

***Case No COMP/M.6092 -  
PRYSMIAN/ DRAKA  
HOLDING***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 09/02/2011

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EUROPEAN COMMISSION

Brussels, 09/02/2011

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.6092 – PRYSMIAN/ DRAKA HOLDING  
Notification of 5/01/2011 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 5 January 2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which Prysmian S.p.A. ("Prysmian", Italy) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Draka Holding N.V. ("Draka", The Netherlands) by way of public bid announced on 6 January 2011.

**I. THE PARTIES**

2. Prysmian is active worldwide in the development, design, production, supply and installation of cables for applications in the energy and telecommunications industries. Prysmian carries out its business through two business segments: (i) Energy Cables and Systems, which designs, develops, manufactures, distributes and installs a full range of products and related accessories for the underground and submarine transmission and distribution of energy in the form of low, medium, high and extra high voltage electricity; (ii) Telecom Cables & Systems, which designs, develops, manufactures, distributes and installs: (a) optical fibre cables for voice, data, video and control applications, as well as broadband connectivity components and accessories; and (b) copper cables. Prysmian has a global presence with subsidiaries in 39 countries, 56 plants in 24 countries, 8 Research &

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

Development Centres in Europe, USA, South America and China and approximately 12,000 employees.

3. Draka is active worldwide in the development, design, production and sale of cable and cable systems in the energy cable sector and in the telecoms cables sector. Draka has subdivided its activities into three groups: Energy & Infrastructure, which is responsible for the low-voltage and instrumentation cable activities, Industry & Specialty, which takes care of the specialty cable operations, and Communications, which handles the communication cable activities. Draka has 68 operating companies in 31 countries throughout Europe, North and South America, Asia and Australia, with approximately 9,400 employees.

## **II. THE OPERATION**

4. On 22 November 2010, Prysmian and Draka entered into a Merger Agreement (“the Merger Agreement”) according to which Prysmian committed to acquire Draka’s ordinary shares tendered in response to the Offer in exchange for a consideration consisting of cash and Prysmian shares to be newly issued (“New Prysmian Shares”). Each Draka shareholder shall receive for each ordinary share (i) 0.6595 New Prysmian Shares and (ii) an amount of EUR 8.60 in cash.
5. The same day, Prysmian obtained an irrevocable undertaking by Flint Investments B.V. (“Flint”), a company incorporated in the Netherlands and the main shareholder of Draka, with a participation of approximately 48.48% of the total issued and outstanding ordinary shares, to tender all its shares to the Offer.
6. As a result of the proposed operation and according to the conditions set out in the Merger Agreement, if the offer is successful, Prysmian will own at least 85% of Draka’s ordinary share capital. Pursuant to the Merger Agreement, Prysmian may however decide to waive the condition of 85% of the ordinary share capital if the shares tendered represent at least 66 % of Draka’s ordinary share capital<sup>2</sup>. If the Offer is successful, Prysmian will acquire sole control of Draka.
7. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **III. EU DIMENSION**

8. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million<sup>3</sup> (Prysmian: EUR 3 748 million, Draka: EUR 2 048 million). They have an EU-wide turnover of more than EUR 250 million (Prysmian: EUR [...] million, Draka: EUR [...] million). Neither Prysmian nor Draka achieve more than two-thirds of their aggregate EU-wide turnover within the same Member State.
9. The notified operation therefore has an EU dimension.

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2 Should the tendered shares represent less than 66 % (2/3) of Draka’s ordinary share capital, this condition may only be waived by Prysmian with the agreement of Draka.

3 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).

## IV. ASSESSMENT

### A. Product market definition

10. The notifying party submits that the activities of Prysmian and Draka can be subdivided in two main product categories: (i) the production and sale of energy cables and (ii) the production and sale of telecom cables, including their respective accessories for both product families. In addition, Draka and Prysmian are active in the production of optical fibre, which is used as an input for the production of optical fibre cables.

#### **Optical fibre (input to optical fibre cables)**

11. Optical fibres - thin strands of glass - permit transmission over longer distances and at higher bandwidths (data rates) than other forms of communication transmission (e.g. electromagnetic signals transmission). Optical fibre is also inert to electromagnetic interferences and therefore to cross talk, as well as to atmospheric influences.
12. Applications for optical fibres range from long haul intercontinental/transoceanic cables to metropolitan networks to access networks to local area networks ("LANs") in homes or buildings. Each application requires specific fibre characteristics.
13. Generally, two types of fibres can be distinguished: Single Mode Fibres ("SMF") and Multi Mode Fibres ("MMF"). SMF are used for most long communication links and in outside networks<sup>4</sup>. SMF constitute the vast majority of optical fibres manufactured (98 % of the worldwide production in terms of fibre kilometres). MMF are able to transfer high amounts of data (due to the relatively large core) but are limited to short distances no longer than 550 meters. These features and the easy and cheap connection characteristics make them especially suitable for LANs and data centres. MMF represents only 2% of the worldwide optical fibres market in terms of volume.
14. The notifying party submits that the relevant product market is the production of optical fibres. Given the lack of Commission precedents, the market investigations examined whether there should be a distinction between the supply of SMF and MMF. A majority of respondents to the market investigation<sup>5</sup> considered SMF and MMF to be distinct markets due to the differences in use, market price and end applications. Suppliers are also different to some extent. The market investigation however indicated that from a supply-side perspective, the manufacturing processes, the basic technologies and the know-how for the production of SMF and MMF are similar, while dedicated installations are necessary for efficient manufacturing<sup>6</sup>.

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<sup>4</sup> Relevant ITU-T standardized SMF include type G.652, for (ultra) long haul type G.654, 655 and 656, for fibre to the home G.657.

<sup>5</sup> Questionnaire to competitors of 17 January 2011, question 21 – 4 out of 7 respondents to this question said that within the market for optical fibre, a distinction should be drawn between the supply of SMF and MMF, 3 replied that no distinction should be made.

