

***Case No COMP/M.3914 -
TELE2 / VERSATEL***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 07/09/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07.09.2005
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.3914 – Tele2/ Versatel
Notification of 05/08/2005 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 05/08/2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (“Merger Regulation”) by which the undertaking Tele2 Netherlands B.V., controlled by Tele2 A.B. (“Tele2”, Sweden), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the Dutch and Belgian parts of Versatel Telecom International N.V. (“Versatel”, Netherlands) by way of public bid announced on 18 July 2005.

I. THE PARTIES

2. Tele2 is a Swedish-based company active in the telecommunications sector. It offers products and services in fixed and mobile telephony, internet, data network and cable TV in 25 European countries.
3. Versatel owns a telecommunications network which provides business and residential customers with voice, data and internet services. Its activities can be divided into four categories (i) fixed telephony, (ii) mobile telephony, (iii) internet and (iv) leased lines.

¹ OJ L 24, 29.1.2004 p. 1.

II. THE OPERATION

4. The proposed operation consists of a public offer announced on 18 July 2005 to be effected by Tele2 Netherlands B.V. (a subsidiary of Tele2) for Versatel Telecom International N.V.
5. Tele2 Netherlands B.V., Apax Partners and Versatel Telecom International N.V. have agreed that, upon completion of Tele2 Netherlands' offer, Apax will acquire Versatel Telecom International N.V.'s German operations². Having regard to the above, Tele2 will acquire sole control only of Versatel's Dutch and Belgian operations.
6. According to the foregoing, the operation described above constitutes an acquisition of control according to Article 3(1)(b) of the Merger Regulation and therefore a concentration.

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million³ (for Tele2: EUR 4 716 million; for Versatel: EUR 327 million; figures related to turnover achieved in 2004). Each of them has a Community-wide turnover in excess of EUR 250 million (for Tele2: EUR [..]; for Versatel: EUR 327 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

8. The parties are active in the same economic sector of telecommunication services in Belgium and in the Netherlands.
9. The markets affected by the transaction and other markets where the concentration will have an impact in the Netherlands and/or in Belgium will be the following:

Relevant product markets

Fixed line telephony services

Retail level

10. The fixed line telephony retail market comprises the provision of connection services or access (at a fixed location or address) to the public telephone network for the purpose of making and/or receiving calls and related services. Such access and services may be supplied by several possible means in respect of the undertaking providing the services and the technology that is used. With regard to fixed

² The acquisition by APAX of Versatel Germany has recently been examined by the Commission (case COMP/ M. 3815 - Apax/Versatel)

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).

telephony services, the Recommendation on relevant markets⁴ distinguishes the following markets (i) local/national and (ii) international services. Each of them can be further divided into services to (a) residential and (b) business customers. Moreover, Local/national services can be further divided into local and national including and/or excluding calls to mobile phones.

Wholesale level: call termination services

11. According to previous Commission's decisions⁵, one of the wholesale services that the operators provide to each other through interconnection agreements is call termination, which consists of the service offered by network operator B to operator A to terminate traffic originating on A's network. Termination services thus allow users of different networks to communicate with each other. Call termination is a wholesale service that is resold or used as an input for the provision of downstream services. There cannot be a substitute for call termination on each individual fixed network since the operator can only reach the relevant end-customers by terminating the call on that specific network. Each fixed termination access network would constitute a relevant market and the network operator has by definition a 100% market share.

Leased lines

12. Dedicated capacity or leased lines may be required (at wholesale level) from telecom operators which own networks by telecom operators which require network capacity (e.g.) to connect two cities. The Recommendation on relevant markets states that a distinction between the terminating segments of a leased circuit (so called local tails or local segments) and the trunk segments may be possible.

Internet access

13. The Recommendation on relevant markets distinguishes three commonly forms of internet access (a) dial-up service, (b) higher bandwidth services and (c) dedicated access. Whereas the Commission in earlier decisions considered separate markets for residential and business customers⁶, it later has taken the view that the demands of residential customers and business customers without any significant needs are converging since the introduction of broadband internet access technologies⁷.

