

*Case No IV/M.676 -
ERICSSON / ASCOM II*

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

Article 6(1)(b) NON-OPPOSITION
Date: 22/12/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.676 - ERICSSON/ASCOM II

Notification of 27.11.1995 pursuant to Article 4 of Council Regulation No 4064/89

- 1 On 27 November 1995 TELEFONAKTIEBOLAGET LM ERICSSON (publ) ("ERICSSON") and ASCOM HOLDING AG ("ASCOM") notified to the Commission their agreement, together with ASCOM (UK) HOLDING LTD ("ASCOM UK"), to establish a joint venture company for which Ascom's Swedish subsidiary, Ascom Tateco AB ("ASCOM TATECO"), will serve as vehicle and will carry out activities in the wireless business communications sector, in particular in on-site paging and cordless telephony.

I THE PARTIES

- 2 Ericsson, a Swedish company, is a manufacturer of telecommunications systems and equipment for wired and mobile communications in private and public networks. It is carrying out the operation through its wholly-owned Swedish subsidiary, Ericsson Radio Systems AB ("ERA"), which is involved in the development, manufacturing, marketing and sales of on-site paging equipment and systems ("OSP"), the proposed activity of the JV company.
- 3 ASCOM, a company incorporated in Switzerland and controlled by the Hasler Works Foundation, has three core areas of business activity: telecommunications, enterprise networking and service automation. Within its telecommunications activities, the development of OSP is carried out by ASCOM principally through ASCOM TATECO, the vehicle company for the proposed operation.

II THE OPERATION

- 4 The joint venture agreement states that Ascom will transfer to the JV the whole of its subsidiary Ascom Tateco AB, including the existing sales subsidiaries of this last undertaking in France, Germany, Norway, Sweden and the USA. The capital of the JV will then be increased and ERA will acquire 30% of the capital of the JV through a cash payment. Finally, ERA agrees to sell to the JV and the JV agrees to buy from ERA all the shares of some ERA subsidiaries located in Germany, Australia, France and the Netherlands as well as certain assets.

III CONCENTRATION

Joint Control

- 5 After the above mentioned operation, the JV will be owned by Ascom/Ascom UK which will hold 70% of the share capital and by ERA with the remaining 30%.
- 6 However, in spite of the fact that Ascom will have the majority of the votes at the general shareholders' meeting and will have the right to appoint the majority of the Board of Directors, the JV will be jointly-controlled by Ascom/Ascom UK and ERA since major decisions concerning the conduct of the business of the JV, such as the appointment of the Managing Director and the approval of the Business Plan, require the consent of both parties.

Autonomy

- 7 The JV will perform on a lasting basis all the functions of an autonomous economic unit. It will have its own research and development and manufacturing activities and will distribute its products mainly through its own marketing and sales outlets and these products will be marketed under trademarks assigned or licensed by ERA and Ascom to the joint venture.

Coordination

- 8 The main activity of the joint venture will be the development, manufacturing, sales and installation of OSP. The joint venture will also develop, manufacture and sell cordless telephony systems and equipment designed to be combined with an OSP system to provide the end user customer with an integrated OSP/cordless functionality. Both parents will transfer all their existing OSP activities to the JV and will completely withdraw from the market and therefore in what regards OSP the core activity of the JV, there will be no risk of coordination of its parents activities.
- 9 Both parents, Ericsson and Ascom, will remain active in the market for cordless telephony systems which can to a certain extent be regarded, at least for some types of applications, as a possible substitute for OSP systems. However, it is not likely that the creation of the joint venture will give raise to the coordination of the competitive behaviour of its parents in the cordless telephony market as the cordless telephony products of Ericsson and Ascom, being partly based on different technologies, have different types of customers. Thus, Ericsson's cordless telephony systems will continue to compete in the upper end of the market and the end customers will be big enterprises

and independent telephone service providers. Ericsson will provide these clients with add-on cordless systems which will be connected to a large capacity central PABX (supplied by Ericsson or a competitor). Ascom's cordless products are integrated systems which already include a small PABX and these products are targeted to small and medium-sized enterprises.

