

***Case No COMP/M.2598 -
TDC / CMG / MIGWAY
JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 04/10/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 04.10.2001
SG (2001) D/291680

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

Dear Sir/Madam,

**Subject: Case No COMP/M.2598 - TDC/CMG/Migway JV
Notification of 03.09.2001 pursuant to Article 4 of Council Regulation No 4064/89¹**

1. On 03.09.2001, the Commission received a notification of a proposed concentration whereby the undertakings TDC Mobile International A/S (DK) and CMG Wireless Data Solutions B.V acquire joint control by purchase of shares in MIGway A/S (DK). MIGway is a newly created company constituting a joint venture.
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No.4064/89 (the Merger Regulation) and that it does not raise any serious doubts as to its compatibility with the common market and with the EEA agreement.

I. THE PARTIES

3. TDC Mobile International A/S, hereafter TDC Mobile, is a 100% owned subsidiary of TDC A/S (formerly Tele Danmark A/S), which is a major Danish provider of domestic and international telecommunication services. It should be noted that TDC A/S has an indirect shareholding in Belgacom (Belgium) based on joint control with other shareholders².
4. CMG Wireless Data Solutions BV ("CMG") provides business information services and wireless data solutions and forms part of the CMG Group, an Anglo-Dutch based global provider of information and communications technology.

II. THE OPERATION

5. This transaction concerns the telecommunication sector, in particular the mobile and messaging services (Short Message Services³). The main activity of MIGway will be to provide wireless application infrastructure services for content and service providers (on the

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).

² M. 689 – ADSB/Belgacom of 29/02/1996.

³ SMS

Internet) that will distribute their content and services (SMS) to mobile network operators in Europe.

6. TDC Mobile has made a non-cash contribution in form of an operator (MCN) code and a number range. CMG will contribute the following assets 1) SMCS Platform and SMCS Throughput License, 2) Mobile Director Platform and Mobile Director Throughput License, 3) Business Tools by way of Query and Reporting Platform for services and billing reports and 4) PBS-Prepaid Billing Solution platform.
7. The parent companies have each acquired 50 % of the issued share capital of the joint venture. At the General Meetings of shareholders and the Board of Directors it generally requires approval by a simple majority to adopt proposals. TDC Mobile and CMG are each entitled to appoint two members of the Board of Directors of the company. This is due to the fact that a shareholder has the right to designate one member of the Board of Directors of the company for every full [...] % of the shareholders' aggregate issued holding of shares held by such a shareholder. Any increase in the share capital of MIGway requires the affirmative approval of shareholders holding at least [...] % of the issued share capital. The Board of Directors of MIGway will elect one of its board members by simple majority as the chairman but the chairman shall not have a casting vote. Binding adoption of decisions by the Board of Directors requires the affirmative approval of a majority of the board members. Consequently, as the parents are entitled to an equal representation in the Board of Directors and as there is equality in the voting rights it can be concluded that MIGway will be subject to joint control.
8. According to the information provided in the notification, MIGway will have its own personal resources including management. In addition the joint venture will have its own financial resources because it will obtain its financial resources through its own business operations.
9. The parents will provide certain services to the joint venture as TDC for example will provide IT support services (i.e. hotline services) and CMG will provide maintenance services for its messaging platforms. In addition, [...]. According to the parties these services will be provided by the parents to the joint venture and sold by MIGway to the parents on an arm's length basis. As the joint venture will provide new services on a European basis it is not possible to quantify the expected sales of the joint venture. Finally, the joint venture will add value to the services provided by the parents as it will offer a complete solution to service and content providers on a pan-European basis which is not offered by any of the parents. Consequently, it can be concluded that the joint venture will perform on a lasting basis all the functions of an autonomous economic entity.

III. CONCENTRATION

10. The transaction is a full function joint venture within the meaning of Article 3(2) of the Council Regulation No 4064/89.

IV. COMMUNITY DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁴ (TDC Group: € 5 977 million; CMG: € 1 329 million; MIGway: € 0). Each of

⁴ 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

at least two of the undertakings concerned have a Community-wide turnover in excess of EUR 250 million (TDC Group: € 5 388 million; CMG: € 1 314 million), 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.

