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*Case No IV/M.651 -
AT&T / Philips*

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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 05/02/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5.2.1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case N° IV/M.651- AT&T-Philips

Notification of a concentration pursuant to Article 4 of Council Regulation N° 4064/89.

On 03.01.1996, AT&T Corp. (AT&T) notified its intention to acquire sole control over certain business units (Acquired Businesses) from Philips Electronics N.V. (Philips).

After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I THE PARTIES

AT&T, the American telecommunications company, provides a broad range of voice and data communications services, in particular US and international long-distance carrier services. AT&T is the ultimate parent company of a group engaged in the full range of telecoms operator activities.

AT&T's activities are organised into a number of different businesses. The telecoms equipment manufacturing activities are in the Network Systems Group. The acquisition takes place in the framework of the process of restructuring of AT&T which will lead to the separation of the telecommunications equipment business from other groups (including telecoms services) by 01.01.97.

Philips, the dutch company, is one of the world's largest electronics companies. Its products include lighting, industrial and consumer electronics, recorded music, components, semiconductors, medical systems, and communications systems.

The two divisions from which the Acquired Businesses are to be divested are Télécommunications Radioélectriques et Téléphoniques (TRT) and Philips Kommunikatons Industrie AG (PKI). Both of these divisions are within the Philips Communication Systems division and are engaged in the development, production and distribution of telecommunication equipment.

II THE OPERATION

Through the notified operation, AT&T is acquiring the following three business units from Philips:

- Transmission Networks (TN)
- Microwave Transmission and Access (MTA)
- Cellular Infrastructure Systems (CIS)

Prior to the closing of the transaction, all assets and shares which are to be divested to AT&T will be transferred to the Philips parent company. Upon closing, the said assets and shares will be transferred to AT&T. In the case of PKI, the transaction with Philips will take the form of an acquisition of the relevant assets from this business unit. In the case of TRT, the transaction will take the form of an acquisition of the shares of TRT. Prior to the transfer of the shares of TRT to AT&T, those parts of TRT which Philips intends to retain will be divested from the current TRT company.

A number of National Sales Organizations (NSOs) will also be acquired by AT&T in the operation. The NSOs concerned are those located in Austria, Belgium, Denmark, Greece, Ireland, Italy, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom.

III THE CONCENTRATION

The notified operation is a concentration consisting of the acquisition of sole control by AT&T of the Acquired Businesses of Philips. Upon completion of the transaction, the Acquired Businesses will be integrated into the Network Systems group of AT&T.

Indeed, following the acquisition agreements and the related agreements signed between AT&T and Philips, the acquisitions of 100% of the shares of TRT by AT&T and the ownership of all the assets which pertain to the Acquired Businesses in the case of PKI will confer, legally and factually, exclusive control to AT&T over the Acquired Businesses. Philips will lose any possibility of exercising any kind of influence on the businesses transferred.

With regard to the NSOs acquired by AT&T, it must be said that they will also be under its sole control taking into account that there will be a transfer of the assets, contracts, employees (in as far as the applicable contractual and legal provisions allow this) and leases to AT&T.

Therefore, the operation constitutes a concentration within the meaning of article 3(1)b of the Merger Regulation.

IV COMMUNITY DIMENSION

AT&T and the parts of Philips to be divested have a combined aggregate worldwide turnover in excess of 5000 million ECU (AT&T: 63,129 million ECU and the Philips Acquired Business [...] ⁽¹⁾ ECU. Each of the entities has a Community-wide turnover in excess of 250 million ECU (AT&T [...] ⁽²⁾ ECU and the Acquired Business [...] ⁽³⁾ ECU). Both AT&T and the Acquired Businesses 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 COMPATIBILITY WITH THE COMMON MARKET

A. Relevant Product Markets

The relevant product markets in this operation are in the public telecommunications equipment sector. With regard to Commission decisions under Article 85.3 and the Merger Control Regulation (in particular the Siemens/Italtel case - N°IV/M.468, decision of 17.02.95), the following relevant product markets have been suggested:

