COMMISSION

COMMISSION DECISION

of 12 April 1991

declaring the compatibility with the common market of a concentration

(Case No IV/MO42 — Alcatel/Telettra)

Council Regulation (EEC) No 4064/89

(Only the English text is authentic)

(91/251/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertaking [1], and in particular Article 8 (2) thereof,

Having regard to the Commission Decision of 21 January 1991 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the obligations proposed by the Commission,

After consulting the Advisory Committee on Concentrations [2],

Whereas :

I. FACTS

The nature of the proceeding

(1) This proceeding concerns a proposed concentration which was notified on 10 December 1990 pursuant to Article 4 of Council Regulation (EEC) No 4064/89, consisting of the acquisition by Alcatel NV (Alcatel) from Fiat SpA (Fiat) of a controlling interest of 69,2 % of the shares of Telettra SpA (Telettra). Telettra will in turn acquire 100 % of Alcatel Face SpA, which is a subsidiary of Alcatel. Fiat will still own 25,4 % of Telettra. The balance of the shares in Telettra are currently owned by the Spanish telecommunications operator, Telefonica de España (Telefonica).

[1] OJ No L 395, 30. 12. 1989, p. 1, rectified vesion OJ No L 257, 21. 9. 1990, p. 13.
[2] OJ No C 127, 17. 5. 1991, p. 2.

The parties

(2) Alcatel is 70 % owned by Alcatel Alsthom Compagnie Générale d'Electricité (Alcatel Alsthom), formerly known as CGE. Alcatel is principally a supplier of telecommunications systems and equipment, and in 1989 had a worldwide turnover of ECU 12,8 billion. Alcatel Alsthom had a consolidated worldwide turnover of ECU 20,7 billion in 1989, the balance deriving mainly from the energy and transportation, nuclear, electrical engineering, and batteries sectors. The Community-wide turnover of Alcatel Alsthom in 1989 was ECU 16,5 billion. Not more than two-thirds was achieved in any one Member State.

(3) Telettra is principally a supplier of telecommunications systems and equipment. In 1989, it had a worldwide turnover of ECU 1,1 billion, ECU 0,95 billion of which arising in the Community. Not more than two-thirds of its Community-wide turnover was achieved in any one Member State.

The context of the agreement

(4) The agreement on the acquisition of control in Telettra is one of the components of the 'accord cadre' entered into between Fiat and Alcatel Alsthom. The other components of the 'accord cadre' are :

— the acquisition by Magneti Marelli, a subsidiary of Fiat, of a controlling interest in Alcatel Alsthom's batteries subsidiary, CEAG. This proposed concentration, which is subject to completion of the Alcatel/Telettra agreement, has been notified and is being dealt with separately under Case No IV/M043 [3],

[3] OJ No C 315, 14. 12. 1990, p. 14.

— the planned acquisition of a controlling interest in Fiat's railway equipment subsidiary, Fiat Ferroviaria, by GEC-Alsthom which is jointly controlled by GEC and Alcatel Alsthom,

— the creation of a European holding company which will be jointly owned by Fiat and Alcatel Alsthom, with the intention of developing initiatives of mutual interest in research and development.

The various components of the 'accord cadre' fall to be separately assessed under Regulation (EEC) No 4064/89 or Article 85 of the EEC Treaty.

The affected product markets

(5) Four product markets within the telecommunications systems and equipment sector are affected by the concentration, these being public switching, line transmission systems, microwave systems, and private switching.

These four markets represent 72 % of the total telecommunications equipment market which had a value of ECU 16,7 billion in the Community in 1989, including other telecommunications equipment areas such as radiotelephony, subsets, earth stations and telecommunications cables.

In terms of value, the most important telecommunications market is the market for public switching with a value of ECU 5,6 billion in 1989 which represents 34 % of the total telecommunications equipment market. In the same year, the market for line transmission systems had a value of ECU 3,9 billion (23 %), private switching a value of ECU 2 billion (12 %), and microwave systems a value of ECU 0,6 billion (3 %).

