II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 18 November 1997

relating to proceedings under Council Regulation (EEC) No 4064/89

(Case No IV/M.913 — Siemens/Elektrowatt)

(notified under document number C(1997) 3589)

(Only the German text is authentic)

(Text with EEA relevance)

(1999/229/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings [1], as last amended by Regulation (EC) No 1310/97 [2], and in particular Article 8(2) thereof,

Having regard to the Commission's decision of 28 July 1997 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations [3],

Whereas:

(1) On 24 June 1997 the Commission received, pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (the Merger Regulation), notification of a proposed merger, whereby Siemens AG (Siemens) intends within the meaning of Article 3(1)(b) of the Merger Regulation to acquire control of Elektrowatt AG (Elektrowatt) through the purchase of shares.

(2) By letter dated 15 July 1997 the Commission informed the parties of its decision to suspend implementation of the notified merger under Articles 7(2) and 18(2) of the Merger Regulation until a final decision was issued.

(3) After examining the notification, the Commission has established that the notified project falls within the scope of the Merger Regulation and gives rise to serious doubts about its compatibility with the common market and the functioning of the EEA Agreement. By decision dated 28 July 1997, therefore, the Commission initiated proceedings under Article 6(1)(c) of the Merger Regulation.

(4) The Advisory Committee discussed the draft of the present decision on 24 October 1997.

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[1] OJ L 395, 30.12.1989, p. 1; corrected version: OJ L 257, 21.9.1990, p. 13.
[2] OJ L 180, 9.7.1997, p. 1.
[3] OJ C 90, 31.3.1999.

I. THE PARTIES

(5) Siemens is active in many areas. Its operations are basically in the fields of energy production, transmission and distribution, systems engineering, propulsion, circuit and installation engineering, automating engineering, public communications networks, private communications systems, protective engineering, traffic engineering, automotive engineering, medical engineering, semi-conductors, passive construction components and pipes and tubes, electromechanical components, information technology and lighting technology.

(6) Elektrowatt is a Swiss holding company which, via subsidiaries in Switzerland and Germany, is active in electricity generation and supply, building technology, security engineering, telephone installations and general building operations, property management, and engineering services in various fields.

(7) The activities of Elektrowatt which will be taken over by Siemens are:

— commercial building control (essentially through Landis & Gyr/Landis & Staefa),

— security engineering (through Cerberus),

— engineering and general operations for building and property management,

— services, systems, installations and equipment for energy supply companies,

— products, systems and services for telephone installations operators (particularly card- and coin-operated phone booths), and

— visual security devices.

Elektrowatt's activities in the fields of electricity supply and (inter)connection will be sold to firms other than Siemens.

II. MERGER

(8) Siemens intends to purchase the Elektrowatt shares held by the Crédit Suisse Group (CSG), Zurich. Elektrowatt's electricity supply and (inter)connection activities will be split off beforehand and transferred to its subsidiary Watt AG. They will be acquired by a consortium of German and Swiss energy suppliers. CSG currently owns 44,9 % of Elektrowatt; the other shares are widely dispersed. Before its shares are sold to Siemens, CSG will make the general-public shareholders a public offer for all Elektrowatt shares.

(9) The merger is caught by Article 3(1)(b) of the Merger Regulation, since Siemens is acquiring sole control over Elektrowatt. This is still the case if the public offer to acquire further Elektrowatt shares through CSG is completely unsuccessful and Siemens can only purchase the 44,9 % of Elektrowatt already belonging to CSG. Ownership of these shares gave CSG, via a secure majority at the general meeting, *de facto* sole control of Elektrowatt, since attendance at the general meeting in the last four years was clearly less than 70 % on each occasion and the other shares are widely dispersed.

III. EU-WIDE SIGNIFICANCE

(10) Together, Siemens and Elektrowatt have an aggregate worldwide turnover of more than ECU 5 billion (Siemens ECU 49,98 billion and Elektrowatt ECU 4,58 billion). Each of them has an aggregate EU-wide turnover of more than ECU 250 million (Siemens ECU 30,325 billion and Elektrowatt ECU 2,27 billion). Neither Siemens nor Elektrowatt achieves more than two thirds of its aggregate EU-wide turnover within one and the same Member State. The project therefore has EU-wide significance but does not constitute a case of cooperation under the EEA Agreement.

IV. ASSESSMENT PURSUANT TO ARTICLE 2 OF THE MERGER REGULATION

A. RELEVANT PRODUCT MARKETS

(11) The operations of Siemens and Elektrowatt overlap and are divided by the parties into the following areas of activity:

— commercial building control,

— building security technology (fire alarms, intrusion protection, and other security systems),

— network control technology,

— energy meters, energy management systems, ripple control transmitters and receivers,

— payphones (coin- and card-operated telephones).

(12) The procedure was initiated on account of possible competition problems in the fields of fire alarms, electricity and heat meters, ripple control transmitters and receivers, and payphones.

1. Commercial building control

(13) By commercial building control is meant the measuring, control, regulation and management of heat, ventilation, air-conditioning and other technical installations, such as building systems, in commercial buildings. Commercial building control, therefore, includes electronic and electronic data-processing systems and their components (excluding the heating, ventilation and air-conditioning equipment itself) which are used for the economic and energy-efficient control and regulation of the operational installations in commercial buildings, including the preparation and commissioning of such building management systems and showing operators how to use them.

(14) A distinction should be made between the market for building management systems as such, the markets for equipment and components (hardware) needed for such systems, and the market for servicing the systems [4].

(a) *Equipment and components for building management systems*

(15) Equipment and components for building management systems can be divided into different groups of appliances and components that are not interchangeable, for example cables, valves and valve mechanisms. These markets are upstream of that for building management systems *per se*, since hardware is a primary product for the suppliers of such systems. In the markets for equipment and components for building management systems, only Elektrowatt is active on a significant scale. For all practical purposes, Siemens does not supply equipment and components outside its own building management systems. No further discussion is needed, therefore, of the markets for equipment and components for building management systems.

(b) *Building management systems*

(16) The market for building management systems as such covers the development and manufacture of systems for the control and regulation of heating, ventilation and air-conditioning (HVAC) in commercial buildings, their commissioning and showing operators how to use them. Building management systems are developed and supplied on a customised basis in the light of the particular requirements of each case. Supply to final customers and commissioning are carried out either by the product manufacturer itself or its subsidiaries/branches, or through wholesalers and undertakings in the HVAC sector. The following client segments can be differentiated: office buildings, hospitals, universities and schools, specialised industries and hotels. In purely residential buildings, however, complex building management systems are not normally used.

(c) *Servicing of building management systems*

(17) Downstream of the market for building management systems is the market for servicing such systems. This covers the maintenance, repair, replacement, modernisation, operational control and debugging of the building's installations. System manufacturers or companies working for them supply servicing for their 'own' building management systems, especially as part of the guarantee for newly installed systems. 'Other people's' building management systems are also serviced by competitors, however. Customers conclude contracts with suppliers for all these services. The market for servicing building management systems therefore covers all the said services.

2. Building security technology

(18) Building security technology covers fire alarm and intrusion protection (burglar alarm) systems, access control and other security systems. Building security technology installations are used primarily in office and industrial buildings, hospitals and hotels. In this

[4] See the Commission Decision of 12 February 1996 in Case No IV/M.692 — Elektrowatt/Landis & Gyr (OJ C 69, 7.3.1996, p. 3). The delineation of the market made in that Decision was confirmed to the greatest possible extent in the course of the investigations in this case both by the parties and by their competitors.

field, too, a distinction must be made between the market for equipment and components, the market for systems and installations as such, and the market for servicing.

(a) *Equipment and components for building security technology*

(19) Only Elektrowatt is significantly active on the markets for building security technology equipment and components. Siemens basically manufactures such equipment and components only for its own use (it also sells to third parties, but on a small scale and only in Germany). The aggregate market shares of Siemens and Elektrowatt/Cerberus in Germany are less than 15 %, however. In the other Member States and throughout the EEA, Elektrowatt's market shares for equipment and components are less than 25 %; market share aggregation does not apply. No further discussion is needed therfore of the markets for equipment and components for building security systems.

(b) *Building security installations: fire protection installations, intrusion protection and other building security insallations*

(20) The market for building security installations/systems as such covers modification of the plant in accordance with the specific requirements of each customer, fitting and commissioning, and showing operators how to use the installations/systems. The Commission has ascertained that fire alarm installations form a separate product market to intrusion protection and other systems. Such installations serve different purposes in each case and are not interchangeable from the customers' point of view. In contrast to other building security installations, fire protection installations are frequently required by law and/or insurance companies. The sensors they use (ionisation, optical, thermal) are different to those in, say, intrusion protection installations (sound, ultrasound, infrared, radar). There are also customers who only, or primarily, require straightforward fire protection systems, for example hospitals or small commercial establishments.

(21) There is admittedly a tendency for fire alarm systems to be integrated with other building security installations. In particular, relatively large firms and government offices, etc. generally require intrusion protection and access control as well as fire protection, and the different systems must work together as smoothly as possible. To achieve this, however, it does not seem necessary for fire alarm and other safety installations to be purchased from the same source, since (part) installations from different manufacturers can be used together. Customer preferences are not clear: some customers prefer to buy all their security technology from the same manufacturer, while others attach importance to buying from several suppliers. In any event, large suppliers are able to deliver fire protection, intrusion protection and other building security installations. Despite the tendency towards integration, separate product markets for fire protection installations on the one hand and for intrusion protection and other security installations on the other should be assumed.

(c) *Servicing building security installations*

(22) It could not be clearly established whether the servicing of fire alarm installations and intrusion protection and other security systems forms an independent product market or is to be classed with the systems market. Servicing includes the maintenance, repair, replacement, modernisation, performance monitoring and debugging of the security installations. Often, the maintenance of building security installations is carried out by the manufacturer. The customer often prefers this, since the reliable, bug-free operation of the installation and the fastest possible debugging are extremely relevant for security. However, there are also other (smaller) firms which carry out maintenance services. The question whether the servicing of building security installations forms an independent market does not have to be decided, however, since even if a separate market is assumed there are no problems of competition.