- 1.Public switching
- 2.Cable transmission
- 3.Point-to-point digital radio transmission
- 4.Local loop
- 5.Customer premises equipment (CPE)
 - 5.1 Network operator owned equipment
 - 5.2 Customer owned equipment
- 6.Wireless access (Point-to-multipoint wireless)
 - 6.1 Fixed wireless for urban applications
 - 6.2 Fixed wireless for rural applications
- 7.Cellular infrastructure

According to the notifying party the above markets cover all the products which are manufactured and/or distributed by the Acquired Businesses, and can be described as follows;

Description of relevant product markets

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1. **Public switching systems** allow the interconnection of service users. The switched services can cover voice, data, image and text. The three main network switching nodes are characterized by:

- (a) local switching functions which interconnect end-users;
- (b) transit exchanges which interconnect transmission links;
- (c) international transit exchanges which provide international services.

In Europe, the public switching equipment with analogue technology is being gradually replaced by digital equipment and new extensions in networks are likewise being carried out using digital technology.

2. **Cable transmission** provides the transport function for:

- a) traffic between local central switching offices and transit central switching offices;
- b) leased line traffic between business customers, by cable and fibre-optics.

The notifying party argues that the market for cable transmission products may be further divided into different product categories based on whether the technology used is PDH or SDH. However, SDH is rapidly becoming dominant. The notifying party and the competitors and customers surveyed by the Commission have confirmed that SDH will be dominant by the year 2000. There are also differences in the functionality of the equipment but to an increasing extent, multifunctional equipment is being introduced with SDH technology equipment.

3. **Point-to-point digital radio transmission or line-of-sight radio technology** provides an alternative to cables for information transport. Radio systems are, like cable transmission, migrating towards SDH.

4. The **local loop** product market comprises a wide range of electronic products connecting homes/premises to the network.

5. **Customer premises equipment (CPE)** relates to the telecommunications equipment which is installed on the customer's premises. According to AT&T it should be divided into two individual product markets, namely (i) network operator owned equipment which would include the network termination equipment (considered to be part of the network) and (ii) user owned equipment which comprises principally of ISDN terminal adapters. ISDN terminal adapters may be further subdivided into two categories: PC card adapters and stand-alone adapters. The competitors and customers contacted by the Commission agreed with these subdivisions.

6. **Wireless access (Point-to-multipoint wireless)**. Wireless access covers point-to-multipoint transmission systems and networks which can be, and generally are, interconnected with the fixed telecommunications networks and are used to deliver normal voice telephone services and ISDN.

For AT&T this category of equipment covers two product markets: fixed wireless for urban applications, and fixed wireless for rural applications. The distinction between the urban and the rural applications is that the former would allow a much higher number of subscribers and that its geographic reach would be shorter than the rural equipment. Most of the companies which answered to the Commission's request of information agreed with this subdivision.

7. Cellular infrastructure. The Commission referred to this product in former decisions as "mobile radio networks" (Siemens/Italtel decision of 17.02.1995). Mobile radio networks allow for communication: (a) within its own network and (b) to or from another fixed or mobile network as long as the user is within radio coverage of his mobile network.

A product market definition is not necessary as, given the respective market positions of the parties in the sectors referred to above or even in separate narrower markets, such a definition would not alter the Commission's conclusion with regard to dominance in this case described under Assessment below.

B. Relevant Geographic Markets

1. **Public switching equipment** is considered by the notifying party to be in transition from national to European-wide. It is true that the Commission in the Siemens/Italtel decision, without defining exactly the geographic market in public switching, made a distinction between the existing digital switch technology (where significant differences amongst Member States remain) and the new technologies such as ATM switches where, due to the liberalization of services and infrastructure and the process of European standardisation, it could be argued that a European-wide market exists.

2. The notifying party refers to the Siemens/Italtel decision where the Commission recognised that standardisation of **cable transmission** equipment is more widespread than switching equipment, partly because the interface aspects of the equipment are more important than for switches. In this context, the geographic market may be viewed as European wide or becoming European wide. In any event, a customer for these products could reasonably expect to have a choice of suppliers from a number of regions.

