COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 85/LM/Oct06

In the matter between:

Nokia Corporation Primary Acquiring Firm

and

Siemens Aktiengeselleschaft Primary Target Firm

Panel	:	DH Lewis (Presiding Member), Marumo Moerane (Tribunal Member), and Medi Mokuena (Tribunal Member)
Heard on	:	4 December 2006
Decided on	:	4 December 2006
Reasons Issued:		13 February 2007

Reasons for Decision

Approval

[1] On 4 December 2006 the Competition Tribunal issued a merger clearance certificate unconditionally approving the merger between Nokia Corporation and Siemens Aktiengeselleschaft. The reasons follow.

The parties

[2] The primary acquiring firm is Nokia Corporation ('Nokia'), a company incorporated under the laws of Finland.[1] Nokia is listed on the New York, Frankfurt, Stockholm and Helsinki Stock Exchanges. No single shareholder controls Nokia, but Nokia controls a number of subsidiaries worldwide.[2]

[3] The primary target firm is Siemens Aktiengesellschaft ('Siemens'), a company incorporated under the laws of Munich, Germany.[3] Siemens is listed on the New York and Frankfurt Stock Exchanges. No single shareholder controls Siemens but it controls a significant number of subsidiaries worldwide, as well

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[1] Nokia has its principal place of business at Keilalahdentie 2-4, FIN-02150 Espoo, Finland.
[2] See Annexure A in record for a comprehensive list of these subsidiaries.
[3] Siemens' principal place of business is Wittesbacherplatz 2, D – 80333 Munich, Germany.

as in South Africa. Siemens' participating subsidiary in this transaction is Siemens Telecommunications (Pty) Ltd.[4]

The transaction

[4] This transaction forms part of an international merger which was notified in several jurisdictions and has been approved in Israel and the United States.[5]

[5] On 19 June 2006, Nokia and Siemens entered into a Framework Agreement in which they agreed to transfer their mobile and their fixed-line equipment businesses to a newly created joint venture to be called Nokia Siemens Network ('NSN'). This new company will have its headquarters in Finland and its regional headquarters in Munich, Germany.

[6] The business of Siemens which will be transferred to NSN is housed in a subsidiary, Siemens Telecommunications (Pty) Ltd ('Siestel'). Siemens will transfer its network business housed in Siestel to NSN and Nokia will also transfer its network business to NSN. However, the Enterprise Networks business will remain under the sole control of Siestel and will not form part of the transaction. On the other hand, Nokia will retain its mobile handset business outside the joint venture.

[7] Post-merger Nokia will have sole control over NSN, the joint venture company, by virtue of holding slightly more than 50% of NSN and the ability to appoint more directors than Siemens.[6] However, decisions on key strategic issues such as business plans and budgets will be taken by a simple majority at board level.

Rationale for the transaction

[8] The merging firms have forwarded a number of reasons as their rationale for this transaction including that:

[8.1] the transaction will result in the merging parties achieving economies of scale through the newly formed entity. The economies of scale will be achieved in

[4] See Annexure A and B in the record for a complete list of the subsidiaries controlled by Siemens.
[5] This transaction has been notified in the United States of America, Argentina, Brazil, Croatia, European Union, Israel, South Korea, Taiwan, and Turkey.
[6] Record p291.

areas which include managerial, commercial, technical, marketing and research and development;

[8.2] the transaction will enable the merging parties to compete more effectively on a global scale. The geographic complimentarity between the parties' mobile network equipment business will also improve the joint venture's ability to compete for the major new opportunities that are likely to arise in emerging markets; and

[8.3] the transaction will enable the parties to save costs by avoiding unnecessary duplication of research and development functions but will also facilitate the development of new and innovative products and services

The parties' activities

[9] Siemens is an international engineering and electronic company involved in diverse business portfolio's that include information and communications, transportation, medical solutions, power and infrastructure, automation and control lighting, financing and real estate. It conducts its business through sixteen operating units.

