

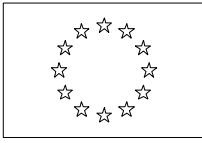
*Case No IV/JV.7 -
TELIA / SONERA /
LITHUANIAN
TELECOMMUNICATI
ONS*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 14/08/1998

*Also available in the CELEX database
Document No 398J07*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.08.1998

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.7 – Telia/Sonera/Lietuvos Telekomas
Notification of 17 July 1998 pursuant to Article 4 of Council Regulation
No. 4064/89**

1. On 17 July 1998, Telia AB (“Telia”) and Sonera Oy (“Sonera”) notified the Commission, pursuant to Article 4 of Council Regulation (EEC) No. 4064/89¹ (the “Merger Regulation”), of a transaction under which they have acquired a 60% interest in Lietuvos Telekomas (“LT”), a Lithuanian telecommunications operator. On 3 July 1998, the Commission acceded to the parties’ request for a derogation pursuant to Article 7(4) of the Merger Regulation in order that the transaction could be put into effect prior to notification.
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.
3. On 22 July 1998, Telia, Sonera and Motorola Lithuania Telecom, Inc. notified to the Commission a separate transaction under which Telia and Sonera acquire a share in UAB Omnitel, a mobile telephony operator in Lithuania. This is the subject of a separate notification under the Merger Regulation (Case No. IV/JV.9 – Telia/Sonera/Motorola/UAB Omnitel) and is not covered by the present decision.

¹ OJ L 395 of 30.12.1989, p. 1, corrigendum in OJ L 257 of 21.9.1990, p. 13; as last amended by Regulation (EC) No. 1310/97, OJ L 180 of 9.7.1997, p. 1, corrigendum in OJ L 40 of 13.2.1998, p. 17

I. PARTIES

4. Telia is the parent company of the Telia group. The Telia group provides a wide range of telecommunications services to private and business customers, such as fixed and mobile telephony, information and media services. Telia is the national public telecommunications operator in Sweden. It is wholly-owned by the Swedish State.
5. Telia is also active outside Sweden, notably through its subsidiary Telia UK (United Kingdom) and its participations in Telecom Eireann (the national public telecommunications operator in Ireland) and Unisource NV (a joint venture between Telia, PTT Telecom BV and Swisscom AG). Telia also provides fixed network services in Finland and has begun to provide mobile telephony services there.
6. Sonera (formerly known as Telecom Finland Ltd) is a wholly-owned subsidiary of Sonera-Yhtymä Oyj, the parent company of the Sonera group of companies. Sonera-Yhtymä Oyj is wholly-owned by the Finnish State. Sonera is likewise a national public telecommunications operator in Finland, providing a wide range of telecommunications services to business and private users.
7. Sonera is also active outside Finland, notably through subsidiaries in Sweden, Germany and Belgium.

II. THE OPERATION

8. The notified transaction is part of the privatisation of the national telecommunications operator in Lithuania. The Lithuanian State conducted an open bid procedure for the selection of a private investor in the capital of LT. In order to participate in this procedure, Telia and Sonera established in Denmark a joint venture company, Amber Teleholding A/S (“Amber”). This company does not have any other activities or assets. On 24 June 1998, the Lithuanian State announced that it had selected the Telia/Sonera consortium as the private investor to be allowed to acquire a share in LT.
9. Under the notified transaction, Telia and Sonera, through Amber, have acquired a 60% stake in LT. The Lithuanian State retained the remaining 40%.
10. The transaction notified consists of (a) the Shareholders’ Agreement between Telia and Sonera for the establishment of Amber, (b) the Shares Sale Agreement between Amber and the State Property Fund of Lithuania (a body set up by and acting on behalf of the Lithuanian State), (c) the Shareholders’ Agreement between Amber, LT and the State Property Fund, (d) an Agreement for Guarantee of Obligations between the State Property Fund, LT, Sonera and Telia and (e) a Services Agreement between LT, Sonera and Telia.

III. THE CONCENTRATION

Joint control

11. Telia and Sonera hold 50 % each of the shares in Amber. The Shareholders' Agreement between Telia and Sonera provides that each parent company will appoint three of the six members of Amber's board of directors. It is envisaged that decisions of the board and of the shareholders' meeting will be taken unanimously in so far as this is possible. Decisions on several important issues (such as the final adoption of the budget) require unanimous approval in any event. In the case of deadlock, the matter may be referred to the presidents of Telia and Sonera, neither of whom has a casting vote. It follows that Amber is jointly controlled by Telia and Sonera.
12. Under the Shareholders' Agreement between the State Property Fund, Amber and LT the board of directors of LT will consist of ten members, six of whom will be appointed by Amber and four by the State Property Fund. The board of directors shall be responsible for the strategic direction of LT and the major decisions affecting its financial condition. Among the matters falling within the competence of the board are the approval of the annual business plan and the appointment of senior executives for which a majority of the members of the board is required.
13. Telia and Sonera will therefore, through their joint venture company Amber, jointly control LT.

