

***Case No IV/JV.1 - \*  
TELIA / TELENOR /  
SCHIBSTED***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 27/05/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27 May 1998

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

**Subject: Case No IV/JV.1 - Telia/Telenor/Schibsted  
Notification of a concentration pursuant to Article 4 of Council  
Regulation No 4064/89**

1. On 16 April 1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Council Regulation (EEC) No 4064/89 [O.J. L 395 of 30 December 1989, p.1; corrected version O.J. L 257 of 21.9.1990, p. 13; as last amended by Regulation (EC) No. 1310/97, O.J. L 180 of 9.7.1997, p. 1; corrigendum in O.J. L 40 of 13.2.1998, p. 17] by which Schibsted Multimedia AS, Telenor Nextel AS and Telia AB of a joint venture NewCoI (which will trade as Scandinavia OnLine) for the provision of certain Internet services to consumer and business customers mainly in Sweden.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89, and does not raise serious doubt as to its compatibility with the common market and with the EEA Agreement.

**I. PARTIES**

3. The parties involved in this transaction are (1) Telia AB, wholly-owned by the Swedish state, is the main telecommunications operator in Sweden, providing a broad range of telecommunications services both in Sweden and abroad, including enhanced services through its shareholding in Unisource; Telia is also an Internet Service Provider (ISP); Internet services in the Swedish language are provided by Telia InfoMedia Interactive AB (2) Telenor AS is the main Norwegian telecommunications operator; its subsidiary Telenor Nextel AS offers a number of

Internet related services; it is a shareholder in Telenordia (33%, the other parent companies are BT and TeleDanmark), which provides telecommunications services on the Swedish market. Telenordia's subsidiary Algonet is an ISP on the Swedish market; (3) the Norwegian Schibsted group is involved in a range of media-related activities such as newspapers, television, films and multimedia; its subsidiary Schibsted Multimedia AS has a number of Internet related activities, including the provision of content, in Sweden via Scandinavia On-Line AB, which is jointly owned by Telenor AS. Schibsted also has a stake in Aftonbladet, a newspaper in Sweden which also has an Internet edition.

## **II. THE OPERATION**

4. The joint venture company will take over the assets and activities of Telia InfoMedia and Scandinavia On-Line AB (SOL). Its activities will be (1) Internet gateway services: through the gateway, consumers and businesses can have access to a range of services presently offered by SOL and InfoMedia, such as financial information, games, business and financial information, shopping, travel, ticket sales; revenues will be generated by advertising, commissions on transactions and subscriptions; related to the gateway services are the provision of Internet advertising services (2) web site production for third parties, including design of web sites and related programming. Initially, NewCoI's services will be provided in the Swedish language.

## **III. CONCENTRATION**

### **Joint Control**

5. Telia and Schibsted shall each own 40% of the share capital of the joint venture and Nextel shall own 20%. The Board of Directors of the joint venture will consist of seven members. Telia and Schibsted will appoint [Deleted business secret concerning number of board members] each and Nextel will appoint [Deleted business secret concerning number of board members].
6. Section 7 of the shareholders' agreement provides that certain decisions require unanimity at the board and at the general meeting. These matters include
  - material changes to the business plan, and
  - the fixing of the annual budget framework.

The annual budget framework includes [Deleted: business secret]. The business plan established by the parties contains *inter alia* [Deleted: business secret]. The unanimity requirement is reinforced by a provision in Section 7 of the shareholders' agreement stipulating that in case of doubt a matter falls under the unanimity clause.

7. The effect of this section is that NewCoI cannot act on certain critical issues except with the consent of all the parties. Consequently, NewCoI will be subject to joint control by Telia, Schibsted and Nextel.

