

***Case No COMP/M.1510 -
BT / AT&T / JAPAN
TELECOM***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/07/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19/07/1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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/M. 1510 – BT/AT&T/ Japan Telecom

Notification of 17.06.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 17.06.1999 the Commission received a notification of a transaction whereby British Telecom plc (“BT”) and AT&T Corp (“AT&T”) would acquire joint control of Japan Telecom Co, Ltd. (“Japan Telecom”).
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89¹ and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. BT is a UK company whose principal activity is the supply of telecommunications services and equipment. Its main services and products are local and long-distance telephony in the UK, provision of local exchange lines to homes and businesses, international telephone calls from and to the UK, and supply of telecommunications equipment for customers’ premises.
4. AT&T is a US corporation 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 US. AT&T and BT have agreed to establish a joint venture named Global Venture to which they would transfer their global network facilities and international

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

gateway to gateway assets and operations. The activities of the joint venture are global telecommunications services to multinational corporations and international carrier services. The Commission has approved the Global Venture agreement under the Merger Regulation.²

5. Japan Telecom is a Japanese telecommunications operator providing a broad range of international and domestic voice and data communications services, including leased-line, digital data transmission services, mobile communications, Internet and cable TV.
6. The notified transaction is an acquisition of joint control through the purchase of a minority shareholding and additional veto rights. On 25 April 1999, BT and AT&T signed a definitive agreement to purchase a combined 30% stake in Japan Telecom. The parties will thus hold equal voting interests of 15% in Japan Telecom. In addition BT and AT&T will each be able to exercise veto rights covering strategic decisions, such as the adoption of the company's five-year business plan, acquisitions of assets and investments.

II. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion³ (BT: [...]; AT&T EUR 45,253m; Japan Telecom EUR 2,828m). Two of them have a Community-wide turnover in excess of EUR 250 million (BT EUR [...]; AT&T EUR 1,745m; Japan Telecom EUR 6.6m), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

III. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product and geographic markets

8. The parties, along the line taken by the Commission in BT/AT&T⁴, consider that there are three relevant markets which the transaction may concern:
 - global telecommunications services,
 - international voice telephony on the UK/Japan route,
 - international carrier services.

Global telecommunications services

9. In the BT/AT&T decision, the Commission described the market for the provision of global telecommunications services as the market for the supply of packages of customised enhanced and value-added global corporate telecommunications services. Although this market encompasses a broad and evolving range of different services, which may be priced individually, suppliers of such packages of customised global corporate telecommunications services tend to offer a global price for the package of

² Commission Decision of 30 March 1999, Case No IV/JV.15 ("BT/AT&T")

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

⁴ IV/JV.15, BT/AT&T

services supplied. Accordingly, although the Commission left the exact definition of this product market open, it suggested that this market could constitute one single relevant product market that should not be broken down into narrower product markets for isolated services included in the range of global telecommunications services.

10. For the purpose of this case, the exact definition of the product market could be left open as it would not affect the conclusions of the Commission's analysis.
11. The geographic market for these services is worldwide, as the customers are intercontinental businesses and the relevant services are by nature global.

International voice telephony between the UK and Japan

12. BT, AT&T and Japan Telecom are providers of international voice telephony services and own interests in trans-Pacific cables.
13. In BT/AT&T, the Commission concluded that the market for the provision of international voice telephony services (namely retail and wholesale international direct dialled services ("IDD") and international private leased circuits ("IPLCs")) could be considered a relevant product market, for which both share of capacity owned and volumes of bilateral traffic constituted relevant indicators of market power.
14. In these decisions, the Commission concluded that from the demand point of view the relevant geographical market had to be defined with reference to country pairs, as different country pairs cannot be considered as valid substitutes. In addition, the Commission identified two distinct geographical markets for each route, each consisting of the originating bilateral traffic from the countries concerned.
15. In the present case the only significant traffic originated by the parties in the Community is from the UK and the only route upon which all parties are active is the UK-Japan route. Therefore, for the purpose of assessing this case the UK-Japan route will be considered to be the relevant geographical market.

International carrier services

16. BT, AT&T and Japan Telecom provide international carrier services, consisting of both direct transmission services (i.e. wholesale IDD and IPLCs) and indirect transmission services (e.g. transit, reorigination etc.). The parties submit that all these services constitute a single market, as switched transit and hubbing represent valid alternatives to the direct routing of traffic between a country pair under the bilateral correspondent system. They also consider that the competitive assessment of the notified transaction should be made on a country pair basis.
17. In the BT/AT&T decision, the Commission concluded that, in addition to direct transmission services which are analysed on a route-by-route basis in the framework of the markets for international voice telephony services, the increasing importance of switched or dedicated transit, re-origination, least-cost routing and hubbing services may also give rise to a separate product market for these services that can be analysed without reference to a distinct origin or destination pair.
18. Accordingly, the Commission identified a relevant product market for the provision of international carrier services, which it found to be at least European wide and possibly global. In the same decision, the Commission left the exact definition of the product

market open. It also left open whether this market should be looked at in terms of country pairs or on a more global basis.

19. In the light of the above, and in line with the approach taken in the previous decisions, the market for the provision of international carrier services is considered to be the relevant product market in this case. In any event, as it does not affect the conclusions of the Commission's analysis, the exact definition of this market and its geographic scope can be left open in the present case.