Full-function entity

14. LT is a fully-fledged telecommunications operator which in 1996 had a turnover of 543.4 million LTS (US\$ 135.9 million). It performs all the functions of an autonomous economic entity. The services provided by LT include local, long distance and international telephony, packet-switched data, leased circuits, value added services, telegraph and telex services. LT has also obtained a GSM licence and a DCS 1800 licence but has not yet started providing mobile telephony services. It does not have any investment, assets, subsidiaries or other operations in the EEA.

IV. COMMUNITY DIMENSION

15. The combined aggregate world-wide turnover of Telia (ECU 5.369 billion) and Sonera (ECU 1.313 billion) exceeds ECU 5 billion. The aggregate Community-wide turnover of each of these companies is more than ECU 250 million. The two undertakings concerned do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The concentration therefore has a Community dimension within the meaning of Article 1 of the Merger Regulation.
16. The notified transaction does not constitute a concentration to which the co-operation procedure provided for in Articles 57 and 58 and Protocol 24 of the EEA Agreement applies.

V. RELEVANT PRODUCT MARKET

Fixed line telephony

17. In previous cases the Commission considered the relevant product markets as being the markets for domestic and international voice and data telecommunications services, with a segmentation between the voice market (in which both private households and business customers participate) and the data market (primarily used by business), and further segmentation into domestic and international markets. As in past decisions, however, the precise product market delimitation in this case can be left open since even on the narrowest possible definition the transaction does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market, the EEA or a substantial part thereof, as it is set out in the competitive assessment under point VII. below.

Mobile telephony

18. In recent decisions the Commission has considered whether mobile telecommunications systems using the GSM standard and systems using the DCS 1800 standard belong to different markets (see cases IV/JV.2 – ENEL/FT/DT of 22 June 1998 and IV/JV.3 – BT/AirTouch/Grupo Acciona/Airtel of 8 July 1998). However, the definition of the relevant product market in this case may be left open since, regardless of which market is considered to be the relevant market, the transaction does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market, the EEA or a substantial part thereof, as it is set out in the competitive assessment under point VII. below.

VI. RELEVANT GEOGRAPHIC MARKET

19. The scope of the relevant geographic market in telecommunications is determined by the extent and coverage of the network and the customers that can economically be reached and whose demands may be met on the one hand and the legal and regulatory system on the other hand. The parties argue that the notified transaction has an impact only on the markets in Lithuania.

Fixed line telephony

20. According to the information provided by the parties, Lithuanian law gives LT the exclusive right to provide public switched telephony services in Lithuania until 1 January 2002. It is therefore reasonable to consider that the relevant geographic market for the provision of domestic and international basic voice and data services in this case is national in scope. For enhanced international services the market is global in scope.

Mobile telephony

21. The geographic scope of the licences granted to LT covers the entire territory of Lithuania. The Commission has however considered in recent decisions that there is an increasing trend towards a European market for mobile telephony service provision (see most recently case IV/JV.4 – Orange/VIAG of 11 August 1998). In

the present case the definition of the relevant geographic market may nevertheless be left open since, on the basis of the assessment set out below, the concentration would not in any event create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market, the EEA or a substantial part thereof.

VII. COMPETITIVE ASSESSMENT

A. Dominance

22. LT operates only in Lithuania which is outside the EEA. The Commission is not therefore competent to make a competitive assessment of the creation or strengthening of a dominant position on the markets in this country.
23. By contrast, such an assessment is possible with regard to enhanced international services. To the extent that LT provides these services at all, its share of the relevant market is minimal. Telia (mainly through its participation in Unisource NV) and Sonera provide such services but even if their market shares were to be added to each other the companies would not be dominant on this market where several other major competitors like Concert and GlobalOne are active.
24. An assessment is also possible with regard to mobile telephony services if the market could be considered as being European in scope. Telia and Sonera are the most important providers of mobile telecommunication services in Sweden and Finland respectively. However, even if their market shares were to be added to each other the companies would not be dominant on this market where a considerable number of other competitors are active. LT (which obtained its licences in December 1997) is in any event not yet active on this market. The parties have also pointed out that in the event that they will succeed in acquiring a controlling interest in UAB Omnitel they would agree to a divestiture of the digital mobile licences which LT has obtained. The impact of the transaction on the European market for mobile telephony services is thus very limited.
25. The concentration will therefore not result in the creation or strengthening of a dominant position on any of the markets referred to above as a result of which effective competition would be significantly impeded in the common market, the EEA or a substantial part thereof.

