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Case No COMP/M.4036 - TPG IV / APAX / Q-TELECOM

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 13/01/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

Subject : Case No COMP/M.4036 – TPG IV/APAX/Q-Telecommunications
Notification of 01/12/2005 pursuant to Article 4 of Council Regulation No 139/2004[1]

I. INTRODUCTION

(1) On 01.12.2005, the Commission received the notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("the Merger Regulation") by which the undertakings TPG Advisors IV Inc. ("TPG IV", USA) and Apax Partners Holdings Ltd ("Apax", UK) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the whole of the undertaking Q-Telecommunications S.A. ("Q-Telecommunications", Greece) 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 the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

[1] OJ L 24, 29.1.2004 p. 1.

II. THE PARTIES

(3) **TPG IV** is a private equity fund, which invests in a variety of companies through acquisitions and corporate restructurings.

(4) **Apax** is the parent of a number of companies which provide investment management and investment advisory services to private equity funds investing primarily in Europe in a range of industry sectors. TPG IV and Apax are hereinafter jointly referred to as "the Parties" [2].

(5) **Q-Telecommunications** is the fourth largest retail mobile telephony service provider in Greece and currently operates as a division of Info-Quest. Q-Telecommunications, which has been active since 2002, is a supplier of retail mobile telephony services in the most populated cities in Greece and operates only a very limited own network[3].

III. CONCENTRATION

(6) The proposed transaction concerns the acquisition of joint control by TPG IV and Apax of Q-Telecommunications pursuant to a share purchase agreement entered into by the Parties on October 27, 2005. The acquisition is expected to be effected either directly by TIM Hellas or by an existing Greek acquisition company, to be acquired by the TIM Hellas ownership chain. Under either scenario, Q-Telecommunications is expected to become a wholly owned subsidiary of TIM Hellas upon completion. Thus, the proposed transaction constitutes a concentration in the sense of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

(7) The combined aggregate worldwide turnover of all the undertakings concerned exceeds EUR 5 000 million and the aggregate Community-wide turnover of each of the two undertakings concerned exceeds EUR 250 million. The concentration therefore has a Community dimension in accordance with Article 1(2) of the Merger Regulation.

V. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

(8) The Parties have identified one relevant product market: the market for the supply of mobile telecommunication products and services to end-users in Greece, which includes the provision of access to the mobile telephone network, the supply of related

2 TPG IV and Apax recently acquired joint control of TIM Hellas, which is the third largest mobile telecommunication operator in Greece. The transaction was approved by the Commission on May 26, 2005, Case COMP/M.3785 – *TPG/APAX/TIM Hellas*.

3 According to the notification Q-Telecom has currently deployed [100-150] antennas in the areas of Athens and Thessaloniki. At the Commission's request the Parties have clarified that Q-Telecommunications only has minor revenues in the wholesale segment, in particular as regards call termination. The wholesale segment of the mobile telecommunications market will not be further addressed, as it does not alter the competitive assessment.

value added services, and the sale of mobile handsets and related products[4]. The Parties note that for the purpose of analyzing this transaction, the sale of mobile handsets and services can be assumed to be a part of the relevant product market given that the sale of these handsets and related products and services is in most cases ancillary to the provision of mobile telecommunication services. In any event, Q-Telecommunications is not active in the sale of mobile handsets and related products; SMS is the only related value-added service it offers. Such a further segmentation of the market would therefore not alter the competitive assessment.

(9) In a number of decisions, the Commission has established that mobile telecommunication services cannot be regarded as a substitute to fixed line telephony services[5], and that the market for mobile telecommunication services is distinct from the emerging market for advanced seamless pan-European mobile telecommunication services[6]. The Commission has not further segmented a mobile telecommunication market, but left open whether distinct product markets exist for (i) digital and analogue mobile telecommunications; (ii) private and business customers; or (iii) pre-paid and post-paid subscriptions[7].

(10) In the Commission's market investigation the large majority of third parties agreed to the proposed product market definition, due to the high level of demand-side and supply-side substitutability as regards the various mobile telephony services and products, in terms of pricing and intended use.

(11) The market investigation also pointed out that, although the three biggest mobile operators (i.e. all mobile operators except for Q-Telecommunications) have been offering 2,5G and 3G services for some time already, the development of these enhanced services is still at such an early stage that 2G, 2,5G and 3G services are still regarded by end-users as interchangeable. Consequently, third parties were of the opinion that the market for the supply of mobile telephony products and services to end-users should not be further segmented according to the type of mobile network technology.

(12) For the purpose of the present case the exact product market definition may be left open, since in all alternative market definitions, the operation does not raise competition concerns.

Relevant geographic market

(13) In line with the Commission's decisional practice, the Parties submit that the most appropriate definition of the relevant geographic market for the supply of mobile telecommunication products and services to end-users is national, i.e. Greece, due to

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4 There is no other horizontal overlap between the Parties' and the target company's activities than the one on the retail mobile telephony services market. The few vertical links brought about by the Parties' existing interests in companies upstream of mobile telephony have no or a negligible effect on competition.

