

***Case No COMP/M.2726 -
KPN / E-PLUS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 07/03/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07.03.2002

SG (2002) D/228818

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.2726 – KPN/E-Plus
Notification of 07/02/2002 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 7.2.2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (“Merger Regulation”) by which the Dutch undertaking Koninklijke KPN N.V. (“KPN”) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the German undertaking E-Plus Mobilfunk GmbH & Co. KG (“E-Plus”), currently controlled by KPN and the US-based undertaking BellSouth Corporation (“BellSouth”), by way of purchase of shares.
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

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).

raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. **KPN** is the incumbent telecommunications operator in the Netherlands. It provides a broad range of telecommunications services at national and international level, including mobile telephony services in the Netherlands, Belgium and Germany (through E-Plus).
4. **E-Plus** is one of the four mobile telephony operators in Germany. It offers mobile telephony services including a wide range of value-added wireless voice and data products, in addition to fixed and mobile Internet applications.

II. THE OPERATION AND THE CONCENTRATION

5. E-plus is currently jointly controlled by KPN and BellSouth². As part of the terms of the acquisition by KPN of the 77.49% interest in E-Plus, it was agreed that BellSouth would have the right to exchange its indirect interest in E-Plus for shares in KPN or in one of its subsidiaries, KPN Mobile N.V. (KPN Mobile). BellSouth has now exercised its exchange right. As a result, KPN will hold 100% of the partnership interests and will acquire sole control over E-Plus. The proposed transaction thus leads to a change in control over E-Plus. The proposed transaction is therefore a concentration in accordance with Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ (KPN € [...] billion, E-Plus € [...]). Each of KPN and E-Plus has a Community-wide turnover in excess of EUR 250 million (KPN € [...] billion, E-Plus € [...] billion), 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.

IV. COMPETITIVE ASSESSMENT

A. Relevant Markets

Introduction

7. The proposed transaction concerns a change from joint to sole control by KPN over E-Plus. Given that E-Plus is a mobile telephony network operator and KPN is a provider of wireless and fixed services in *inter alia* the Netherlands the relevant markets for the assessment of the proposed transaction are markets related to the provision of retail and wholesale mobile telephony network operator services.

² See further Case No COMP/JV.38 – KPN/BellSouth/E-Plus, decision of 18.02.2000.

³ 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).

8. According to the information provided by the parties to the proposed transaction, the transaction would not lead to any horizontal overlaps irrespective of product market definition chosen on the basis of national markets or any direct accretion of market shares as KPN is only active in Germany via E-Plus and E-Plus is only active in Germany. Even on the basis of wider than national markets, the proposed transaction would not lead to any markets in which the combined position of KPN and E-Plus on a European level - irrespective of market definition chosen - would be more than 5% (KPN estimates). The only potentially vertically affected market identified by KPN for the purpose of the proposed transaction is the market for international wholesale roaming services in the Netherlands. The Commission's investigation has therefore focused on whether the change of control in E-Plus could have any impact on this market. However, for the reasons set out below the Commission has concluded that notified operation does not raise serious doubts irrespective of market definitions chosen.

International wholesale roaming services

9. The Commission found in the *Vodafone/BT/Airtel* and the *Vodafone/Airtel* decisions⁴ that there could be distinct wholesale markets for international roaming, which are national in scope.
10. International roaming agreements are bilateral agreements between mobile telephony operators in different countries. Most operators endeavour to enter into as many roaming agreements as possible in each country. Most network operators have also one (or more) preferred roaming partner(s) in each country and e.g. all Dutch network operators have a preferred roaming arrangement with a German operator and vice-versa. Currently, none of the Dutch or German network operators have an exclusive roaming partner. However, some respondents to the Commission's investigation in the current case have indicated that they may enter into such arrangements in the future. Other respondents have indicated that they will continue to maintain as many roaming agreements as possible in each country (at least in the short to medium term) to ensure maximum service coverage to their subscribers when roaming abroad and to maximise revenues by ensuring that as many customers of foreign network operators will use their network when roaming into their country and thus increase the inbound roaming revenue.
11. The provision of international wholesale roaming to foreign mobile network operators thus satisfies primarily a demand by foreign mobile network operators whose main objective is to enable them to offer their own subscribers a 'seamless service', not limited to the territory in which they have their own physical network. Downstream there is also a demand from users (i.e. subscribers) to be able to use their mobile phones while outside their home countries without having to acquire a new SIM card, or to enter into another subscription. The bilateral nature of the agreements also allows mobile network operators to earn revenue from visiting subscribers of foreign networks with whom they have entered into agreements.
12. The Commission has previously found that the provision of international wholesale roaming service could be distinct from national roaming, airtime provision, indirect