V. COMPETITIVE ASSESSMENT

A. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

12. The parties have stressed that the industry presently operates on the basis of individual contracts between each content and service provider on the one hand and the network operator on the other hand. According to the parties it is already possible on the level of specific networks, for content and service providers to obtain wholesale access for SMS to networks of mobile operators by bilateral agreements with each individual operator. The provision of the pan-European services to be launched by the joint venture is in the opinion of the parties an evolving business at an early stage of development.

Wholesale access (SMS) to mobile telephony infrastructure (pan-European)

13. The parties submit that the product market for wholesale access (SMS) to mobile telephony infrastructure on a pan-European-level ought to be considered as the relevant market for MIGway. According to the parties it would not be relevant to further subdivide into narrower product markets and they have submitted that the relevant geographic scope of market for the activities of the joint venture is European. These views have broadly been supported by the Commissions investigation.

A.1 UPSTREAM RELEVANT MARKETS

14. The parties have identified the following vertically related markets where one of the parent companies would be present:

i) SMS Platforms

15. In order to provide the services of the joint venture SMS platforms and maintenance is necessary. SMS platforms are used for conveying SMS messages on the mobile networks⁵. According to the parties, SMS platforms constitute a separate product market as they use a specific technology for SMS that cannot be substituted by other technologies. The parties have submitted that the platforms including maintenance⁶ are generally provided on a European or even global basis.
16. However it is not necessary to further delineate this market because in all alternative definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of it.

ii) The market for connectivity to the international signalling network

1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

⁵ The platform consists of the necessary software to direct and route the data contained in a SMS message, and the hardware (ex. servers) needed to run the software and connect to the mobile network infrastructure.

⁶ Maintenance of the platforms can be carried out by the supplier of the platform as even on the spot service but can be performed at a distance through computer connection to the platform.

17. According to the parties the services of the joint venture requires connection to the international signalling system in order to ensure the necessary connections with the national mobile networks operators. The parties have submitted that this is done by establishing connectivity to the international signalling network (SS7), to which all operators – fixed or mobile – are connected. The parties have emphasised that it is not decisive whether connectivity is established for the purpose of transmitting data to a fixed or mobile network, as the connection will in all respect be of a similar nature. According to the parties connectivity is established through the existing international exchanges typically owned by the incumbent telecommunications operators in the different Member States. The TDC group provides these services in Denmark and Belgacom provides them in Belgium whereas a joint venture BEN⁷ provides similar services in Holland. In summary it is the view of the parties that the geographic scope of the market for connectivity to the international signalling network is European.
18. This market definition has broadly been confirmed by third parties. As some telecommunication operators irrespective of their geographic location are able to offer these services the Commission has concluded that the market for connectivity to the international signalling network is at least European in scope.

iii) The market for call centre services

19. Call centre services covers a variety of services ranging from Customer Care services (ex. switchboard services, billing, etc) to different types of IT support services (ex. hotline. According to the parties it could be relevant to subdivide these services into Customer Care services and IT support services, since these services differ in nature. The parties have submitted that these services should be considered to be either European or regional in scope as they may be offered independent of the location of the user of the service.
20. However it is not necessary to further delineate this market because in all alternative definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of it.

A.2 DOWNSTREAM RELEVANT MARKETS

21. The parties have identified the following downstream related markets:

iv) The market for provision of content and services for electronic media

22. Content and services that may be distributed via electronic media, especially via the internet, SMS or WAP technology includes a variety of types of services. In Denmark, TDC offers a number of contents as well as services (ex. directory services and stock exchange information) and Belgacom offers a few of these services in Belgium. According to the parties content and services may be offered by anyone by applying the necessary technology. As regards SMS, undertakings wanting to offer content or services will contract for access and a volume of traffic with an existing mobile network operator.
23. The parties have submitted that the market for such services is in the process of being established and that depending on the kind of content or service in question, this market may be defined either nationally or internationally.

⁷ Between Belgacom, Tele Danmark and Deutsche Telekom.

24. However it is not necessary to further delineate this market because in all alternative definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of it.

The market for mobile telecommunication services

25. The parties has referred to previous Commission decisions where the market for mobile telecommunications services have been defined independent of the technical standard used to provide the service in question. The parties have submitted that market to consider in respect of MIGway's SMS services is the product market for mobile telecommunications services based on GSM 900, DCS 1800, UMTS or CDMA technology. In line with previous Commission decisions the parties consider this service market to be national in scope.
26. Based on previous decisions, the Commission therefore concludes that the relevant market is the market for mobile telecommunications services on a national basis.