### **Full function entity**

8. The parties will contribute to NewCoI most of the assets and activities of InfoMedia and SOL. Both companies currently operate as independent business entities.
9. NewCoI will have its own organisation and will initially have around [Deleted: business secret] staff which will enable it to perform all its functions independently. After a start-up period NewCoI is expected to finance its activities through own resources or financing. The sales which NewCoI will make to its parent companies are estimated by the parties to be less than 10% of its total sales. The joint venture will acquire certain services from the parents, for example [Deleted: business secret] However, these will be acquired on an arm's length basis and will also be available from other suppliers.
10. The shareholders' agreement is valid until [Deleted: business secret] and subsequently subject to automatic renewal for [Deleted: business secret] year periods. Telia and Schibsted are prohibited from transferring their shares in NewCoI until [Deleted: business secret] Nextel may transfer its shares from [Deleted: business secret].

NewCoI will accordingly perform on a long-lasting basis all the functions of an autonomous economic entity.

#### **IV. COMMUNITY DIMENSION**

11. Telia has a worldwide turnover of 5,369 MECU, Nextel 3,182 MECU and Schibsted 668 MECU which taken together is more than ECU 5 billion. Telia and Nextel have an aggregate Community-wide turnover of more than ECU 250 million. Telia and Schibsted alone achieved two thirds of their aggregate Community-wide turnover within one and the same Member State, namely Sweden. Nextel did not achieve more than two thirds of its aggregate Community-wide turnover in Sweden.

The concentration therefore has a Community dimension within the meaning of Article 1 of the Merger Regulation.

12. Telia, Nextel and Schibsted achieved more than two thirds of their annual EFTA-wide turnover in Norway. The undertakings concerned have a combined turnover in the territory of the EFTA states that equals 25% or more of their total turnover in the EEA territory. All undertakings concerned have a turnover exceeding ECU 250 million in the territory of the EFTA States. Consequently, the operation is an EFTA co-operation case pursuant to Article 58 and Protocol 24 of the EEA Agreement.

#### **V. RELEVANT PRODUCT MARKET**

13. In their notification, the parties identified three product markets: provision of 'gateway' services over the Internet; advertising on the Internet; and production of Internet web-sites and related services. These, and other possible relevant markets, are examined below.
14. Gateway services do not appear to constitute a market in themselves. As described above, gateways, such as the Passagen service currently provided by Telia InfoMedia, are essentially a kind of web-site hosting several different services or groups of services some or all of which may be provided by third

parties. They are generally financed through advertising rather than subscription income and most are supplied free of charge to Internet subscribers by Internet Service Providers (ISPs) as part of the access package (see below). Gateway services can thus be taken into account in the examination of the markets defined below.

15. In Bertelsmann/Burda/HOS Lifeline[Case No. IV/M.973] the Commission found that provision of paid-for content (eg games, special news services) on the Internet constituted a separate market, distinct from that for Internet advertising. This was because the two activities generated revenue in different ways and from different sources (advertising from the advertiser, but paid-for content from the subscriber); moreover the two activities were frequently carried out by different undertakings and required substantially different inputs. This approach will be followed here.
16. The parties consider that the production of web sites is a separate product market as the service provided demands both design and computer skills and which implies that the service constitutes a separate market. Web site production may be sufficiently technical and specialised to justify a separate market definition.
17. The provision of access to the Internet to end users is a separate activity from those identified above. A physical connection between the final user and the ISP is usually made either by means of a connection over a public switched telephone circuit, known as “dial up” access, or by means of a dedicated private line (dedicated access). Dial up Internet access is usually the choice for lower usage customers - such as the residential or small business customers at whom the joint venture's services are mainly aimed. Such access consists essentially of the supply to subscribers of an Internet address, provision of the relevant software to enable messages to be sent and received in the correct electronic format used for Internet traffic; and ‘connectivity’ - access to all other networks which together make up the Internet. Other features may also be supplied as part of an access package, such as ‘search engines’, or gateway or content services. The joint venture company itself is not present on this dial up Internet access market, but two of its parents (Telia and Telenor) are, and it is clearly closely related to the joint venture’s markets. It is accordingly not a relevant market for the assessment of dominance, but is considered further from the viewpoint of co-ordination (Article 2(4) of the Merger Regulation) below.
18. In any event, as the operation does not create or strengthen a dominant position on any of those markets, all the above market definitions can be left open.