3. The notifying party's opinion is that the geographic market for **point-to-point digital radio equipment** is also in transition from national to European-wide.

4. The notifying party considers that the geographic market for **local loop** products is still influenced by the regulatory climate which differs from one Member State to the other.

5. With regard to **customer premises equipment** and in particular in relation to the network operator owned equipment, the notifying party states that the geographic market definition is still influenced by standardisation issues. The notifying party remarks that there are two different standards which are used within the EEA for network termination equipment, the 2B1Q standard and the 4B3T standard. The 4B3T standard is the older standard which is used in Belgium and Germany. In the other EEA countries, the 2B1Q standard is used. Therefore, according to AT&T, two geographic markets are considered to exist in network operator owned equipment. Standards for user owned equipment are based on the European ISDN standard and hence, a European wide market in these products could be considered.

6. The notifying party considers that the geographic market for **wireless access** (both for rural and urban applications) is at least European and possibly global. The notifying party provides information about various suppliers of different nationality which are active in this area through trials and sales in the various countries within Europe and the world.

7. In relation with **cellular infrastructure** the notifying party refers to the Commission decision Siemens/Italtel which stated that operators of mobile radio networks in western Europe had confirmed that they purchased telecommunications equipment through tender procedures and

that the geographic location of the equipment manufacturers had little relevance. However, the Siemens/Italtel decision did not finally define the geographic market.

It would seem clear that the geographic market for GSM standard cellular infrastructure is at least European as this standard has been set as the EEA standard.

Some of the competitors and customers contacted by the Commission have defined the relevant product markets referred to above as worldwide product markets. Some others prefer a distinction based on standards. For instance a distinction between ETSI (Europe and other non-European countries) and ANSI (especially North America).

However, given that the operation does not result in any problem of dominance in the EU/EEA area, for the reasons exposed in the assesment below, it is not necessary to define the relevant geographic market in the present case.

VI-ASSESSMENT

A. Horizontal Effects

According to the information provided by the notifying party and essentially confirmed by the competitors and customers surveyed by the Commission the following conclusions can be drawn on the impact of the notified operation on competition in the common market:

1. Public switching: The activities in Europe of AT&T and the Acquired Businesses are limited both from a geographical point of view and from a product point of view.

The combined market share of AT&T and the Acquired Businesses are estimated at a level of [...] ⁽⁴⁾ of the EC market for public switching equipment in 1994. In addition there is no overlap between the activities of AT&T and those of the Acquired Businesses in terms of sales in Member States.

The only country within the EEA in which sales by AT&T of public switching equipment are substantial is the Netherlands [...] ⁽⁵⁾ but as the Acquired Businesses currently have no sales of public switching equipment in the Netherlands the notified operation will not lead to any increase of AT&T's share of the Dutch market. In addition, a significant number of competitors of AT&T are active in this sector such as Siemens and Alcatel. Thus, given the existence of actual competition and the existence of substantial potential competition (NEC, Ericsson, Nokia...) in the market, the proposed acquisition will not lead to the creation or the strengthening of a dominant position in the common market.

2. Cable transmission: The combined market shares of AT&T and the Acquired Businesses in the cable transmission market (including all products) was [...] ⁽⁶⁾ 1992 and [...] ⁽⁷⁾ 1994 at the EC level. If we just consider the combined market share with regard to SDH cable

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transmission products, in 1992 was of [...] ⁽⁸⁾ in 1993 of [...] ⁽⁹⁾ and, in 1994 of [...] ⁽¹⁰⁾ at the Community level.

In the cable transmission sector at the Community level, it is observed that Alcatel and Siemens/GPT both have a significant presence (probably over 20% according to information for 1993). Furthermore, the demand side of the market for transmission equipment shows a high degree of concentration and the customers seem to have substantial bargaining power with regard to the purchases which they make.