<sup>6</sup> Questionnaire to competitors of 17 January 2011, questions 22 and 23 – 4 out of 6 respondents to these questions considered the manufacturing processes to be similar, 2 replied that there are small differences in the manufacturing of fibre preforms but that it is possible to switch production with certain investments.

15. In any event, for the purpose of the present transaction, it can be left open whether the production of SMF and of MMF constitute separate markets as only one of the parties, Draka, is active in the production of MMF and 98% of the worldwide production of optical fibre is SMF, so that this does not change the competitive assessment.

### **Telecom cables**

16. Telecom cables are used to transmit voice, data or other forms of communication signals via electromagnetic or optical (light) signals through a fixed-line connection.
17. Reflecting the different transmission modes, previous Commission decisions<sup>7</sup>, although they ultimately left open the exact product market definition, considered a distinction between (i) the market for optical fibre cables which are typically used for the transmission of electronic communications signals in backbones as well as international and domestic telecom networks using broadband technology, and (ii) copper cables which were originally used in all telecom networks using narrow band technology and today are mostly used in the provision of last mile telecom connections and building cabling. The notifying party submits that these market definitions still hold.

### *Optical fibre cables*

18. Optical fibre cables transmit light impulses through a fibre strain at comparatively high bandwidths. Optical fibre cables are typically deployed for the transmission of electronic communications signals in local area networks (LANs), last-mile access networks, metropolitan area networks, and long-distance networks (including submarine connections).
19. As pointed out above, past Commission decisions considered the relevant product market to be optical fibre cables but ultimately left the exact product market definition open.
20. The market investigation clearly indicated that submarine cables need to be distinguished from terrestrial optical fibre cables due to significant differences in product characteristics and in the manufacturing process<sup>8</sup>. Neither Prysmian nor Draka are active in the production of submarine optical fibre cables. The relevant product market to be considered in the present transaction is therefore the supply of terrestrial optical cables and its potential sub-segments.
21. The notifying party submits that the type of fibre used in a cable does not justify a segmentation of the optical cables market into markets for cables using single-mode fibre (SMF) and cables using multi-mode fibre (MMF). Firstly, MMF cables represent only one of many types of cables that may be chosen by customers for short distance needs based on fibre count and bandwidth needs. According to the notifying party, optical cables with MMF may be substituted with SMF cables and in particular those of the categories ITU-T G.652 and G.657. Secondly, as specifications for cables are made by customers, and as a

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<sup>7</sup> See Case COMP/M.3836 - Goldman Sachs/Pirelli Cavi e Sistemi Energia/Pirelli Cavi e Sistemi Telecom, Commission decision of 5 July 2005, paragraphs 14-16; Case COMP/M.4050 - Goldman Sachs/Cinven/Ahlsell, Commission decision of 6 January 2006, paragraphs 11-13; Case COMP/M.2574 - Pirelli/Edizione/Olivetti/Telecom Italia, Commission decision of 20 September 2001, paragraph 29.

<sup>8</sup> Questionnaire to competitors of 17 January 2011, question 32 – 8 out of 8 respondents. Questionnaire to customers – telecom cables of 17 January 2011, question 7, 4 out of 5 valid responses (one further response was contradictory in itself).

range of different cables are generally supplied within the same contract, a cable supplier would purchase MMF to produce the MMF cable if so required by customers.

22. The market investigation was inconclusive as to whether (terrestrial) optical cables using SMF and (terrestrial) optical cables using MMF are distinct<sup>9</sup>. Where respondents draw a distinction, it was generally based on the differences in usage (e.g. short distances vs. long distances) and/ or market access (SMF cables are mostly direct sales to end-customers such as telecom operators, where MMF cables are mostly indirect sales via distributors). However, all respondents to the questionnaire to competitors indicated that the manufacturing process for both type of cables is similar. It was also pointed out that producers can easily switch production and most suppliers typically provide both types of cables.
23. In any event, for the purpose of the present transaction, it can be left open whether SMF and MMF optical fibre cables constitute separate product markets or whether they constitute a single product market as no competition concern arises under any alternative product market definition.

#### *Copper cables*

24. Telecom copper cables carry electromagnetic signals and are typically bandwidth-constrained. Copper cables were originally used in all telecom networks using narrowband technology but today are mostly used in the provision of last mile telecom connections (such as local loops) and building cabling (although there is a tendency to replace copper cables by fibre connections also at these levels).
25. In line with previous Commission practice<sup>10</sup>, the notifying party submits that copper cables constitute a separate market. While optical fibre cables and copper cables show a certain degree of demand side substitutability, they differ as to the manufacturing and technical characteristics (e.g. materials, performance).
26. All but one respondent to the market investigation confirmed the distinction between optical fibre cables and telecom copper cables<sup>11</sup>.
27. It can therefore be concluded that for the purposes of the present case, the relevant product market is the supply of telecom copper cables.

#### *Energy cables*

28. The notifying party submits that energy cables are used for a number of applications, in which electrical energy must be transmitted from one location to another. Those applications include the transmission and distribution of electrical power through the utility companies' networks, carrying the electrical power within buildings, and usage in industrial

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<sup>9</sup> Questionnaire to competitors of 17 January 2011, question 30 – 5 respondents affirmed a distinction between SMF and MMF cables, 3 did not consider them distinct. Questionnaire to customers – telecom cables of 17 January 2011, question 6 – 3 respondents considered them distinct, 3 did not.

<sup>10</sup> Case COMP/M.3836 Goldman Sachs/Pirelli Cavi e Sistemi Energia/Pirelli Cavi e Sistemi Telecom, paragraphs 19-20.

<sup>11</sup> Questionnaire to competitors of 10 January 2011, question 29 – 7 out of 8 respondents. Questionnaire to customers – telecom cables of 17 January 2011, question 5 – 6 out of 6 respondents.

and domestic applications. Different types of energy cables can be distinguished primarily by their technical capability to carry different levels of voltage and - partly as a function of this - by the customer groups to which they are sold.

