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Case No COMP/M.2130 - BELGACOM / TELEDANMARK / T-MOBILE INTERNATIONAL / BEN NEDERLAND HOLDING

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 25/09/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 COMP/M.2130 – BELGACOM/TELE DANMARK/T-MOBILE INTERNATIONAL-BEN NEDERLAND HOLDING
Notification of 23.08.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 23.08.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ("the Merger Regulation") by which the undertakings Belgacom N.V./S.A. ("Belgacom"), Tele Danmark A/S ("Tele Danmark") and T-Mobile International AG ("T-Mobile International"), a 100% subsidiary of Deutsche Telekom AG, acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the Dutch undertaking Ben Nederland Holding B.V. ("Ben"). Ben has been awarded one of the five third generation (3G) mobile licences in the Netherlands and it will build and operate a UMTS[1] network in the Netherlands.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 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. Belgacom is the principal provider of domestic and international telecommunications services in Belgium. At present the Belgian state owns 50% + 1 share of Belgacom. The

1 Universal Mobile Telecommunications System

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remainder of the shares in Belgacom are held by ADSB telecommunications consortium (50% - 1 share), an international consortium made up of SBC (35%), Singapore Telecom (27%), Tele Danmark (33%) and a group of investors from the financial sector.

4. Tele Danmark is the principal provider of domestic and international telecommunications services in Denmark.

5. T-Mobile International is a 100% subsidiary of Deutsche Telekom AG (DT). It is primarily active in mobile telecommunications and acts as a holding company for DT's mobile telecommunications companies, including DeTeMobil, One2One and MaxMobil.

6. Presently, Ben is a joint venture between Belgacom (70.59%) and Tele Danmark (29.41 %) offering mobile telecommunications services on the Dutch market.

II. CONCENTRATION

Joint control

7. As a result of the notified operation Ben will become a joint venture jointly controlled by Belgacom, Tele Danmark and T-Mobile International. Belgacom and Tele Danmark will have a stake of together […]% and T-Mobile International will have a stake of […]%. The shareholder's rights of Belgacom and Tele Danmark must be exercised jointly for the purpose of the exercise of voting rights under the Shareholders Agreement. Belgacom/Tele Danmark are entitled to jointly designate 3 directors and T-Mobile International to designate 2 directors to the supervisory board. The management board will consist of one managing director appointed by T-Mobile International and one managing director appointed by Belgacom/Tele Danmark.

8. […].

9. […].

Full function joint venture

10. The joint venture will be a full function joint venture within the meaning of article 3(2) of the Merger Regulation performing all the functions of an autonomous economic entity on a lasting basis.

III COMMUNITY DIMENSION

11. The combined aggregate world-wide turnover of the undertakings concerned exceeds EURO 5 000 million (EURO […] million for Belgacom, EURO […] million for Tele Danmark, EURO […] million for Deutsche Telekom and EURO […] million for Ben). Belgacom, Tele Danmark and Deutsche Telekom each have a Community–wide turnover in excess of EURO 250 million (EURO […] million for Belgacom, EURO […] million for Tele Danmark and EURO […] million for Deutsche Telekom). Belgacom, Tele Danmark and Deutsche Telekom do not achieve more than two thirds of their aggregate Community–wide turnover within one and the same Member State. The notified operation has therefore a Community dimension in accordance with Article 1(2) of the Merger Regulation, but does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant markets

12. UMTS is a recently developed technological standard for mobile telephony services, which enables a whole range of improvements over previous GSM-technology-based standards in terms of multimedia applications and global mobility and coverage, all of which constitute the so called "third generation" of mobile telephony services. Third generation mobile networks should be capable of offering services such as high speed data transmission, video telephony and teleconferencing, high speed Internet access and electronic mailing, interactive user services such as online banking or shopping as well as entertainment such as audio and video on demand and video games.

13. The parties submit that – in line with previous Commission decisions[2] concerning mobile telecommunication services - the relevant market to be considered is the market for mobile telephony services and that this market is national in scope. In COMP/M.1954 – ACS SONERA VIVENDI XFERA and in COMP/M.2099 – Hutchison/NTT DoCoMo/KPN Mobile – both creation of joint ventures that had been awarded a 3G license – the Commission did not define a product or geographic market with regard to UMTS mobile telephony.

14. If UMTS mobile telephony were considered to constitute a separate market, there would be four other licensees active in this market and able to develop and offer the same services as Ben. If mobile telephony as a whole were considered to be the relevant market, the proposed transaction would not lead to the creation or strengthening of a dominant position on the Dutch market either. Given that in the present case, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area, it is not necessary to further delineate the relevant product and geographic markets.

B. Competitive Assessment

15. The 3G Mobile Licences for the Netherlands were awarded by way of auction. The five successful bidders were the incumbent 2G network operators: KPN Telecom, Libertel, Telfort, Dutchtone and Ben. KPN Telecom is the strongest player in mobile telecommunications services in the Netherlands with a share (based on subscribers) of around 48.4% followed by Libertel with a share of 32%. Number three is Dutchtone with a share of 6.9% closely followed by Ben (6.6%) and Telfort (6.4%).

16. Tele Danmark is also active in the Netherlands through Talkline Netherlands, a service provider which does not own its own mobile telecommunications network. The market share of Talkline Netherlands on the Dutch market is less than […]%.

17. Accordingly, the concentration will not lead to the creation or strengthening of a dominant position.

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[2] See COMP/M.1795 - Vodafone Airtouch/Mannesmann, para. 9, 23

V. ANCILLARY RESTRAINTS

Non-compete restrictions

18. The parties have included a non-competition clause. The non-competition clause provides that Belgacom, Tele Danmark and T-Mobile International/Deutsche Telekom shall refrain from having a direct equity participation or indirect equity participation as well as from having management involvement in any IMT-2000 license holder operating an IMT-2000 network in the Netherlands to the extent that it concerns the Dutch operation of such other IMT-2000 license holder.

19. The parties claim that these obligations are directly related and necessary to achieve the benefits of the joint venture, ensuring that the financial value of the UMTS license will be safeguarded and that the joint venture will be a commercial success with regard to the development and the exploitation of the license.

20. The Commission considers the non-competition covenants as directly related and necessary to the implementation of the concentration and hence to be covered by this decision for a period of three years.

VI. CONCLUSION

21. 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

Mario Monti
Member of the Commission