## **VI. RELEVANT GEOGRAPHIC MARKET**

19. According to the notifying parties, the market for advertising should normally be regarded as national, considering the adaptations to which publicity campaigns are subject when used on different national markets. Although the parties also submit that issues of language etc. are less relevant considerations when advertising on the Internet, the HOS Lifeline decision appears to confirm that this can be considered on a national basis. It appears clear that the geographic market is at least national in scope, possibly on a linguistic basis.
20. The parties did not submit that Internet subscription content was an affected market. The SOL service being proposed by the parties is Swedish language in

scope and some services, such as the Stockholm city guide service will be local in scope. However, other subscription content could be demanded across borders. In the light of this operation, the likely scope for the content to be offered by the joint venture is national, especially as there are separate SOL companies offering similar services in Norway and Denmark.

21. According to the parties, the geographic scope for the market for web site production and related services is also national. This is based on the parties' experience in the market and is illustrated by the fact that the main web production undertaking in Sweden has different subsidiaries in the other Nordic countries. However, the market is unlikely to be less than national in scope and may well be wider.
22. As the market for dial up Internet access is not a relevant product market for the analysis of dominance, the relevant geographic market will be examined as part of the analysis of co-ordination effects below.
23. In any event, as the operation does not create or strengthen a dominant position on any of the above markets, all the above definitions of geographic markets can be left open.

## **VII. COMPETITIVE ASSESSMENT**

### **A Dominance**

24. For Internet advertising, according to the notifying parties, all three parent companies are on the market. Telia, through InfoMedia, has a market share of [Business secret: between 10% and 20%] which will be contributed to the joint venture, Schibsted (through its 49% controlling stake in Aftonbladet Hierta AB) has [Business secret: less than 10%] % and Telenor a market share of [Business secret: less than 5%] %. This appears to be a rapidly growing market with many market actors. The investigation of the Commission resulted in the conclusion that the market shares listed above will not create or strengthen a dominant position.
25. For paid for content provision, the notifying parties have not provided any data as they have not identified it as a separate market. The joint venture will offer games, financial information, business services, automotive, shopping, travel and ticketing. Most of these services will be supplied free of charge and therefore they will fall into the Internet advertising market as defined above.
26. For web site production, Telia will contribute part of its activities to the joint venture and Telenor will remain on the market. According to the parties, Telia's market share is [Business secret: less than 5%] %, Telenor is less than [Business secret: less than 5%] % and the joint venture [Business secret: less than 5%] %. This does not create or strengthen a dominant position.
27. In the light of the above information, and even based on the most unfavourable market definition, the operation does not create or strengthen a dominant position on any market.

### **B. Co-ordination of Competitive Behaviour**

28. Pursuant to Article 2 (4) Merger Regulation, a joint venture having as its object or effect the co-ordination of the competitive behaviour of (at least two of) its parent companies has to be appraised in accordance with the criteria of Article 85 (1) and 85 (3) EC-Treaty. In order to establish a restriction of competition in the sense of Article 85 (1) EC-Treaty, it is necessary that the co-ordination of the parent companies' competitive behaviour is likely and appreciable and that it results from the creation of the joint venture, be it as its object or its effect.

**1. Definition of candidate markets for co-ordination**

29. Candidate markets for co-ordination are those on which the joint venture and at least two parent companies are active, or closely related neighbouring markets where at least two parent companies remain active.

