

***Case No COMP/M.2463 -
SPEEDY TOMATO***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 14/06/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14/6/2001
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2463 – Speedy Tomato/Olivetti

Notification of 10 May 2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 10 May 2001 the Commission received a notification of a proposed concentration by which the undertakings Speedy Tomato AB (“Speedy Tomato”), a subsidiary of the Swedish Telia Group (“Telia”), and Olivetti Tecnost S.p.A. (“Olivetti Tecnost”), a subsidiary of the Italian Olivetti Group (“Olivetti”), acquire joint control of Speedy Tomato S.p.A. (“the JV”), a private limited company incorporated under the laws of Italy.
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 (the “Merger Regulation”)¹ and does not raise serious doubts as to its compatibility with the common market and with the EEA agreement.

I. THE PARTIES

3. Speedy Tomato is responsible for the launch and operation of a pan-European mobile access portal. The portal, which will be marketed under the Speedy Tomato brand on a pan-European scale, will *inter alia* contain information services, advertising banners and e-commerce solutions provided by third party content providers. Speedy Tomato has already launched its portals in the UK, Denmark and Finland.

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).

4. Olivetti Tecnost, belonging to the Olivetti/Telecom Italia group, is a supplier of home-office equipment, vertical applications, gaming systems, and solutions for home automation and Internet new ventures.
5. The JV will launch the Italian version of the Speedy Tomato Internet portal.

II. THE OPERATION

6. The proposed concentration constitutes an acquisition of joint control by Speedy Tomato and Olivetti Tecnost over the JV.

III. CONCENTRATION

Joint control

7. Speedy Tomato and Olivetti Tecnost will each own 50% of the JV's capital and will have equal voting rights. The Board of Directors will consist of six members elected by the shareholders, each party being entitled to appoint three members. The parties will jointly nominate the Chairman of the Board. To constitute a quorum, at least four members shall be present and decision at Board meetings shall be adopted by at least four members. Decisions of Shareholders' meetings require the support of shareholders holding two thirds of the shares. As a result, Speedy Tomato and Olivetti Tecnost will obtain joint control over the JV.

Full function

8. The JV is a company which will perform on a lasting basis all the functions of an autonomous economic entity. It will have a management dedicated to its day-to-day operations and sufficient resources in order to conduct its business on a lasting basis. The parties will contribute EUR [-] millions to the JV during a [-] year period and the JV will be given licences to use the portal and the Speedy Tomato brand and concept. The JV is therefore a full function joint venture within the meaning of the Merger Regulation and the transaction therefore constitutes a concentration within the meaning of Article 3(1) b of the Merger Regulation.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billions² (Speedy Tomato EUR [-] millions, Olivetti Tecnost EUR [-] millions). Each of Speedy Tomato and Olivetti Tecnost have a Community-wide turnover in excess of EUR 250 millions (Speedy Tomato EUR [-] millions; Olivetti Tecnost EUR [-] millions), 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.

² 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.

V. RELEVANT MARKETS

10. The JV will offer in Italy, Internet portal services such as e-mail, SMS, chat and calendar, news, weather, sport, financial services, games and horoscopes as well as “paid for content” services provided by third party providers. In addition, the JV will also offer advertising possibilities (including SMS tail ads and banners) through the portal.
11. The portal will be mainly a mobile portal since its design and the services will be specifically adapted for mobile users. However, the portal will be accessible through other means than mobile/WAP telephones. Furthermore, services will not be restricted to Olivetti’s mobile phone customers, but will be available to anyone with a mobile phone and access to the Internet.
12. It is necessary to consider the possible existence of markets for (i) the provision of Internet advertising space, (ii) and the provision of Internet portal services. The Commission has identified in previous decisions the possible existence of these markets³.

Internet advertising

13. In relation to the parties’ sources of revenue, one source of income for the JV will be the sales of advertising space. In previous decisions the Commission has defined Internet advertising as a market in its own right and concluded that internet advertising markets are likely to be national, although in certain circumstances may be wider, for example when the same language is spoken in more than one country. It is possible that this market could be further classified into advertising on a mobile platform. However, it is not necessary to decide since however the markets are defined, the concentration does not threaten to create or strengthen any dominant position.

Internet portal services

14. In its decision on Vodafone/Vivendi/Canal+, the Commission recognised that there may exist separate markets for Internet portals. This built on the Commission’s previous analysis which looked at the various revenue streams which portal operators receive (advertising revenue, subscriptions, etc.). The Commission also distinguished between vertical portals, i.e. those that focus on providing relatively narrow access to a particular content category and horizontal portals. The Commission noted that there are potentially separate markets for horizontal portals according to which platform is used to access the Internet (PC, mobile phone, TV, etc.). The JV’s portal will be accessible mainly through mobile/WAP phones but also through alternative platforms. It is therefore not necessary to reach a formal decision as to the boundaries of the relevant product market, since the current concentration does not threaten to create or strengthen a dominant position however the market is defined.
15. Concerning the definition of the geographic market, the Commission has previously noted that national markets may be appropriate for certain internet-related activities, but that they may also be increasingly European⁴. However, the precise boundaries of the

³ Case IV/JV.1, Scandinavian On Line; IV/JV.11, @Home Benelux BV and COMP/JV.48 – Vodafone/Vivendi/ Canal+.

⁴ See Case COMP/JV.48 – Vodafone/Vivendi/Canal+, paragraph 37

relevant geographic market(s) can be left open since even on the narrowest possible basis, no competition issues arise.

VI. ASSESSMENT

Internet advertising space and Internet portal services

16. Telia is not active in the Italian portal market. The focus of its operations has been so far mostly Sweden. Olivetti, through Telecom Italia, launched three mobile oriented Internet portals in Italy last year. These portals are still in a start-up phase and the JV, which is not yet active on these markets, will not lead to any aggregation of market shares.
17. There are several established mobile Internet portals in Italy, which include strong players such as Vodafone-Vivendi, Wind/Infostrada, Fininvest/Mediaset, British Telecom. Further new portals are about to be launched on the Italian market this year.
18. Olivetti provides mobile and fixed Internet dial-up access in Italy. Since this portal is aimed at mobile telephone users the Commission has investigated possible vertical issues in this regard. Olivetti's market share, according to Olivetti's estimates, in the mobile Internet dial-up access in Italy is [30-50%]. However, the Commission has found no indications that this vertical relationship will give rise to any competition concerns. The portal will be operated independently, in that its services will be available to any user regardless of the mobile ISP of his/her choice.
19. The concentration, therefore, does not threaten to create or strengthen a dominant position on the market for Internet advertising space or on the market(s) for Internet portals in Italy.

VII. 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 and Article 57 of the EEA Agreement.

For the Commission,

Mario MONTI