29. In line with previous Commission decisions<sup>12</sup>, the notifying party identifies the following relevant product markets as regards energy cables: (i) general wiring, which covers a wide variety of medium/low voltage cables used for electrical systems in buildings and industrial applications, as well as for internal wiring of electrical equipment and for power and signal supply of mobile devices including cables for railways, automobile cables, or cables for petrochemical installations; (ii) low voltage (LV, up to 1 kV) and medium voltage (MV, 1 kV to 33 kV or 45 kV) power cables, which are predominantly used in the distribution of electricity; and (iii) high voltage (HV, 33/45 kV to 132 kV) and extra-high voltage (EHV, 275 kV, 400 kV) power cables, which are used for the transmission of power and are mainly purchased by the large national grid operators<sup>13</sup>.
30. Almost all respondents to the market investigation confirmed that (i) general wiring cables, (ii) low and medium voltage power cables and (iii) high and extra-high voltage power cables constitute three separate product markets<sup>14</sup>, as these markets require different production technologies and processes, have different customers and partially different suppliers.
31. The Commission investigated whether the general wiring cables market should be segmented further according to the industrial applications for which these cables are used.
32. As regards demand-side substitutability, the notifying party submits that general wiring cables are sold through electrical wholesalers and cable distributors or directly to installers and to original equipment manufacturers (OEMs), and that these cables may have hundreds of different industrial applications requiring specific features. They further submit that in the cable industry, customers generally purchase products according to their own specifications and needs (environmental or shock resistance, flexibility, etc.) and that this also applies in the general wiring sector, where there is limited possibility for a customer to substitute a product intended for one application with a product intended for a different application, while at the same time respecting specifications constraints.
33. This was confirmed to some extent by the market investigation. A small majority of customers took the view that general wiring should be further subdivided into different

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<sup>12</sup> See Case COMP/M.1882 - Pirelli/BICC, Commission decision of 19 July 2000; Case COMP/M.3836 - Goldman Sachs/Pirelli Cavi e Sistemi Energia/Pirelli Cavi e Sistemi Telecom, Commission decision of 5 July 2005; Case COMP/M.4050 - Goldman Sachs/Cinven/Ahlsell, Commission decision of 6 January 2006.

<sup>13</sup> Questionnaire to competitors of 10 January 2011, question 5 – one competitor explained that the delineation between LV-MV and HV-EHV energy cables stands at 66kV, rather than 33/45kV as submitted by the parties and in line with previous Commission decisions. However, for the purpose of this decision, it is not necessary to define the exact limit in terms of voltage between the LV-MV and HV-EHV cables markets as both markets are not affected by the present proposed transaction (see below at paragraph 56).

<sup>14</sup> Questionnaire to competitors of 10 January 2011, question 6 – 7 out of 7 competitors agreed with the above market definitions; questionnaire to customers of 17 January 2011, question 5 – 24 out of 26 customers agreed with the above market definitions, 1 indicated that aeronautics cables should constitute a separate product market, and 1 did not know.

types of industrial applications because of the specificities of the cables used for these applications<sup>15</sup>. However respondents did not generally or consistently indicate whether and how the general wiring should be further segmented (for example, several respondents which are active in the same industry (e.g. lifts, automotive) had different views as to whether general wiring should be further segmented or not). One exception is that all customers in the aeronautics industry indicated that due to the very high technical requirements of their cables, these should be considered as a separate product market.

34. As regard supply-side substitutability, the notifying party submits that as far as the underlying technology is concerned, all applications included in the general wiring market have in common the same technology as regards precisely the manufacturing process associated with electrical technology, cable technology and material technology. General wiring cables have a common production process: copper drawing - bunching - insulating - laying up - external jacketing - mechanical protection - external sheathing. The insulating and external jacketing manufacturing steps can be performed either with thermoplastic or thermosetting machineries (each suitable for a different insulating/jacketing material); the difference is driven by the characteristics that the final product must have for its application. The manufacturing sequence is completed in full or in part according to cable design defined by the final customer, which may be specific for the final use/application (e.g. more simple cables like building wire or automotive cables do not require all the manufacturing steps).
35. The notifying party further submits as regards supply-side substitutability that all cable manufacturers own the technology to operate all the manufacturing steps and almost all the cables producers are able to propose in their product portfolio a wide range of cables, suitable with customers' needs and compliant with specifications. In addition, it submits that all producers may easily and quickly and at low cost switch from one application to another one or increase the overall production capacity. According to the notifying party, the costs for upgrading a production line or for changing the capabilities of a production line are very limited (below 20% of the original cost to source the full production line) as is the time necessary. There may be constraints for a line to produce some products due to the characteristics of the line and of the machineries within the line (e.g. size, speed, reliability or other technical/performance features), for instance for aviation and elevator cables such as those produced by Draka. However, the underlying technology does not change significantly and the cost to source the proper equipment is not substantially different from the cost of sourcing a similar machinery of the same family.
36. This was broadly confirmed by the market investigation. A majority of competitors confirmed that the general wiring market should not be further subdivided based on the different applications (automotive, aeronautics, oil and gas, marine, etc.)<sup>16</sup> since, even

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<sup>15</sup> Questionnaire to customers of 17 January 2011, question 6 – 13 out of 26 customers indicated that the general wiring cables market should be further segmented, while 11 customers indicated that the general wiring cables market should not be further segmented as the underlying technology and materials used are similar, and 2 did not know.

<sup>16</sup> Questionnaire to competitors of 10 January 2011, question 7 – 4 out of 7 respondents indicated that there was no need to segment the general wiring cables market per type of applications as the underlying design and production process for the different applications was similar, 1 respondent submitted that the general wiring cables market should be further segmented, but did not explain how, 1 respondent explained that the market should be further sub-segmented between construction cables on the one hand, and industrial and OEM cables on the other hand, and 1 respondent indicated that OEM cables should be a separate product market.



though on the demand side cables for different applications have different requirements and may not always be used for other applications, on the supply side, the design, production technologies and manufacturing processes are similar and substitutable between different types of applications, even if some adaptation (including in some instances the purchase of additional machinery) may be required in order to switch the production of cables to another industrial application<sup>17</sup>.