3. **Energy meters, ripple control technology, energy-management systems, network control technology (command and control equipment for energy suppliers)**

(23) Command and control equipment for power supply companies covers equipment, systems and installations which are used (a) to monitor and control power and other energy networks (network control systems) and (b) to record and control energy consumption. The command and control equipment in the second product group all uses number recording technology, but can

be further divided according to its different applications.

(24) Energy meters are mechanical and electronic meters and metering systems which record the quantities of electricity, gas or heat consumed. As explained by the parties, electricity, gas and heat meters form independent relevant product markets, since both the technology used and the customer categories differ. The customers for energy meters are the respective energy suppliers, i.e. electricity, gas and district heating companies.

(a) *Gas meters*

(25) The market for gas meters is not affected by the merger, since only Siemens with a market share of 22 % in the United Kingdom is active in this sector and Elektrowatt does not manufacture gas meters.

(b) *Electricity meters*

(26) The market for electricity meters covers mechanical meters (built on the Ferraris principle), electromechanical meters ('hybrid meters') and electronic meters. A distinction can be drawn, on the basis of the application, between meters for tariff customers (households and small consumers), meters for industrial customers and 'high-end' meters. The high-end domain comprises fields of application with special, particularly high technical requirements (e.g. meters for measuring the exchange of current in the high-voltage grid between different electricity producers). In the case of households and small consumers, which use only low-voltage electricity and are subject to at the most two tariffs, it is mostly mechanical meters that are still used, at any rate in western and central Europe with the exception of France, the Netherlands and the United Kingdom. In Scandinavia, by contrast, it is electronic meters which are primarily being used, and in households too. Among industrial final consumers, electronic meters primarily are being used throughout the EEA. In the high-end category, only electronic meters are used.

(27) Meters with electronic measuring systems and counting mechanisms are in competition in terms of price and function with traditonal equipment built on the Ferraris principle. Because electronic meters have a greater functional range, they can be used in a broader applications spectrum than mechanical or electromechanical meters. Thus the technical implementation of tariff schedules, for example the introduction of complex customer charging, which is facilitated by electronic meters, is highlighted as a substantial advantage by the majority of customers surveyed. Compared with mechanical ones, moreover, electronic meters are more sensitive. Their operability is less affected by fluctuations in voltage, frequency or temperature. Further advantages of electronic over mechanical meters are a lack of sensitivity to their environment, smaller dimensions (space-saving equipment), multifunctional installation possibilities (e.g. combination meters with ripple control receivers or timer) and the use of cost-saving reading techniques (remote reading). Among the disadvantages, however, can be reckoned shorter calibration periods, a higher breakdown rate and a currently higher purchase price than the mechanical alternating current or three-phase meter built on the Ferraris principle.

(28) A narrower definition of the market on the basis of fields of application, however, is inappropriate, even taking account of the differences between mechanical and electronic meters. Even though in the domestic field it is principally Ferraris meters which continue to be used, at any rate in central Europe, the generally expected diversification of tariffs will accelerate the spread of electronic meters, which have in any case been manufactured for two decades. The higher cost at present of electronic meters compared with alternating current or three-phase meters is not an obstacle to their increasing use, even in households. Their use may even prove to be more economic on a total cost basis, if the lower installation and administrative outlay compared with mechanical meters is taken into account. A further argument for the increased use of electronic as opposed to mechanical meters is that their prices generally have fallen in the past five years as a result of constant technical improvement and greater competition from new suppliers. The customer expectation is that this trend will continue. The Commission therefore assumes a uniform market covering all types of electricity meter, from the traditional Ferraris via the hybrid to the electronic.

(c) *Heat meters*

(29) Heat meters are appliances which measure and indicate the consumption of thermal energy in flats and houses and in industrial and municipal buildings. The equipment used is either mechanical (vane mechanism) or electronic (measurement by ultrasound). Mechanical meters are being increasingly replaced in all spheres by electronic ones. The Commission is therefore assuming a uniform market covering mechanical and electronic heat meters.

(d) *Energy management systems*

(30) Energy management systems are installations for recording, controlling and monitoring electricity consumption. The customers for such systems are principally power supply companies and relatively large industrial firms, which use energy management systems to optimise consumption. The aim, for instance, is to try and exploit cheap-rate periods and avoid or flatten consumption peaks.

(e) *Ripple control transmitters and receivers*

(31) With the aid of ripple control transmitters and receivers, multi-tariff meters and consumption equipment can be centrally controlled and switched on and off. The transmission device of the ripple control unit is installed at the power supply company and the receivers at the site of the multi-tariff meters or consumption equipment. Ripple control transmitters are increasingly incorporated in the metering systems installed in the current-consuming devices. The customers for ripple control transmitters and receivers are chiefly power supply companies.

(f) *Network control technology*

(32) By network control technology is meant the development, engineering, delivery/installation, maintenance and servicing of control systems for public power, gas, water and district heating networks. Such installations consist of computerised central control stations (network control stations) and facilities with which the geographically separate parts of a network, for example transformer substations, switchgear and power stations can be remotely controlled (remote control or station control technology). Network control technology does not include equipment, controlled by network control systems, in the power supply field such as switching installations, overload protection equipment and transformers. The customers for network control technology are essentially power supply companies.

(33) Network control technology installations must be tailored to the specific requirements of individual customers, whose networks have usually developed over time and also differ from each other in terms of commercial organisation. Nevertheless, there is no justification for dividing the sector into separate relevant product markets according to the type of network to be controlled, since the basic control technology for network control installations does not differ. In view of the complexity and size of the equipment, the design, installation and maintenance are carried out by one supplier. According to the Commission's investigations, there are no smaller firms in the network control technology field which simply carry out the maintenance of network control technology installations. The Commission is therefore assuming an overall market for network control technology for public and industrial power, gas, water and district heating networks, which comprises the design, installation and maintenance of the installations.

4. **Payphones**

(34) Payphones are publicly accessible telecommunications terminal equipment, through which the general public is supplied with telecommunications services for consideration. Payphones can be distinguished firstly by mode of payment. There are coin-operated phones, phones using prepaid phone cards and credit-card telephones. There are also combined telephones, for example combined coin and card phones, or phones which take different types of card. This circumstance does not mean, however, that separate markets could be formed depending on the mode of payment. All manufacturers supply phones for the important payment modes (coin, phonecard and credit-card phones). Customers, too, usually ask for telephones with several or all of the abovementioned payment modes. Thus the conditions of competition for payphones with different modes of payment do not differ. It is to be expected, moreover, that payphones with different modes of payment will continue to be demanded (thus, for instance, phonecard telephones and credit-card telephones sometimes appeal to different end users; even coin-operated telephones will not disappear entirely).

(35) A distinction must be made, however, between 'public' and 'private' payphones. 'Public' payphones are telephone installations, operated by telecoms companies that are still State-owned or by private operators of the public telephone network authorised to do so as a result of liberalisation, which are principally located in public, unsupervised places (outdoors) and mostly accessible round the clock. 'Private' payphones are terminal equipment operated both by the telephone companies and by private undertakings, with independently set rates often higher than those of 'public' payphones; they are usually located on private property indoors and are often accessible only during certain times. Even after the complete liberalisation of telecommunications, it will be necessary to maintain a telephone installations network consisting of 'public' payphones as part of the basic supply. 'Private' payphones will, by definition, be used for profit and are therefore not suited to ensuring a nationwide basic telephone supply for the population. The Commission is therefore assuming different product markets for 'public' and 'private' payphones.

(36) A further fundamental difference between 'public' and 'private' payphones lies in the additional security measures that are needed for 'public' payphones. 'Public' payphones must also clearly be more robust than payphones installed indoors, for example in restaurants, airports and government buildings, where there is less danger of vandalism. The manufacturing costs of unsupervised 'public' payphones are therefore clearly higher than those for 'private' payphones (two or three times as high). The Commission is therefore assuming different product markets for 'public' and 'private' payphones.

(a) *Public payphones*

(37) 'Public' payphones are to be found in the public domain, principally on streets and in public places. Telecoms companies are frequently subject, even when they are already privatised, to State regulations, which oblige them to provide a basic supply of payphones in the public domain. In addition, because extra security measures are required, the manufacturing costs of unsupervised 'public' payphones are clearly higher than those of 'private' ones. Also, the operation of 'public' payphones is often not very profitable on account of higher costs and declining demand (*inter alia*, owing to the growing spread of mobile phones). In this field there are only a few large customers, who (may) take their decisions not just on the basis of market criteria. The market for 'public' payphones is essentially determined by these customers, whose procurement policy and purchasing decisions have a decisive influence on market share.

(b) *Private payphones*

(38) The market for 'private' payphones is completely different in competitive structure to that for 'public' payphones. 'Private' payphones are operated on private property by a wide variety of firms. For instance, 'private' payphone operators may be owners of restaurants, pubs or hotels. There could also be 'private' payphone networks in, for example, service stations. Operators of 'private' payphones are free to decide whether they want to operate payphones or not and will do so only if they expect a direct or indirect profit from them.

B. RELEVANT GEOGRAPHIC MARKETS

1. **Commercial building control**

(a) *Building management systems*

(39) According to the undertakings involved, the market for commercial building control covers the entire EEA. They reason that barriers to market entry are low and that products and services are basically the same throughout the EEA. Any differentiation is basically order, not country, specific. Differences might also arise as a result of climatic conditions. The statutory and administrative provisions in the individual Member States, however, are not so different as to affect cross-border trade. In addition, Europe-wide standards drawn up by the European Committee for Standardisation (CEN) will shortly come into force in this field.

(40) In its decision in Elektrowatt/Landis & Gyr [5], the Commission mentioned a few other reasons for accepting national markets, without however conclusively defining the geographic market. The Commission's more recent enquiries have essentially confirmed the parties' submission.

[5] See footnote 4.

