

*Case No IV/M.685 -  
Siemens / Lagardère*

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 08/02/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.02.1996

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

**Subject: Case N° IV/M.685- SIEMENS/LAGARDERE (MATRA TRANSPORT)  
Notification of 05.01.1996 pursuant to Article 4 of Council Regulation N°  
4064/89**

1. On 5 January 1996, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 4064/89<sup>(1)</sup> which concerns a Shareholders' Agreement signed on 29 December 1995 and other related agreements among Siemens Aktiengesellschaft (Siemens), Lagardère Groupe S.C.A. (Lagardère) and Matra Transport S.A. (Matra Transport), a subsidiary of Lagardère. The Shareholders' Agreement provides in particular for the acquisition by Siemens of a 50% stake in a new corporation Matra Transport International which concentrates all Lagardère's transportation activities.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and within the functioning of the EEA Agreement.

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<sup>(1)</sup> OJ No L 395 of 30.12.1989; Corrigendum OJ No L 257 of 21.09.1990, p.13.

## **I. THE PARTIES**

3. Siemens is a publicly held German industrial and electronics company active, through subsidiaries, in the following sectors: industrial and building systems, drives and standard products, automation, automotive systems, power generation, power transmission and distribution, semiconductors, medical engineering, public communication networks, network systems, passive components and electron tubes, private communication systems, defence electronics and transportation systems.
4. Lagardère is a French holding company involved, through subsidiaries, in the following sectors: high technologies (especially in the fields of space, defence, telecommunications and transport), automobiles and media.
5. Matra Transport International was formed as Lagardère's subsidiary in the field of transportation systems. It is active in automated urban transportation and more precisely in certain automatic train control systems (ATCs) and automated guideway transit systems (AGTs).

## **II. THE OPERATION**

6. According to the Shareholders' Agreement, Siemens will acquire a 50% stake in Matra Transport International. The Shareholders' Agreement also governs the corporate structure as well as the management and business organisation of Matra Transport International. Finally, the Shareholders' Agreement includes several related arrangements between Siemens, Lagardère and Matra Transport International.

## **III. CONCENTRATION**

### *Joint venture*

7. Matra Transport International will be owned on a 50/50 basis by Siemens and Lagardère. Decisions at the Shareholders' Meeting will be taken by unanimous vote. In case of deadlock at a second shareholders meeting, the matter will be referred for resolution to the Chief Executive Officers of Lagardère and Siemens and their decision will subsequently bind the shareholders.
8. Matra Transport International will have a President who will conduct its overall business and management. He will be nominated, for succeeding five year periods, on a rotating basis, by one party with the approval of the other party. The President will appoint the Executive Officers, after the approval, for some of them, of Lagardère or Siemens or the Supervisory Committee as the case may be. It will also appoint, among the Executive Officers, the General Director after the approval of the party who has approved his own nomination.
9. The Supervisory Committee will consist of six members, of whom will be three nominated by Siemens and three by Lagardère. Its Chairman, who will not have a casting vote, will be nominated, for succeeding five year periods, on a rotating basis, by one party with the approval of the other party. The Supervisory Committee will be competent for the approval of the budget, the budget plan, including the research and development plan and major acquisitions, disposals and capital expenditures. It will decide by

unanimous vote. In case of deadlock at a second meeting, the matter will be referred for resolution to the Chief Executive Officers of Lagardère and Siemens and their decision will subsequently bind the members of the Supervisory Committee.

10. A research and development committee will be set up between Matra Transport International and Siemens consisting of an equal number of representatives of each of them, in order to seek convergence with Siemens' research and development. This committee will act by consensus. Nevertheless, for [...] <sup>(2)</sup> only, if a consensus is not reached, and after referral for resolution to the President and a representative of Siemens, the matter will be referred to the Supervisory Committee where Siemens will have a casting vote. In view of what has been said before, including the approval of the research and development plan by the Supervisory Committee, and given that [...] <sup>(2)</sup> will represent a minor part of Matra Transport International's activities <sup>(3)</sup>, Siemens' limited casting vote cannot be considered as impairing the exercise of joint control by Lagardère. Therefore, Matra Transport International will be jointly controlled by Siemens and Lagardère.