- 10 Therefore, taking into account that the joint venture will constitute an autonomous full function undertaking, jointly controlled by ERA and Ascom/Ascom UK and that it is not likely that its creation will lead to the coordination of the competitive behaviour of its parents, either on the OSP market or in any other neighbouring market, the notified operation is considered to be a concentration within the meaning of Article 3(2) of the Merger Regulation.

IV. COMMUNITY DIMENSION

- 11 The operation has a community dimension. The worldwide turnover of the two undertakings concerned, Ericsson and Ascom amounted to 9,009 million ECU and to 1,872 million ECU respectively in 1994. The aggregate community-wide turnover of each party exceeded, in 1994, 250 million ECU and the undertakings concerned did not achieve more than two-thirds of their aggregate community-wide turnover within one and the same Member State.

V. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant Product Markets

- 12 The JV's business will cover broadly two main areas of activity: i) OSP and ii) cordless telephone products and systems designed to be combined with an OSP system. With regard to both OSP and cordless telephony products and systems, the JV's activities will consist of development, manufacture, distribution and service, including installation, technical support and training.
- 13 Within the above-mentioned business activities of the JV the concentration will only lead to combined market shares in OSP. The parties describe this product market as arguably belonging to a larger market for wireless business messaging systems.
- 14 An OSP system is a privately-owned and operated wireless communication system, used to alert and/or inform mobile people. The parties describe the OSP market as consisting of i) hard-core on-site paging equipment and systems and ii) applications, which cover related OSP equipment, such as nurse-call systems, personal alarm/security systems, extended range and cordless equipment.
- 15 As the actual overlap between Ericsson and Ascom exists only in hard-core OSP systems and alarm/security systems, these products together constitute the affected product market.

B. Relevant Geographic Markets

- 16 The parties contend that the market for the supply of OSP systems is EEA-wide. Their analysis is based on the lack of regulatory barriers to entry in different Member States with the adoption of harmonized technical standards, the sale of the same technology and equipment throughout the EEA, the fact that the parties and their leading competitors (Bosch, Philips and Multitone) market their products in almost every Member State and that there are substantial trade flows, since producers supply the entire EEA from single manufacturing plants. Furthermore, the parties and their leading competitors use the same trademarks across the EEA. Information provided by the main competitors and end-users confirms this analysis.
- 17 Nevertheless, the market of OSP presents certain national characteristics, such as the need to provide installation and after-sales service. Therefore, a national presence is to a certain extent required. However, there are many factors to be taken into account with respect to this. Firstly, a part of the clients is composed of international companies which negotiate the conditions of supply centrally with the head-quarters of OSP manufacturers, and the resulting conditions determine the conditions of sale to each subsidiary of the client at a national level. Secondly, there are a number of independent distributors (small companies and large multi-national groups such as Alcatel or Siemens) in different Member States with sufficient expertise to provide after-sales service for the OSP systems of manufacturers who do not have a national presence themselves. Even small suppliers of OSP have access to distributors located in other Member States. Furthermore, several OSP suppliers express the view that no obstacle exists which would limit their ability to expand into other Member States where they do not have a presence. However, the main competitors have already non-negligible market shares in several Member States.
- 18 Given all these factors, the relevant geographic market is considered to be at least EEA-wide and, as it does not present any competition concern at EEA level, it is not deemed necessary to consider a broader market definition in this case.

C. Assessment

Market shares

- 19 The combined turnover of the joint-venture for OSP systems at end-user level and inclusive of installation and after-sales services amounted in 1995 to [...] ⁽¹⁾ Ecus. This would give the parties an estimated market share for the joint-venture of around [...] ⁽²⁾ of the relevant market and a share of between [...] ⁽³⁾ to each of their main competitors (Philips, Bosch and Multitone). This estimate is a maximum market share, since it has been calculated on the basis of the turnover declaration of only the main competitors of the parties and the parties own turnover figures. In the absence of reliable market value estimates, it is not possible to calculate with better accuracy the share of the joint venture.

