

***Case No COMP/M.1865 -
FRANCE TELECOM /
GLOBAL ONE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/03/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.03.2000

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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject: Case No COMP/M. 1865 - France Télécom / Global One

Notification of 28/02/2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 28 February 2000, France Télécom notified its intention to acquire sole control over Global One.

I. THE PARTIES

2. France Télécom is a telecommunications operator that provides a wide range of telecommunications services to residential, professional and very large business users, primarily in France. FT's principal business activities are the provision of public fixed-line voice telephony services (including through standard and ISDN lines), leased lines and data transmission services, mobile telecommunications services, telecommunications equipment sales and rentals, Internet services, cable television and broadcasting services and information services.
3. Global One offers integrated voice and data services primarily to multinational customers, as well as carrier services and traveller services on a world-wide and regional basis. Global One was a joint venture controlled by France Télécom, Deutsche Telekom and Sprint Corporation (see the Commission's *Atlas* and *GlobalOne* decisions of 17 July 1996, OJ L 239 of 19.9.96 pp 23 and 57). On 21 January 2000 France Télécom, Deutsche Telekom and Sprint entered into an agreement whereby Sprint agreed to sell and France Télécom and Deutsche Telekom agreed to purchase in equal shares, all of Sprint's interests in Global One.

II. THE OPERATION

4. On 26 January 2000, France Télécom and Deutsche Telekom, and affiliates of those companies, entered into a Transfer Agreement, whereby Deutsche Telekom agrees to sell, and France Télécom agrees to purchase, all of Deutsche Telekom 's interests in Global One.

III. CONCENTRATION

5. The proposed transaction consists in a change from joint to sole control of Global One. Indeed, France Télécom will hold the entirety of the shares in Global One's capital.

IV. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion¹. Each of France Télécom and Global One have a Community-wide turnover in excess of EUR 250 million. Global One does not achieve more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

V. PROCEDURE

7. France Télécom has requested a derogation to the standstill obligation under Article 7 of the merger regulation. This derogation would apply only to the representation of Deutsche Telekom at various levels of management but not to the actual transaction. France Télécom argues that urgent decisions about the restructuration of Global One (nomination of key personnel, business development, etc.) need to be taken urgently and that the continued presence of Deutsche Telekom would hinder the taking of such decisions. While it is true that the proposed concentration does not raise any competition issue (see the assessment below), the Commission considers that this request is not acceptable. France Télécom has not shown to what extent its situation is different from the situation of any party who has acquired a new business and wants to have control over it as soon as practicable. In addition, it is hard to see what difference a time period of three to four weeks would make to the restructuration of Global One.

VI. COMPETITIVE ASSESSMENT

8. There are marginal overlaps between France Télécom and Global One activities. France Télécom is already the distributor of Global One services in France. It has some activities in other countries and have started to build a pan European network but these activities are focussed on local national telecommunication services and in any event have limited market shares. Hence, the proposed change from joint control to sole control over Global One does not alter significantly the market position of either France Télécom or Global One on any of the markets on which they are active.

¹ 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.

9. Global One is active in three areas : (i) corporate telecommunications services both globally and regionally, (ii) traveller services and (iii) carrier services.
10. As to corporate telecommunication services, France Télécom was present in this sector either as a distributor of Global One or, marginally, as a supplier of basic telecommunication services to customers. Global One offers international services. If a market definition based on the offering of global telecommunication services was retained, according to the BT/AT&T decision of 30 March 1999, Global One would have a market share in the [10 to 20%] range, France Télécom adding only a few percentage points. If a market definition including all telecommunication services offered to corporate customers was retained, the notifying party has estimated the combined market share at less than [2-5%].
11. As to traveller services (including prepaid, post-paid and Visaphone services), the notifying party argue that Global One's market position is consistently below [2-5%] in any EEA country. The proposed concentration will therefore not lead to any change in market power on this market.
12. As to carrier services, France Télécom is only active on bilateral international voice telephony routes. Although France Télécom has a significant amount of traffic on the direct routes between North America and France, Global One never generates more than [2-5%] of the total voice minutes transited over transatlantic routes. The proposed concentration will therefore not lead to any change in market power on this market.

VII. ANCILLARY RESTRAINTS

13. France Télécom has asked the Commission to consider a transition plan signed with Deutsche Telekom as ancillary to the notified transaction to the extent it would be considered to be restrictive of competition. In particular it has drawn the Commission's attention to the following provisions.

The relationship with customers and continuity of supply

14. The Transition Plan includes provisions on cooperation in the notification and migration of customers. Such provisions do not constitute restrictions of competition.
15. The parties have agreed that for a period of a maximum of 2 years, Global One will continue to provide services and grant marketing, pre-and post-sales support to customers or customer contacts of Deutsche Telekom, on the same terms. Such a provision will enable Global One to maintain the revenue flows generated by the wholesaling of its services to Deutsche Telekom who resell them to its customers. To the extent that such provisions enable Global One to maintain the related revenues for a limited time period they can be considered directly related and necessary to the notified transaction.

Transitory non-competition obligations

16. The Transition Plan includes transitional non-competition obligations limited to Global One products and services and for a period of one year. During that period Deutsche Telekom cannot offer products and services to customers with whom France Télécom or Global One has an identified contract or opportunity but only and insofar as those products and/or services compete with products or services subject to the contract or

opportunity. The same obligation applies to France Télécom and Global One. The Transition Plan also provides that if Deutsche Telekom enters into an international telecom alliance, it remains subject to the non-competition clause. However, the new alliance is not subject to the non-competition clause provided Deutsche Telekom does not control the alliance directly or indirectly.

17. The above-described non-competition obligations imposed on Deutsche Telekom are necessary to protect the full value of the assets transferred to France Télécom and therefore to the extent they would be restrictive of competition are ancillary to the notified transaction. The non-compete obligations imposed on France Télécom and Global One protect the interests of Deutsche Telekom and in that way are not directly related to the notified transaction. To the extent they would be considered as restrictive of competition they would not be ancillary to the notified transaction.

Staffing

18. The Transition Plan also provides that for one year following the closing dates, Deutsche Telekom will be prohibited from soliciting any employees of Global One and Global One will be prohibited from soliciting any employees of Deutsche Telekom. These provisions do not apply where those employees themselves respond to a bona fide public job advertisement or otherwise seek out employment with the other party on their own initiative.
19. The non solicitation provision imposed on Deutsche Telekom is necessary to protect the full value of the assets transferred to France Télécom and therefore to the extent they would be restrictive of competition are ancillary to the notified transaction. Conversely, the non solicitation provision imposed on France Télécom protects the interests of Deutsche Telekom and in that way cannot be considered to be directly related to the notified transaction. To the extent it would be considered as restrictive of competition this non solicitation provision would not be ancillary to the notified transaction.

VIII. CONCLUSION

20. 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,
(Signed : Mario MONTI
Member of the Commission)