*a) Relevant product markets (services and access markets)*

30. The joint venture will be active in the provision of various services linked to the use of Internet, which are described above (Section V). As far as these markets are concerned, at least two of the parent companies are active on the market for web site production. However, beside these joint venture markets, another market could be identified on which at least two of the parent companies are active. This market, which concerns the provision of dial-up access to the Internet, constitutes a market which is closely related to that of the joint venture, in the sense of Article 2(4) of the Merger Regulation.

*(1) Advertising over the Internet*

31. Concerning the market for the provision of advertising over the Internet, it can be stated that only Schibsted Multimedia AS remains active on it after the creation of the joint venture. Therefore, this market can not be considered as a candidate market for co-ordination.

*(2) Paid for content provision*

32. Concerning the market for the provision of subscriber content over the Internet, none of the three parent companies will remain active on the same product market as the joint venture following the operation. Telenor Nextel AS and Schibsted Multimedia AS were, prior to the creation of the joint venture, active on it through their jointly owned subsidiary Scandinavia OnLine AB. This subsidiary being entirely transferred to the joint venture as Telenor Nextel's and Schibsted's joint contribution to it, these two parent companies are not active on this market as a result of the creation of the joint venture. Telia has contributed its activities on this market to the joint venture. Schibsted provides content through the on-line version of the newspaper it owns (*Aftonbladet*), but this service is offered for free and therefore is on the Internet advertising market. Therefore, this market cannot be considered as a candidate market for co-ordination.

*(3) Web site production and related services*

33. According to the indications submitted by the parties in the notification, two of the parent companies remain active on the market for the production of web sites. These companies are Telia, through its subsidiary Telia Promotor AB, and Telenor Nextel, through Bonnier Telenor Företagsinfo AB. InfoMedia, which also provides these

services, will be contributed to the joint venture. The production of web sites therefore constitutes a candidate market for co-ordination between the parent companies of the joint venture.

*(4)Dial up Internet access*

34. Generally speaking, dial up Internet access provided by Internet Service Providers (ISPs) who charge subscriptions to customers constitutes a discrete market, according to the market definitions as set out above.
35. All three parent companies are active on different markets from the above mentioned joint venture markets. Both Telia and Telenor (through Telenordia which has entered into a joint venture with BT and TeleDanmark) provide a full range of telecommunication services, whereas Schibsted is active in the field of multimedia services.
36. Telia and Telenordia (Algonet) provide dial up Internet access to users. Access to the Internet is a necessary prerequisite for the use of any Internet service. The dial up Internet access market must therefore be considered as a market upstream to the joint venture's markets. This upstream market is to be considered as closely related to the joint venture's markets and therefore constitutes a candidate market for co-ordination in the sense of Article 2(4) of the Merger Regulation.

Given that the creation of the joint venture does not raise concerns under Article 2 of the Merger Regulation, all of the above market definitions can be left open.

**b) Relevant geographical market**

37. For web site production, as it is likely to be generally done in Swedish, the relevant geographic market is at least as wide as Sweden or Sweden plus the Swedish language communities in other Nordic countries. However, there is no technical barrier to these services being provided outside Sweden and the Nordic countries. The Internet services of the joint venture will be offered in Swedish language for private and business users in Sweden. Although access to Internet content in Sweden is available from outside Sweden, this does not widen the market definition as the content offered is aimed specifically at consumers in Sweden. Therefore, the relevant geographical market for dial up Internet access is Sweden.

**2. Assessment under Article 2(4)**

38. The parties submitted that co-ordination of the competitive behaviour between the parent companies is not the **object** of the creation of the joint venture. In the absence of clear indications to prove that such an object is pursued, an intended co-ordination of the parent companies' behaviour can not be established.
39. However, it might be the **effect** of the operation to give way to co-ordination of competitive behaviour. This question has to be examined separately for the web site production market and for the dial up Internet access market.