*Autonomous economic entity and lasting basis*

11. The new joint venture will operate on the markets concerned, performing all the functions normally carried out by other undertakings on the markets concerned. It will continue the business currently conducted by Matra Transport <sup>(4)</sup> which was an autonomous entity with in particular staff, assets, R&D capacities and financial resources necessary for it to operate on the market. The fact that pursuant to Article 21.2 the joint venture and Siemens shall enter into an agreement for supplies and services for railway transportation products and equipment by Siemens at most favored customer's conditions does not change this assessment. Such kind of contracts will only be ancillary to the operation if the joint venture is not obliged to buy from one of its parent companies. To be able to offer a whole AGT system, the joint venture will need e.g. a supply of mechanical parts for the wagons. However, it has especially to be taken into account, that a supplier of AGT systems need not have the ability to produce all necessary parts of a railway system. Up to now, Matra is the market leader at least within the European Communities without having itself ability to produce the mechanical parts. The relevant assets of an AGT system supplier are the know-how of the system, the experience and expertise on the market and the ability to produce some essential electronical parts. A more vertical integration of railway technology within a supplier is not necessary. The autonomy of Matra Transport International will be furthermore strengthened by several agreements with its parents. First, concerning AGTs, it will have the possibility to use Siemens and/or Lagardère's sales channels <sup>(5)</sup>. Second, Lagardère and Siemens will provide certain administrative, financial and similar services to the joint-venture on an arm's length basis <sup>(6)</sup>. As regards ATCs, sales outside France except those related to MatraTransport's existing customers will be made exclusively through Siemens' sales channels, Siemens acting as agent or prime contractor of the joint venture <sup>(7)</sup>.

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<sup>(2)</sup> Deleted; business secret.

<sup>(3)</sup> Deleted; business secret. Minor part of the joint venture's activity.

<sup>(4)</sup> Limited activities in the field of ATCs will furthermore be transferred from Siemens to Matra Transport International. See footnote 3.

<sup>(5)</sup> Sections 16.1 and 18.1 of the Shareholders' Agreement.

<sup>(6)</sup> Section 21.4 of the Shareholders' Agreement.

<sup>(7)</sup> Sections 16.2 and 18.2 of the Shareholders' Agreement.

Nevertheless, this fact should not impair the autonomous character of the joint venture given its limited activities in the ATC sector<sup>(8)</sup>.

12. The joint-venture is formed for an initial period of 99 years<sup>(9)</sup>.
13. As a result, the joint venture will perform on a lasting basis all the functions of an autonomous economic entity.

*Absence of coordination of competitive behaviour*

14. Lagardère withdraws completely from the railways transportation sector. Such a withdrawal is definitive in view of the continued research and development necessary in this sector. There is, therefore, no scope for coordination between the parents of the joint venture.

#### **IV. COMMUNITY DIMENSION**

15. The present operation has a Community dimension within the meaning of Article 1(2) of the Merger Regulation. The worldwide turnover of all the undertakings concerned amounted, in 1994, to more than ECU 5 billion (Lagardère: ECU 8 billion, Siemens: ECU 47 billion) and each of the undertakings achieved a Community-wide turnover of more than ECU 250 million (Lagardère: ECU 5996 million, Siemens: ECU 29900 million). The two undertakings concerned did not achieve more than two-thirds of their respective turnover within one and the same Member State.

#### **V. ASSESSMENT UNDER ARTICLE 2 OF THE MERGER REGULATION**

##### A. Relevant product markets

16. The product markets affected by the proposed concentration can be identified as:
  - the market for AGT (Automated Guided Transportation) and
  - the market for ATC (Automatic Train Control).
17. The AGT market belongs to the field of local trains and systems. It includes urban transport systems as well as people movers which can be used e.g. at airports. AGT systems differ from the other local transport systems. The main characteristic of an AGT system is automation, in that the train is automatically controlled and operated from a central command center. There are two principal elements of an AGT system, namely the ATC system and the vehicles used in connection therewith. Moreover, a supplier of an AGT system has to present a complete solution for all aspects related to automated guided transportation. This includes solutions for safety standards, e.g. fire escape routes and changes of platforms. Furthermore, if a metro is organized as an automated guided system, the metro vehicles has to be prepared for such a system. Compared with existing metro systems, AGTs fullfil different requirements. Metros are a traditional form of urban

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<sup>(8)</sup> According to past figures, Matra Transport International's turnover generated through exclusive supply Agreements with Siemens represent [Deleted; business secret: very minor part] of the joint venture's turnover.

