimis* sales from a single made-to-order handset model developed for [...] and which accounted for sales of only EUR [...] in 2007.
54. The transaction would give rise to a vertically-affected market to the extent that SEN has a market share exceeding 25% on the market for PBXs in several Member States including Germany ([30-40]%), Greece ([20-30]%), Latvia ([40-50]%), Lithuania ([20-30]%), Luxembourg ([50-60]%), Portugal ([20-30]%), Slovakia ([40-50]%) and Slovenia ([30-40]%). However, on the basis of the information available, this link will not create any risk of customer or input foreclosure.
55. SEN estimates that in 2008 it will purchase cordless handsets for a value of approximately EUR [...] million (i.e., less than [0-5]% of total EEA market for consumer communications terminal devices). Accordingly, there should be no risk of customer foreclosure for Sagem's competitors on the upstream market. Further, the

merged entity would not have the ability to engage in input foreclosure as SEN's competitors would have alternative suppliers because Sagem's market share on the EEA market for communications terminal devices in 2007 was only [5-10]% (sales of EUR [...] million out of a market of EUR 2 708.5 million)²². Key competitors in this area are Siemens ([20-30]%), Panasonic ([10-20]%) and Philips ([10-20]%).

Stand-alone power supplies / PBXs

56. The proposed transaction creates a vertical link because SEN purchases stand-alone power supplies for incorporation into PBXs and Lineage Power produces stand alone power supplies for PBXs. SEN does not produce stand-alone power supplies but purchases them from a number of suppliers for incorporation into its PBXs. The transaction would give rise to a vertically affected market to the extent that SEN's market share for PBXs exceeds 25% in several Member States. Power supplies amount for a *de minimis* part of the total price of a PBX (SEN's sales of PBX hardware in 2007 amounted to EUR [...] million whereas purchases of power supplies accounted only for EUR [...] million).
57. Lineage Power estimates that it has a market share of less than [0-5]% in the EEA for stand-alone power supplies in 2007 (sales of EUR [...] million out of a market size of EUR 716.6 million). Lineage Power's sales of power supplies for PBX use amounted only to EUR [...]. The top players in this market are Eltek ([30-40]%), Benning ([20-30]%) and Emerson ([10-20]%). Therefore it appears that there is no scope for input foreclosure.
58. As stated above, SEN estimates total purchases of EUR [...] million of these products in 2008, i.e., less than [0-5]% of the total EEA market. Accordingly, the proposed transaction does not seem to give rise to any risk of customer foreclosure.

Other electronic components: PLLs and hybrid protectors / PBXs

59. Lineage Power produces PLL control systems that and hybrid line protectors. The transaction would create a vertical link in relation to PLLs and to hybrid protectors because SEN purchases these inputs for incorporation in PBXs from a number of producers, including Lineage Power²³. The proposed transaction would give rise to vertically-affected markets in the countries where SEN's market share for PBXs is above 25%.
60. PLLs are widely used in radio, telecommunications, computers and other electronic applications. The proposed transaction is unlikely to give rise to input foreclosure in this area as Lineage Power is a minor supplier of PLLs. In 2007, it recorded sales of EUR [...] million (including EUR [...] in sales to SEN) out of an EEA market size of EUR 20 million, achieving a market share of [5-10]%. Other players include Alps ([50-60]%) and Sirenza ([5-10]%). SEN is not a significant buyer of these items: its purchases of

²² The notifying party has submitted that its market share would be further reduced to [0-5]% if fax machines are excluded. Furthermore, as regards cordless handsets designed to be used with PBXs, Sagem's sales of cordless handsets to [...] amounted to less than [0-5]% of the total EEA supply of cordless handsets designed to be used with PBXs.

²³ In particular, sales to SEN are made on an Original Design Manufacturer ("*ODM*") basis, i.e. in accordance with the designs provided by SEN.

"inductors/hybrids/relays" - a category that includes (but is not limited to) both PLLs and hybrid protectors accounted for only EUR [...] million in 2007.

61. Lineage Power is a *de minimis* player in relation to hybrid line protectors. In 2007, it recorded sales of EUR [...] million (of which EUR [...] million correspond to SEN) out of a market size of around EUR 3 000 million, i.e. a market share of [0-5]%. This product is led by players such as Continental and Bosch (market shares in excess of [40-50]% and [10-20]% respectively). Purchases by SEN would account, at most, for [0-5]% of this market.
62. Finally, it is noted that PLLs and hybrid line protectors account for a minor fraction of the end price of a PBX. SEN's purchase of "inductors/hybrids/relays" only represent less than [0-5] % of the total revenue generated by SEN sales of hardware in 2007.

Conclusion on vertical assessment

63. In light of all the above-mentioned factors, the Commission considers that, regardless of the exact market definition retained, the proposed operation will not lead to any significant impediment to effective competition in the common market or a substantial part thereof.

VI. CONCLUSION

64. 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)
Siim KALLAS
Vice-President of the Commission