With the introduction of CE standards, which also cover product documentation and service manuals, the regulatory differences between the Member States will become increasingly smaller. Global manufacturers point out in this respect that progressive standardisation is leading to different product designs in the United States and the EEA.

(41) Moreover, local presence/proximity to the customer continues to be advantageous, particularly as far as maintenance is concerned. This is why internationally active suppliers have a combination of central production plants and national sales organisations. Differences in the distribution of market share between Member States can therefore be put down to the historical presence of a number of nationally established suppliers. However, this does not argue against accepting an EEA-wide market. There is demand for the development and installation of complex building management systems throughout the EEA. Severe restrictions of a technical or a legal nature do not exist. As already assumed in the abovementioned decision, any price differences are also not that significant, because the services (installation of the equipment, maintenance work) are carried out on site and prices are therefore strongly influenced by nationally different labour costs. Geographical pecularities, such as climate conditions in southern Member States, do not warrant a narrower definition of the market. The building management systems of the large suppliers are adapted to different conditions. In the same way as the operational requirements for each project, which differ markedly from each other, climate-related requirements affect only the final configuration of the overall system and not its basic functions. For these reasons, the Commission is assuming at least an EEA-wide market for building management systems.

(b) *Servicing building management systems*

(42) As already mentioned, the local presence of the supplier is advantageous as far as servicing is concerned, since, in the event of a malfunction, customers require a response in not more than half a day and are generally not satisfied with advice given over the telephone. Building management systems are principally serviced, therefore, by nationally active, often relatively small undertakings, which are not associated with the international system manufacturers. The Commission is therefore assuming national markets for servicing.

2. **Building security technology**

(43) The parties designate the entire area of the EEA as the relevant geographic market for building security technology. They reason that the building security products supplied and demanded are basically the same and that any differences are not country, but order, specific. In some fields, however, different forms for the equipment are required because of the differences in national provisions. Furthermore, in this field, there is already one European standard in force, and an additional one is expected shortly, which will lead to further harmonisation.

(44) The Commission's enquiries have confirmed that there is a trend towards Europeanisation in this area also. There is, however, still strong evidence of the existence of national markets. In particular, many European countries have their own approval and recognition systems in the security technology field, which means that in each country a separate test and recognition procedure has to be initiated.

(a) *Fire alarms*

(45) There is a European standard (EN 54) for fire alarms, but it can be regarded only as a 'lowest common denominator' and as a rule does not suffice on its own to secure recognition in a Member State as a supplier. In Germany, France and Belgium especially, additional local requirements have to be met. In Germany, for example, approval/recognition by the VDS (Verband der Sachversicherer) is necessary. In the United Kingdom, France, Austria, Italy, Spain and Scandinavia local installation standards exist. Fire alarm systems must fit into the local fire brigade infrastructure; in Ireland and Greece, for example, the local fire brigade must be involved at the planning stage. The Commission is therefore assuming that the markets for fire alarm systems are still national.

(b) *Intrusion protection and other building security installations*

(46) Intrusion protection and other building security installations must bear the CE mark throughout Europe. The hardware as such can then be traded across Europe. The actual use of such hardware is, however, still governed in the individual countries as a rule by additional requirements. National authorisations, either by authorities or by insurance associations, exist in Belgium, Germany, Spain, France, Ireland, the Netherlands and the United Kingdom. In Belgium, France, Greece and Ireland, transmission equipment still has to be approved by the respective telecoms company. Intrusion protection systems must, moreover, fit into the national police infrastructure. The Commission has therefore come to the conclusion that the markets for intrusion protection and other building security installations are likewise still national.

(c) *Servicing of fire alarm, intrusion protection and other building security installations*

(47) As with equipment markets, the markets for the servicing of building security installations are also national. Even more so than in the case of the equipment market itself, geographical proximity to the customer plays an important part in the case of servicing. Such proximity is especially necessary when faults have to be put right quickly.

3. **Energy meters, ripple control technology,energy management systems, network control technology (command and control equipment for energy suppliers)**

(a) *Electricity meters*

(48) The parties maintain that the EEA is the relevant geographic market for electricity meters, for the following reasons. Whereas up until about 10 years ago the markets for electricity meters were still separate national markets with predominantly national production and a company like Landis & Gyr could do business throughout Europe only by maintaining its own manufacturing plants in 10 European countries, conditions have now changed fundamentally. Customers no longer attach any importance to the presence of a manufacturer in their country, but demand quality, service, short delivery periods, a high degree of functionality and greater economy, that is say an altogether more favourable price/performance ratio. This is leading to a levelling of market prices in Europe and to a concentration of production among suppliers. Market entry costs have, at all events, fallen considerably in the case of electronic meters. National authorisation or standardisation provisions do not constitute significant market entry barriers as they do not affect the fundamentals of the development and construction of energy meters.

(49) The Commission's enquiries have revealed that there is already a strong trend towards Europeanisation in respect of electricity meters. Besides the parties there are a number of other suppliers who are active throughout Europe or at least in several Member States. The successful placing on the market of Iskra Emeco, a company from Slovenia, shows that the market for electricity meters is becoming increasingly international. What is more, customers are obliged, at least in the case of large procurement contracts, to tender on a Europe-wide basis pursuant to the Utilities Directive.

(50) Although the larger electricity supply companies invite tenders for their electricity meter requirements on a Europe-wide basis, the contract will still be performed at national level. Nearly all suppliers therefore have in each Member State an establishment or at least a local sales agency, or else they market their products through the sales organisation of another manufacturer who has a presence in the Member State concerned. Although they did not regard the presence of such a national representation as a decisive factor in their choice of a particular supplier, the customers surveyed stated that they considered it at least highly advantageous when it came to working together, especially over the timely delivery of spare parts.

(51) As far as the technical standards governing electricity meters are concerned, a distinction has to be made. There are European standards for electricity meters, such as, for example, EN 60521 for mechanical alternating current and active-power meters of categories 0,5, 1 and 2, EN 61036 for electronic alternating current and active-power meters (precision categories 1 and 2), EN 60687 for electronic alternating current and active-power meters (precision categories 0,2 and 0,5) and EN 601268 for electronic alternating current and reactive energy meters (precision categories 2 and 3). In some Member States (e.g. Germany, Austria and the

United Kingdom), these are coupled with a national standard (e.g. DIN EN provisions, BS EN provisions). There are also national provisions on meters, for example concerning the particulars which may be noted down when meter readings are made or transcribed.

(52) In most Member States, with the exception of Denmark, Finland and Luxembourg, electricity meters must be approved. In Denmark, national approval provisions for electricity meters are scheduled to enter into force in August 1998. The approval conditions are laid down in the respective national provisions. In some cases there are detailed, type-specific approval provisions (e.g. Germany, the Netherlands and Austria). Calibration and the fixing of tolerances for electricity meters, which guarantee the accuracy of the meter reading and hence serve to protect the final consumer, are also the subject-matter of national rules. Calibration and recalibration periods and tolerances for electricity meters therefore differ from one Member State to another.

(53) The need to have a branch at national level, the special technical requirements, the special statutory provisions for calibration and tolerances, and the national approval procedures are so many reasons for a narrower, national market delimitation. Whether, given that demand is exercised through Europe-wide tenders, they are sufficient for justifying the acceptance of meter markets which are currently still national in character can remain an open question, since the proposed merger does not result, either in the EEA or in the individual Member States, in the creation or strengthening of a dominant position.

(b) *Heat meters*

(54) The legal and factual framework for heat meters corresponds to that for electricity meters. There are special national technical requirements, special statutory provisions governing calibration and tolerances, and national approval procedures. Customers, at least in the case of relatively large procurement procedures, are obliged to tender on a Europe-wide basis in accordance with the Utilities Directive. Furthermore, as well as the parties, there are a number of other suppliers, who are active throughout Europe or at any rate in several Member States. It can remain undecided, however, whether the markets for heat meters are currently still national or whether there is already an EEA market, since the proposed merger does not result, either in the EEA or in the individual Member States, in the creation or strengthening of a dominant position.

(c) *Ripple control transmitters and receivers*

(55) Ripple control transmitters and receivers are used in most Member States. The Commission's enquiries have established that the requirements governing ripple control transmitters and receivers are largely the same throughout Europe. There are no market entry barriers due to country-specific technical requirements or national approval provisions. The Commission therefore assumes that there is at least an EEA-wide market for ripple control transmitters and receivers.

(d) *Energy management systems*

(56) The Commission's enquiries have established that the requirements governing energy management systems are to a large extent similar throughout Europe. Such different requirements as do exist are mostly company, and not country, specific. There are no market entry barriers due to country-specific technical requirements. The Commission is therefore assuming at least an EEA-wide market for energy management systems.

(e) *Network control technology*

(57) The parties maintain that the relevant geographic market for network control technology is the EEA, and for the following reasons. Intermediary trade within the EEA is not hindered by import restrictions and low transport costs make it financially worthwhile to supply goods from a central manufacturing plant. This can be seen from the organisation and marketing policy of the major suppliers. Network control technology is characterised by a uniform industry standard resulting from the universally used electronic data-processing and data-systems technology. The remaining national approval requirements or standards affect the bases neither of the development nor of the construction of network control systems, and all suppliers are able to meet national specificities. The deregulation and liberalisation of the energy markets is exerting additional price pressure on the purchasers of network control technology,

and this spells the end of national procurement preferences. Lastly, the Commission has already recognised, in its Decision of 3 September 1996 in Case No IV/M.706 — GEC Alsthom NV/AEG [6], a comparable effect of deregulation in the market for network control components of power generation plants.

(58) The Commission's enquiries have confirmed the parties' standpoint. The technical standards of network control technology are largely identical. Where they still exist, country-specific requirements no longer play any decisive role. The procurement policy of power supply companies is based on Europe-wide calls for tenders which encompass the planning, design, building and commissioning of complete or partial network control systems. The determining factors when it comes to deciding what to buy are price, specifications and the quality of the products and services. Company-specific requirements may, however, lead to a preference for one manufacturer, especially in the event of the extension or replacement of existing systems. This may help explain the different market shares in the individual Member States. Both the customers and the suppliers surveyed share the parties' point of view. The Commission accordingly assumes there is at least an EEA-wide market for network control technology.