[10] Siemens' participating subsidiary is Siestel. Siestel is involved in the provision of telecommunication equipment and related services. It provides telecommunication equipment such as radio access network and access network equipment, core network system and applications, fixed-line OSS/BSS and associated services, transport and IP networking equipment and network management and business management systems.

[11] Nokia is an international mobile telecommunications company with a global network of sales, customer service and operational units that are involved in the manufacture and sale of cellular telephony and related services.

[12] Nokia South Africa is Nokia's participating subsidiary in this transaction.

[13] The other activities of the merging parties are not considered in these reasons since they do not affect the assessment of the current transaction. These

include the enterprise business of Siemens,[7] information communication, power, transportation, medical and financing and real estate of Siemens as well as the mobile telecommunication business of Nokia.

RELEVANT MARKETS

Relevant geographic market

[14] The Commission and the merging parties submitted that the market is global. This is because major providers of network equipment compete worldwide for contracts and tenders. Moreover, telecom network equipment is generally based on international standards. Consequently, there is a standardisation and liberalisation of services relating to telecommunication markets. The liberalisation of services has widened the geographic scope of telecommunication network equipment market.

[15] Although the Commission and the parties defined the market as global, they analysed the effects of this transaction on competition both on the international and national market. It is not necessary for the Tribunal to make a finding on the relevant geographic market since, as shall be seen below, the impact of this transaction is minimal on both the national and the global market.

Relevant product market

[16] The parties submitted that the joint venture will be active in two core markets namely mobile network equipment and associated services and fixed line network equipment and associated services. The Tribunal has concluded that the parties will indeed be active in the said two core markets. We now turn to consider these product markets in detail and the market shares.

Market for mobile network equipment and associated services

[7] The enterprise business of Siemens which will be carved out and not form part of this transaction, relates to Private Automatic Bank Exchange (PABX). PABX is a private telephone exchange, which ties together telephone, fax, and data systems in a company and connects these to the public telephone network.

[17] Mobile network equipment and associated services comprises of radio access network, core network system, and network management and business management systems.

[17.1] *Radio Access Network ('RAN')*- RAN equipment facilitates radio access between the mobile handset and the network via multiple base transreceiver stations (or 'base stations'), and a smaller number of base station controllers that control multiple base stations. The parties both supply RAN equipment.

[17.2] *Core Network System*- CNS equipment manages information flows within the mobile network and includes circuit-switching equipment for voice traffic, packet-switching equipment for data traffic, and other database responsible for storing and processing information about subscribers and handsets. CNS elements are also linked to other telephony networks (i.e. external networks) in order to enable communication with fixed-line and mobile telecommunication subscribers in other networks.

[17.3] *Network management and business management systems*- Network management and business management systems software supports carriers' technical and commercial needs. Software includes Operations Support Systems ('OSS'), it supports network management functions such as fault identification, network configuration and performance management. Business Support Systems ('BSS'), supports business management functions such as billing, charging, subscriber management.

[17.4] *Associated services*- Various services are supplied with mobile network equipment, including deployment, delivery and installation services, maintenance and care services; managed services; and other professional services. Most of these network services are closely connected to the supply of network equipment and both parties supply mobile network services.

International market for mobile network equipment

Table 3

Company	**Sales figures**	**Market shares (%)**
Ericsson	13.873	23

Nokia	**6.271**	**10**
Siemens	**5.157**	**8**
Alcatel/Lucent	7.931	13
Motorola	4.627	7
Nortel	3.325	5
NEC	2.209	4
Huawei	1.190	2
Others	16.472	27
Total	**61055**	**100**

[18] On the international market for mobile network equipment the merged entity will have a market share of 18%. The Commission highlighted that this is slightly higher than the accepted benchmark of 15% and that the change in HHI is 160 points in a moderately concentrated market. The merging firms compete with Ericsson which has a 23% market share, Alcatel Lucent which has a market share of 13%, Motorola with 7%, Nortel with 5%, NEC with 4% and Huawei with 2%.

