

***Case No COMP/M.1679 -  
FRANCE TELECOM /  
STI / SRD***

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: 21/10/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.10.1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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. 1679 – France Telecom/STI/SRD**

Notification of 20/09/1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 20/09/1999 the Commission received a notification of a proposed concentration by which the undertaking France Telecom Mobiles International Belgium (“FTMI”), a subsidiary of France Telecom S.A. (“France Telecom”), acquires within the meaning of Article 3 (1) (b) of the Merger Regulation joint control of Sonae Redes de Dados S.A. (“SRD”), currently wholly-owned by Sonae Tecnologia de Informação S.A. (“STI”).

**I. THE PARTIES AND THE OPERATION**

2. France Telecom is a telecommunications operator, active primarily in France, and engaged in practically all aspects of voice, image and data transmission including mobile and voice telephony. FTMI Belgium is a holding company of France Telecom and as such, holds certain shares in entities located outside France acting in the wireless or wireline telecommunications business.
3. STI is a holding company wholly-owned by the Sonae group, a conglomerate company mainly active in the wood panel industry, tourism, transports, media, food and non food retailing, real estate and telecommunications. The Sonae group is ultimately owned by Mr. Belmiro de Azevedo and his family. STI’s activity, through its subsidiaries, is the development of information technology-related and telecommunications businesses. STI holds stakes of capital in companies such as Optimus, the third mobile phone operator in Portugal, and SRD.
4. SRD is a telecommunication company that is currently providing data, Internet and voice telephony services to closed-user groups.

5. The operation will involve the acquisition within the meaning of Article 3(1)(b) of the Merger Regulation of joint control over SRD.

### **Joint control**

6. Under the Share Subscription Agreement and the Shareholders' Agreement, FTMI Belgium and STI will respectively own [...] of SRD's shares. SRD's Board of directors will be composed of [...]. According to the Shareholder's Agreement, strategic decisions such as the approval of the budget, business plan and strategic plan require [...]. This means that neither FTMI nor STI can take decisions unilaterally. Alternatively, either party has veto power over the most important strategic decisions of the joint venture. Consequently, both parent companies will be able to exercise decisive influence over SRD.

### **Autonomous full function entity operating on a lasting basis**

7. SRD is an existing company that already offers some telecommunications services in Portugal, namely data and Internet services and voice telephone services to closed users groups. SRD is intended to become a nation-wide telecommunications operator in the Portuguese wire-line telecommunications market providing a full range of services to both business and residential customers. In that regard, on 16 August 1999, SRD was awarded a licence to provide voice telephony services after full liberalization of the Portuguese market by 1 January 2000. SRD has management dedicated to its day-to-day operations, and sufficient resources including finance and staff in order to conduct on a lasting basis its business activities. The joint venture, therefore, carries out all the functions normally carried out by companies operating in this field.

## **II. COMMUNITY DIMENSION**

8. France Telecom and the Sonae Group have a combined aggregate world-wide turnover in excess of EURO 5000 million (France Telecom: 24 648 million, and the Sonae Group 3 090 million). Each of them has a Community-wide turnover in excess of EURO 250 million (France Telecom: [...], and the Sonae Group:[...]). The parties do not achieve more than two-thirds of their Community-wide turnover in the same Member State. The notified operation therefore has a Community dimension.

## **III. COMPATIBILITY WITH THE COMMON MARKET**

### *Relevant product and geographical markets*

9. The parties identified a number of sectors where the transaction might have a certain impact on competition. These are :

i) *Local loop telephone services.* This covers both the market for provision of local telephone networks (provision of infrastructure) and the market for related services allowing final users access to the telephone network when they want to originate calls and for telephone companies to terminate calls to their intended recipients. The parties consider that the geographical scope of these two markets is national.

ii) *Business data communications.* From the demand point of view this market can be described as services provided by one supplier who can meet voice and data handling requirements between different operational business locations that may be situated in more than one country. SRD provides this service on a EEA-wide and on a world-wide

basis. According to the parties, the geographic dimension of this market is at least EEA-wide.