4. **Payphones**

(59) The notifying parties consider the geographic market for payphones to be at least EEA-wide. The reason they give is the largely identical technology for payphones worldwide. Differing national access conditions or standards do not constitute barriers to market entry since they do not affect the bases of payphone development, construction and technology. The leading suppliers of payphones can produce equipment which satisfies national approval criteria and customer requirements. Differing market share levels in different European countries can be explained historically by the purchasing behaviour of the mostly State-owned monopoly telecommunictions operators. With the increasing liberalisation of telecommunications markets, this is becoming less significant, however, inasmuch as growing competitive pressure will lead to a more cost-conscious purchasing behaviour on the part of telecoms operators.

(a) *Public payphones*

(60) In the past, markets for 'public' payphones were national. 'Public' payphones were operated by State-owned telephone authorities. National product specifications made it difficult for suppliers of 'public' payphones to supply in other Member States. Orders were always given to a small group of domestic suppliers, which is why such suppliers usually have high market shares in their countries. Foreign suppliers could supply non-domestic markets only through national subsidiaries established in those markets. This procurement policy promoted the emergence of different payphone network specifications and technical standards, which are still in existence today.

(61) In almost all the Member States the 'public' payphones field has not yet been liberalised (exceptions: Finland, Sweden and the United Kingdom). In every country, even those in which the sector has already been liberalised, the respective (still or previously State-owned) telecoms company exerts a strong influence. These telecoms companies operate all or (in liberalised markets) most 'public' payphones and are therefore able to demand for their payphone networks specifications and technical standards which payphone suppliers have to fulfil. These specifications and technical standards, and in particular the 'security philosophy', differ so markedly from one country to another that a separate payphone model has to be developed for each major Member State.

(62) The question whether national markets must be assumed, as before, for 'public' payphones can be left open at this point. The merger of Siemens and Elektrowatt has appreciable competition effects only on the market for 'public' payphones in Germany. It is sufficient, therefore, to examine whether Germany should be regarded as a separate relevant geographic market.

(63) The most important structural features of the 'public' payphones sector in Germany are:

— that Deutsche Telekom has in the past procured, and is today procuring, 'public' payphones exclusively from undertakings established in Germany,

[6] OJ C 308, 17.10.1996, p. 4.

— that changes in this behaviour over the forecast period are not to be expected, since the contract for the development and manufacture of the new cardphone system, which will replace the current generation of card phones, has already been given by Deutsche Telekom to domestic suppliers, Siemens and Landis & Gyr,

— that there was no Europe-wide tender for the award of this contract in 1992 and that, hence, there is in Germany no genuine Community competition as yet in the 'public' payphones sector; nor, given that the contract for the development and manufacture of the new cardphone system has been awarded to Siemens and Landis & Gyr, will there be a Europe-wide tender for the procurement of 'public' payphones during the forecast period.

(64) In view of the current structural features of the 'public' payphones sector in Germany, the German market should be regarded as a separate relevant geographic market for the purpose of whether the merger could create a dominant position which would significantly impede effective competition.

(b) *Private payphones*

(65) In the 'private' payphones sector, market and competitive conditions also still differ considerably from one Member State to another, for example in relation to payphone density. This sector has, of course, already been liberalised in all Member States except Italy. Here, too, the (still or previously) State-owned telecoms companies continue to control a large part of the market, but competition from private suppliers is increasing. 'Private' payphone networks also need security measures and a control station linking the network, together with appropriate software. The 'private' supplier is free here, however, to choose his standards and software. A multinational 'private' supplier can therefore, for example, operate in different countries with the same systems. All that then has to be installed is an interface with the respective communications network. The Commission is therefore assuming there is at least an EEA-wide market for 'private' payphones.

C. ASSESSMENT

1. Commercial building control

(a) *Building control systems*

(66) Both Siemens and Elektrowatt are active in the market for building control systems. According to the parties' estimates, the volume of the market in the EEA may be put at some ECU 1,6 billion. The merger will result in an aggregate market share of [30 % to 40 %] (*) (Elektrowatt through Landis & Staefa [25 % to 35 %], Siemens [0 % to 10 %]).

(67) Besides the parties, Honeywell Inc., USA (Honeywell) and Johnson Controls Inc., USA (Johnson) are leading suppliers of building control systems. Honeywell and Johnson are regarded as the world market leaders. In the EEA, Honeywell and Johnson have market shares of approximately [10 % to 20 %] and [5 % to 15 %] respectively. Other significant competitors are TA Control and Danfoss, which operate chiefly in the Scandinavian countries where, according to the Commission's estimates, they have market shares of up to 20 %. In the remainder of the EEA there are active competitors who often focus clearly on one or two Member States in which they achieve market shares of from 5 % to 15 %. This category includes Satchwell in the United Kingdom and France, Kieback & Peter in Germany, Sauter [7] in Germany and France, and Priva in the Netherlands.

(68) The commercial building control market overlaps with a number of neighbouring, markets such as, for example, heating, ventilation and air-conditioning installations, computer and software technology, electrical installation technology, industrial process control technology and building security technology. Companies which are active in these areas are potential competitors, and some of them have already entered the commercial building control market.

(69) In view of the existence of a number of competitors, including several financially strong

(*) Parts of this text have been edited to ensure that confidential information is not disclosed.

(7) Elektrowatt holds 36 % of the shares in Sauter, but does not have any voting rights. In paragraph 35 of Decision IV/M.692 — Elektrowatt/Landis & Gyr (see footnote 4), it was established that Elektrowatt could not influence the conduct of Sauter.

companies which are world market leaders, and having regard to further potential market entries from neighbouring sectors, it is not to be expected that Siemens and Elektrowatt will occupy a dominant position in the market for building control systems as a result of the merger.

(b) *Servicing*

(70) The same holds true for the market for the servicing of building control systems. Servicing is often carried out by the company which supplied/installed the system. There are, however, a number of, mainly small, regionally active, companies which specialise in servicing. Of the parties, only Elektrowatt/Landis & Staefa is active to any extent in the servicing field (EEA market share [10 % to 20 %]). Siemens carries out servicing only in Germany and Belgium/Luxembourg, where its market shares are [0 % to 10 %] and [0 % to 10 %] respectively.

2. **Building security technology**

(a) *Fire alarms*

(71) The Community-wide market volume for fire alarms is, according to the notifying parties, approximately ECU 1,8 billion. The largest national market is Germany (market volume approximately ECU 550 to 600 million), followed by France (approximately ECU 300 million) and the United Kingdom (approximately ECU 250 to 300 million). There will be significant increases in market shares in this area only in Germany and Denmark.

(72) Although Siemens has market shares of more than 30 % in Luxembourg, the Netherlands and Austria, Elektrowatt is not active in those countries. Equally, Elektrowatt has market shares of more than 30 % in Finland, France, Portugal and Sweden, where Siemens is not active. In these countries, there will be no increase in market shares. There is no likelihood that the mere disappearance of a potential competitor will lead to the creation of a dominant position. Nor is there any evidence to suggest that Siemens or Elektrowatt already occupies a dominant position in one of these countries. In each of these markets there are a number of competitors with market shares in excess of 10 %, and from time to time newcomers have entered the market, including the American firms Tyco and Notifier, the latter being a particularly aggressive competitor. The position in the relevant national markets may be assessed as follows:

— Germany

(73) Siemens has a market share for fire alarms in Germany of approximately [35 % to 50 %] and is hence the market leader. Elektrowatt/Cerberus is hardly represented in this field in Germany (its market share is [< 5 %]). The main competitors are Bosch (market share, according to the Commission's estimate, approximately [15 % to 25 %]), Caradon Esser (market share, according to the Commission's estimate, approximately [15 % to 25 %]) and Hekatron (owned by Schweizer Securiton AG) (according to the Commission's estimate, approximately [10 % to 20 %]). There are also a number of suppliers with market shares of up to 10 % (including Fritz Fuss and Tyco).

(74) In view of the minimal increase in market shares and the presence of at least three strong competitors, the merger is unlikely to lead to the creation or strengthening of an (individual) dominant position on the part of Siemens in the German market for fire alarms. Instances of market entry, for example by Tyco, a firm which is active internationally in the field of fire-alarm technology and other types of security technology, and the Austrian firm Schrack, show, moreover, that market entry barriers are not very high.

(75) The German market for fire-alarm systems is fairly highly concentrated. Nevertheless, it is unlikely that the merger will result in a joint dominant position on the part of Siemens and the other three leading suppliers. Not only are market shares unevenly distributed, but fire alarms in particular are an extremely heterogeneous product specifically tailored to the individual customer. Uniform competitive behaviour can therefore be ruled out with a sufficient degree of probability.

— Denmark

(76) In Denmark Siemens controls approximately [10 % to 25 %] of the fire-alarm market, and Elektrowatt/Cerberus approximately [25 % to 40 %]. The combined market share of the parties, according to their figures, therefore

comes to approximately [40 % to 60 %], although some competitors put it significantly lower. A major competitor and previous market leader is the Danish firm Falck, which offers a broad product range in the fields of building security, fire protection and fire fighting. Falck has above all excellent access to the public authorities in Denmark as it supplies, for example, the fire brigades of more than 60 % of Danish local authorities. Other major competitors in the fire-alarm sector in Denmark are the firms Dansk Hustelefon Selskab (market share approximately [5 % to 10 %]), Wormald, which is part of the American group Tyco, (market share approximately [5 % to 10 %]), Semco and Eifa (market shares of less than 5 %).

(77) The particular advantages which Falck possesses in its home market compared with the parties to the merger will help to ensure that, even after the merger, the company will retain its strong position in the Danish security market (according to Falck's own estimates, its market share is approximately 50 %). The strong position of Siemens and Elektrowatt in the fire alarm sector is offset, moreover, by their weak position in intrusion protection and other building security installations (only Elektrowatt is represented in Denmark, with a market share of less than 10 %), since some customers at least purchase a complete building security system from a single supplier. Falck, by contrast, is also strong in the field of intrusion protection and other forms of building security.