37. As regards the timing and cost of switching from the production of cables for one type of application to another<sup>18</sup>, one competitor explained that the decision to invest in a new application was essentially a question of taking up a profitable business opportunity and that if the demand was there and a reasonable pay-off could be foreseen, the investment would be made to invest into the production of cables for a new application.
38. A majority of customers also confirmed that even if smaller suppliers may concentrate on specific types of cables or applications, most middle and large suppliers produce a whole range of general wiring cables for different applications<sup>19</sup>.
39. The Commission also investigated whether cables with specific technical characteristics (such as flame-retardant and fire-resistant cables, a new development requested for instance for large infrastructure projects such as tunnels or public buildings) could constitute a separate product market. A small majority of competitors and customers who responded to the market investigation submitted that flame-retardant and fire-resistant cables do not constitute a separate product market on their own but rather constitute an evolution towards higher product specifications for the existing cable-related markets<sup>20</sup>. A majority of competitors and customers also indicated that most suppliers are capable of producing, and do produce, flame-retardant and fire-resistant cables<sup>21</sup>.

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17 Questionnaire to competitors of 10 January 2011, question 8 – 5 out of 7 respondents explained that the design and manufacturing processes are the same and that material, know-how and equipment can be partly switched, even if some adaptations had to be made per application, 1 respondent explained that construction cables on the one hand, and industrial and OEM cables on the other hand require different manufacturing processes and higher specifications for industrial and OEM cables, and 1 indicated that Flame Retardant or Fire Resistant cables may require specific production lines.

18 Questionnaire to competitors of 10 January 2011, question 9.

19 Questionnaire to customers of 17 January 2011, question 7 – 9 out of 26 respondents explained that the majority of suppliers offer a whole or at least wide range of cables, 7 explained that the majority of middle and large suppliers offer a wide range of cables and that the smaller ones may specialise, 6 explained that the majority of suppliers specialise, and 4 did not know.

20 Questionnaire to competitors of 10 January 2011, question 13 – 4 out of 7 respondents indicated that flame-retardant and fire-resistant cables do not constitute a separate product market, while 3 respondents indicated that even though no patent was required to produce such cables, a high level of know-how was required; questionnaire to customers of 17 January 2011, question 8 – 11 out of 26 respondents indicated that flame-retardant and fire-resistant cables do not constitute a separate product market but rather a logical evolution of existing requirements, 10 indicated that they constitute a separate product market because of their higher specifications, and 5 did not know.

21 Questionnaire to competitors of 10 January 2011, question 15 - 4 out of 7 respondents indicated that if not all, many suppliers can produce such cables, while 3 indicated that not all suppliers produced them because a certain level of investment was needed in order to master the know-how for the production of such cables, even though no intellectual property was attached to them and materials were readily available; questionnaire to customers of 17 January 2011, question 10 – 13 out of 26 respondents indicated that most suppliers can produce such cables, 9 indicated that not all producers had the required certification to produce such cables, and 4 did not know.

40. The Commission finally investigated whether cables for the aeronautics industry could constitute a separate product market because of their very high technical requirements (e.g. in terms of weight, arc tracking, etc). The customers purchasing cables for use in the aeronautics industry responded that from the demand side, the supply of such cables should be considered as a separate product market because of their very high technical specifications requiring the use of special machines and materials, which in turn require large investment from the cable manufacturer<sup>22</sup>. On the other hand, the respondents confirmed that on the supply side, several manufacturers are capable of producing and do sell these cables (Nexans, Draka, Carlisle, Sumitomo and Tyco, although the two latter producers use a different technology for the production of their cables). The investigation also showed that while obtaining the necessary certification may be difficult, costly and time consuming (from 8 months to one-and-a-half years) for new suppliers it is easier and faster for customers to switch between their already certified suppliers<sup>23</sup>. In any event, since out of the notifying parties, only Draka (and not Prysmian) produces cables for aeronautics applications, the Commission considers that it is not necessary to conclude on whether or not the supply of such cables constitutes a separate product market for the purpose of the present transaction, as this does not affect its competitive assessment.
41. In conclusion, the Commission notes that, in line with its precedent findings, the relevant products markets as regards energy cables seem to be (i) general wiring, (ii) low and medium voltage power cables, and (iii) high voltage power cables. However, for the purpose of the present decision, it is not necessary to conclude on whether the general wiring market should be further subdivided based on specific applications as the proposed transaction does not raise any competition concerns under any alternative market definition for the supply of general wiring.

## **B. Geographic market definition**

### *Optical fibre (input to optical fibre cables)*

42. The notifying party submits that the optical fibre market can be defined as global in scope as optical fibres are available throughout the world from a variety of suppliers and transportation costs are low. For instance, Prysmian purchases fibres from manufacturing facilities in the US and Japan as input for its optical fibre cables.
43. The market investigation confirmed that the relevant geographic market for the supply of optical fibre is worldwide in scope. Firstly, respondents unanimously considered the optical fibres market to be worldwide<sup>24</sup>. Secondly, the market investigation showed that non-vertically integrated competitors for the supply of optical fibre cables source optical fibre at a worldwide level<sup>25</sup>. Thirdly, responses indicated that with 1-5% of the sales

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<sup>22</sup> Questionnaire to customers of 17 January 2011, question 6.

<sup>23</sup> Questionnaire to customers of 17 January 2011, question 16.

<sup>24</sup> Questionnaire to competitors of 10 January 2011, question 24. 8 out of 8 respondents considered the market for optical fibres to be worldwide.

<sup>25</sup> Questionnaire to competitors of 10 January 2011, question 25. Moreover, two replies to question 26 of the same questionnaire indicate that the factories of those competitors producing and selling optical fibre typically export a notable percentage of their production to the EEA (if located outside of the EEA, with the exception of one factory located in China) or a significant percentage outside the EEA (if located within the EEA).

price, transport costs for optical fibre are relatively low<sup>26</sup>. Finally, respondents indicated that there were no significant price differences within the EEA but some variation at worldwide level, which one respondent attributed to currency fluctuations<sup>27</sup>.

44. Therefore, it can be concluded for the purpose of the present decision that the geographical scope of the optical fibre market is worldwide in scope.