⁴ Recommendation 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 communications networks and services; OJ 8.5.2003, p.45

⁵ COMP/M.1493 - Telia/Telenor, COMP/M.2803 - Telia/Sonera, COMP/M.3806 - Telefónica/Cesky Telecom. See also Recommendation on relevant markets.

⁶ COMP/M.1838 - BT/Esat

⁷ COMP/M.2803 - Telia/Sonera

14. In the present case it is not necessary to take a position on the relevant market definition as outlined above given that the transaction will not impede effective competition.

Mobile telephony services

Retail level

15. At retail level the Commission has previously considered whether a distinction between business customers and private individuals or between pre-pay and post-pay customers should be made. The exact market definition was however left open. In the present case it is not necessary either to further delineate the market given that the transaction will give no raise to competition concerns.
16. In previous decisions the Commission has discussed the existence of a possible market for pan-European mobile telecommunication services to international mobile customers in particular multi-national corporations (MNCs)⁸. Whether such a product market exists can be left open for the assessment of the present transaction given that Tele2 and Versatel do not offer any pan-European mobile telecommunication services.

Wholesale level, call termination services

17. The Recommendation on relevant markets distinguishes voice call termination on individual mobile networks as a separate market. The definition provided in paragraph 11 for fixed networks can be applied *mutatis mutandi* for mobile networks. Accordingly, there cannot be a substitute for call termination on each individual mobile network since the operator can only reach the relevant end-customers by terminating the call on that specific network. Each mobile termination access network would constitute a relevant market and the network operator has by definition a 100% market share.

Relevant geographic markets

18. All these product markets have been defined in previous Commission decisions⁹ as to be national in scope in particular taking into account the existing regulatory barriers in the telecommunications sector. This geographic market delineation can be confirmed in the present case.

Assessment

Horizontal effects

Fixed line telephony services

19. Versatel, is a network owner whereas Tele2 does not own its own network but is only active as a re-seller (CPS¹⁰). However, fixed telephony services to residential

⁸ see for example COMP/M.3806 - Telefónica/Cesky Telecom

⁹ Cf. Case COMP/M.2803 – Telia/Sonera and Recommendation on relevant markets.

¹⁰ Carrier pre-selection

customers are not provided by Versatel in the Netherlands through its own network but only through CPS.

20. Both Tele2 and Versatel provide services to business and residential customers in the Netherlands. As regards Belgium, Tele2 provides fixed telephony services to both business and residential customers and Versatel only to business customers.
21. The transaction will lead to horizontal overlaps exceeding 15% (affected markets) in the following possible markets in the Netherlands:

	Tele 2	Versatel	Combined
Fixed Telephony			
<i>Retail level</i>			
<i>Residential customers</i>			
Local services	[20-30]%	[<5]%	[20-30]%
National services excl FM*	[15-25]%	[<5]%	[15-25]%
National services incl FM	[20-30]%	[<5]%	[20-30]%
Local/national services excl	[20-30]%	[<5]%	[20-30]%
International services	[20-30]%	[<5]%	[20-30]%
FM	[20-30]%	[<5]%	[20-30]%
<i>Total Residential customers</i>	[20-30]%	[<5]%	[20-30]%
<i>Residential+ business</i>			
Local services	[10-20]%	[<5]%	[10-20]%
National services incl FM	[10-20]%	[<5]%	[10-20]%
Local/national services excl	[10-20]%	[<5]%	[10-20]%
FM	[10-20]%	[<5]%	[10-20]%

* Fixed to Mobile

22. Concerning the market for the provision of services to business customers and its possible submarkets the transaction will not lead to any affected market in the Netherlands. The main competitor in the markets for fixed telephony is KPN with a market share of [60-70]% in the total Dutch fixed telephony market (Tele2 has a [15-25]% market share and Versatel a [<5]% market share). Other fringe competitors in fixed telephony are Scarlet ([<5]% market share) and Premium with ([<5]% market share).
23. As regards Belgium, overlaps between the parties' activities will only take place in the markets for fixed telephony services for business customers (Tele2 [<5]% and Versatel [<5]%) and the following possible submarkets: local/national services excluding fixed to mobile (Tele2 [<5]% and Versatel [5-10]%), international services (Tele2 [<5]% and Versatel [<5]%) and fixed to mobile services (Tele2 [<5]% and Versatel [<5]%). The incumbent service provider (Belgacom) is the main competitor in Belgium.
24. In view of the limited market shares and overlaps resulting from the transaction and the presence of strong competitors, i.e. KPN in the Netherlands and Belgacom in Belgium, the concentration will not significantly impede effective competition in the common market or in a substantial part of it, in particular, as a result of the creation or strengthening of a dominant position in any of the markets listed above.