National market for mobile network equipment

Table 4

Company	**Sales figures**	**Market shares (%)**
Siemens	**327.8**	**48**
Nokia	**1.6**	**0.2**
Ericsson	226	33
Alcatel/Lucent	62	9
Others	68.6	10
Total Sales	**686**	**100**

[19] In the national market for mobile network equipment the merging parties will have a post-merger market share of 48.2% and will undoubtedly be the biggest player in that market. However, pre-merger Siemens enjoys a market share of 48%. The market share accretion as a result of this transaction will be only

0.2%, which is relatively low. Moreover, the merging parties will compete with Ericsson which has a market share of 33% and Alcatel with 9%.

Market for fixed line network equipment and associated services

[20] The parties submitted that they have only limited overlaps with respect to public fixed-line network equipment, since Nokia has traditionally been a niche player in this area. Fixed-line network equipment comprises of access network equipment for the local loop, core network equipment and applications, transport and IP networking equipment and fixed-line OSS/BSS.

[20.1] *Access Network equipment for local loop*: Access networks, also known as the ‘last/first mile’ or the ‘local loop’, connect subscribers to the core fixed-line network and, therefore, services provided by the fixed line operator. The parties both supply access network equipment.

[20.2] *Core network equipment (including public switching) and applications*: Fixed line core network equipment and applications include public switching equipment, applications and intelligent networks (‘IN’) equipment. Public switching equipment allows IP/data, including servers and software, hosting and running different applications to allow customers to intercommunicate with various services offered by the network or third party providers. IN provides value added services in addition to the standard telecoms services.

[20.3] *Transport and IP Networking Equipment*: this comprises wireline transmission equipment (namely optical network equipment), wireless microwave radio transmission equipment, and data networking equipment (namely core routing and switching).

[20.4] *Fixed-line OSS/BSS and associated services*: Fixed-line OSS/BSS and associated fixed-line services correspond, concerning their functionality and characteristics, to their mobile equivalents in the area of mobile network equipment and services.

International market for fixed line network equipment

<u>Table 1</u>

Company	Sales figures	Market share (%)
Alcatel/Lucent	8.571	12
Huawei	3.978	6
Nokia	**372**	**1**
Siemens	**3.192**	**4**
Nortel	3.228	4
Ericsson	2.975	4
NEC	2.776	4
Motorola	432	1
Others	46.232	64
Total	**71746**	**100**

[21] The main feature on the market shares of the international market for fixed-line network equipment is that the merging parties will have a combined post-merger market share of 5%. They will continue to face competition from many players including Alcatel/Lucent which has a market share of 12% and Huawei which has a market share of 6%, among others.

National market share for fixed line equipment

<u>Table 2</u>

Company	Sales figures	Market shares (%)
Siemens	**30.1**	**8**
Nokia	**0.5**	**0.1**
Alcatel/Lucent	53	14
Ericsson	23	6
Others	272.4	72
Total Sales	**379**	**100**

[22] In the national market of for fixed line network equipment the parties will have a post-merger market share of 8.1%. The merging parties' competitors will continue to effectively compete with national and international players such as

Alcatel having a market share of 14% and Ericsson having a market share of 6%.

Public Interest

[23] There are no public interest issues.

Conclusion

[24] This transaction does not lead to a substantial prevention or lessening of competition and there are no public interest issues. Accordingly, this transaction is approved without any conditions.

_________________ 13 February 2007

DH Lewis **Date**

Presiding Member

Concurring: M Moerane and M Mokuena

Tribunal Researcher : R Kariga

For the merging parties : L Vundla and L Morphet, Deneys Reitz Attorneys

For the Competition Commission : L Lamola and M Mohlala (Mergers and Acquisitions)