(78) The possibility that, as a result of the merger, Siemens and Elektrowatt will dominate the (individual) market for fire alarms in Denmark can therefore be ruled out. The same applies to the creation of a market-dominating oligopoly, in view in particular of the products' lack of homogeneity, the low degree of market transparency and the fairly low barriers to market entry.

(b) *Intrusion protection/other building security installations*

(79) According to the parties, the Community-wide market volume of intrusion protection and other building security installations is approximately ECU 3,7 billion. The largest national market here is the United Kingdom (market volume approximately ECU 1 billion), followed by Germany (ECU 750 to 800 million) and France (ECU 550 to 600 million). Siemens has a significant presence in this area only in Germany and Austria; it maintains a slight presence also (market share less than [1 %]) in Italy and the Netherlands. Elektrowatt is likewise not active in all Member States.

(80) Only in Germany will there be any significant increase in market shares. In that country, Siemens has a market share of approximately [5 % to 15 %], while Elektrowatt has a market share of approximately (0 % to 10 %]. The market leader in this area is Bosch with, on the Commission's estimate, market shares of [30 % to 40 %], while a number of other competitors have market shares of up to 10 %. In view of this market structure, the creation of a dominant position or a dominant oligopoly can be ruled out.

(81) In all the other Member States, the market shares of Siemens and Elektrowatt are around or below 10 %. In most countries the merger will not lead to any increase in market shares. There is clearly no danger of the creation of a dominant position in these markets.

3. **Energy meters, ripple control technology, energy management systems and network control technology (command and control equipment for energy suppliers)**

(a) *Electricity meters*

(82) Siemens and Elektrowatt hold substantial shares of the electricity-meter market. Their EEA-wide joint market share is put by the parties themselves at approximately [30 % to 45 %] (Siemens [10 % to 20 %], Landis & Gyr [15 % to 25 %]) but is put by competitors on a slightly higher trend. Overlapping does not occur in every Member State. According to its own estimates, Elektrowatt/Landis & Gyr has market shares of [85 % to 100 %] in Greece and [40 % to 50 %] in Portugal, countries in which Siemens is, however, not active. Siemens in turn has a market share of approximately [65 % to 85 %] in Ireland, a country in which Elektrowatt is, however, not active.

(83) In all the other Member States, there is a degree of overlapping. In Sweden, the parties, according to their own figures, have a market share of [5 % to 15 %] (Siemens [< 5 %], Elektrowatt/Landis & Gyr [5 % to 15 %]). In Norway and the United Kingdom the joint market shares are below 30 % (Norway: Siemens [0 % to 10 %], Elektrowatt/Landis & Gyr [15 % to 25 %] = [20 % to 30 %]; United Kingdom: Siemens [15 % to 25 %],

Elektrowatt/Landis & Gyr [5 % to 15 %] = [20 % to 30 %]. In Germany, Finland, France and Spain, the joint market shares are below 40 % (Germany: Siemens [20 % to 30 %], Elektrowatt/Landis & Gyr [5 % to 15 %] = [30 % to 40 %]; Finland: Siemens [0 % to 10 %], Elektrowatt/Landis & Gyr[20 % to 30 %] = [30 % to 40 %]; France: Siemens [< 5 %], Elektrowatt/Landis & Gyr [30 % to 40 %] = [30 % to 40 %]; Spain: Siemens [5 % to 15 %], Elektrowatt/Landis & Gyr [20 % to 30 %] = [35 % to 45 %]). In Italy and the Netherlands, the joint market shares are below 50 % (Italy: Siemens [25 % to 35 %], Elektrowatt/Landis & Gyr [15 % to 25 %] = [45 % to 55 %]; Netherlands: Siemens [< 5 %], Elektrowatt/ Landis & Gyr [40 % to 50 %] = [40 % to 50 %]). The parties achieve joint market shares of over 50 % in Belgium, Denmark and Austria (Belgium: Siemens [15 % to 25 %], Elektrowatt/Landis & Gyr [25 % to 35 %] = [45 % to 55 %]; Denmark: Siemens [< 5 %], Elektrowatt/Landis & Gyr [45 % to 55 %] = [45 % to 55 %]; Austria: Siemens [20 % to 30 %], Elektrowatt/Landis & Gyr [35 % to 45 %] = [60 % to 70 %]).

(84) In the markets for electricity meters, besides the parties, Schlumberger is active in almost all Member States. Like the parties, Schlumberger manufactures mechanical, electromechanical and electronic meters. The current market leader, Schlumberger, has an EEA-wide market share of approximately [30 % to 40 %]. According to the Commission's estimates, Schlumberger's market share in Belgium/Luxembourg comes to [40 % to 50 %], in Germany [30 % to 40 %], in France [45 % to 55 %], in Italy [40 % to 50 %], in Portugal [55 % to 65 %], in Spain [45 % to 55 %], in the Nordic countries (Denmark, Norway, Sweden and Finland) [25 % to 35 %] and in Greece, Ireland and Austria [25 % to 35 %].

(85) A further competitor active in several Member States is the Slovenian company Iskra Emeco, whose meter-manufacturing plant is in volume terms the largest in Europe. Iskra Emeco, too, manufactures mechanical, electromechanical and electronic meters. The Commission estimates its market share in Germany at [20 % to 30 %], in Belgium at less than 20 % and in the Netherlands at [20 % to 30 %]. The company is also active in Denmark, Norway, Sweden, Finland, Italy, Spain and the United Kingdom. The market shares held in these countries are, however, currently still under 10 %.

(86) A significant competitor is the Finnish firm Enermet. Enermet manufactures, *inter alia,* ripple control transmitters and receivers, automatic meter-reading systems and electronic electricity meters. The focal point of its operations used to be Scandinavia, where according to the parties Enermet is the market leader for meters. Enermet is also active in Germany and the Netherlands, where it has permanent establishments.

(87) The ABB group, which is in a strong market position in the USA following its acquisition of the meter business of Westinghouse, is in the process of building up a Europe-wide presence in the electricity meter field. The group currently has electricity meter-manufacturing plants in the EEA in Sweden, Germany and the United Kingdom. Prior to its acquisition in 1996 of the British firm GEC Meters, ABB was active only in the field of electronic meters. Mechanical meters are now also manufactured by ABB in the United Kingdom. According to competitors' estimates, ABB's market share in the United Kingdom comes to [10 % to 15 %].

(88) In addition to the abovementioned companies, there are regionally and locally active competitors. In Germany, there is Deutsche Zählergesellschaft (DZG), which is also active, however, to a so far, limited extent in Belgium, Denmark, the Netherlands and Austria. In France, there is Chauvin Arnoux/Matra and Sagem, which supply electronic meters to EdF. Sagem also has an establishment in Spain. In the United Kingdom, AMPY, Horstmann and Polymeters Response International are active in the field of electronic meters.

(89) The purchasers of electricity meters are mainly power supply companies. Customer concentration differs widely from one Member State to another. Whereas in Germany, for example, there are approximately 500 power supply companies of varying sizes (ranging from the nine large, interconnected power companies such as RWE, PreussenElektra and VEW, through regional distribution companies to municipal works), suppliers are faced in France, Italy and Greece with only one company (in France: EdF, in Italy: ENEL and in Greece: Public Power Corporation). On average, however, the 20 largest customers account for 80 % of the market volume. The power supply companies have sufficient market knowledge

and negotiating power, which they exercise by way of Europe-wide calls for tenders.

(90) The customers surveyed by the Commission have confirmed that prices both for electronic and for mechanical meters have fallen considerably in the last five years in all Member States. Whereas up until 1993 prices in both meter sectors were fairly stable, they have since collapsed by between 20 % and 40 %. In the opinion of customers, the collapse in prices is due to the active competitive behaviour of suppliers. They mostly believe that the prices of mechanical meters will stabilise at around the present level. Further price reductions are, however, expected for electronic meters. In the opinion of competitors, the collapse in prices is due to the power supply companies' Europe-wide tendering, which has given those companies a better overview of prices. The competitive pressure already existing in the run-up to the liberalisation of electricity markets heralds for the future an even greater cost consciousness on the part of power supply companies and further price pressure on suppliers.

(91) A further reason for the collapse in prices is the strong competitive pressure from suppliers of electronic meters. The Commission's enquiries have revealed the existence of intensive competition at the levels of the development and manufacture of electronic meters. In recent years there have been a number of market entries in the field of electronic meters, for example ABB in the USA and in the EEA, Sagem in France and AMPY in the United Kingdom. The market entry barriers in this field are at all events very low for a company which is already active in the manufacture of electronic products. Prices for electronic meters have fallen in recent years.

(92) The increasing replacement of mechanical meters by electronic ones has increased the price pressure on suppliers of mechanical meters and contributed greatly to the collapse in prices for mechanical meters. The aggressive price behaviour of Iskra Emeco, to which both customers and competitors have referred, has, moreover, resulted in other mechanical meter suppliers having to reduce their prices further so as not to lose traditional customers or in order to win back lost business.

(93) In view of these market structures, the proposed merger cannot be expected, despite the high joint market shares, to create or strengthen a dominant position of the parties in individual markets in the Member States most affected, namely Belgium, Denmark, the Netherlands and Austria:

— Belgium

(94) The parties' market shares in Belgium were subject during the last three years to strong variations. According to their own estimates, the parties achieved a joint market share of [45 % to 55 %] (Siemens [15 % to 25 %], Elektrowatt/Landis & Gyr [25 % to 35 %]) in 1995/1996. They succeeded over the last three years in almost doubling their market share. In 1994/1995 the joint market share came to [20 % to 30 %] (Siemens [0 % to 10 %]), Elektrowatt/Landis & Gyr [15 % to 25 %]) and in 1993/1994 it came to [15 % to 25 %] (Siemens [5 % to 15 %], Elektrowatt/Landis & Gyr [5 % to 15 %]). Their main rivals are Schlumberger (market share [40 % to 50 %]) and Iskra Emeco (market share of less than 20 %). DZG is also active in Belgium. In Belgium suppliers have essentially one strong customer, Electrabel, whose procurement policy and purchasing decisions determine suppliers' market shares. Each year Electrabel puts its annual electricity meter requirements up for tender Europe-wide. In the past, Electrabel has purchased electricity meters from at least four different suppliers. There are no reasons why it should change this procurement policy in future.