### ***Telecom cables***

45. Past Commission decisions<sup>28</sup> considered that all telecom cable markets are at least EEA-wide in geographic scope due to their cross-border nature both in terms of supply and demand, although the exact geographic scope was ultimately left open.
46. In the present case, the notifying party submits that recent developments now point to a global dimension as far as optical fibre cables are concerned. According to the notifying party, elements supporting this conclusion are the international reach of telecoms fibre infrastructures, which is to a large extent globally standardized, as well as worldwide export and import flows facilitated by low transportation cost (estimated at approximately 1 to 5% of the price per fibre kilometre).
47. Cable suppliers however indicated in the market investigation that while transport costs in the EEA are between 1 and 8% of the sales price, worldwide transport costs range between 6% and 20%. Other indicators in the market investigation also suggested that the relevant geographic market for terrestrial telecom cables is primarily EEA-wide in scope, with some indication of a more global dimension<sup>29</sup>.
48. Based on the above and in line with the precedents of the Commission, it can be concluded for the purpose of the present decision that the geographic scope of the telecom cables market is all at least EEA-wide.

### ***Energy cables***

49. The notifying party submits that the general wiring market, the LV-MV power cable market and the HV-EHV power cable market are all at least EEA-wide.
50. In a previous decision<sup>30</sup> the Commission found that the energy cable markets are all at least Community-wide in scope due to harmonisations of cable specifications, the presence of

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26 Questionnaire to competitors of 10 January 2011, question 27a), 5 out of 6 responses.

27 Questionnaire to competitors of 10 January 2011, question 28, 6 out of 6 responses.

28 Case COMP/M.3836 Goldman Sachs/Pirelli Cavi e Sistemi Energia/Pirelli Cavi e Sistemi Telecom, paragraphs 19-20.

29 Questionnaire to competitors of 10 January 2011, question 33 – 3 submitted that the market is worldwide. 4 respondents considered the market to be EEA-wide or smaller. Some cable suppliers considered the markets to be national given that telecom operators typically have their own product specifications for cables. However, the main suppliers of optical fibre cables of all 6 telecom cable customers who responded are located within the EEA in different countries (Questionnaire to customers – telecom cables of 17 January 2011, question 9). Moreover, all respondents also indicated that they get some supplies from outside the EEA and two indicated that they increasingly source from suppliers based in Asia (question 10).

30 See Case COMP/M.1882 - Pirelli/BICC, paragraph 33.

multinational operators, and in the case of power cables, and the fact that utilities purchase Community-wide on the basis of procedures provided for in EU public procurement directives.

51. All competitors who responded to the market investigation confirmed that these three product markets had a geographic scope which is at least EEA-wide<sup>31</sup>. As regards specifically the general wiring market, a majority of customers indicated that they purchased in several countries in the EEA and also sometimes outside the EEA, in the Middle East, Asia, Latin America and South Africa, confirming that the geographic scope of that market would be at least EEA-wide<sup>32</sup>.
52. Based on the above and in line with the precedents of the Commission, it can be concluded for the purpose of the present decision that the geographic scope of the general wiring market, the LV-MV power cable market and the HV-EHV power cable market is at least EEA-wide.

### **C. Competitive assessment**

53. The proposed transaction gives rise to horizontal overlaps between Prysmian and Draka's activities in the production of energy and telecom cables. Furthermore, it will increase the vertical integration of the merged entity. Both parties are engaged in the manufacturing of optical fibre but only Draka supplies optical fibre to third party optical fibre cable manufacturers. Prysmian produces optical fibre for its own consumption only<sup>33</sup>. As a consequence, no horizontal overlap arises on the upstream market for optical fibre.
54. Draka is active in the supply of optical fibres to be used in optical fibre cables; Prysmian is active in the production of optical fibre but supplies only marginally third parties; Prysmian sources [...] % of its needs from third party suppliers of optical fibre<sup>34</sup>.

#### **Horizontal effects**

55. The notifying party submits that the following markets are horizontally affected by the notified transaction:
  - a) The EEA market for (terrestrial) optical fibre cables, with a combined market share in 2009 of [20-30] % (Prysmian: [5-10] %; Draka [10-20] %). If a global market was to be considered, the market shares of Prysmian and Draka would be [5-10] % and [5-10] %, respectively;
  - b) The EEA market for general wiring, with a combined market share in 2009 of [20-30] % (Prysmian [10-20] %, Draka [10-20] %).

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<sup>31</sup> Questionnaire to competitors of 10 January 2011, question 16 - 7 out of 7 competitors; one competitor indicated that the market may even be larger than the EEA for cables used in the automotive industry.

<sup>32</sup> Questionnaire to customers of 17 January 2011, question 12 – 4 out of 26 respondents indicated that they purchase their general wiring cables worldwide, 3 indicated that they purchase locally / nationally, and the rest indicated that they either in the EEA, or in a mix of national, EEA and worldwide locations.

<sup>33</sup> Prysmian only sells fibre strands from time to time to third parties on a spot basis. These sales amounted to approximately EUR [...] in the EU in 2009. At a global level, they do not represent more than [0-5] % of worldwide production in any event.

<sup>34</sup> In 2009 and 2008, approximately [...] % of Prysmian's remaining needs were supplied by [...].

56. As regards the EEA market for LV-MV power cables and cable accessories where an overlap arises between the parties, the parties submit that their combined market share is well below 15% ([10-20]%), As far as HV-EHV cables are concerned, the proposed transaction will not modify the structure of the market since Draka is not active on this market.
57. With respect to the EEA market for telecom copper cables where the parties also overlap, the combined market share would be [5-10]% (measured in value). The potential sub-segments of telecom copper cables (as tracked by independent industry analyst CRU), notably external (outdoor) copper cables and internal (indoor) telecom/ data copper cables, would not be affected either<sup>35</sup>.

