

***Case No COMP/M.3530 –
TELIASONERA AB
/ORANGE A/S***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 24/09/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24/09/2004

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.3530 – TeliaSonera AB/Orange A/S
Notification of 20.08.2004 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 20.08.2004, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² by which the undertaking TeliaSonera AB (“TeliaSonera”, Sweden) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Orange A/S (“Orange A/S”, Denmark) 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 139/04 and does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

I. THE PARTIES

3. **TeliaSonera** is a telecommunication company active in the Nordic and Baltic region. TeliaSonera also operates within the mobile communications markets in Russia, Eurasia and Turkey. TeliaSonera is in Denmark the fourth largest mobile communication company. In Denmark it also operates within fixed telephony, internet broadband, cable TV, data communication and wholesale of capacity in the mobile network. TeliaSonera has around 494,000 mobile telecommunication customers in

¹ OJ L 24, 29.1.2004 p. 1.

² OJ L 24, 29.1.2004 p. 1

Denmark. TeliaSonera operates its own 2G network and holds a licence for the operation of a 3G network in Denmark.

4. **Orange A/S**' ultimate parent company is France Telecom S.A. Orange A/S is the third largest mobile telecommunication company in Denmark with a customer base of around 605,000. Orange A/S is active in the provision of mobile telecommunication in Denmark. Orange A/S operates a 2G network and holds a licence for the operation of a 3G network in Denmark.

II. THE OPERATION

5. The operation concerns the acquisition by TeliaSonera of sole ownership by way of purchase of 100% of the outstanding voting shares of Orange. The proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation 139/04.

III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ (TeliaSonera EUR 9034 million, Orange EUR 258 million). Both TeliaSonera and Orange have a Community-wide turnover in excess of EUR 250 million (TeliaSonera EUR [...] million, Orange EUR [...] 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.

IV. COMPETITIVE ASSESSMENT

Product market definition

7. With reference to the Commission's previous cases⁴, the parties consider the relevant market to be the market for mobile telecommunications services in Denmark which encompasses both the wholesale (network) level and the retail (distribution) level. Referring to the case *Vodafone/Singlepoint*, the parties consider a further distinction between business customers and private individuals, or between pre-pay and post-pay customers not appropriate.
8. In line with the Commission's Recommendation of 11 February 2003 on Relevant Product and Service Markets⁵, the parties have indicated that the following submarkets

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).

⁴ See *inter alia* decision of 13 October 1999 in case COMP/M.1439 – Telia/Telenor; decision of 12 April 2000 in case COMP/M.1795 – Vodafone Airtouch/Mannesmann; decision of 10 July 2002 in case COMP/M.2803 – Telia/Sonera; decision of 16 September 2003 in case COMP/M.3245 – Vodafone/Singlepoint.

⁵ Commission Recommendation of 11 February 2003 on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, OJ L 114, 8.5.2003, p.45.

can potentially be distinguished: (i) the market for the provision of access to and call origination on a public mobile network in Denmark; (ii) the market for the provision of call termination on a public mobile telephone network in Denmark; and (iii) the Danish wholesale market for access to international roaming on public mobile networks.

9. According to the parties the first sub-market covers access to a public mobile network and the possibility to make calls using this network to other persons that are subscribed to other public fixed or mobile networks. The second sub-market concerns the receipt of calls made by users operating in the first sub-market. In this context it should be stressed that voice call termination on each mobile network is normally seen as a separate market since voice call termination on one network is in principle not substitutable for termination on another network (c.f. market 16 of the above-mentioned Recommendation). The last sub-market concerns the service of network operators to other operators through international roaming agreements to make use of their networks. As regards this market the parties refer to the Recommendation (c.f. market 17) which mentions a wholesale market for access to international roaming on public mobile networks and thus a market comprising several networks. Alternatively each individual network could constitute a separate market.⁶
10. In the market investigation one network operator confirmed the parties' view that the relevant product market is the market for mobile telecommunications services. Another network operator considered the market should be sub-divided into wholesale and retail markets. Network operators, that are also active in the provision of telecommunications services to Independent Service Providers (ISPs), have indicated that a distinction between a wholesale and a retail market could be made, based on different structure in terms of number and types of providers active on each level and the difference in products offered. However, they nevertheless concluded to one overall market for telecommunications services. In relation to the retail market, several respondents to the Commission's market investigation considered the retail market should be split into residential customers and business customers.
11. The market investigation also evidenced that distinct markets potentially exist for mobile telecommunications services to Pan-Nordic customers. However, neither party provides truly pan-Nordic services. Services provided to a limited number of TeliaSonera's large corporate customers are all provided on a national basis. Orange has no such customers or mobile communication networks in other Nordic areas. As such the operation would not give rise to any overlaps in this segment. There seems to be a growing demand from pan-Nordic companies, such as the major banks and insurance companies, however at the present stage a distinct market for the provision of pan-Nordic telecommunications services does not (as yet) exist.
12. According to the parties, at the present stage of the development of the market, no distinction should be made between 2G, 2.5G and 3G technologies, primarily based on the fact that no company has yet established a 3G network with nationwide coverage in Denmark. The results from the market investigation confirmed that as yet no distinct market for mobile telecommunications services based on 3G technology exists.