At the Community level in the SDH sector, AT&T has a very low market share [...] ⁽¹¹⁾ and at a national level, there is zero or extremely limited overlap between AT&T and the Acquired Businesses.

Given the low overlap on both the Member State and the Community level, it does not appear that the operation would lead to any anti-competitive problems in the SDH and PDH cable transmission markets. This has been supported by the results of the Commission's investigation which proved the existence of effective competition in the market.

3. Point-to-point digital radio transmission: AT&T sales of digital radio transmission products within Europe are extremely limited and almost all in Germany where AT&T attains a market share between 20 and 30 %. Sales by the Acquired Businesses within this sector represent a minor part of the European market for digital point-to-point transmission equipment with the only significant sales in France [...] ⁽¹²⁾ and to a lesser extent the United Kingdom [...] ⁽¹³⁾. On a EEA level, the combined market share is [...] ⁽¹⁴⁾. The impact of the operation in this product market is small and will not lead to any significant change in the market.

4. Local loop: AT&T had a very low presence in this market in 1994 in the Community. The Acquired Businesses have a certain presence in this market with a share of [...] ⁽¹⁵⁾ in 1994 at the Community level. At national level the Acquired Businesses has particularly high market shares in two countries: Belgium [...] ⁽¹⁶⁾ and Germany [...] ⁽¹⁷⁾ in 1994. However, AT&T was only active in Italy in 1994 where it had [...] ⁽¹⁸⁾ of an extremely small market. The Acquired Business was not present in Italy in 1994. Given the small effect of the operation, as for point to point digital radio transmission, and the existence of sufficient present and potential competition in the national markets referred to as Siemens, Alcatel, Nortel, Ericsson, Nokia..., the notified operation will not create or strengthen a dominant position in the common market.

5. Customer premises equipment: In relation to network operator owned equipment the sales of the Acquired Businesses are limited to the geographic market consisting of Belgium (less than 5% in the last three years) and Germany where it ranges between 20% and 25%. AT&T

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⁽¹²⁾ Deleted: business secret: between 10 % and 20 %

⁽¹³⁾ Deleted: business secret: between 5 % and 15 %

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⁽¹⁵⁾ Deleted: business secret: between 15 % and 25 %

⁽¹⁶⁾ Deleted: business secret: between 70 % and 80 %

⁽¹⁷⁾ Deleted: business secret: between 30 % and 40 %

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has no sales in this sector in Belgium and Germany and therefore, there is no overlap of geographical markets.

With regard to the user owned equipment sector AT&T does not have a position within the EEA. The notified operation should therefore not have any impact on the current market structure for these products.

6. Wireless access: In relation to the fixed wireless urban applications AT&T manufactures one fixed wireless product called AirLoop based on CDMA technology which is currently the subject of a trial in the United Kingdom. The Acquired Businesses manufacture one fixed wireless product for urban applications which is called Swing. Swing is the subject of trials in Spain and Switzerland. Both AT&T and the Acquired Businesses list zero revenue in this sector for 1994. In addition, according to the information obtained by the Commission other alternative technologies are available to a sufficient number of the competitors of AT&T.

With regard to rural applications, this sector could be classed as a niche product with limited deployment. In any case AT&T currently does not have any products falling within this market and the Acquired Businesses' activity appears to be limited.

7. Cellular infrastructure: In this equipment sector the combined market share of AT&T and the Acquired Businesses in the Community is [...] ⁽¹⁹⁾ in 1994. Within Europe, AT&T makes only very limited sales of cellular infrastructure equipment in Italy and Spain (both less than [...] ⁽²⁰⁾ market share). There is no significant overlap between sales by AT&T and sales by the Acquired Businesses in the geographic market defined as the EEA. Therefore, the operation does not pose any competition problem with regard to this sector.