(6) Market shares of the parties and of their main competitors in these product markets in 1989 are reproduced in the Annex [1].

The public telecommunications equipment markets

(7) The telecommunications equipment supply industry is characterized by a steadily increasing and very high level of R&D expenditure, due to the increasing software content of telecommunications products and the shortening of product life cycles. Technically, Telettra fits in well with Alcatel's existing product base, and the acquisition gives Alcatel access to Telettra's cross-connect technology.

(8) Public switching, line transmission equipment and microwave equipment are largely public telecommunications equipment markets where the telecommunications operators are the only, or by far the most important, customers. The Spanish telecommunications operator, Telefonica, for example, is the only buyer in Spain of public switches, and buys 90 % of the line transmission equipment and currently 60 % of the microwave equipment in that Member State.

(9) Public telecommunications operators in principle operate diversified supplier policies which aim to strike a balance between creating and maintaining competition between suppliers on the one hand, and minimising costs arising from product differences on the other hand. For public switching, for example, it is generally not considered feasible to have more than two or three suppliers because of the high cost and technical complexity of this type of equipment. For transmission equipment, in general terms, it is usual to have more suppliers, say three to five, but there would still be a practical limit to the number which could be sustained.

(10) Procurement practices vary from one operator to another, and from one category of equipment to another, but are in principle based on a combination of negotiated contracts and tenders.

(11) Procurement practices of the Community telecommunications operators are evolving. Traditionally, in all Member States public networks were operated by State-owned telecommunications authorities which gave their orders for telecommunications equipment to a small group of national suppliers. This was often accompanied by specific national technical standards, which created adaptation costs for non-domestic suppliers.

(12) The actual pace of change in procurement policy varies quite significantly from one Member State to another. In this context, a process of liberalization and deregulation of the telecommunications sector has been initiated in the framework of the achievement of the single market. The Commission's directives on liberalization of telecommunications services, for example, aim to create more competition by breaking up the monopolies of the network

[1] This Annex constitutes business secrets which have been deleted in accordance with Article 20 (2) of Regulation (CEE) No 4064/89 for publication.

operators in the provision of services. On the supply side, directives on public procurement and on mutual recognition of terminal type approval aim to open markets to competitors from other Member States. Furthermore, there are efforts to achieve a Community-wide standardization of telecommunications equipment in the framework of European Telecommunications Standards Institute (ETSI).

(13) It is anticipated that the application of the provisions of Council Directive 90/531/EEC [1] on public procurement will contribute to further breaking down the traditional nationally-based buying policies of the telecommunications operators. Member States have to implement this Directive by 1 January 1993, with the exception of Spain, which must implement it by 1 January 1996, and Greece and Portugal by 1 January 1998.

(14) As to standardization of products in the markets under consideration, ETSI, which was set up in 1987, plans to issue 22 standards and 11 technical reports in the transmission area in its work programme for 1990 to 1993. Adoption of ETSI standards by the telecommunications operators in this area is voluntary for the time being, and commitment to this varies. However, from the date of implementation of Directive 90/531/EEC, use of European Telecommunications Standards (ETS) by telecommunications operators will be mandatory in the specification of their calls to tender.

(15) The extent of existing national specifications varies from one Member State to another and according to product. National specifications for transmission equipment for example are low or non-existent in Spain but quite significant in Italy.

The transmission markets in Spain

(16) Because of the significance of Alcatel and Telettra as competitors for the supply of line transmission equipment in Spain, the Commission has carried out a detailed enquiry as to the structural impact of the concentration in this Member State.

(17) Spain is at present the fastest growing telecommunications market in the Community, with overall growth expected to continue at around 5 % per annum in real terms for the next five years because of the modernization programme under way. In 1989 the value of the line transmission equipment market was ECU 531 million (13 % of the total Community market) and that of the microwave equipment market ECU 117 million (20 % of the Community market). Against the overall trend in the other telecommunications equipment markets, the microwave equipment market is generally declining.