⁶ In a recent statement of objections issued by the Commission regarding wholesale international roaming in the UK, the Commission found that, at least for the period until September 2003, roaming on each individual network constituted a separate market (c.f. the Commission's press release IP/04/994).

According to the Danish licensing regime the four licensees of a 3G licence⁷ are under the obligation to have a 30% population coverage by the end of 2004, however, only the company HI3G Denmark ApS (“3”) at present has commenced the setting up of its 3G network. As a result of the merger, the combined entity must either hand back a 3G licence to the NITTA (the Danish IT- and Telecom Agency) or assign it to a third party.

13. In conformity with previous cases and supported by the results from the investigation the Commission concludes that the widest possible relevant market is the market for mobile telecommunications services. For the purpose of the present case a further distinction into narrower markets is not necessary, as this does not change the competitive analysis.

Geographic market definition

14. The parties have submitted that the relevant geographic market is national, given the fact that the Danish legislative and licensing regime is different from other EU countries.
15. The results from the market investigation have generally confirmed that the geographic scope of the market is national. This is in line with the recent study of the Nordic competition authorities⁸.
16. The Commission concludes that the geographic scope of this market is limited to the Denmark, in line with its decisions in previous cases.

Competitive assessment

17. Since both TeliaSonera and Orange A/S are active as providers of mobile telecommunication services in Denmark, the proposed transaction will give rise to a horizontal overlap in the provision of such services. Currently, four 2G network operators provide network services and these are the incumbent Danish telecommunication company TDC, Sonofon, which is owned by the incumbent Norwegian telecommunication company Telenor, TeliaSonera and Orange A/S. TDC has recently acquired the ISP Telmore and Sonofon has acquired the ISP CBB. In addition, there are a number of smaller service providers/resellers that also offer mobile communication services to end-users.
18. On the network level the proposed transaction will reduce the number of competing networks to three serving around 4.8 million subscribers in Denmark. Denmark has a relatively lower average customer base per operator than Sweden and Norway. In 2003 the average user per operator was in Denmark 1,196,250 compared to 2,081,691 in Norway and 2,889,667 in Sweden.⁹ The mobile penetration rate in Denmark reached 89% in 2003, whereby the Danish mobile market must be considered saturated. During the last years prices in the Danish mobile telephony market has decreased strongly. In 2003 prices have decreased with up to 35% making Danish mobile prices the lowest in

⁷ TDC, TeliaSonera, Orange and 3.

⁸ Competition in the Nordic telecommunication sectors, 25 August 2004, p. 25.

⁹ Competition in the Nordic telecommunication sectors, 25 August 2004, p. 26.

the EU.¹⁰ However, this has had a strong impact on the profitability of the network operators, with only TDC making a profit on its mobile telecommunication business.

19. The merger of TeliaSonera and Orange will create the third largest mobile operator in Denmark after TDC and Sonofon. On the total mobile telecommunication market the parties would have a market share of [15-25]% (TeliaSonera [0-10]%, Orange [5-15]%) in 2003 based on value. The major competitors will be TDC with a [35-45]% market share and Sonofon with a market share of [25-35]%. The remaining [0-10]% of the market is split between smaller service providers such as Tele2, Debitel Denmark and new entrant 3G operator "3".
20. As stated before, based on the Commission's market investigation there are some indications that the retail market for mobile telephony in Denmark could be split into a market for (i) residential customers and one for (ii) business customers, based on differences in demand. Based on such a segmentation of the market the parties would hold a combined market share of [5-15]% (TeliaSonera [0-10]%, Orange [0-10]%) regarding corporate customers based on the number of subscribers, whereas TDC has a [50-60]% market share and Sonofon has a [25-35]% market share. Concerning residential customers the parties will have a combined market share of [20-30]% (TeliaSonera [5-15]%, Orange [5-15]%) based on the number of subscribers. TDC holds a market share of [30-40]% and Sonofon a market share [20-30]% with the remaining around [5-15]% split between smaller service providers.
21. Considering the wholesale market for provision of access and call origination on public mobile telephone network in Denmark the merged entity will hold a combined market share of [15-25]% (TeliaSonera [0-10]%, Orange [5-15]%) in 2003 based on value. The largest competitor will be TDC with a [40-50]% market share followed by Sonofon with [25-35]%. The remaining [0-10]% will be divided between the smaller service providers.
22. The parties hold a similar market position on the wholesale market for mobile termination in Denmark. The parties would have a combined market share on the market for mobile termination of [15-25]% (TeliaSonera [0-10]%, Orange [5-15]%) in 2003 based on value, thereby creating the third largest operator on the market. The second largest operator will be Sonofon with a market share of [20-30]% and TDC would remain the largest operator with a market share of [35-45]%. The above figures are based on the assumption of competing networks. If termination is considered to be network specific market each operator would hold a 100% market share, but the proposed transaction would then not give rise to an overlap between Orange and TeliaSonera.
23. The proposed transaction will also result in an overlap on the wholesale market for access to international roaming on public mobile networks. On this market the parties combined market share will be [10-20]% (TeliaSonera [0-10]%, Orange [0-10]%) in Denmark based on value. The two major competitors are TDC and Sonofon each with a market share of around [35-45]%. Again, the above figures are based on the assumption of competing networks. Considering the market as network specific, each operator would hold a 100% market share and there would not be any overlap between Orange and TeliaSonera.