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- 20 The professional association, the Association of European Manufacturers of Personal Wireless Communications Equipment (ESPA), does not collect the sales figures of its members. It only calculates total volume sales of OSP receivers of those suppliers who, as members, report these. On this basis, the joint venture would have a market share of [...] ⁽⁴⁾, again a maximum, because there are a number of OSP suppliers that do not report to ESPA.

Main Competitors

- 21 The joint venture will be subject to competition from large multinational groups such as Philips, Bosch, or Motorola, which are groups with significant financial resources, distribution networks spread throughout the EEA, and with a large technological base.
- 22 Furthermore, it will face competition from a number of companies of a smaller size, but which are specialised to a large extent in OSP systems. Companies such as Multitone, Blick or Swissphone sell their OSP systems in several Member States, while still others, such as Technel and TOA are active in particular Member States.

Technological Aspects

- 23 Even if the merged entity will enjoy synergies and benefit from economies of scale as a result of the operation, it is to be noted that the three main competitors Philips, Bosch and Multitone are also active in the neighbouring market of wide area paging systems and equipment (WAP) which is a market which generates a higher turnover at EEA level than OSP. WAP and OSP equipment are usually manufactured at the same sites, within the same factories and there are a lot of components which can be used by these two technologies in particular with regard to the manufacturing of the receivers, where about 85% of the components included in an WAP receiver can be used in a standard OSP receiver. These important synergies allow the above mentioned companies to spread R&D and manufacturing costs of OSP receivers and therefore significant economics of scale are achieved allowing the OSP competitors' products to be competitive. Neither Ericsson nor Ascom are on the market for WAP receivers and they are forced to join forces in OSP in order to achieve economies of scale.
- 24 In view of the characteristics of this market, there is no significant risk of prices being adversely affected as a result of this operation. In fact the prices have fallen significantly in the last few years. OSP is a declining market which will suffer significant competitive pressures by other wireless communications technologies such as, in particular, cordless telephony but also private mobile radio, WAP, GSM etc. Competitors, in general, in reply to the Commission's inquiry have stated that in the long term the OSP business will be replaced to a significant degree by the above-mentioned new technologies, in particular cordless telephony. The threat of new technologies becoming comparatively cheap alternatives to OSP adds an important competitive pressure on the OSP suppliers who at present are fighting to maintain their current level of sales.

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Demand Aspects

- 25 Furthermore, a large part of OSP customers have a significant bargaining power, as demand in the OSP market is characterized by the existence of large and/or highly sophisticated professional purchasers and tends to be relatively concentrated. The public sector accounts for a large part of total OSP customers ([...]⁽⁵⁾ for the parties) in the various Member States, especially in areas such as health care, prisons, transport and other public utilities. Many private customers, such as service industries (banks, hotels, etc.) manufacturing plants, retail outlets and offices, are also large organizations. In the public sector OSP contracts are frequently awarded through calls for tenders and many large organizations also invite bids from several potential suppliers, creating a competitive environment.
- 26 Based on the above findings, it is not likely that the JV will create or strengthen a dominant position in the market for OSP systems and equipment.

VI. ANCILLARY RESTRAINTS

- 27 While it is explicitly provided for in Article 23 of the joint venture agreement that the parties will continue to compete with each other in other areas of the telecommunications business, the same Article also provides that the parents will neither directly nor indirectly be engaged in any OSP business, except through the joint venture. As this clause is the expression of the lasting withdrawal of the parents from the JV product market, it can be considered as directly related and necessary and therefore ancillary to the notified operation.

VII CONCLUSION

- 28 For the foregoing reasons the proposed concentration does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA agreement.

For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)b of Council Regulation No. 4064/89.

For the Commission,

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