

***Case No IV/M.966 -
PHILIPS / LUCENT
TECHNOLOGIES***

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

Article 6(1)(b) NON-OPPOSITION
Date: 20/08/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.08.1997

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M. 966 - PHILIPS/LUCENT TECHNOLOGIES
Notification of 14.07.1997 pursuant to Article 4 of Council Regulation
(EEC) N° 4064/89

1. On 14.07.1997, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) N° 4064/89 by which Philips Electronics N.V. and Lucent Technologies Inc. acquire, within the meaning of Article 3(1)(b) of the Council Regulation, joint control of a newly created company constituting a joint venture by way of the purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) N° 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. Philips Electronics N.V. is the parent company of the Philips Group of Companies ("Philips"). Philips is active in the areas of lighting, semiconductors and components, consumer and professional products and systems, and software and software services. Its consumer communications division designs, manufactures

and markets a range of personal communication products, including corded and cordless telephones, cellular telephones, answering machines and pagers.

4. Lucent Technologies Inc. builds, manufactures and delivers a wide range of public and private service network communications and telephone systems for both the consumer and business. Its consumer products unit manufactures, sells, services and leases communication products for consumer and small office use, including corded and cordless telephones, cellular telephones and answering machines.

II. THE OPERATION

A. Joint control

5. The notified concentration is a joint venture between Philips and Lucent Technologies for the development, design, production, marketing, distribution, lease and sale of consumer communication terminal devices (currently consisting of corded, cordless and cellular telephones, answering machines and pagers). The joint venture will be named Philips Consumer Communications; Lucent will hold 40% of the joint venture's shares and Philips 60%.
6. The joint venture will be managed by a board consisting of five members, with Philips appointing a majority. The original business plan, which will last for five years, will be subject to the agreement of the parties. Certain other decisions, for example, the approval of the annual budget (when diverging from the original business plan), capital expenditure in excess of US\$ 100 million, the commencement of any new business outside the original scope of the joint venture, require the approval of both of the Lucent Technologies' representatives and at least one Philips' representative on the board of the joint venture. Therefore, both parties will have the possibility to exercise decisive influence over the strategic commercial behaviour of the joint venture. In addition Philips will appoint the joint venture's chief executive officer and Lucent Technologies the chief financial officer. These factors lead to the conclusion that the joint venture will be jointly controlled by Philips and Lucent Technologies.

B. Autonomous long-lasting economic entity

7. The joint venture will perform, on a lasting basis, all the functions of an autonomous economic unit. It will directly or indirectly hold all the present businesses consisting of, and assets primarily used in, the operation of Lucent Technologies' consumers product division and Philips' consumer communication division. Philips and Lucent Technologies will license the joint venture certain intellectual property rights that it may need to meet its objectives. The joint venture shall endeavour to be self-funding and its initial funding shall be agreed upon by the parties on the basis of the original business plan. Therefore the joint venture will perform on a lasting basis, all the functions of an autonomous economic entity.
8. After the completion of the transaction Philips and Lucent Technologies will not be competing in Europe in the field of activities of the joint venture. The creation

of the joint venture therefore will not give rise to co-ordination of the competitive behaviour of the parties amongst themselves or between them and the joint venture.

III. COMMUNITY DIMENSION

9. Philips and Lucent Technologies have a combined aggregate world-wide turnover in excess of ECU 5 000 million (Philips, ECU 32 794 million and Lucent Technologies, ECU 12 482 million). Each of them has a Community-wide turnover in excess of ECU 250 million (Philips, ECU [...] million; and Lucent Technologies, ECU [...] million). Furthermore, they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.

IV. COMPETITIVE ASSESSMENT

A. Relevant product market

10. The notifying parties consider that there is a relevant product market for electronic consumer communication terminal devices being corded, cordless and cellular telephones, answering machines and pagers. However it would appear possible that, given the different technologies employed in these products, their varying characteristics, prices and intended uses, they may form five different relevant product markets.
11. Despite this possibility it should be noted that there are certain overlaps between the products, for example, cordless or corded telephones may be combined with answering machines. In addition individual consumers may possess corded, cordless and cellular telephones and, in the near future, it is anticipated that cordless telephones will be marketed that become cellular telephones depending on the distance that they roam from their base station.
12. However it is not necessary to conclude whether the relevant product market is that of electronic consumer communication terminal devices or, instead, that there are the five individual relevant product markets indicated above, because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or in any substantial part of that area.

B. Relevant geographic market

13. The notifying parties submit that the relevant geographic market appears to be world-wide or, at least, Europe-wide. Although it is not possible to use any one product in all countries, because of differing technical standards, it is possible to identify certain regions where corded, cordless and cellular telephones, together

¹ Deleted for publication; < than 17000

² Deleted for publication; < than 1200

with answering machines and pagers, may be employed without regard to national boundaries. Such is the case in Europe for analogue and digital cordless telephone technology. Similarly GSM cellular telephones may be used throughout Europe. Furthermore manufacturers, such as Philips market their products throughout the EEA, and some have gone as far as establishing a European-wide sales price structure.

14. For these reasons the geographic market would appear to be at least as wide as the EEA. However it is not necessary to conclude that this is the case because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or in any substantial part of that area.

C. Competitive assessment

15. The parties submit that there are no affected markets because of the fact that Lucent Technologies does not currently produce or sell any of the joint venture's products within the EEA territory. Even if the geographic market would be defined as world-wide the combined market shares of the parties would not lead to the conclusion that the proposed concentration would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

V. ANCILLARY RESTRICTIONS

16. The parties have submitted that five classes of provisions should be considered as ancillary restrictions: non-compete obligations, technology licensing provisions, provisions on joint development agreements, provisions on the relationship between the joint venture and the parties and a Terminals Co-operation Agreement.
17. As far as concerns the non-compete obligations on the parties (which expire after six months following the time at which either Philips or Lucent Technologies cease to hold at least 20% of the share capital of the joint venture), the Commission is satisfied, insofar that there may be restrictions of competition under Article 85 EC, that they meet the criteria for acceptance contained in the notice on restrictions ancillary to concentrations.
18. The Terminals Co-operation Agreement, as submitted with the notification, requires the joint venture [...] when not to its commercial disadvantage, to supply terminal equipment to Lucent Technologies when that company responds to sales opportunities arising from certain customers. Moreover the agreement can only be terminated by mutual accord. Given the [...] nature of this Agreement, its [...] nature and the fact that it may only be terminated by mutual accord, the Commission cannot accept that it forms a restriction ancillary to the concentration.

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19. The Commission does not consider that Articles 12, 13, 14, 15 and 22 of Schedule 17-A, relating to technology licensing and joint development agreements, give rise to restrictions of competition, because of the non-exclusive character of the licenses. Also Article 20 of the Memorandum of Understanding, relating to the services made available to and the purchases by the parties from the joint venture, does not give rise to restrictions of competition, because these will take place on commercial terms. Similarly the Commission does not consider that the parties' grant of non-exclusive technology licences to the joint venture forms a restriction of competition. The parties have notified these Articles as ancillary, but since they are no restrictions of competition, they are not ancillary.

VI. CONCLUSION

20. 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 (EEC) N° 4064/89.

For the Commission