*Optical fibre cables*

58. Both parties are engaged in manufacturing terrestrial optical fibre cables<sup>36</sup>, a market that has shown strong growth due to increasing fast broadband needs. Based on its estimates derived from figures produced by independent market analyst CRU, the notifying party submits that the combined market shares for terrestrial optical cables, measured in sales value, are [20-30]% at the EEA level (Prysmian: [5-10]%, Draka: [10-20]%), and [10-20]% at the worldwide level (Prysmian: [5-10]%; Draka: [5-10]%) in 2009<sup>37</sup>.

**Table 1: Terrestrial Telecom Optical Cables – size of market and market shares**

Terrestrial Telecom Optical Cables 2009 ('000 EUR)	Market size	Prysmian		Draka		Combined market shares
		Sales	Market shares	Sales	Market shares	
EU	[...]	[...]	[5-10]%	[...]	[10-20]%	[20-30]%
EEA	[...]	[...]	[5-10]%	[...]	[10-20]%	[20-30]%
Worldwide	[...]	[...]	[5-10]%	[...]	[5-10]%	[10-20]%

<sup>35</sup> In 2009, the parties' combined market share in the sub-segment of external copper cables was [10-20]% (measured in value). Their market share in the much larger market for internal copper cables (including copper LAN cables) was [5-10]% (measured in value). With sales not exceeding EUR [...] million in 2009, Prysmian is only marginally present in the sub-segment of internal telecom/ data copper cables, so there would be essentially no horizontal overlap in this segment. One respondent pointed out that the estimates by CRU for the market category of "internal telecoms/ data copper cables" may be substantially overestimating the market volume when compared with estimates in the BSRIA Worldwide Reports for Structured Cabling 2010, another independent industry analyst. However, even on the basis of the lower market volume based on BSRIA estimates, it is reasonable to conclude that the telecom copper cables market would not be affected.

<sup>36</sup> According to notifying party, neither Prysmian nor Draka engage in the production and sale of submarine optical fibre cables, but Prysmian may occasionally be requested to insert optical fibre cables ancillary to its submarine power cables installations.

<sup>37</sup> However, in a previous Commission decision (Case COMP/M.3836 - Goldman Sachs/Pirelli Cavi e Sistemi Energia/Pirelli Cavi e Sistemi Telecom, Commission decision of 5 July 2005, paragraph 25), Prysmian (formerly known as Pirelli Cavi e Sistemi Telecom) had submitted EU-wide market shares of [30-40]% for Prysmian and [10-20]% for Draka in the year 2004. According to the notifying party, these market shares were obtained through internal estimates (except for Nordic countries) rather than being based on CRU figures, which likely lead to an underestimation of the market size and an overestimation of the Prysmian/Pirelli's market share. CRU figures also show that the market in Western Europe more than doubled between 2004 and 2008 while, according to Prysmian's figures, Prysmian's sales (measured in value) consistently decreased since 2005, from EUR [...] in 2005 to EUR [...] in 2009.

59. The main competitors at the worldwide level are as follows:

**Table 2: Terrestrial Optical Cables – market shares of competitors**

<b>Terrestrial Optical Cables, worldwide market (in value)</b>	<b>2009</b>
<b>Corning</b>	[5-10]%
<b>Draka</b>	<b>[5-10]%</b>
<b>Prysmian</b>	<b>[5-10]%</b>
<b>Furukawa</b>	[5-10]%
<b>YOFC</b>	[0-5]%
<b>SEI (Sumitomo)</b>	[0-5]%
<b>Fujikura</b>	[0-5]%
<b>Others</b>	[50-60]%
Source: Prysmian estimates elaborated on the basis of value figures provided by CRU and publicly available information	

60. With a [10-20]% market share, the merged entity will become the global leader in the supply of terrestrial optical fibre cables<sup>38</sup>. It would be followed by US-based Corning ([5-10]%) as well as Japan-based Furukawa ([5-10]%) and SEI ([0-5]%). All are vertically-integrated manufacturers. The market is fragmented with many other smaller cable suppliers.

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<sup>38</sup> Yangtze Optical Fibre and Cable Co. Ltd (“YOFC”) is a joint venture in which Draka holds 37.5% of the shares and to which it licensed its technology. Adding 37.5% of YOFC’s market share ([0-5]%), the merged entity would have a market share of close to [10-20]%.

61. The main competitors on the EEA market for the supply of terrestrial optical cables are as follows:

**Table 3: Terrestrial Optical Cables – market shares of competitors**

<b>Telecom Optical Cables, EU+EFTA, 2009</b>	<b>Market share</b>
<b>Prysmian</b>	<b>[5-10]%</b>
<b>Draka</b>	<b>[10-20]%</b>
<b>OFS (Furukawa)</b>	[5-10]%
<b>Nexans</b>	[5-10]%
<b>Corning</b>	[5-10]%
<b>Acome</b>	[5-10]%
<b>Twentsche Kabelfabriek (TKH group)</b>	[5-10]%
<b>Ericsson</b>	[0-5]%
<b>Sterlite</b>	[0-5]%
<b>LS</b>	[0-5]%
<b>Others</b>	[40-50]%
Source: Prysmian estimates elaborated on the basis of value figures provided by CRU and publicly available information	

62. With [20-30]%, the merged entity will become the clear leader within the EEA market,<sup>39</sup> with competitors having market shares of [5-10]%, and lower. However, these include a number of competitors who also benefit from vertical integration, such as OFS owned by Furukawa (Japan), Corning (USA), Sterlite (India) and the TKH group (Netherlands). Competitors without their own fibre production are Nexans (France), Acome (France) and Ericsson (Sweden). The market is fragmented with many other smaller cable suppliers.
63. As for the potential sub-markets of SMF cables and MMF cables, the notifying party submits that there is no information available to calculate (based on value) the size of both market segments and the market shares of the suppliers of SMF and MMF optical fibre cables. When measured in volume, the combined market shares for the sub-segment of SMF cables would be [30-40]%, and [20-30]%, for MMF cables<sup>40</sup>.
64. The market investigation also verified the general conditions and barriers to entry into the market for the supply of optical fibre cables. All telecom cable customers identified several alternative suppliers for optical fibre cables (in both sub-segments) such as Nexans, Acome, LG Cable, Fiberhome, Corning, Furukawa (OFS), General Cable and various smaller providers<sup>41</sup>. Most competitors did not identify any barriers to entry within the EEA with the exception of meeting customer-specific product specifications and telecom operators' lengthy qualification procedures (generally estimated to last between 6 months and 1 year)<sup>42</sup>. Moreover, Asian cable suppliers such as Sterlite (India), LG Cable and Samsung (South Korea), ZTE and Huwaei (China) are regarded

<sup>39</sup> With [30-40]%, the parties' 2009 combined market share is higher when measured in volume.