B. Co-ordination of competitive behaviour

26. Pursuant to Article 2 (4) of the Merger Regulation, to the extent that the creation of a joint venture has as its object or effect the co-ordination of the competitive behaviour of undertakings that remain independent, such co-ordination shall be appraised in accordance with the criteria of Article 85 (1) and (3) of the EC Treaty. In order to establish a restriction of competition in the sense of Article 85 (1) of the 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

27. According to Article 2 (4) (2) of the Merger Regulation, the Commission shall, when making the said appraisal, take into account in particular whether two or more parent companies retain to a significant extent activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market.
28. Since the Commission would not be competent to take any position on competition on the Lithuanian market, only closely related markets within the EU are to be looked at as possible candidate markets. Both Telia and Sonera being active, to a different extent, on the Swedish and Finnish fixed telephony markets, these markets could be considered as candidate markets for co-ordination. Telia (mainly through its participation in Unisource NV and Uniworld NV) and Sonera are also active in the provision of enhanced international services. As to mobile telephony, Telia and Sonera are – depending on the definition of the relevant geographical market chosen – either actual competitors or could at least be potential competitors on markets which could be considered to be neighbouring markets closely related to the Lithuanian market.

2. Assessment under Article 2 (4)

29. There are no indications which would allow the conclusion that the acquisition of joint control in LT has the object of co-ordinating the competitive behaviour of Telia and Sonera on the market concerned or in their respective national markets. It should therefore be examined whether the acquisition of LT might have the effect of co-ordinating the competitive behaviour of Telia and Sonera.

Fixed line telephony

30. Telia and Sonera taken together have a very important share of the fixed telephony markets in Sweden and Finland respectively (substantially more than 60 % on either market). However, the size of the fixed line telecommunications market in Lithuania is very small compared to the markets in both Finland and Sweden. There is therefore no likelihood that the acquisition of control over LT would lead to a co-ordination of the competitive behaviour of the parent companies on the above-mentioned markets. As to enhanced international services, Telia and Sonera only have a limited share of the market and there is no indication that the present transaction would lead to a co-ordination of the competitive behaviour of these companies on that market.

Mobile telephony

31. To the extent that the market for the provision of mobile telephony services should be European in scope, the market shares of LT and its two parent companies would be rather modest and in any event substantially below 10 %. It would therefore not be likely that the acquisition of control over LT by Telia and Sonera would lead to a co-ordination of the competitive behaviour of these companies on that market. If the markets were to be considered as being national in scope, neither Telia nor Sonera would be active on the markets of the other company to a noticeable degree. The size of the telecommunications market in Lithuania is very small compared to the markets in both Finland and Sweden and the possible share in that market of Telia and Sonera (through LT) is even more limited. Therefore, no co-ordination is likely on these markets either. This conclusion is not affected if the acquisition of a share in

UAB Omnitel by Telia and Sonera (see paragraph 3 above) is taken into consideration as well.

32. In the light of the above analysis, there appears to be no likelihood of co-ordination on any candidate 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 any candidate market.

VIII. ANCILLARY RESTRAINTS

33. The notifying parties have identified five restrictions in their agreements which they consider to be directly related and necessary to the implementation of the concentration:

- Section 6.1 of the Shareholders' Agreement between Amber, LT and the State Property Fund contains a non-compete obligation between the shareholders and LT. According to this provision, Amber and its affiliates, including Telia and Sonera, will not directly or indirectly carry on any defined telecommunications business in Lithuania for (i) five years from the date of closing or (ii) for the duration of the agreement and for a period of two years after its termination, whichever is the longer;
- Section 6.3 of the Shareholders' Agreement prohibits Amber from holding a controlling interest in more than one digital mobile operator in Lithuania;
- Section 3.5.1 of the Shares Sale Agreement requires the State to operate LT in the normal course of business during and prior to the close of the transaction;
- Section 9.2 of the Shareholders' Agreement, Section 5.3 of the Shares Sale Agreement and Section 7.2 of the Services Agreement contain confidentiality clauses whereby the parties procure to ensure that employees, agents, advisers and officers of the parties may not disclose any confidential information regarding LT obtained as a result of the transaction unless and until such information enters into the public domain; and
- Section 2.1 of the Services Agreement obliges Telia and Sonera to provide to LT on a non-exclusive basis and for a period of three years after closing certain services deemed necessary for achieving a number of strategic objectives

34. The first three obligations referred to above would, if they constitute restrictions of competition, only have an impact on competition in Lithuania and are therefore outside the competence of the Commission. The Commission considers that the fourth and fifth obligations listed above do not, to the extent they could be found to have an impact on the common market or the EEA, constitute restrictions of competition. Any agreements which may be concluded pursuant to the last clause are however not part of the notification and are therefore not covered by this Decision.

IX. CONCLUSION

35. In the light of the above, the proposed transaction does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.
36. 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 (EEC) No. 4064/89 and Article 57 of the EEA Agreement.

For the Commission,