— Denmark

(95) In Denmark the high joint market shares are due predominantly to the strong position of Elektrowatt/Landis & Gyr. There will be only a slight increase in market shares. According to their own estimates, the parties achieved a joint market share of [45 % to 55 %] (Siemens [< 5 %], Elektrowatt/Landis & Gyr [45 % to 55 %]) in 1995/1996. In 1994/1995 the joint market share came to [50 % to 60 %] (Siemens [< 5 %], Elektrowatt/Landis & Gyr [45 % to 55 %]) and in 1993/1994 it came to [50 % to 60 %] (Siemens [< 5 %], Elektrowatt/Landis & Gyr [50 % to 60 %]). Whereas in recent years Siemens's market share was invariably less than [< 5 %], over the same period Elektrowatt/Landis & Gyr has lost about 5 % market share. Besides the parties, Schlumberger, Enermet, Iskra Emeco, ABB and DZG are active in Denmark.

The customers surveyed by the Commission put their meter requirements up for tender on a Europe-wide basis. In Denmark, electronic meters are increasingly being used in the domestic consumer sphere too. Among suppliers who, like the parties, Schlumberger and Iskra Emeco, also manufacture mechanical meters, there is stiff competition for the remaining supply contracts for mechanical meters. The price competition is further intensified by companies, such as Enermet and ABB, which offer for sale only electronic meters, but which wish to increase their shares in the domestic consumer sphere.

— Netherlands

(96) In the Netherlands too, the large jont market shares are mainly due to the strong position of Elektrowatt/Landis & Gyr. Only a small market share is aggregated. According to the parties' own figures, their combined market share was [40 % to 50 %] (Siemens [< 5 %], Elektrowatt/Landis & Gyr [40 % to 50 %]) in 1995/1996, [40 % to 50 %] (Siemens [< 5 %]), Elektrowatt/Landis & Gyr [35 % to 45 %]) in 1994/1995, and [40 % to 50 %] (Siemens [5 %], Elektrowatt/Landis & Gyr [35 % to 45 %]) in 1993/1994. Other firms active in the Netherlands are Schlumberger, Enermet, Iskra Emeco and DZG. The customers surveyed by the Commission issue calls for tenders to cover their meter requirements sometimes on a EU-wide basis. Electronic meters have been used in Dutch homes since 1996. The fact that domestic mechanical meters are now being replaced with electronic ones suggests that competition between suppliers of both mechanical and electronic meters and between them and suppliers of only electronic meters will become increasingly fierce.

— Austria

(97) According to the parties' own figures, their combined market share was [60 % to 70 %] (Siemens [20 % to 30 %], Elektrowatt/Landis & Gyr [35 % to 45 %]) in 1995/1996, [55 % to 65 %] (Siemens [20 % to 30 %], Elektrowatt/Landis & Gyr [30 % to 40 %]) in 1994/1995, and [60 % to 70 %] (Siemens [15 % to 25 %], Elektrowatt/Landis & Gyr [35 % to 45 %]) in 1993/1994. Also present in Austria are Schlumberger (with a market share of [25 % to 35 %]) and, to a lesser degree, DZG and Bayrische Zählerrevision Bauer.

(98) The very large market shares which the parties have hitherto enjoyed in Austria are essentially attributable to the specific conditions of competition in that Member State. Prices for electricity meters were subject to public control in Austria until the beginning of the 1990s. Traditional supply relationships of many years' standing existed between the few manufacturers in Austria and their customers. This regulated market gave the latter little incentive to purchase on a price-conscious basis and to seek out alternative suppliers.

(99) In recent years, however, prices for electricity meters have fallen drastically (by up to 60 %), a fact which is confirmed by all customers surveyed. The main reason for this has been Austria's accession to the European Union and the fact that Austrian customers have, since 1995, been issuing Community-wide calls for tenders. Although traditional suppliers have continued to have the upper hand during the first of these calls for tenders, it cannot be concluded that the parties will, on the basis of their existing high market shares, in future have an insufficiently controllable freedom of action with regard to competition. In Austria too, Europe-wide calls for tenders will lead to a better overview of and further pressure on prices, as has already occurred in the other Member States. It should also be borne in mind that Iskra Emeco is at present seeking to enter the Austrian market. This development will force the traditional suppliers to reduce their prices still further in order not to lose their traditional customers.

(100) The proposed merger can also not be expected to lead to the emergence of a joint dominant position on the part of Siemens/Elektrowatt and Schlumberger either at the level of the individual Member States or at EEA level. The Commission's enquiries have not produced any indications that an easing of competitive conduct between the main suppliers is to be expected. The reduction of meter prices recorded in all Member States is evidence of active price competition between the main suppliers in all the Member States in recent years. In view of the purchasing power of customers and the intensity of external competition, it is to be assumed that competition between Siemens/Elektrowatt and Schlumberger will remain strong after the merger. Power supply companies have sufficient market knowledge and negotiating power, which they use via the system of Europe-wide calls for tender. Contracts are now generally awarded

solely on the basis of low prices. The competitive pressure which already exists in expectation of the future liberalisation of electricity markets suggests that the power supply companies will become even more cost-conscious and that customers will pressurise suppliers even more for lower prices. It should also be borne in mind that the gradual replacement of mechanical meters with electronic meters will increase the pressure of competition, in particular on the main suppliers which, like Schlumberger and Siemens/Elektrowatt offer both types.

(b) *Heat meters*

(101) With regard to heat meters, the aggregate EEA-wide market shares of Siemens and Elektrowatt are only just over [10 % to 15 %] (Siemens [< 5 %], Elektrowatt/Landis & Gyr [5 % to 10 %]). There is a noticeable overlap between the parties only in Denmark (Siemens [5 % to 10 %], Elektrowatt/Landis & Gyr [25 % to 35 %] = [30 % to 40 %]) and Austria (Siemens [5 % to 15 %]), Elektrowatt/Landis & Gyr [25 % to 35 %] = [35 % to 45 %]). In Germany the parties only have a market share of less than 10 %. Beside the parties, Spanner Pollux (SPX) too, which sells heat meters manufactured by Siemens, is active in Germany, with a market share of [20 % to 30 %]. The leading manufacturer Europe-wide is the firm ISTA (market share [20 % to 25 %]), which belongs to the Raab Karcher Group (VEBA). Other important manufacturers are the Danish firms Kamstrup, Danfoss and Grundfos. Some manufacturers of electricity meters also make heat meters (e.g. Schlumberger, ABB and Enermet).

(102) The Commission's investigations have revealed that the conditions of competition for heat meters are to a large extent the same as for electricity meters. The main customers of heat meters are power-supply companies with district heating operations. They issue calls for tenders mainly on a Europe-wide basis. The customers surveyed confirmed that heat-meter prices have fallen sharply in recent years (by up to 50 %). Some expect a further drop in prices in coming years.

(103) In view of these market structures, it is not to be expected, despite the high joint market shares, that the proposed merger will lead to the creation or strengthening of a dominant position for the parties on the individual markets in the Member States most affected: Denmark, Austria and Germany.

— Denmark

(104) The large joint market share in Denmark is largely a result of the strong position of Elektrowatt/Landis & Gyr in that country. Only a small market share is added. The parties' combined share was, according to their own figures, [35 % to 45 %] (Siemens [5 % to 10 %], Elektrowatt/Landis & Gyr [25 % to 35 %]) in 1995/1996, [40 % to 50 %] (Siemens [5 % to 15 %], Elektrowatt/Landis & Gyr [25 % to 35 %]) in 1994/1995, and [35 % to 45 %] (Siemens [15 % to 25 %], Elektrowatt/Landis & Gyr [20 % to 30 %]) in 1993/1994. The market leader in Denmark is Kamstrup. The merger will lead to the disappearance of one of the main competitors on the market segment of static meters and to the parties' becoming the second largest supplier. Alongside the parties and Kamstrup, the firms Grundfos (market share, according to the Commission's estimate, of less than 20 %]), Danfoss, Hydrometer and Bailey-Fischer and Porter (Germany) sell heating meters. The Commission's investigations have revealed no indications of any expected easing of competition between the leading suppliers Kamstrup and Siemens/Elektrowatt.

— Austria

(105) According to their own figures, the parties had a joint market share of [35 % to 45 %] (Siemens [5 % to 15 %], Elektrowatt/Landis & Gyr [25 % to 35 %]) in 1995/1996, [40 % to 50 %] (Siemens [10 % to 20 %], Elektrowatt/Landis & Gyr [25 % to 35 %]) in 1994/1995, and [40 % to 50 %] (Siemens [10 % to 20 %], Elektrowatt/Landis & Gyr [25 % to 35 %]) in 1993/1994. SPX, with a market share of [10 % to 20 %], is also active in Austria. The main competitors are ISTA and Kamstrup (with market shares of some [10 % to 20 %] each) and ABB. According to buyers, Kamstrup has been particularly noticeable for its aggressive competitive conduct in Austria. Given this situation, there are no indications here either that the merger will lead to the parties' obtaining a market share which would allow them to avoid the competitive pressure of other suppliers.