¹⁰ Konkurrenceregørelse 2004, p. 88, Danish Competition Authority.

24. The switching costs of customers associated with switching suppliers of mobile telephony are considered to be low in Denmark. Firstly, the lock-in period in which the customer is contractually tied to a certain mobile operators is currently 6 months. One third party states that the Danish mobile telephony market has the highest level of churn in the EU. This creates a volatile market condition where relative market positions can change substantially within the course of a year. On average, Danish mobile operators have an annual churn rate of 35% (including residential and business customers), which is 12.9% higher than the EU average of 22.1%. Secondly, mobile number portability has existed in Denmark since 2001, whereby customers have been able to change mobile service supplier but keep their mobile number. In addition, it is cost free for any customer to change supplier. The Commission's market investigation confirmed that switching supplier of mobile telephony is easy for customers.
25. As can be seen from the above mentioned market shares on the retail and wholesale markets, the proposed transaction will create the third largest mobile network operator in Denmark after TDC and Sonofon. Based on the relative market shares of the merged entity the Commission has not identified any concerns in relation to a single or collective dominant position on the market for mobile telephony in Denmark or on any other submarkets considered. The Commission's market investigation confirmed this view. In general, the proposed transaction is not expected to significantly change the Danish market for mobile telephony, which is also expected to be competitive in the future.
26. Based on the above it can be concluded that the proposed transaction will not significantly impede effective competition on the outlined markets for mobile telephony in Denmark, in particular as a result of the creation or strengthening of a dominant position.

Vertical effects

27. The Commission has considered the possible vertical effects of TeliaSonera's presence in Sweden and Finland upon its position on the Danish market for mobile telecommunication. As outlined in the *Telia/Sonera* decision¹¹ international calls establish a vertical link between networks in different countries. The overlap in Denmark could thus, in principle, have an impact on competition between TeliaSonera and its competitors in Sweden and Finland, where TeliaSonera holds strong positions regarding the provision of international telephony services. In particular, the combined entity could raise rivals' costs for cross-border calls out of Sweden or Finland terminating on its network in Denmark.
28. TeliaSonera estimate the total volume of telecommunication traffic from Sweden to Denmark to constitute a total of [...] million minutes in 2003. Of these [...] million minutes [...] million minutes terminated in TDC's fixed network, which constitutes approximately [85-95]% of all the traffic. The remaining [...] million minutes terminated in mobile networks of which [40-50]% terminated in TDC's mobile network, [20-30]% in Sonofon's network, [10-20]% in Orange's network and [0-10]% in TeliaSonera's network and [0-10]% in other networks. From the above figures it can be concluded that the proposed transaction will not have a significant

¹¹ COMP/M.2803 – Telia/Sonera, paragraph 78 ff.

vertical effect in terms of traffic from Sweden to Denmark, as the additional effect will only constitute [10-20]% of the traffic terminating on mobile networks in Denmark.

29. By comparison, the traffic from Finland to Denmark is much smaller. TeliaSonera estimates the total traffic to be [...] million minutes in 2003. TeliaSonera estimates that [...] million minutes terminated on TDC's fixed network. The remaining [...] million minutes terminated on mobile networks. TDC terminated [35-45] of the calls on its mobile network, Sonofon [30-40]%, Orange [10-20]% and TeliaSonera [5-15]. Considering these figures the transaction is not likely to have any significant vertical effects either.
30. Based on the above it can be concluded that the proposed transaction is not likely to create any vertical competition concerns.

V. CONCLUSION

31. 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 (EC) No 139/2004.

For the Commission

(Signed)

Mario MONTI

Member of the Commission