<sup>40</sup> The notifying party notes that Prysmian's estimates for MMF cables are based on their consumption of MMF in volume and that actual numbers may be lower due to cutting and matching losses.

<sup>41</sup> Questionnaire to customers – telecom cables of 17 January 2011, question 13.

<sup>42</sup> Questionnaire to competitors of 10 January 2011, question 70 - 6 out of 7 valid responses. One respondent also submitted that know-how, high CAPEX requirements vs. comparatively low ROI and local sales presence are also barriers to entry.

as new entrants into the EEA market<sup>43</sup>. It can therefore be concluded that alternative suppliers and increased market entry by non-EEA suppliers for optical fibre cables will constrain the merged entity post transaction.

65. In light of the above considerations, the proposed transaction does not give rise to any competition concerns stemming from horizontal overlaps between Prysmian and Draka in the provision of optical fibre cables.

*General wiring cables*

66. Based on its estimates derived from figures produced by independent market analyst CRU, the notifying party provides the following market shares for general wiring cables:

**Table 4: General Wiring Cables – size of market and market shares**

General Wiring 2009 ('000 EUR)	Market size	Prysmian		Draka		Combined market share
EU	[...]	[...]	[10-20]%	[...]	[10-20]%	[20-30]%
EEA	[...]	[...]	[10-20]%	[...]	[10-20]%	[20-30]%

67. The above market shares estimations have been broadly confirmed by two of the competitors who responded to the market investigation<sup>44</sup>.
68. The notifying party submits that post transaction there will remain for all possible applications, at least eight alternative suppliers, including many qualified competitors in the EEA, some of which with market shares and scale of business that, albeit smaller, remains close to that of the combined entity in the EEA (e.g. Nexans ([10-20]%), General Cable ([5-10]%), NKT ([5-10]%), Telefonika ([5-10]%), Leoni ([5-10]%), Waskonig & Walter ([0-5]%), General Cavi ([0-5]%) and Top Cable ([0-5]%). Moreover, it submits that more than 100 smaller companies are active in the market exercising significant competitive constraints on major suppliers, and that many large Asian cable manufacturers active worldwide may easily expand their activity in the future in the EEA, thus placing further competitive constraints on the parties.
69. The market investigation generally confirmed the presence of a relatively large number of alternative suppliers of general wiring cables for the different applications, inside and outside of the EEA<sup>45</sup>.

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43 Questionnaire to competitors of 10 January 2011, question 71 – 6 respondents out of 8 found that Asian competitors have entered the EEA market.

44 Questionnaire to competitors of 10 January 2011, question 37 – 2 out of 7 competitors provided market shares estimates; these were broadly in line with the market shares provided by the notifying party.

45 Questionnaire to competitors of 10 January 2011, questions 41 and 43 – 6 out of 7 competitors listed between 8 to 30 alternative suppliers of general wiring cables (including smaller suppliers specialising in certain applications or cables) to Prysmian and Draka, 1 indicated only 4 alternative suppliers, but explained that they sourced a very limited quantity of general wiring cables for their operations; questionnaire to customers of 17 January 2011, question 25 – out of the 22 customers who responded to that question, 21 indicated a number of alternative suppliers to Prysmian and Draka, including Nexans, Top Cables, General Cables, NKT, Telefonika, Leoni, Waskonig & Walter, Acome, General Cavi, Carlisle, Tyco, and others; 1 customer submitted that they had no alternative to Prysmian and Draka for



70. One competitor explained in the market investigation that it could be time consuming to have the products tested and sometimes certified with new customers. Several customers confirmed that it could sometimes take from eight months to more than one year to certify a new supplier for certain specific applications such as for instance cables for the aeronautics or aerospace sector, but they also explained that they worked with several certified suppliers and that switching supply between these already-certified suppliers was much easier and far less time consuming (from several weeks to three-four months)<sup>46</sup>.
71. The market investigation also indicated that the general wiring market was currently -and for the foreseeable future- suffering some excess-capacity<sup>47</sup> due mainly to a number of capacity extension investments conducted before the last financial crisis and its resulting loss of demand for general wiring cables, and that general wiring cable suppliers were currently running at between 50-80% of their production capacity<sup>48</sup>, indicating that price increases were unlikely as a result.
72. Respondents to the market investigation also confirmed the presence of new entrants in the general wiring cables market from, for instance, Egypt, Turkey, Russia, India, Korea, Thailand and China<sup>49</sup>, some of them being very active such as among others El Sewedi or Carlisle.
73. Finally, the majority of competitors and customers who responded to the market investigation confirmed that the transaction would not raise any competition-related concerns for their business, for the affected markets in general, and for the prices of general wiring cables<sup>50</sup>. In particular, a number of respondents explained that the transaction was unlikely to raise concerns because (i) the general wiring cables market currently suffers some excess capacity and may continue to do so in the foreseeable future, (ii) general wiring cables were increasingly becoming a "commodity" product where price will increasingly become the main factor influencing the purchasing decision of customers, (iii) the general wiring cables market is rather "atomized" with many suppliers already present in the EU and newcomers from outside the EU.

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the supply of NSSHÖU and NTSWÖU cables, which are specialised general wiring cables for the mining industry; however, further investigation revealed that these were standard cables which were (or could be produced) by other suppliers, including Nexans, (with the Rheyfirm family of products), Ariston Cavi, Telefonika, AEI, General Cable, and Tratos, albeit with some lead-time of up to 6 months for certifying these new suppliers.