Internet access

25. The transaction will lead to horizontal overlaps in dial up internet access in the Netherlands where the combined market share of the parties will be [10-20]% (Tele2 [<5]% and Versatel [10-20]%). KPN is the leading provider of these services. Other fringe competitors are Wanadoo and Enertel.
26. As regards higher bandwidth services, Versatel has a market share in the Netherlands of [5-15]%. Tele2 has started offering ADSL services in the Netherlands in 2005¹¹. Its market share can be regarded as negligible. Other competitors in this market are KPN as well as Essent, UPCV, Wanadoo and Tiscali.
27. On 1 August 2005, Tele2 launched high speed ADSL in Belgium. Versatel's 2004 Belgian market share is only [<5]%).
28. Given the limited market shares of the parties, the transaction will not significantly impede effective competition in the common market or in a substantial part of it.

Retail mobile telephony services

29. Neither Versatel nor Tele2 own a mobile network. Tele2 provides retail mobile telephony services as a Mobile Virtual Network Operator (MVNO)¹² in the Netherlands and Versatel is a re-seller of retail mobile telephony services. The market shares of the parties in the Netherlands are very low (Tele2 [<5]% and Versatel [<1]%).
30. Having regard to the above, the transaction will not significantly impede effective competition in the retail market for mobile telephony services in the Netherlands.

Vertical effects

Call termination services in mobile and fixed networks in connection with fixed and mobile telephony services

31. Tele2 provides mobile telephony services as a MVNO in the Netherlands. In this respect, it could be considered that Tele2 provides also call termination services¹³. Versatel, as a fixed network owner, is active as a call termination services provider in the Netherlands and Belgium. Since each network constitutes a relevant market both companies would have a 100% market share in their respective mobile and fixed networks. Strictly speaking this would result in vertically affected markets.
32. As indicated in the Telia/Sonera decision¹⁴ and in numerous decisions, according to Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on

¹¹ Tele2 currently uses KPN's network for its product offering.

¹² A Mobile Virtual Network Operator (MVNO) is a mobile operator that does not own its own radio frequency spectrum and usually only has a core network infrastructure.

¹³ Tele 2 is a provides or wholesale call termination services as it owns a core network which is used for the provision of mobile telephony services and as it sets its own mobile call termination rates.

¹⁴ COMP/M.2803 – Telia/Sonera

a common regulatory framework for electronic communications networks and services, termination in fixed and mobile networks can be used upstream in one country to distort competition downstream in the other country. However, the combined market position of Tele2 and Versatel, as providers of fixed and mobile telephony services, in the countries where they operate is not sufficiently strong to foreclose competition by increasing their termination tariffs in the Netherlands and in Belgium. Consequently the 100% market shares held by Tele2 and Versatel with regard to call termination services in their respective mobile and fixed networks in the Netherlands and in Belgium will not lead to any restriction of competition.

Leased lines

33. Versatel is active as a wholesaler of leased lines in the Netherlands. Due to Tele2's activities on some of the possible downstream markets for leased lines (e.g. internet access) a potential vertical relationship between Tele2 and Versatel may be created. Versatel's market share at wholesale level in the Netherlands is [<5]%. If the market is further divided, the market shares are [<5]% for terminating segments and [5-10]% for trunk segments. The main competitors in the termination segment are KPN, Priority, Essent and BT and in the trunk segment KPN.
34. Given Versatel's insignificant market shares the transaction will not significantly impede competition in the common market or in a substantial part of it.

CONCLUSION

35. 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)
Neelie KROES
Member of the Commission