<sup>(9)</sup> Annex 2 to the Shareholders' Agreement, Article V.

mass transit. AGTs are more high technology products which are e.g. used to increase capacities and frequencies of urban transport systems. Once a customer has decided on a system, there is no interchangeability between the systems. Even if a customer wants a complete new traffic systems, AGTs and metros will meet at least some substantial different requirements. Therefore, AGT systems must be distinguished from metros and trams without automation and are not only a part of a market for local trains and systems.

18. ATC (Automatic Train Control) systems are a market in the field for signalling (or train control and protection systems) which belongs to the field of trackside systems. Signalling consists of all components, systems and sub-systems required to protect the traffic flow of trains and other forms of public transportation and to guarantee the safety of operation thereof. Signalling includes products ranging from block systems which are enhanced versions of track circuits with up to 64 speed codes to refine the curve profile of the train's movement to interlocking systems which control the direction and the movement of the trains to ATC systems. The different products can be used in several applications ranging from urban applications, suburban applications and mainline application. Signalling can be divided into low-technology products, i.e. more traditional signalling devices, and high-technology products, i.e. ATC systems. Given the applications of ATC systems which replace traditional signalling devices, ATC systems are the relevant product market.

#### B. Relevant geographic markets

19. The markets for rail technology have in the past been national. Also today, in some sections of rail technology, national or regional specifications currently still act as entry barriers for exports outside the home region. Before, the Commission has decided that at least the product markets for trams and metros are still national in Germany (Case No. IV/M.580 ABB/Daimler-Benz). Nevertheless, the Commission has also decided that a market for the setting-up of a complete system including the infrastructure are possibly geographically wider than the markets for the procurement of products to be added to an existing rail traffic system.
20. However, for new technology such as AGT and ATC systems under consideration in this case, the limitations discussed above do not apply. As far as the creation of new local transportation systems is concerned, the relevant geographical market is at least Europeanwide or even wider, because there is no need for taking the existing infrastructure into account. Furthermore, according to the figures provided by the parties, there are only about 800 AGT vehicles in operation worldwide, of which about 300 within the European Communities. However, even taking the narrowest market definition, the concentration does not lead to the creation or strengthening of a dominant position.
21. ATC systems are not only used within AGT systems for the creation of a new rail system. In future, the improvement and completion of already existing local transportation systems towards full automation will be at least an important segment of the market for ATC systems. Insofar, it cannot be excluded that existing technical specifications as well as existing relationships between customers and suppliers could still act as a barrier for a market entry of not domestic suppliers. Therefore, in Germany and France the markets for ATC systems could still be national. However, even if there were national markets in France and Germany, the concentration would not lead to the creation or strengthening of a dominant position.

## C. Competitive Assessment

### a) AGT

22. Up to now, there are very few AGT systems worldwide. Therefore, market shares are not relevant to assess the market position of the main players. More important is the ability of a supplier to offer such kind of technology. Only a few companies presently supply AGT systems. Within the European Community, such systems have been created mostly in France. Matra is the leading company in Europe. ADTRANZ, the joint venture of ABB and Daimler-Benz, seems to be number two because they are very strong in the field of people movers. Up to now, Siemens' presence is insignificant. Commission's investigations show that GEC Alsthom can be considered as a potential competitor although it is not yet active on the market. According to the information provided by the parties, UTDC Bombardier supplies AGTs which uses an automation provided by Alcatel through its subsidiary SEL. Given the information of the parties, Ansaldo provides the UTDC Bombardier system in Italy including its own ATCs, i.e. Ansaldo supplies ATC instead of SEL. Therefore, Ansaldo is at least a potential competitor on the Community market for AGTs. At the European level, given the size of the active or potential competitors, a market dominating position of the joint venture cannot be expected.
23. Even if there were national markets, with respect to France, the market position of Matra will not be strengthened by the concentration as Siemens is not active on the French market. Furthermore, as Siemens' AGT activities have been insignificant, up to now, Siemens cannot be seen as being active on the AGT market. On the other hand, Matra is not active on the German market or on any other national market within the EEA.

