

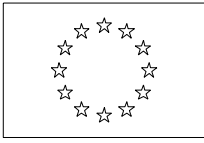
*Case No IV/M.1252 -
AT&T / TCI*

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

Article 6(1)(b) NON-OPPOSITION
Date: 04/12/1998

*Also available in the CELEX database
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04.12.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir,

Subject: Case No 1252-AT&T/TCI

Notification of 3.11.1998 pursuant to Article 4 of Council Regulation No 4064/89

1. On 3.11.1998 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ (« the Merger regulation ») by which AT&T acquires, within the meaning of Article 3 (1) (a), control of the whole of Tele-Communications, Inc. (« TCI »).
2. After examination of the notification the Commission has concluded that the notified operation falls within the scope of application of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market or with the functioning of the EEA agreement.

I THE PARTIES AND THE CONCENTRATION

3. AT&T is a telecommunications common carrier in the United States providing a broad range of US and international voice and data communications services including long-distance and on-line Internet services to and from the United States. In the European Community, AT&T has a group of subsidiary companies in the United Kingdom. In particular, AT&T Communications (UK) Ltd. provides domestic long

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

distance and international voice and data communications to targeted corporate, consumer and wholesale customers in the United Kingdom. In addition, ACC Corp., a subsidiary of AT&T, has a U.K. subsidiary called ACC Telecom that provides switch-based telecommunications services to businesses, residential customers and educational institutions in the U .K.

4. TCI is principally engaged in the operation of cable television networks, mainly in the US market. In the European Community, TCI holds controlling interests in Telewest Communications plc (a UK cable operator which owns and operates 28 cable franchises in the U.K.), Flextech (a U.K. television programming company) and MultiThématiques (a Paris-based television programming company).
5. The notified concentration consists of a merger within the meaning of Article 3 (1) (a) of the Merger Regulation between the respective businesses of AT&T and TCI by way of a stock for stock merger. TCI's shareholders will obtain shares in AT&T in exchange for their shares in TCI. The entirety of the TCI business will be the subject of the concentration, including the controlled subsidiaries forming part of the TCI Group, Liberty Media Group and the TCI Ventures Group. The three groups currently forming part of TCI will be fully merged with and become subsidiaries of AT&T. The notifying parties point out that the Liberty Media Group within AT&T will be operated independently from AT&T.

II COMMUNITY DIMENSION

6. AT&T and TCI have a combined aggregate worldwide turnover in excess of ECU 5,000 million (AT&T: ECU 45,253 million; TCI: ECU 6,675 million). The Community-wide turnover of each AT&T and TCI exceeds 250 million (AT&T: [...]²; TCI: [...]³). The undertakings concerned do not achieve more than two-thirds of Community-wide turnover in any one EC Member State. The concentration therefore has a community dimension.

III COMPATIBILITY WITH THE COMMON MARKET

A. RELEVANT PRODUCT/GEOGRAPHIC MARKET

7. The main economic sectors involved in the concentration are fixed telecommunication services, pay television and cable networks. It is not necessary to arrive at an exact product/geographic market definition for the purpose of assessment, since in the present case the concentration would not raise competition problems, whatever the market definition chosen.

B. ASSESSMENT

8. With the merger, AT&T and TCI wish to unite their respective current telecommunications and television services offer in the US market by way of new integrated packages combining their current services. The combination of the current

² Deleted; business secret

³ Deleted; business secret

respectively owned long distance telecommunications networks and broadband cable television networks in the United States would create opportunities for the parties to upgrade these networks which will be available for the provision of new enhanced telecommunications and multi-media services (e.g. cable telephony, fast Internet access, digital television programming, interactive services such as home banking and home shopping, etc....).