Telefonica's ability to react to the concentration

(18) The telecommunications operator most concerned by the concentration, Telefonica, has raised no objection. Like other telecommunications operators, Telefonica has a diversified supplier policy so as not to be overly dependent on any one supplier. In its initial reply to the Commission's enquiries, Telefonica stated that it considered that the concentration between Alcatel and Telettra would not affect this policy.

(19) In response to the Commission's subsequent enquiries Telefonica has specified that its policy of diversified transmission equipment purchasing is based, *inter alia*, on the following principles:

— orders are placed on the basis of annual or two-yearly programmes and product suppliers are aware of invitations to tender for products. The factors taken into account in awarding contracts are quality, the delivery period, reliability and price,

— Telefonica is willing both to arrange any contacts that suppliers wish to have and to provide them with the information they deem necessary in order to be able to tender on an equal footing,

— new or potential suppliers may freely request technical approval of their products. Products which have successfully undergone technical testing are included in Telefonica's catalogue of suitable products which can be purchased. The ultimate choice of products is made in accordance with a combination of parameters, of which technical performance is one,

— an industrial presence in Spain will not henceforth be a decisive factor; it will, however, be necessary to maintain back-up in the country,

— the company's strategic plan for 1991 to 95 provides among other things for the opening-up of the market to new suppliers.

[1] OJ No L 297, 29. 10. 1990, p. 1.

(20) Telefonica has minority shareholdings in some of its suppliers. In particular, it has a shareholding of 21 % in Alcatel Standard Electrica SA which is a subsidiary of Alcatel, a shareholding of 10 % in Telettra Española SA, which is a subsidiary of Telettra, and a shareholding of 5,4 % in Telettra itself.

(21) An agreement which is conditional on the acquisition of Telettra by Alcatel has already been entered into whereby Alcatel will acquire Telefonica's 5,4 % shareholding in Telettra. The same agreement contains a provision whereby Alcatel has a call option to acquire Telefonica's shareholding in Telettra Española SA.

Furthermore, Telefonica has stated that there is no longer a strategic reason to retain minority shareholdings in its suppliers, and that it is willing to consider suitable offers.

(22) Accordingly, on 6 February 1991, Alcatel made the following commitments to the Commission :

— to acquire Telefonica's 5,4 % shareholding in Telettra when control in Telettra is acquired,

— to exercise the call option to acquire the 10 % shareholding of Telefonica in Telettra Españla SA,

— to enter immediately into good faith negotiations with Telefonica so as to acquire at a fair price Telefonica's 21 % shareholding in Alcatel Standard Electrica SA.

Competitors' ability to react to the concentration

(23) American Telephone and Telegraph Company (AT&T) is the world's leading line transmission equipment supplier. It conducts its business in Spain through a joint venture company, AT&T-NS España, which was set up in 1987. This company is 51 % owned by AT&T and 49 % owned by Amper SA. The joint venture's first transmission sales were in 1988, with strong increases following in 1989 and 1990. AT&T-NS España today offers the full range of line transmission products in Spain.

AT&T considers that it is possible for it to sell a higher than anticipated level of transmission equipment in Spain. AT&T-NS España has the ability and spare capacity to do this, and AT&T could supply products from other subsidiaries into this market.

AT&T does not currently sell microwave transmission products in Spain. AT&T-NS España is said to continue to pursue public tender opportunities for microwave radio equipment.

(24) Telefonaktiebolaget LM Ericsson (Ericsson) is a Swedish company which, because of its relatively small domestic market base, has always been an active international competitor. Almost 50 % of its overall turnover now arises in Europe, excluding Sweden. Ericsson is already established in Spain. Although principally a supplier of public switching equipment to Telefonica, it also supplies digital transmission equipment products. Ericsson considers that it could strengthen the existing product offering, and easily expand local capacity if necessary, or supply products from other subsidiaries.