***Web site production and related services***

40. On the web site production market, which is one of the joint venture markets, two parent companies will remain active. According to the parties' indications, the combined market share of the parent companies does not exceed [Business secret: less than 5%] % on this market and the joint venture will have a market share of [Business secret: less than 5%] %. This total market share of [Business secret: less than 10%] % on the Swedish market, which is the narrowest and most unfavourable to



the parties, in any event would not allow the conclusion that any restriction of competition is appreciable..

41. Therefore, in the light of the above, even if the parent companies were to co-ordinate their activities on the web site production market this co-ordination could not lead to an appreciable restriction of competition and it is therefore not necessary to establish a causal link between the creation of the joint venture and the behaviour of the parent companies outside the joint venture on this closely related market.

### ***Dial up Internet access***

42. The dial up Internet access market is characterised by high growth [According to information obtained during the Commission's investigation, the growth rate in Sweden in the next three years will be around 30%] and relatively low barriers to entry. The costs of starting a small ISP providing a dial up service are low and small companies can and do provide dial up Internet access. According to information supplied by the parties, there are around 100 such ISPs in Sweden. Entry is also possible from both local start-up ISPs and global ISPs entering the Swedish market. In addition, as the market is very price sensitive, in particular given the low switching costs, this would prevent higher prices through co-ordination from being sustained. Any increase in prices would result in the parties quickly losing market share to rival companies as new subscribers opted for lower price offerings.
43. Telia is present on this market. Telenor, through Telenordia (33%, the other parent companies are BT and TeleDanmark), is also present. Telia and Telenordia hold substantial market shares [Telia has a [25-40%] market share and Telenordia has [10-25%] of the market defined above. The largest service provider offering dial up Internet access in Sweden is Tele2 (a telecommunications company which is a member of the Kinnevik Group, a leading Nordic media company), which has a [40-50%] market share. However, on the basis of other information received, it appears that if the market share of Telenordia were to be attributed to Telenor, their total market share would be [35-65%]. Figures in square brackets are business secrets. This data is on the basis of information obtained from the notifying parties and other third parties during the investigation. Other third party estimates have put the leading three companies market shares as being lower than these figures (Tele2: 36%; Telia: 25%; Telenordia (Algonet): 13%)]. However, market shares are of limited significance on this growing market. In any case, the combined market share of Telia and Telenordia has fallen by between 15% and 20% of the total market over the last nine months.
44. Given the characteristics identified above, the market structure is not conducive to co-ordination of competitive behaviour.
45. The relative size of the markets for Internet advertising, content and web site production (the markets of the joint venture) compared with that of dial up Internet access is relevant to the likelihood of co-ordination., The dial up Internet access market is substantially larger than the other markets mentioned above [According to information obtained by the Commission during its investigation, the proportion of revenues derived from access is 93% in Sweden compared with 7% from all other Internet revenue sources] and therefore given the relative sizes of the markets concerned, the likelihood of co-ordination is reduced further.
46. Therefore, in the light of the above and on the basis that the narrowest market definition has been chosen, there is no likelihood that the parent companies would co-ordinate on the dial up Internet access market and it is therefore not necessary to

establish a causal link between the creation of the joint venture and the behaviour of the parent companies outside the joint venture on this related market.

### **VIII. ANCILLARY RESTRICTIONS**

47. The obligations which the parties have requested to be treated as an integral part of or ancillary to the proposed concentration include a non competition clause which states that none of the parties may provide within Sweden any service which is in direct competition with such services as the parties decide that NewCoI will provide without competition from its parents; at present only gateway services are subject to this prohibition. The non-compete obligation is applicable during the time a party holds shares in the company and for [Deleted: business secret]<sup>1</sup> thereafter. This clause can be considered as directly related and necessary to the implementation of the concentration as long as the shareholder retains a controlling shareholding in the joint venture.

### **IX. CONCLUSION**

48. In the light of the above information, the proposed concentration does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA agreement.

The Commission therefore has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA agreement. This decision is adopted in application of Article 6 (1) b of Council Regulation No 4064/89.

For the Commission,