5 See e.g. Case COMP/M.2803 – *Telia/Sonera*, Commission decision of July 10 2002; Case COMP/M.1795 – *Vodafone Airtouch/Mannesmann*, Commission decision of April 12, 2000; Case COMP/M.3245 – *Vodafone/Singlepoint*, Comission decision of 16 September 2003.

6 Case COMP/M.2016 – *France Telecom/Orange*, Commission decision of August 11, 2000.

7 Case COMP/M.3530 – *Teliasonera/Orange DK*, Commission decision of 24 September, 2004

the fact that mobile telecommunication services are provided exclusively by nationally licensed operators.

(14) Third parties in the Commission's market investigation confirmed the Parties' view on the national scope of the retail mobile telephony market in the present case by referring among others to the national nature of the obligations attached to licences and the procedure for spectrum allocation.

(15) For the purpose of the present case the exact geographic market definition may be left open, since in all alternative market definitions, the operation does not raise competition concerns.

VI. COMPETITIVE ASSESSMENT

(16) The Commission's market investigation revealed that even though the transaction would lead to a reduction in the number of market players from four to three, overall the market remains at least as competitive as it was before, TIM Hellas remaining the third largest supplier but, following the merger, in a stronger position to compete with the two main players, Cosmote and Panafon-Vodafone.

(17) TPG IV and Apax are already active in the mobile telecommunication sector through their jointly owned subsidiary, TIM Hellas. Q-Telecommunications, currently Greece's smallest supplier, is also active in the retail market for mobile telecommunications services. Accordingly, the Parties submit that the proposed transaction will give rise to a horizontal overlap in the provision of retail mobile telephony services in Greece.

(18) Competition on the Greek market for mobile telecommunication services takes place among four active suppliers (Mobile Network Operators): Cosmote, Panafon-Vodafone, TIM Hellas and Q-Telecommunications[8]. TIM Hellas and Q-Telecommunications are the third and fourth largest mobile operator respectively in Greece and will remain so post-transaction. With the combination of Q-Telecommunications' market share of [less than 5%] by revenue or [5-10%] by subscription and TIM Hellas' market share of [15-20%] by revenue or [20-25%] by subscription (in 2004), the new entity's aggregate market share would amount to [20-25%] (based on revenues) or [25-30%] (based on the number of subscribers) after the acquisition. The two large rival operators, Cosmote with [35-40%] market share and Vodafone-Panafon with around 35-40% share, would still be the strongest players on the Greek mobile telephony market. Cosmote is the former fixed telephony incumbent in Greece and has a strong customer base, while Vodafone-Panafon's strength lies in the integrated European network of the Vodafone mother company. Both companies are well-placed to continue to compete effectively.

(19) This argument was unanimously embraced by third parties in the market investigation. Many even argued that the strengthening of TIM Hellas would narrow down the gap between the two leading operators and the third alternative, and would thus further sharpen the competitive situation on the market, ultimately benefiting the customers with better prices and higher quality.

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8 The Commission's investigation has revealed that currently there is spectrum available for at least one or two new mobile network operators.

(20) The Parties submit that, contrary to similar past merger cases, in this context Q-Telecommunications cannot be seen as a “maverick“, the removal of which could create significant competition concerns in the mobile telephony market.

(21) This opinion of the Parties is supported by the fact that Q-Telecommunications is currently the youngest and the weakest player in the market. Q-Telecommunications entered the Greek mobile telephony market only in 2002. The vast majority of its customers […] are pre-paid card users, who tend to represent the low end of the market, and the number of its permanent subscribers is limited. In addition, Q-Telecommunications does not offer value-added services other than SMS (a service offered by all mobile operators). The company has not established a full mobile network with sufficient coverage in Greece, but its operation mainly concentrates on areas adjacent to several major Greek cities (e.g. Athens and Thessaloniki), providing services only on DCS 1800 spectrum. Moreover, [a majority] of Q-Telecommunications' traffic is dependent on Vodafone-Panafon's network pursuant to a roaming agreement.

(22) The market investigation, furthermore, indicated that large customers generally rely on more than one operator (and usually on the large ones) for their telecommunication needs. This is all the more possible given the fact that Q-Telecommunications predominantly has a pre-paid customer base. In fact, the removal of Q-Telecommunications from the market would not jeopardize customer choice, nor would it entail a major change in the structure of the market. The market investigation has also evidenced that switching supplier at no significant cost remains possible following the merger.

(23) TIM Hellas, in comparison with Q-Telecommunications, is (and will continue to be) able to engage in pricing competition with its two biggest competitors, also given its own network facilities with full coverage of the country. Additionally, TIM Hellas is the strongest competitor to Cosmote and Vodafone-Panafon thanks to the UMTS spectrum license it holds. The Parties are of the opinion that the acquisition will not have a negative effect on competition, but more so that it may even enhance competition by creating a combined mobile telephony operator, which will be in a better position to compete with the large incumbents: Cosmote and Vodafone-Panafon. The results of the market investigation have confirmed the Parties' view.

(24) In the light of the above, it can be concluded that the proposed transaction will not significantly impede effective competition in the mobile telephony sector in Greece, in particular as a result of the creation or strengthening of a dominant position.

VII. CONCLUSION

(25) 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