Ericsson currently has limited sales of a small capacity short distance radio link in the microwave equipment market in Spain. It states that it is intended to develop its position in this Member State and that essentially there is no product adaptation requirement for further development.

(25) Siemens currently has only a marginal position in the transmission markets in Spain, accounted for by sales of around ECU 10 million of microwave equipment in 1989. Siemens is the third largest telecommunications equipment supplier worldwide, just behind Alcatel and AT&T, and is therefore a significant potential competitor for the transmission markets in Spain.

In response to the Commission's enquiries, Siemens considers that there are currently two important trade barriers to the Spanish markets. These are the vertical integration of Telefonica with suppliers, and the fact that Directive 90/531/EEC on public procurement does not have to be applied in Spain until 1996.

(26) Alcatel in its notification cites the possibility of significant entry into the Community's markets by other large companies, notably Northern Telecom of Canada, and Fujitsu and NEC of Japan. For these companies however, the costs of product adaptation are substantial, since there are currently substantial differences in technical specifications.

II. LEGAL ASSESSMENT

Concentration

(27) The notified operation is a concentration within the meaning of Article 3 (1) (b) of Regulation (EEC) No 4064/89 since by acquiring 69,2 % of the shares in Telettra, Alcatel will acquire control of Telettra.

Community dimension

(28) The thresholds of Article 1 (2) of Regulation (EEC) NBo 4064/89 are met since the combined aggregate worldwide turnover of Alcatel Alsthom and Telettra is more than ECU 5 billion and the aggregate Community-wide turnover of each is more than ECU 250 million, of which not more than two-thirds is achieved within one and the same Member State. The concentration therefore has a Community dimension.

Compatibility with the common market

(a) *Relevant product markets*

(29) The concentration leads to an increase in market shares in four markets: public switching, line transmission equipment, microwave equipment and private switching. Each of these markets is a relevant product market for the purposes of assessment under Regulation (EEC) No 4064/89.

(b) *Geographical markets*

(30) It is considered that up to now the telecommunications markets in the Community have been largely fragmented in national markets. The main reasons for this have been, *inter alia:*

— the operation of the public networks by national telecommunications authorities which have traditionally given their orders for telecommunications equipment to a small group of national suppliers, and

— different national standards which created high costs of adaptation for non-domestic suppliers.

This situation is evolving as described in recitals 7 to 15 above.

(31) In very broad terms, standardisation is progressing faster for transmission equipment than for public switching for example. Furthermore, the replacement of analogue technology by digital will further break down some of the existing technical barriers in the medium to long term.

(32) Although it is anticipated that in the medium term the technical barriers will become less significant, the actual pace of change of commercial policy of the network operators varies substantially from one Member State to another.

(33) The combination of Alcatel and Telettra has a significant impact on competition only on the transmission markets in Spain. It is sufficient therefore to examine whether the Spanish markets have to be considered as relevant geographical markets.

(34) The most significant structural characteristics up to now have been that:

— the Spanish telecommunications operator, Telefonica, traditionally purchased from locally established suppliers, although this has started to change

— there is no legal obligation in Spain for the next five years to apply the procurement procedures provided for in Directive 90/531/EEC on public procurement,

— there are vertical links between Telefonica and its major equipment suppliers and in particular Alcatel and Telettra, by means of minority shareholdings. Vertical links between telecommunications operators and their suppliers can distrot normal conditions of competition by giving those suppliers a privileged position on the market. This can be the case even where telecommunications operators only have minority shareholdings, since such links would normally put other suppliers without such links at a disadvantage.

(35) Given the current structural characteristics of the transmission markets in Spain, it is concluded that Spain has to be considered as a separate relevant geographical market, for the purpose of assessing whether the concentration could give rise to a dominant position which would significantly impede effective competition within the meaning of Article 2 (2) of Regulation (EEC) No 4064/89.