⁴ Case No COMP/M.1863 (decision of 18.12.2000) and Case No COMP/M.2469 (decision of 26.06.2001).

access through carrier pre-selection (i.e. call origination) or pre-selection⁵. For the purpose of the current transaction it is not necessary however to conclude on the relevant market definition since, irrespective of market definition chosen, the proposed transaction does not lead to competition concerns for the provision of such services or any related services.

B. Assessment

International wholesale roaming services

13. As mobile network operators both KPN and E-Plus provide wholesale international roaming services to foreign network operators and, at the same time, receive such services from operators in other countries, in order to offer its customers a seamless mobile telephony service outside their own national territory. In order to offer and receive such services, KPN and E-Plus have entered into bilateral international roaming agreements with each other as well as with other network operators. Due to the cross-border element of the international wholesale roaming, there is thus an existing vertical link between E-Plus and KPN.
14. Neither KPN nor E-Plus has been able to estimate their market share on the total (inbound and outbound) markets for international wholesale roaming. However, taking into account KPN's market share of ca. 40% on the Dutch mobile telephony service market, KPN presumed that its market share for international wholesale roaming in the Netherlands is more than 25%. As a consequence, KPN considered this market as possible vertically affected market.
15. The market investigation has shown that KPN is the market leader in the Dutch wholesale market for international roaming with a market share of [50-60%]. Its closest competitor is Libertel with a market share of [20-30%], followed by Ben [0-10%], Dutchtone [0-10%] and Telfort [0-10%]. E-Plus' market share on the German wholesale market for international roaming is less than 15%.
16. Given E-Plus' relative small size compared to its main competitors T-Mobil and D2 Vodafone in the German market⁶, KPN Mobile is not likely to choose E-Plus as its exclusive roaming partner in Germany and even if it would, it would not have any significant foreclosure effects either in Germany or the Netherlands, given that alternative and significant suppliers exist in both countries.
17. The market investigation has shown that due to technical reasons, most operators are currently unable to direct all inbound traffic onto their networks to any significant degree. Thus, even if E-Plus had KPN as its only preferred roaming partner in the Netherlands, KPN would not be able to make sure that all of E-Plus' subscribers actually roam on its network.

⁵ See *inter alia* Case No COMP/M.2282 – *BT/Esat Digifone*, Commission decision of 16.03.2001, Case No COMP/M.1863 – *Vodafone/BT/Airtel*, Commission decision of 18.12.2000.

⁶ According to figures provided by KPN E-Plus' market share of German mobile telephony network providers per 1 December 2002 was 13.4% (7,481,000 subscribers) as compared to T-Mobil (Deutsche Telekom) with 41.0% (22,800,000 subscribers) and D2 Vodafone with 39.3% (21,860,000 subscribers).

18. The Commission's investigation has also shown that even if KPN did receive all of E-Plus' traffic on its network, this would not have any significant effect on KPN's position in the Dutch market. E-Plus represents less than [0-10]% of total inbound roaming minutes in the Netherlands. Today more than half of the roaming traffic generated by E-Plus' subscribers is handled by KPN. Thus, even if KPN managed to receive all of E-Plus' subscribers roaming traffic in the Netherlands this would add less than [0-10]% to KPN's current market share.
19. The Commission therefore concludes that the proposed transaction will not have any significant effect on KPN's position in the Dutch market or raise serious doubts as to its compatibility with the common market. The relevant market definitions can therefore be left open.

V. 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