- 46 Questionnaire to customers of 17 January 2011, question 16.
- 47 Questionnaire to competitors of 10 January 2011, question 49 – 7 out of 7 respondents indicated that the general wiring cable market had enough spare capacity and was experiencing a slight to significant excess capacity.
- 48 Questionnaire to competitors of 10 January 2011, question 38.
- 49 Questionnaire to competitors of 10 January 2011, question 49 – 5 out of 7 respondents listed a number of new entrants from outside of the EEA; among them, El Sewedi from Egypt and LS Cables and LG from Korea were the most often cited among other new entrants coming from outside the EEA.
- 50 Questionnaire to competitors of 10 January 2011, question 73 – 6 out of 7 competitors indicated that the proposed transaction was unlikely to have a negative effect on them, the market or prices, while 1 indicated generally that it was negative that the merged entity would become the number one cable manufacturer worldwide; questionnaire to customers of 17 January 2011, question 28 – 18 out of 26 respondents indicated that the proposed transaction was going to have either a positive or no negative effect on them, the market or prices, 5 indicated that the proposed transaction was negative as it was reducing the number of suppliers in the market, and 3 did not know.

74. In light of the above considerations, it can be concluded that the proposed transaction does not give rise to any competition concerns stemming from horizontal overlaps between Prysmian and Draka in the provision of general wiring cables.

#### **Non-horizontal effects**

75. Draka manufactures both MMF and SMF using its patented technologies PCVD/ACDV (Plasma Chemical Vapour Deposition). Prysmian, conversely, only manufactures SMF and has access to the most widespread technologies (Outside Vapor Deposition - OVD and Vapor Axial Deposition - VAD) pursuant to license agreements with Corning and Sumitomo Electric Industries, Ltd., respectively<sup>51</sup>.

76. Draka manufactures optical fibre for its own consumption ([...]% of its SMF production and [...]% of its MMF production is captive use), but also sells to third parties for use in telecom optical cables.

77. Prysmian produces optical fibre for its own consumption only<sup>52</sup>. Approximately [...]% of its needs are covered by this production. In 2009, approximately [...]% of Prysmian's remaining needs were supplied by [...] and [...]% by Draka; in 2008, [...]% were sourced from [...] and [...]% from [...].[...].

78. The notifying party submits that the transaction will not materially modify the parties' current situation, as both already produce optical fibres to cover most of their own requirements. In any event, the parties' combined production of SMF according to CRU amounts to [10-20]% worldwide<sup>53</sup> (measured in fibre km)<sup>54</sup>.

79. The production shares of the main suppliers of SMF worldwide in 2010 (including supply for internal consumption) are summarized in the table below.

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51 [...].

52 Prysmian may sell fibre strands from time to time to third parties only on a spot basis and therefore cannot be considered as a supplier in the market.

53 Adding 37.5% of YOFC's market share ([5-10]%) given that it is a joint venture in which Draka holds 37.5% of the shares, the merged entity would have a market share of above [10-20]%.

54 The parties together produce [80-90]% of the total production of SMF within the EEA (Prysmian: [50-60]%, Draka [30-40]%). The notifying party points out, however, that this ratio is misleading since Prysmian supplies all its optical cables manufacturing facilities worldwide from its optical fibre production source located within the EEA. In addition, this share does not raise concern given that the relevant geographic market for the supply of optical fibre has been clearly identified as worldwide.

**Table 5: SMF cables – market shares of competitors**

<b>Market Shares for SMF production worldwide (in volume), 2009+2010</b>	
Corning	[10-20]%
Furukawa	[10-20]%
Fujikura	[5-10]%
<b>Draka</b>	<b>[5-10]%</b>
Sumitomo	[5-10]%
YOFC	[5-10]%
<b>Prysmian</b>	<b>[5-10]%</b>
Futong	[5-10]%
Hengtong	[0-5]%
ZTT	[0-5]%
Samsung	[0-5]%
Sterlite	[0-5]%
Fiberhome	[0-5]%
Other	[10-20]%
<b>TOTAL</b>	<b>100%</b>

Ref: CRU Executive Summary August 2010

80. Draka's production of MMF amounted to [20-30]% worldwide in 2009. The notifying party submits that even if MMF were to be considered a separate market, the proposed transaction does not lead to any significant vertical integration as Draka's share in worldwide production is below 25%. Given that the market investigation clearly indicated that the supply of optical fibre (both SMF and MMF) is a worldwide market, this argument can be accepted.
81. Draka currently sells [...] % of its SMF production and [...] % of its MMF production to third party optical fibre cable producers. The transaction will increase the merged entity's integration in the downstream market for optical fibre cable manufacturing, and it is conceivable that post transaction the merged entity would increase its own internal consumption and stop or reduce its supply to third party optical fibre cable producers and/or increase prices for optical fibre to third parties. However, given that the market for the supply of optical fibre is clearly worldwide and that the global production shares of the parties for SMF are [10-20]% for SMF, and [20-30]% for MMF, the merged entity is unlikely to have the ability to implement such a hypothetical strategy. Moreover, most competing optical fibre cable suppliers are also vertically-integrated in the production of optical fibre. Finally, the market investigation did not reveal any concern with regard to a potential input foreclosure for the supply of optical fibre<sup>55</sup>. All cable suppliers replied that there are alternative suppliers of optical fibres<sup>56</sup>. This seems to be the case also for the niche market of MMF. At a worldwide level, a number of manufacturers supply MMF, including Corning, OFS-Fitel (Furukawa), J-Fiber (Leoni), Fujikura, Twentsche Fibre Optics (TKH group), Sumitomo, and Prime Optica.

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<sup>55</sup> Questionnaire to competitors of 10 January 2011, question 73 – 8 replies.

<sup>56</sup> Questionnaire to competitors of 10 January 2011, question 57 – 6 respondents out of 6.

82. The proposed transaction does not therefore raise any competition concerns stemming from vertical effects.

## **V. CONCLUSION**

83. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the European Commission,  
(signed)  
Joaquín ALMUNIA  
Vice-President of the European  
Commission*