### b) ATC

24. The ATC technology can be used for AGTs but also for the improvement of existing transportation systems which are not fully automated. Matra has been active in the high-technology area with a greater emphasis on urban public transportation, while Siemens has been active principally in lower technology ATC products with a greater emphasis on suburban and mainline public transportation.
25. With respect to the whole ATC technology, from 1992 until 1994 Siemens had average market shares of about [...] <sup>(10)</sup> in the Community and [...] <sup>(11)</sup> in Germany. However, Matra was only active in France and had average market shares of about [...] <sup>(12)</sup> in France, i.e. about [...] <sup>(13)</sup> in the Community.
26. Customers of the parties and their competitors for AGTs are local transportation companies operating at municipal level, airports and others who have to solve local transport problems. In addition, customers for ATCs are also national railway companies.
27. The major European competitors in the field of signalling and the market for ATCs are Ansaldo, Westinghouse Brake and Signal, Adtranz, GEC Alsthom, SEL and Sasib. Given

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<sup>(10)</sup> Deleted; business secret: above 20%.

<sup>(11)</sup> Deleted; business secret: less than 50%.

<sup>(12)</sup> Deleted; business secret: less than 20%.

<sup>(13)</sup> Deleted; business secret: less than 5%.

the market position of the parties and the size of the competitors, a market dominating position can be excluded at the European level.

28. Besides Siemens, at least SEL and Adtranz are active on market for ATC in Germany. Via its parent company Alcatel, SEL is linked with GEC Alsthom. Assuming that there is a German market, given the size of the competitors, the existence of a market dominating position of Siemens is not likely. Furthermore, as Matra is only active in France, the position of Siemens could be strengthened only because of a technology transfer from Matra to Siemens. This technology transfer is limited as far as the present business field of Siemens is concerned. However, Siemens gets access to high-technology products of Matra. Nevertheless, ADTRANZ and GEC Alsthom have also access to such a technology. The ADTRANZ subsidiary AEG Westinghouse seems to be the leading supplier for people movers, the smaller kind of AGTs. SEL has also expertise in the field of ATCs.
29. In France, given the market shares of the parties, the creation of a market dominating position can be excluded.

c) Possible effects on related markets

30. It can also be excluded that the concentration leads to a market dominating position of Siemens or a market dominating oligopoly of Siemens and ADTRANZ on the German markets for trams and metros. The Commission has decided that these markets are still national in Germany and that ABB and Daimler-Benz have to sell the AEG subsidiary Kiepe to avoid the creation of a market dominating duopoly on the German markets for trams and metros (Case No. IV/M. 580 ABB/Daimler-Benz). The present concentration will not change the situation on these markets. Competitors like GEC-Alsthom and Bombardier will be able to guarantee effective competition also in future. They also have access to the ATC technology in question. Therefore, the concentration will not foreclose the German markets.

## **VI. ANCILLARY RESTRAINTS**

31. According to point 9.5 of Form CO, the notifying parties have requested the Commission to clear several clauses of their agreement, in so far as these clauses are ancillary to the concentration. The assessment made below is without prejudice to these clauses being restrictive of competition.
32. Sections 16.1, 18.1 and 21.4 of the Shareholders' Agreement reinforce the autonomy of the joint venture. They constitute therefore an integral part of the concentration.
33. Section 23 of the Shareholders' Agreement provides that the parties will procure that any company within their respective groups will refrain from activities in the scope of business of the joint venture as long as they are directly or indirectly shareholders of the joint venture, unless otherwise expressly provided by the Shareholders' Agreement. This clause expresses the reality of the lasting withdrawal of the parents from the scope of business assigned to the joint venture and can therefore be recognised as an integral part of the concentration.
34. Finally, Sections 19, 21.1 and 22 of the Shareholders' Agreement which concern transitional agreements with respect to the operation of the business prior to the closing



date and remaining obligations under a contract in existence, are normal practice in this kind of operations and can therefore be accepted.

35. By contrast, the exclusivity clause referred to in Sections 16.2 and 18.2 of the Shareholders' Agreement (see point 11 above) does not appear to be necessary for the implementation of the operation and cannot therefore be considered as ancillary to the concentration.
36. Similarly, according to Section 16.3 of the Shareholders' Agreement, the joint venture will be the exclusive sales channel for the sale in France of Siemens' transportation products (except main line rolling stocks). This restriction is not directly related and necessary to the implementation of the concentration and cannot therefore be considered as ancillary. The same applies for the agreements pursuant to Section 21.2 and 21.3. It has especially to be stressed that an obligation of the joint venture to buy products of the parent companies would not be ancillary.

## **VII. CONCLUSION**

37. The proposed concentration therefore does not raise serious doubts as to its compatibility with the common market.
38. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation N° 4064/89.

For the Commission,