(c) *Impact of the proposed concentration*

Overall impact

(36) For public switching, there is an impact only in Italy, where Alcatel and Telettra together would have 21 % of the market based on 1989 figures. Since Italtel is by far the leading competitor on the Italian market, having maintained a market share of 50 % for the last few years, the creation of a dominant position for the combined entity in this product market by the concentration is excluded, even if Italy were to be considered the relevant geographic market.

For private switching, Telettra is not a significant competitor in any Member State since it has a marginal presence only on the Italian market. The concentration produces no significant structural effect on either the Italian or wider Community market.

Accordingly, only the impact of the concentration on the markets for line transmission equipment and microwave equipment (the transmission markets) in Spain has to be considered.

Transmission markets in Spain

(37) On the basis of the actual market shares of Alcatel and Telettra in 1989, the concentration leads to very high combined market shares on the transmission markets in Spain for the new entity, because the two companies are the two current principal suppliers to Telefonica.

The figures are as follows:

— line transmission equipment: Alcatel 40 %, Telettra 41 %,

— microwave equipment: Alcatel 18 %, Telettra 65 %.

Contestability of the transmission markets

(38) A very high share of any market could indicate that a dominant position exists. Such an indication in the case of a supplier may nevertheless be countered, for example by the buying power of a monopsonistic purchaser.

In the present case, the high market shares of Alcatel and Telettra in the transmission markets in Spain result from Telefonica's choice of these companies as its main suppliers. This choice was however made on the basis of Alcatel and Telettra being active competitors in the past.

(39) Since Telefonica has maintained a diversified purchasing policy up to now, it is not probable that the new combined entity will sustain the same market share as achieved by the parties as competitors.

(40) It is possible for Telefonica to increase its purchases from other suppliers of transmission equipment in order to prevent any dependence on the new entity.

AT&T is immediately capable of increasing its deliveries across the entire range of line transmission equipment products. AT&T is not yet supplying microwave products in Spain, but AT&-NS España is continuing to pursue some public tender opportunities.

Although Ericsson does not cover the whole range of line transmission products, it is capable of increasing deliveries of digital products, these products being the most important segment for new installations. Ericsson currently has only limited sales of microwave equipment in Spain. It has stated however that it is intended to develop its position in that Member State.

The two principal actual competitors are therefore capable of increasing supply.

(41) Furthermore, it would seem possible for some competitors not currently present to a significant extent in Spain to become suppliers in the changed environment. Although the procedures envisaged in Directive 90/531/EEC on public procurement do not have to be introduced yet, Telefonica has stated that:

— it is willing both to arrange any contacts that suppliers wish to have and to provide them with the information they deem necessary in order to be able to tender on an equal footing,

— new or potential suppliers may freely request technical approval of their products. Products which have successfully undergone technical testing are included in Telefonica's catalogue of suitable products which can be purchased. The ultimate choice of products is made in accordance with a combination of parameters, of which technical performance is one,

— an industrial presence in Spain will not henceforth be a decisive factor.

(42) On this basis, there would be no significant barrier from the demand side for strong competitors such as Siemens to enter into Spain. Siemens is already present to some extent in the microwave equipment market.

The technical costs of adaptation do not today in themselves constitute an appreciable barrier to entry for European-based competitors. There is no indication either for the time being that proprietary intellectual property rights could be exploited in such a way as to amount to a barrier to such competitors. Within the framework of standardization in ETSI the Commission has a strong interest in preventing such a barrier emerging.

(43) Consequently, as to competitors not hitherto based in Europe, such as Northern Telecom, Fujitsu and NEC, it is not necessary to determine whether these are realistic potential competitors in Spain in the foreseeable future in the line transmission

equipment market. It is likely that a technical barrier to entry will remain until the Community's standardization programme comes into effect and Telefonica fully adopts the standards which will be defined by ETSI in this area. The North American and Japanese standards are currently significantly different from those adopted by the various European network operators. Once common European standards are defined and implemented, the necessary minimum volume to justify adaptation may become a more realistic possibility.