*iii) Value-added services.* The Commission has in past decisions<sup>1</sup> noted that a separate product market for so-called value-added services could be envisaged. This market is comprised of mostly customised combinations of a range of existing telecommunications services, mainly liberalised voice services including voice communication between members of a closed group of users, high speed data services and outsourced telecommunications solutions specially designed for individual customer requirements. The parties consider that the relevant geographic market for these services is world-wide or at least EEA-wide. In any event, it is not necessary to define precisely the relevant geographic market in the present case as the operation does not lead to the creation or the strengthening of a dominant position, even on a national basis.

*iv) Internet services.* This sector mainly includes dial up and dedicated access to Internet service providers (ISPs)<sup>2</sup>. According to the parties, these markets are national in scope.

10. In the present case it is unnecessary to define the relevant product and geographical markets more precisely as the transaction does not raise any competition problems even on the narrowest market definition.

#### *Competitive assessment*

11. As noted above, the Portuguese market for telecommunications services is not yet fully-liberalised<sup>3</sup>. SRD was recently awarded a licence to provide basic fixed voice telephony services after full liberalization of the Portuguese market but as of now it is not able to do so. SRD's operations are currently very limited. As a new entrant on the Portuguese telephony sector, SRD is facing competition from well-established companies, such as the incumbent operator Portugal Telecom. Furthermore, the overlaps of the parent's activities in the different markets concerned are negligible.
12. As mentioned above, the market for "local loop telephone services" covers both provision of infrastructure (provision of local telephone networks) and the market for call origination and termination. On the market for provision of local telephone networks in Portugal, it has to be noted that neither SRD nor France Telecom and the Sonae group have local loop infrastructure in Portugal. As far as the market for origination and termination of calls is concerned, the parties estimate that SRD's market share amounts to [ $<5\%$ ]. France Telecom holds a minority interest giving it joint control, together with Deutsche Telecom and Sprint, over Global One Portugal. Since the Portuguese market is

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<sup>1</sup> See for example case No IV/M 1553 – France Telecom/Editel/Lince (decision of 30/07/1999).

<sup>2</sup> Access to the Internet is usually obtained by subscribing for access services provided by an Internet Services Provider ("ISP"). A physical connection is required between a point of access, or node, on the ISP's network, and the terminal or terminals or point of connection of the final user's network. The provision of this connection is usually made over the public switched telephone network (known as "dial up access") or, for larger user clients with a need for more continuous access, through a permanent dedicated connection over a private line (or its virtual equivalent), known as 'dedicated access'.

<sup>3</sup> The Commission's decision 97/310 of February 1997 (OJ L 133 of 24/5/1997, p. 19) provided that Portugal could delay liberalisation of voice telephony and the provision of public networks (until 1 January 2000).

not yet fully-liberalized, the activities of Global One Portugal are very limited. The parties estimate its market share on the call origination/termination well below [<5%] in this country. The Sonae group has no controlling shareholdings or interests in telecommunications companies active on this market, other than those in SRD. Consequently, the operation does not give rise to any competitive concern on that market. Finally, given that SRD is only active in Portugal where the joint venture does not currently provide local telephone networks and has a very low market share on the market for call origination and termination, the operation does not lead to the removal of a potential competitor in France and, thus, does not strengthen the position of France Telecom in this country.