— Germany

(106) According to their own figures, the parties achieved a joint market share of [5 % to 15 %] (Siemens [0 % to 10 %], Elektrowatt/Landis & Gyr [0 % to 10 %]) in 1995/1996. The joint market shares in 1994/1995 and 1993/1994 were also under [5 % to 15 %]. In Germany, according to the Commission's investigations, SPX achieved a market share of [20 % to 30 %] in 1995/1996. The most important competitors are ISTA (market share of approximately [25 % to 35 %]), and Danfoss and Kamstrup, whose market shares however are currently still less than 5 %. Besides Kamstrup, Siemens and Landis & Gyr are the only suppliers of ultrasound heat meters in Germany. However, these account for only 15 % of the heat-meter market at the moment. Given the increasing use of ultrasound meters in Germany and the generally confirmed aggressive price competition from Kamstrup, substantial price competition between Siemens/Elektrowatt/Landis & Gyr and Kamstrup can be assumed. In view of these facts, there is no reason to believe that the merger will lead to a dominant position of the parties on the market for heat meters in Germany.

(c) *Ripple control transmitters and receivers*

(107) On the market for ripple control transmitters and receivers, which is also small (market volume of less than ECU 100 million), the joint EEA market share of Siemens and Elektrowatt/Landis & Gyr is some [25 % to 35 %] (Elektrowatt/Landis & Gyr [15 % to 25 %], Siemens [5 % to 15 %]), again according to their own figures. Their competitors estimate that share to be somewhat larger, but not more than 35 %. The main internationally active competitors are Schlumberger (EEA market share, according to the Commission's estimate, of [25 % to 35 %]), Enermet (EEA market share [15 % to 25 %]), and ABB (EEA market share less than 10 %). Iskra has now also begun to supply ripple control receivers, initially in Germany.

(108) In view of an EEA-wide market share of no more than 35 % and the size of the market shares of their closest competitors, it cannot be claimed that the merger will give rise to or strengthen a dominant position. Nor, for the following reasons, is it to be expected that the merger plan will lead to a dominant position of the leading suppliers taken together. Ripple control transmitters and receivers are not homogeneous products. They must be designed to suit the network (including the software) of the power supply company concerned. The customers are mostly energy suppliers in a quasi-monopsony position. Furthermore, the barriers to market entry are low, particularly for firms which come from the electronics sector. The price of ripple control transmitters and receivers, too, has fallen drastically over the last five years. The EEA-wide collapse in prices for ripple control transmitters and receivers shows that in recent years active price competition between the leading suppliers has prevailed. Given the quasi-monopsony position of the opposite side of the market and the intensity of foreign competition, it can be assumed that, even after the merger, there will be substantial competition between the leading suppliers.

(d) *Energy management systems*

(109) In the area of energy management systems, which is at present a relatively small market (EEA-wide market volume of some ECU 100 million), it is mainly Elektrowatt/Landis & Gyr which is active, with an EEA-wide market share of some [20 % to 30 %]. Siemens is represented only in Belgium/Luxembourg and Germany, with market shares of less than 10 %. Siemens' EEA-wide market share is about [< 5 %]. Schlumberger is an important competitor Europe-wide (Community market share of [10 % to 15 %]). There are also a few other national and international suppliers (UPS, ABB, Datawatt).

(110) Given the small addition of market share and an EEA-wide combined market share of [20 % to 30 %], it cannot be assumed that the merger will create or strengthen a dominant position.

(e) *Network control technology*

(111) The EEA market volume for network control technology is some ECU 700 million. It is difficult to put a precise figure on market shares, since the systems in question are expensive, are tailored to the individual customer, and have a long lifespan (up to 20 years). The award of an individual contract to one company might therefore influence its national and EEA market share considerably, which leads to relatively strong fluctuations. The parties estimate their

average EEA-wide market share for network control technology in the period 1993/1994 to 1995/1996 at [25 % to 35 %] (Siemens [15 % to 25 %], Elektrowatt/Landis & Gyr [5 % to 15 %]). Important international competitors are ABB (market share, according to the Commission's estimate, of [7 % to 15 %]) and Cegelec-AEG, which belongs to the Alcatel-Alsthom Group (market share, according to the Commission's estimate, of [5 % to 15 %]). Other competitors with smaller market shares (e.g. Harris, PSI, REPAS, Westinghouse) also exist, but some of them belong to large groups. Smaller firms originally active only at national level have also successfully expanded in recent years (e.g. the Austrian firm SAT into Germany, the Netherlands, Denmark and eastern Europe.

(112) The supply of network control technology is a service-oriented and customer-oriented business, whereby account must be taken of the specific needs of power supply companies. A specific problem is the short duration of software cycles compared to the lifespan of an installation. This means that proximity to the customer and flexibility are more important factors than financial strength. The customers are again power supply companies, which have both market knowledge and negotiating power. In view of all of these factors, the merger will not lead to, or strengthen a dominant position on this market.

4. Payphones

(a) *Public payphones*

(113) The total volume of the payphones market (both 'public' and 'private') in the EEA was some ECU 250 to 300 million in 1996, corresponding to an overall quantity of some 480 000 units. 'Public' payphones account for about half of the total value but less than one third of the total quantity. This is because of the higher unit price of public installations. Siemens and Elektrowatt have a stronger market position for 'public' payphones, for which the number of suppliers and customers is limited, than for 'private' payphones. According to their own information, the parties have a combined EEA market share for payphones as a whole of [25 % to 35 %] (Siemens [5 % to 15 %], Elektrowatt [20 % to 30 %]). The Commission's investigations have revealed that this share does not exceed [30 % to 40 %]. In the area of 'public' payphones, the parties have a much stronger combined market position (with an EU share of over [35 % to 45 %]). Elektrowatt's subsidiary, Landis & Gyr, has been the leading supplier of 'public' payphones at least since 1993. In December 1996, Siemens acquired the Spanish manufacturer Amper Elasa and thereby significantly improved its own market position. At the level of national markets for 'public' payphones, the merger will lead to an added market share only in Germany. Outside that country, Siemens is only active in Spain (via Amper Elasa), where Elektrowatt has only a minimal market share of some [< 1 %] for indoor (i.e. 'private') payphones.

— Germany

Market structure

(114) With some 20 % of all installed 'public' phones in the EU (more than […] units, including some […] cardphones) and a 'public' payphone network density of some two phones per 1 000 inhabitants, Germany has the second-largest market potential of all EEA countries. Developments on the German market are currently being defined by the renovation and modernisation programme of the 'public' operator, Deutsche Telekom. The number of 'public' payphones purchased fell between 1994 and 1996 because Deutsche Telekom did not expand its network in view of the planned introduction of a new generation of cardphones. This new system is intended to meet higher security standards. The project has been the subject of a call for tenders. The introduction of these new cardphones from the end of 1997 will lead to existing phones being gradually replaced and to market growth (up to […] payphones per annum, with a total of some […] units).

(115) Three manufacturers competed for the German 'public' payphones market up to 1995: Siemens, Landis & Gyr and Bosch Telekom. The latter stopped developing new 'public' payphones in 1995 and now supplies only those phones covered by its outstanding obligations. Nevertheless, Deutsche Telekom has still been able after 1996 to award its contracts to at least

two suppliers. In view of Deutsche Telekom's strong purchasing power, the basic conditions for effective competition continued to be met on the basis of existing procurement practice even after Bosch Telecom had withdrawn from the market because, with Siemens and Landis & Gyr, two suppliers were still competing with each other.

Effects of the merger

— Creation of a dominant position

(116) After the merger of Siemens and Elektrowatt, Deutsche Telekom will no longer have the possibility of buying from two different suppliers. It seems extremely questionable whether effective competition can be restored on the basis of an alternative supplier in the medium term. Siemens and Landis & Gyr have developed the new 'N.I.K.E.', system in conjunction with Deutsche Telekom. […]. The 'public' payphones market in Germany will, in the foreseeable future, consist of cardphones developed by Siemens and Landis & Gyr and operated using Eurochip phonecards. For economic and technical reasons, the only possible suppliers of these phones will be Siemens and Landis & Gyr. By approaching these two suppliers for the development of the new card phone system, Deutsche Telekom had ensured that it had at its disposal two suppliers which were independent of each other but which, in particular, were both still familiar with the details of the management system. The merger will mean that Siemens will be the only supplier of the new-generation cardphones. It will therefore have a dominant position on the 'public' payphones market in Germany.

(117) […]. Despite this theoretical room for manoeuvre laid down by contract, the changes to the market structure caused by the merger will lead to a restriction of competition. The N.I.K.E. cooperation agreement between Siemens and Landis & Gyr concerned the development of a new overall system. The powerful customer, Deutsche Telekom, was still able to stimulate competition by awarding its contracts to a number of suppliers. At the same time it could avoid the technical risk of introducing untried 'public' payphones which had possibly not been smoothly adapted to the requirements of the management system. Since the alternative source of supply has now disappeared, it no longer has this means of exerting pressure. The investigations carried out have confirmed that effective competitive pressure by potential market entrants is not to be expected.

(118) Even if the barriers to entry with regard to the technology developed by Siemens could be overcome by granting a licence, entry into the market is not worthwhile for a new supplier. The new phonecard system is a product line developed specifically for the German market. The market volume is limited, and, alongside Siemens/Landis & Gyr, competitors are already active on this market which were and are traditional suppliers of Deutsche Telekom. These suppliers have developed the new phonecard system together with Deutsche Telekom for the German market and control the technology applied. In addition, Deutsche Telekom has already ordered […] quantities with traditional suppliers.

(119) It should also be remembered that a potential interested party, even if it receives licences for the cardphone technology, does not have the same knowledge of the overall system that Siemens/Landis & Gyr does as the developer of that system […]. For Deutsche Telekom, given the requirements regarding the company background system, a complete change of supplier for the remaining delivery quantities […], for which firm orders have not yet been placed with Siemens/Landis & Gyr, would be too risky. It can therefore be assumed that Deutsche Telekom, in order to minimise its risk, would not place an order for the entire delivery quantity remaining with one potential interested party. Thus, the prospects of a potential supplier being awarded a worthwhile contract are very slight. After the merger, therefore, the lock-in effect caused by Deutsche Telekom's long-term contractual obligation towards the dominant supplier Siemens will prevent any effective pressure being exerted by potential competitors.