Structural links between Telefonica and the parties to the concentration

(44) In the context of the present case, the participation of Telefonica in the capital of Alcatel and Telettra, given their strong position on the transmission markets in Spain, is considered to amount to a barrier for other competitors.

(45) Alcatel has entered into a commitment *vis-à-vis* the Commission whereby Alcatel will acquire from Telefonica the minority shareholdings in Telettra and Telettra España SA and will enter into negotiations to acquire from Telefonica the minority shareholding in Alcatel Standard Electrica SA. The vertical links between Telefonica and Telettra will therefore disappear and given Telefonica's willingness to consider appropriate offers, there is a probability that the vertical link between Telefonica and Alcatel will also be removed, given Alcatel's commitment in this respect.

(46) Alcatel's commitments relate to the removal of a significant structural barrier to the transmission markets in Spain, and it is considered necessary therefore for the Commission to ensure that these commitments are complied with as soon as possible after completion of the concentration by attaching appropriate obligations to its Decision.

(d) *Conclusion*

(47) For the reasons outlined above, it appears that competitors of Alcatel and Telettra are capable in the near future of increasing their supply to Telefonica in the transmission markets. Because of its diversified purchasing policy and removal of vertical links with Alcatel and Telettra, it also appears that Telefonica is capable in the near future of increasing its purchases from other suppliers.

(48) In these circumstances, it is not considered that the current high market shares of Alcatel and Telettra on the transmission markets in Spain will enable the new entity to behave to an appreciable extent independently of its competitors and main customer.

(49) The concentration does not therefore create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it,

HAS ADOPTED THIS DECISION :

Article 1

Subject to the obligations defined in Article 2, the proposed concentration between Alcatel and Telettra is declared compatible with the common market.

Article 2

The following obligations are attached to this Decision :

(a) that Alcatel acquires Telefonica's 5,4 % shareholding in Telettra SpA upon the acquisition of control in Telettra SpA, and that Alcatel informs the Commission when this takes place ;

(b) that Alcatel exercises its call option to acquire the 10 % shareholding of Telefonica in Telettra Espanola SA as soon as this is possible, and at the latest within 12 months from the acquisition of control in Telettra, and that Alcatel informs the Commission when this takes place ;

(c) that Alcatel enters immediately into good faith negotiations with Telefonica so as to acquire at a fair price Telefonica's 21,14 % shareholding in Alcatel Standard Electrica SA, within one week of the closing of the agreement with Fiat to acquire Telettra, and that Alcatel informs the Commission when it has done so ;

— that Alcatel informs the Commission as soon as there is a successful outcome,

— where there is no successful outcome within three months, that Alcatel informs the Commission of the progress of the negotiations that are taking place, and updates this information subsequently every three months,

— that Alcatel, in the event of no successful outcome, or no successful outcome after 12 months have elapsed, provides the Commission with full details of the offer being made (including price and conditions) so as to enable the Commission to verify that the negotiations as defined above have been conducted in good faith;

(d) So as to ensure that the effect of the commitments is not neutralized, that Alcatel shall not sell to Telefonica shares in any company of the Alcatel group which has activities in the Community without prior approval from the Commission until such time as the Commission waives this obligation. This obligation ceases to have effect at the latest on the date of full implementation in Spain of Directive 90/531/EEC, which must take place by 1 January 1996.

Article 3

This Decision is addressed to:

Alcatel NV,
Paris Headquarters SA,
33, rue Emeriau,
F-75015 Paris
and
Telettra SpA,
19 Via E. Cornalia,
I-20124 Milano.

Done at Brussels, 12 April 1991.

For the Commission
Leon BRITTAN
Vice-President