B. Competitive assessment

Dominance

Global telecommunications services

20. BT and AT&T both offer global telecommunications services, which are also to be offered by their Global Venture. Japan Telecom currently does not provide such services, but it is anticipated that it will distribute the Global Venture's products in Japan.
21. In BT/AT&T, the Commission concluded that the Global Venture would not have a dominant position on the market for global telecommunications services. This was due, *inter alia*, to the presence of substantial competitors like Sprint/Global One, MCI/WorldCom, Equant and C&W, to the potential additional competition from local telecommunications operators or IT/computing companies and to the fact that multinational companies are sophisticated and powerful customers.
22. There is no indication that these findings would be altered as a result of the present operation. It is true that having a presence in Japan appears to be important for the provision of global telecommunications services, as, prior to the recession in the Asia/Pacific region, around 30% of the world's top 1000 multinational customers were headquartered in Japan, and most multinational customers have branch offices or affiliates or joint ventures in Japan. The parties consider that [20;25]% of multinational customers have requirements in Japan.
23. However, other substantial competitors (such as Equant, GlobalOne, MCI/WorldCom and C&W) are already active in Japan. Secondly, Japan Telecom currently does not operate on the market for global telecommunications services, and it has a relatively modest presence in the Japanese domestic telecommunications sector (it accounts for less than 15% of sales of domestic long distance services) and in international telecommunications services from Japan. And finally, the provisions of Japanese telecommunications appear to have been substantially liberalised in recent years, which should offer additional options of entry into this country.
24. In the light of the above, the proposed concentration will not lead to the creation or the strengthening of a dominant position on the market for the global telecommunications services as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

International voice telephony services on the UK/Japan route

25. AT&T, BT and Japan Telecom are active in the market for international voice telephony services on the United Kingdom/Japan route. In particular, Japan Telecom

and BT (through its subsidiary BTCS) engage in international voice telephony services from Japan; and BT and AT&T send traffic from the United Kingdom to Japan.

26. In the UK, BT and AT&T would account for approximately between [25-35]% of retail IDD services from the UK to Japan, for between [0-10]% of wholesale switched services from the UK to Japan, and BT's share of IPLC capacity emanating from the UK is between [15-25]%. In addition, Japan Telecom does not operate from the UK, and AT&T is withdrawing from the UK market.
27. There would appear to be no possibility for BT or AT&T on the one hand, and Japan Telecom on the other hand, to reach self correspondence, given the substantial difference between the IDD traffic originated by BT or AT&T in the UK and the IDD traffic originated by Japan Telecom and BTCS in Japan.
28. In addition to the bilateral traffic carried, the shares of capacity owned also constitute relevant indicators of market power. Since traffic on the UK/Japan route is primarily transmitted via several trans-Pacific cables, it is therefore also necessary to examine whether the parties will own an important share of such capacity. However, the parties submit that their combined share of trans-Pacific capacity will be between [0-10]% by year-end 1999 and, despite investment in new cables, will be between [0-10]% by 2001.
29. Finally, it is necessary to examine whether any of the parties would be in a position to restrict or control termination access.
30. In Japan, there is no indication that Japan Telecom or BTCS could be in a position to restrict or control access, as the main domestic network is operated by NTT.
31. In the UK, the Commission concluded in the BT/AT&T decision that, although BT still enjoys a very strong position in the domestic markets, the UK regulatory regime would not enable BT to use this strong position to underpin the Global Venture's position on the UK/US route. Similar considerations also apply on the UK/Japan route. Given that Japan Telecom is not active in the UK, there is no indication that the operation would change that conclusion.
32. In the light of the above, the proposed concentration will not lead to the creation or the strengthening of a dominant position on the UK market for the provision of international voice telephony services on the UK/Japan route as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

International carrier services

33. BT, AT&T and Japan Telecom offer international carrier services.
34. On a global basis, the parties' combined share of all worldwide outgoing IDD traffic was between [10-20]% in 1997, and their combined share of capacity of major worldwide undersea cables that are projected to be in operation at year end 2000 is between [0-10]%.
35. Alternatively, an analysis on a route-by-route basis shows that Japan Telecom is not active in providing carrier services other than IDD and IPLCs originating from Japan. In that context, the only route where the operation would lead to an overlap and upon

which the parties may have a market share in excess of 15% is the UK/Japan route. This route has been examined in the context of international voice telephony services, and the operation was not found to result in the creation or the strengthening of a dominant position.

36. Consequently, the proposed concentration will not lead to the creation or the strengthening of a dominant position on the market for international carrier services as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

Co-ordination of competitive behaviour

37. In BT/AT&T the Commission found that certain co-ordination effects existed within the terms of Article 2(4) of the Merger Regulation. AT&T offered remedies to solve the competition problems that these co-ordination effects created. This operation does not raise any new co-ordination effects within the meaning of Article 2(4) which had not been identified at the time of the BT/AT&T decision nor does it change the nature of the co-ordination effects identified in the previous decision. This is because this operation is the creation of a joint venture in Japan, and the co-ordination effects identified in BT/AT&T were on markets in the UK. Even if those markets were to be considered to be neighbouring to those of the joint venture, any additional co-ordination effect in the UK would be insignificant.

V. CONCLUSION

33. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,