Conclusion

(120) In view of the above, the Commission has come to the conclusion that the proposed merger will

lead to the emergence of a dominant position on the part of Siemens on the market for 'public' payphones in Germany and that competition on that market will be significantly impeded. The Commission also takes the view that, because of the lock-in effect caused by Deutsche Telekom's long-term contractual obligation towards Siemens, which will be the dominant supplier after the merger, it remains unlikely that potential competitors will be able to exert effective pressure. There are no visible indications that Deutsche Telekom's purchasing power will be able to offset these effects. The lock-in effect will also continue to be felt after the time limit for fulfilling the contract has expired. As soon as the new cardphone system is installed, i.e. the current generation of cardphones has been completely replaced, demand in this field for servicing and replacing the installed base will shrink. Market entry for firms which have hitherto not received any orders from Deutsche Telekom will, in view of the few replacement orders available, hardly make economic sense, since access to third-party technology, which is associated with high investment costs, is generally profitable only if the number of units involved is relatively large.

Commitment given by the parties

(121) In the course of the proceedings, the parties informed the Commission that Elektrowatt AG had decided to sell all the business and assets of Landis & Gyr in the area of payphones, chip cards and visual security features for banknotes and security documents to third parties. The sale of the payphones operation could lead the Commission to lift its doubts concerning the emergence of a dominant position in Germany.

(122) Should this sale no longer take place before completion of the notified merger, the parties have given the following commitment:

(123) '(1) Siemens undertakes to ensure that, after acquiring sole control of Elektrowatt AG (deadline II within the meaning of the agreements between *(inter alia)* Crédit Suisse and Siemens, see Section 2.1 of the notification), Elektrowatt AG and the firms associated with it will sell all their activities relating to the development, manufacture and marketing of payphones (public and private) (subject of the disposal) to a third party […]. The third party in question must be independent and unconnected with the Siemens Group and be an existing or potential effective competitor […].

(124) (2) Siemens undertakes to ensure, after completion of the merger and before the said sale, that the subject of the disposal covers all activities relating to the development, manufacture and marketing of public and private payphones. Siemens also undertakes to maintain the same conditions of competition in the subject of the disposal as applied before completion of the merger. Siemens also undertakes to ensure that, outside the normal course of business, the business assets of the subject of the disposal will not be reduced before the sale […].

(125) (3) Siemens undertakes to ensure, after completion of the merger and before the said sale of activities, that the future buyer of the subject of the disposal will be placed in the same position (i.e. concerning rights and obligations) with regard to the N.I.K.E. cardphone system jointly developed by Landis & Gyr for Deutsche Telekom as Landis & Gyr was in before the merger. In particular, this means that the buyer will have the same rights to the jointly developed technology of the N.I.K.E. system as Landis & Gyr had before the merger. If Landis & Gyr has its own patents or any other intellectual-property rights and own know-how with regard to the N.I.K.E. system, Siemens undertakes to transfer them to the buyer. If Landis & Gyr does not have its own patents or other intellectual-property rights and own know-how but has access to the technology developed by Siemens, Siemens undertakes to grant the buyer the same access under the same conditions as are applied to Landis & Gyr.

(126) (4) […], Siemens will, in consultation with the Commission, appoint a trustee (the trustee), for example an investment bank. The latter shall ensure on behalf of the Commission that until the disposal of the subject of the disposal Siemens fulfils its obligations *vis-à-vis* the

Commission, entered into under point 2. The trustee shall also ensure that with regard to the sale Siemens fulfils its obligations *vis-à-vis* the Commission, entered into under point 3, […].

(127) (5) Should the sale not occur […], Siemens will irrevocably transfer authority over the subject of the disposal to the trustee, who, […], will carry out the sale at the expense of the owner(s) in accordance with regular commercial principles, […].

(128) (6) Every three months, the trustee shall send the Commission, as well as a copy for Siemens, a written report on the monitoring of the fulfilment of the obligations entered into by Siemens *vis-à-vis* the Commission.

(129) (7) Before the signing of a binding contract and at any rate every three months, the trustee shall send the Commission, as well as a copy for Siemens, a written report on the progress of negotiations with third parties interested in buying the subject of the disposal.

(130) (8) The trustee shall continue the negotiations with an interested third party only if the Commission within two weeks of receiving the trustee's report does not formally communicate its view that the buyer does not satisfy the conditions of purchase.

(131) (9) The duties of the trustee shall end after the subject of the disposal has been sold.

(132) (10) […]'

Assessment of this commitment

(133) The merger leads only in Germany to any significant addition of market shares on the market for 'public' payphones. After a careful examination of the plan, the Commission takes the view that the merger will give rise to a dominant position on the part of Siemens on this relevant national market, as a result of which effective competition will be impeded in a substantial part of the common market. On the basis of the proposed commitment, competitors are being offered the possibility of buying the payphone activities of the subsidiary, Landis & Gyr, on the market for 'public' payphones in Germany. After this sale has occurred, the buyer will be in the same position as that previously occupied by Elektrowatt/Landis & Gyr. This will ensure that Deutsche Telekom will still have access to two suppliers after the merger. Deutsche Telekom will therefore still be in a position to award its contracts for the manufacture and supply of 'public' payphones on the basis of effective competition between Siemens and the other supplier. The Commission has therefore concluded that the proposed commitment is liable to prevent a dominant position from arising or being strengthened on the market for 'public' payphones in Germany.

(134) The commitment proposed by the parties covers the disposal of the entire payphones division, i.e. all the payphone activities of Landis & Gyr. The parties have not proposed restricting the commitment to the payphone activities of Landis & Gyr on the market for 'public' payphones in Germany. Restriction of the commitment would be considered only if such a commitment were already enough to avert the creation or strengthening of a dominant position on the market for 'public' payphones in Germany with sufficient certainty. It seems extremely doubtful, however, whether a suitable buyer could be found for a disposal that was limited to 'public' payphones in Germany, in so far as such a restriction could be applied at all in law and in fact. The proposed commitment is therefore necessary if the creation or strengthening of a dominant position on the market for 'public' payphones in Germany is to be averted with sufficient certainty.

(b) *Private payphones*

(135) On the 'private' payphones market, many more suppliers are active EEA-wide than on the 'public' payphones market. Alongside Elektrowatt/Landis & Gyr (with a market share of approximately 18 %), two other competitors, Tetrel and GN-Rathdown, had comparable

market shares in 1995 (approximately 20 % in each case). Tetrel has considerably improved its market position in recent years, having become the leading supplier to the British Telecommunications Group. Other competitors are Schlumberger (1995 market share of some 7 %), Ascom-Monetel (1995 market share of less than 5 %) and FMN Nordhausen (1995 market share of some 6 %), which are active in several Member States. In 1996, the Far Eastern companies Inventec and Vector also entered this market, which indicates that barriers to entry are lower than for 'public' payphones. Siemens does not itself manufacture 'private' payphones, but it does have a 40 % holding in GTP (1995 market share of some 5 %).

(136) In the course of the proceedings, the parties informed the Commission that Elektrowatt has now bought GN-Rathdown. According to the parties, the purpose of this acquisition is to 'round off' Elektrowatt's payphones business with a view to the intended sale and, hence, to improve the terms for that sale. The effects on competition of the acquisition are confined at most to the period before the fulfilment of the commitment to sell. It is not necessary therefore to subject this merely temporary change in Siemens's position on the 'private' payphones market to a more thorough assessment. In view of the existing market structure and given that Elektrowatt's payphone business is to be sold, plus the fact that Siemens, at the latest when the commitment has been fulfilled, will be active on the 'private' payphones market only through its holding in GPT, the Commission has concluded that the merger does not give rise to any doubts regarding competition on the 'private' payphones market.

D. OVERALL ASSESSMENT

1. Building management systems and their servicing

(137) The proposed merger does not lead to the emergence or strengthening of a dominant position on the part of the parties on either the EEA market for building management systems or on the national markets for the servicing of such systems.

2. Fire-alarm installations, intrusion-protection and other security installations, servicing of fire-alarm installations, and intrusion-protection and other security installations

(138) On the national markets for fire-alarm installations and for intrusion-protection and other security installations, and on the national markets for the servicing of such installations, the merger will not give rise to, or strengthen a dominant position which would impede effective competition in the common market or a substantial part thereof.

3. Electricity meters

(139) On the national markets for electricity meters, the merger will not give rise to, or strengthen a dominant position which would impede effective competition in the common market or a substantial part thereof.

4. Heat meters

(140) The proposed merger does not lead to the emergence or strengthening of a dominant position on the affected markets for heat meters.

5. Ripple control transmitters and receivers

(141) The proposed merger does not lead to the emergence, or strengthening of a dominant position on the part of the parties on the affected EEA market for ripple control transmitters and receivers.

6. Energy-management systems

(142) The proposed merger does not lead to the emergence, or strengthening of a dominant position on the part of the parties on the affected EEA market for energy-management systems.

7. Network control technology

(143) The proposed merger does not lead to the emergence, or strengthening of a dominant position on the part of the parties on the affected EEA market for network control technology.

8. 'Public' and 'private' payphones

(144) The Commission's investigations have revealed that no dominant position will be created or strengthened as a result of the merger on the private payphone markets. On condition that the commitment given by the parties is fulfilled, this assessment also applies to 'public' payphones.

V. CONCLUSION

(145) For the reasons set out above, subject to the condition that the commitment given by the parties is fulfilled, it is to be assumed that the proposed merger will not lead to the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in a substantial part of the Community. Subject to that condition, therefore, the merger is to be declared compatible with the common market and with the functioning of the EEA Agreement pursuant to Article 2(2) of the Merger Regulation and Article 57 of the EEA Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The notified merger between Siemens AG and Elektrowatt AG is hereby declared compatible with the common market and with the functioning of the EEA Agreement, subject to the condition that the commitment given by the parties and set out in recitals 123 to 132 of this Decision is fulfilled.

Article 2

The parties shall be required to report to the Commission on the fulfilment of the condition in Article 1 of this Decision.

Article 3

This Decision is addressed to:

Siemens AG
Wittelsbacherplatz 2
D-80333 München.

Done at Brussels, 18 November 1997.

For the Commission
Karel VAN MIERT
Member of the Commission