B. ASSESSMENT

27. The total value of the assets transferred to the joint venture by the parents is less than € 100 million. However, if some of the relevant markets were defined on the narrowest basis there would be vertically affected markets.

Wholesale access (SMS) to mobile telephony infrastructure (pan-European)

28. Wholesale access to mobile telephony infrastructure on a network-by-network/national basis would in view of the parties only to a very limited extent be substitutable services to the services to be offered by MIGway as the latter have a wider geographic scope. The parties have therefore submitted that the services offered on a national level differ from the services to be provided by MIGway as the services on a national level in principle can be offered by any existing network operator capable of handling SMS services. In contrast Migway is in view of the parties entering the emerging market for wholesale access (SMS) to mobile telephony infrastructure on a pan-European-level aimed at content and services that are primarily intended to be distributed internationally rather than on a national/local basis. Finally, the parties have submitted that potential competitors would be existing mobile operators with an SMS platform.
29. Third parties have generally confirmed there is an emerging market for wholesale access (SMS) to mobile telephony infrastructure on a pan-European-level. They have also confirmed that it is not possible at present to provide any reliable market data. Some third parties have identified a few current and some potential competitors and confirmed that in their view there are no major barriers for potential competitors to enter this emerging market. On this basis, the operation does not lead to the creation or strengthening of a dominant position and any foreclosure effect on the market for wholesale access (SMS) to mobile telephony infrastructure on a pan-European-level.
30. In view of the parties there are no horizontal overlaps but only vertically affected markets. The parties have submitted that only the downstream national market for mobile communication services would be vertically affected.

B. 1 Vertical relationships

i) SMS Platforms

31. Few mobile operators have emphasised that as an effect of the operation CMG would disappear as one of their main suppliers of SMS platforms. However, other global suppliers are able to provide these platforms and maintenance. According to the parties CMG would account for [5-15%] on a world wide and European basis. According to the parties other suppliers on both a global and European basis are Logica [25-35%], Schlumberger/Sema [15-25%], Nokia [10-20%] and Ericsson [10-20%] and Comverse [5-15%]. The parties have also claimed that these companies are established sources of supply as the mobile operators are increasingly using a multi-vendor strategy.
32. Moreover, other suppliers of SMS platforms have confirmed that these products and services are supplied on a global basis and that Logica as the largest supplier accounts for a market share above 25-35% whereas they regard CMG as the second largest competitor. Consequently, the operation does not lead to the creation or strengthening of a dominant position in SMS platforms.

ii) Connectivity to the international signalling network

33. According to the parties TDC's market share on a European basis is insignificant and below 25%. However, on a national basis TDC and Belgacom would both account for market shares in the range of [75-85%] [...]. Moreover, third parties have generally confirmed that the geographic scope of this market is European. Accordingly the operation does not lead to the creation or strengthening of a dominant position and foreclosure effect on the market for connectivity to the international signalling network.

iii) Call center services

34. With regard to call center services TDC would on an overall basis account for a market share of [less than 20-30 %] on both a national and European level. If Customer Care services and IT support were considered as constituting separate markets only IT support services would be a vertical related market. If the markets were defined as national markets TDC and Belgacom would each account for market shares [below 20-30 %] on their respective home markets for IT support services. Consequently, the operation does not lead to the creation or strengthening of a dominant position on the market for call center services.

iv) The market for provision of content and services for electronic media

35. According to the parties TDC and Belgacom are both active providing some content and services mainly provided on a national basis. The operators market shares would account for [less than 20-30 %] irrespective of whether this market is national or wider in geographic scope. On this basis, the operation does not lead to the creation or strengthening of a dominant position on the market for provision of content and services for electronic media.

v) The market for mobile telecommunication services

36. The parties have submitted that on a national level TDC Mobile would account for a market share of 44% in Denmark and Belgacom Mobile for 55% in Belgium. Even though the parties have high market shares in two downstream national markets for mobile telecommunication services third parties have generally not raised competition concerns with regard to the effect of the operation on this market. Given the above, the operation does not lead to the creation or strengthening of a dominant position and any foreclosure effect on the market for mobile telecommunication services.

VI. CONCLUSION

37. 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

Romano PRODI

President