13. As regard the market for business data communications, SRD's market share is well below [<5%] in the EEA. France Telecom's jointly controlled subsidiary Global One Portugal offers data transmission services to multinational companies, but its presence, with a market share below [<5%] in the EEA is not very significant. The Sonae group is not active on this market, other than through SRD. On a national basis, the combined market share of SRD and Global One Portugal is [<5%].
14. As regards value-added services, SRD's current activities are virtually inexistent with a share of less than [<5%] in the EEA. France Telecom's involvement in this market is through Global One which, according to the parties, has a market share of [<5%] on a EEA-wide basis. On a national basis, the combined market share of SRD and Global One Portugal is [<10%].
15. Concerning Internet services, the only market on which the parties' activities exceed 15% in Portugal is the dedicated access to ISPs. On that market, SRD reaches [15-25%] market shares due to its recent acquisition of the Internet provider IP Global. France Telecom, through its jointly controlled subsidiary Global One Portugal, has a market share of [5-15%]. The Sonae group is not active in this market. It has to be noted that the dedicated access market is rapidly growing in Portugal (around +30% between 1997 and 1998 on the basis of the number of lines). Furthermore, the lion's share of this market ([40-60%]) is currently held by the incumbent operator Telepac, owned by Portugal Telecom. Consequently, the operation does not lead to the creation of a dominant position on this market.

#### **IV. ANCILLARY RESTRAINTS**

16. The notifying parties request the Commission to consider the following provisions in the Shareholders' Agreement as ancillary to the concentration:
  17. (A) Non competition in Portugal, France and Spain
18. The Shareholders' Agreement provides that STI, FTMI, Efanor<sup>4</sup> and France Telecom will not compete: *i*) in Portugal, in any telecommunications business that is in competition with those carried out by SRD, *ii*) in France, in any telecommunications business that is in competition with those carried out by France Telecom. *iii*) in Spain, in any telecommunications business that is in competition with those carried out by Lince

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<sup>4</sup> Efanor Investimentos, SGPS, is the main holding company of the Sonae group.

Telecommunications ("Lince"), provided that an agreement is reached between SRD and Lince.

19. The obligation not to compete with SRD in Portugal expresses the commitment of the parties to the joint-venture and is necessary to protect the parent's investment in SRD from free riding. This non competition clause can thus be considered necessary for the implementation of the concentration.
20. On the contrary, the non competition clauses relating to France Telecom and Lince's activities in France and Spain are not beneficial to the Joint venture. These clauses are not necessary for the functioning of SRD and can not be considered as ancillary to the concentration.

(B) Supplies from the parent companies

21. The Shareholders' Agreement states that the parties have agreed to give the joint venture, while the Shareholders' Agreement is in effect, access to the supply of services and goods in conditions at least equal to those given to their Affiliates or those which their Affiliates give other companies, which trade the same range of products or services. Any related party transaction will be at arm's length, and it is expressly provided that SRD will not buy products and services from related companies when the terms and conditions are less favourable than those offered by any other supplier in the market for the same quality level. In particular, the Shareholders' Agreement states that France Telecom will provide various technical services upon request by SRD on an as-needed basis and at arm's length. This assistance will be provided through a Technical Services Agreement, to be entered into by SRD and an Affiliate of France Telecom S.A., named France Cables et Radio ("FCR"). The Technical Services Agreement will govern the services to be rendered by FCR to SRD on a case-by-case basis. The Shareholders' Agreements also states that, in principle, France Telecom will be the exclusive telecommunications partner of SRD. The parties stressed that the "exclusivity" given to France Telecom is not absolute, but is rather a "principle" that is necessary to ensure that SRD will be able to resort to the services provided on terms equal to those granted to other customers. According to the parties, if France Telecom is not in a position to provide the services SRD requires, or if France Telecom's offer is not attractive to SRD, SRD is able to obtain technical services elsewhere.
22. The parties consider that the main purpose of these provisions is to ensure that SRD maintains supply links with the parents under market conditions and benefits from the parents' advice and expertise to permit its rapid and effective entry into the Portuguese market.
23. From a general point of view, the Commission considers that these provisions, to the extent they entail a restriction of competition and are aimed to protect the joint venture, can be considered as ancillary to the concentration as they constitute an element inherent to the successful functioning of SRD. However, the preferred supply status granted, in principle, to France Telecom is not directly related and necessary for the functioning of the joint venture and limits the freedom of SRD to source freely from alternative suppliers. Thus, this preferred supply status cannot be considered as ancillary to the concentration.

## V. CONCLUSION

24. In view of the above the Commission 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, and Article 57 of the EEA Agreement.

For the Commission,