9. The notifying parties argue that the merger is focused, almost entirely, on the United States and that its effects on competition in the European Community will be marginal.
10. An internet service provider (ISP) submitted that the notified transaction would enable the merged entity to leverage its position, as the owner of the upgraded CATV infrastructure in substantial parts of the UK, to create a dominant position in the alleged market for broadband Internet access and services. In particular, TCI controls Telewest, which is a provider of cable services (telephony and television) in the UK. The cable network franchises owned and operated by Telewest account for 25.7 percent of the U.K. homes in areas which have been franchised for the operation of cable networks.
11. However, even if there was a separate broadband market⁴, there is no overlap between AT&T and Telewest in any such market, as AT&T does not operate a broadband network in the United Kingdom. A vertical relationship could exist in that Telewest could connect its broadband network to the narrowband long distance network operated in the United Kingdom by AT&T Communications Ltd. In addition, ACC Long Distance UK Ltd. ("ACC UK") which is under the control of AT&T provides switch-based telecommunications services to businesses, residential customers and educational institutions in UK. However, AT&T UK's share of UK telecommunications services is not significant⁵ and there are many competitors providing these telecommunication services in UK such as BT, Mercury, Worldcom or Global One. The merger with AT&T would not, therefore, significantly improve Telewest's position in any such broadband market.
12. The ISP also alleged that Telewest and BT will have a collective dominant position on a future broadband market in the British local cable markets. The argument is that the proposed merger between AT&T and TCI and the link between AT&T and BT⁶, taken together, will result in all the future means of broadband internet access in the UK being controlled by two companies, i.e. AT&T/TCI (broadband cable) and BT (dial-up telephone and wireless, through the BiB consortium). However, it has not been justified how the present merger of TCI with AT&T would have as its result

⁴ While broadband has advantages over narrowband in terms of speed, it has the disadvantage of being more costly. It has been argued that consumers make a trade-off between speed and cost.

⁵ For instance, [less than 5%] in international residential retail basic voice services; [less than 5%] in international basic voice services to business customers; [less than 5%] in international wholesale carrier services.

⁶ AT&T proposes to form a joint venture with British Telecommunications plc for the provision of global telecommunications services to multinational corporate customers. The AT&T/BT joint venture has been notified to the European Commission under Council Regulation (EEC No. 4064/89) as amended.

this alleged collective dominant position. Indeed, there are other cable operators in the UK market with significant market shares, in terms of customers actually connected to the cable television network, such as CWC (31.8%), NTL (14.9%), Comcast (7.8%) or Comtel (6.8%). In addition to that, the possible link in the UK between AT&T/TCI and BT, if relevant at all, is not the result of this notified operation and cannot be assessed in this decision.

13. The ISP expressed, in a very vague manner, similar concerns in the Netherlands to those identified in the UK. In this connection the ISP refers to @Home Benelux, a wholly owned subsidiary of Edon, Palet Kabelcom and @Home, which will provide enhanced Internet access services to residential customers, mainly located in the Netherlands. @Home is controlled by TCI. However, @Home Benelux does not have at present any turnover. There is no horizontal overlap or vertical relationship between AT&T and TCI in the Netherlands in telecommunications or cable TV markets. Therefore, the notified operation cannot create or strengthen a dominant position in the Dutch market.
14. With regard to the current operation, the Commission has reached the conclusion, that there is only one vertical affected market in the Community. Telewest's cable networks are relevant to the extent that they can be used to offer retail and wholesale fixed telecommunications services. However, in these fixed telecommunication services markets, TCI/Telewest and/or AT&T⁷ market shares are not significant at UK level, and in any event are far below the threshold of 25 percent. Other competitors such as BT or Mercury have much stronger market positions in the relevant UK markets. Significant competition also comes from other competitors such as WorldCom, Global One or other cable operators. Therefore, this vertical affected market cannot give rise to any competition concern.
15. The proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

IV CONCLUSION

16. For the above reasons, the Commission decides not to oppose the notified concentration 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.

For the Commission,

⁷ Through AT&T Communications (UK)Ltd., and ACC Telecom.