

ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from Siemens AG (“Siemens”) and Vodafone Group Plc (“Vodafone”), which is designed to remedy the anticompetitive effects resulting from Siemens’s acquisition of certain voting securities of Atecs Mannesmann AG (“Atecs”), a subsidiary of Vodafone. Atecs is comprised of Mannesmann Rexroth AG (“Rexroth”), Mannesmann Dematic AG (“Dematic”), Mannesmann Demag Krauss-Maffei Kunststofftechnik GmbH (“Demag Krauss-Maffei”), Mannesmann VDO AG (“VDO”) and Mannesmann Sachs AG (“Sachs”). Under the terms of the Consent Agreement, Siemens and Vodafone will be required to divest Vodafone’s Mannesmann Dematic Postal Automation business (“MDPA business”) to Northrop Grumman Corp. (“Northrop”) no later than ten (10) days from the date Siemens consummates its acquisition.¹

The proposed Consent Agreement has been placed on the public record for thirty (30) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make final the Decision and Order.

Pursuant to an April 14, 2000 Share Purchase Agreement and related amendments, Siemens agreed to acquire just over 50% of the voting securities of Atecs from Vodafone, and subsequently to purchase the remainder of the Atecs voting securities through the exercise of a

¹ Because Vodafone will no longer have control over the assets to be divested following the acquisition, its obligations under the Consent Agreement terminate at the time the acquisition is consummated.

“Put-Call-Option.” The total value of the transaction is expected to exceed \$9 billion. Under the terms of the agreement, Siemens will operate and retain ownership of four Atecs subsidiaries, Dematic, VDO, Demag Krauss-Maffei and Sachs. Robert Bosch GmbH will lease from Siemens the right to operate the fifth Atecs subsidiary, Rexroth. The Commission’s complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, in the market for the research, development, manufacture, integration, sale and service of postal automation systems.

Siemens and Vodafone, through its Atecs Dematic subsidiary, are the two leading suppliers of postal automation systems in the world. Public postal services throughout the world purchase these systems to process letter mail and flat mail, which includes over-sized envelopes, catalogs, and magazines. These highly integrated systems are able to cancel stamps or meter marks, read addresses using optical character recognition technology, translate addresses into destination barcodes, and use these barcodes to sort mail by country, state, city and/or street. Postal automation systems reduce the amount of labor needed to reliably handle the millions of pieces of mail received daily by public postal services.

The world market for postal automation systems is highly concentrated, and the proposed acquisition would allow Siemens, the largest supplier of these systems, to purchase its closest competitor. Siemens and Dematic regularly bid against each other for significant public postal contracts, and they supply postal automation systems to virtually all of the major public postal services in the world, including the United States Postal Service. By eliminating competition between these two leading suppliers, the proposed acquisition would allow Siemens to exercise

market power unilaterally, thereby increasing the likelihood that purchasers of postal automation systems would be forced to pay higher prices and that innovation and service levels in the market would decrease. Siemens's proposed acquisition of Vodafone would also increase the likelihood that the remaining suppliers of postal automation systems could collude to the detriment of customers in the market for postal automation systems.

Significant impediments to new entry exist in the postal automation systems market. Customers require highly sophisticated and reliable systems in order to process the large volume of mail they handle daily. Consequently, customers do not consider new suppliers of postal automation systems unless they first establish a track record of successfully delivering smaller component parts. A supplier must then develop a competitive system and have the resources to participate in the very lengthy competitions typical in this market. These steps are difficult, expensive and time-consuming. For this reason, new entry into the market for postal automation systems would not be accomplished in a timely manner or be likely to occur at all even if prices increased substantially after the proposed acquisition.

The Consent Agreement effectively remedies the acquisition's anticompetitive effects in the postal automation systems market by requiring Siemens and Vodafone to divest the MDPA business. Pursuant to the Consent Agreement, Siemens and Vodafone are required to divest the MDPA business to Northrop no later than ten (10) days from the date Siemens consummates its acquisition of certain voting securities of Vodafone. If the Commission determines that Northrop is not an acceptable buyer or that the manner of divestiture is not acceptable, Siemens and

Vodafone must divest the MDPA business to a Commission-approved buyer within three (3) months from the date the Order becomes final. Should they fail to do so, the Commission may appoint a trustee to divest the MDPA business.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed buyer of divested assets must not itself present competitive problems. The Commission is satisfied that Northrop is a well-qualified acquirer of the divested assets. Northrop is a publicly-traded corporation and a leading systems integrator. It has the necessary industry expertise to replace the competition that existed prior to the proposed acquisition. Furthermore, Northrop poses no separate competitive issues as the acquirer of the divested assets.

The Consent Agreement contains several provisions designed to ensure that the divestiture of the MDPA business is successful. The Consent Agreement requires Siemens and Vodafone to provide incentives to certain employees to continue in their positions until the divestiture is accomplished. Under certain circumstances, Siemens is also required to provide additional incentives to key employees to accept employment, and remain employed, by the acquirer. For a period of one (1) year from the date the divestiture of the MDPA business is accomplished, Siemens and Vodafone are prohibited from soliciting or inducing any employees or agents of the MDPA business to terminate their employment with MDPA. Furthermore, for a period of four (4) months following the date the divestiture is accomplished, Siemens and Vodafone are prohibited from hiring any employees or agents of MDPA. Siemens and Vodafone are also prohibited from soliciting MDPA customers for a period of two (2) years from the date

Siemens signs its divestiture agreement with the acquirer of the MDPA business. Finally, Siemens is not permitted to disclose to any person or use any information it obtains relating to the MDPA business.

In order to ensure that the Commission remains informed about the status of the MDPA business pending divestiture, and about the efforts being made to accomplish the divestiture, the Consent Agreement requires Siemens and Vodafone to file reports with the Commission within thirty (30) days of the date they sign the Consent Agreement, and periodically thereafter, until the divestiture is accomplished.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the Consent Agreement or to modify in any way its terms.