B. Vertical Effects

AT&T has limited activities as an operator of telecommunications infrastructure within the EEA, mainly through AT&T Communications UK Ltd, which provides fixed network telecommunications services in the United Kingdom. AT&T Communications UK is a purchaser of switching and transmission equipment. However, it has to be taken into account that AT&T Communications UK's purchases of telecommunications equipment represent a negligible part of the total purchases of public telecommunications equipment within the EC and the EEA and a minor part (below 5%) of the total purchases of public telecommunications equipment in the United Kingdom. Also, the telecommunications services license granted to AT&T Communications UK forbids preference being given to AT&T group equipment manufacturers.

The notifying party has also informed the Commission that through data and messaging operations in Europe (namely through the BCS-E and Easylink business units), AT&T operates a limited amount of telecommunications equipment within the EC/EEA. This equipment primarily does not fall within the affected market of cable transmission referred to above. In addition, the purchases of telecommunications equipment by BCS-E and Easylink represent a negligible portion in overall market terms.

Given the circumstances referred to above it can be considered that the vertical relationships described are of minor importance and will not create or strengthen a dominant position in the common market.

⁽¹⁹⁾ Deleted: business secret: less than 5 %

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VII- ANCILLARY RESTRAINTS

In article 5.8 of the Purchase and Sale Agreement signed between the parties it has been agreed that Philips will not compete for a period of [...] ⁽²¹⁾, following the closing date, with AT&T in respect of the products proprietary to the Acquired Businesses or products which have undergone serious development therein or products that would be considered to be natural successors of product currently offered by the Acquired Businesses. This clause reflects a reasonable purchaser's protection against competitive acts of the vendor in order to take over fully the value of the assets transferred. Therefore it can be regarded as ancillary to the concentration.

Exhibit C to the Purchase and Sales Agreement contains a number of Transitional Operating Agreements. Its goals are to ensure smooth transfer of Acquired Business from Philips to AT&T. The interim supply and services agreements have been signed for an initial transitional period which amounts, as a general rule, [...] ⁽²²⁾, having as target reducing the negative effects of disruption of traditional lines of internal procurement and supply. Certain of these agreements are combined with a management services agreement with the same duration. However, in spite of this [...] ⁽²³⁾ initial period there is a clause applicable to these agreements which establishes that the Agreement shall automatically continue in effect after the expiration of the [...] ⁽²⁴⁾ year term unless terminated by one of the parties. The parties have not justified to the Commission that there is an objective need for agreements of potentially indefinite duration and therefore the period necessary for the replacement of the relationship of dependency by autonomy in the market will only be covered by the present decision for a maximum period of [...] ⁽²⁵⁾ (equivalent to the period that the parties initially considered sufficient).

In addition, these Transitional Operating Agreements contain a number of lease Agreements for premises which will (i) either be acquired by AT&T but part of which will be leased to Philips - at least during transitional periods not exceeding [...] ⁽²⁶⁾ with optional extensions -(ii) or will remain with Philips but will be partly used by AT&T. In so far as these lease Agreements could be regarded as restrictive they are ancillary to the concentration.

Furthermore, the Transitional Operating Agreements cover another category of Agreements related to the provision of certain services, the transfer of certain activities and the assignment of certain contracts which are considered necessary to ensure the transition from businesses units within an integrated economic entity to a independent undertaking. These Transitional Operating Agreements in so far as could contain provisions that may be regarded as restrictive do not go beyond what is directly related and necessary to the implementation of the notified concentration. These latter notified agreements are covered by the present decision for a maximum period of five years which has been justified by the parties as a necessary restriction in the sectors involved for the replacement of the relationship of dependency by autonomy in the market.

(21) Less than five years
 (22) Less than five years
 (23) Less than five years
 (24) Less than five years
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 (26) Less than five years.

Finally, the notifying party submits an Intellectual Property Agreement where its provisions are related to the implementation of the notified concentration and to ensure adequate access by the parties to those IPRs which are necessary for the operations which are either being transferred or retained by Philips. The parties agree to license certain software, copyrights and patent rights. In so far as they could be regarded as restrictive they must be considered ancillary to the concentration.

VIII- CONCLUSION

For the above reasons, the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6 (1) b of Council Regulation 4064/89.

For the Commission