

***Case No COMP/M.4721 -
AIG CAPITAL
PARTNERS /
BULGARIAN
TELECOMMUNICATIO
NS COMPANY***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 27/07/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27-VII-2007

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Madam(s) and/or Sir(s),

Subject: Case No. COMP/M.4721 – AIG CAPITAL PARTNERS / BULGARIAN TELECOMMUNICATIONS COMPANY
Notification of 12 June 2007 pursuant to Article 4 of Council Regulation (EC) No. 139/2004¹
Publication in the Official Journal of the European Union No. C 135 of 19 June 2007, page 21

1. On 12 June 2007 the Commission received notification of the proposed concentration pursuant to Article 4 of Council Regulation (EC) No. 139/2004 by which the undertaking AIG Capital Partners, Inc ("AIG CP", USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole the undertaking Bulgarian Telecommunications Company ("BTC", Bulgaria) by way of purchase of shares.
2. On 3 July 2007, the Commission received a request by the Bulgarian Republic, dated 2 July 2007, to refer the proposed concentration to its competent authorities with a view to assessing it under Bulgarian national competition law, pursuant to Article 9(2)(a) of the Merger Regulation ("the request"). Observations on the referral request were made by the parties on 9 July 2007.

¹ OJ L 24, 29.1.2004 p. 1

3. On 25 July 2007, the Commission adopted a decision by which the request to refer the concentration to the competent authorities of the Republic of Bulgaria, pursuant to Article 9(3)(a) of Council Regulation (EEC) No 139/2004 was rejected on the grounds that the legal requirements set out in Article 9(2)(a) and (b) of the Merger Regulation were not met.

I. THE PARTIES

4. AIG CP provides investment advice and market asset management products and services on an international basis. Its parent company American International Group Inc. ("AIG") offers a wide range of insurance products on a global basis. In Bulgaria, AIG is active in various sectors of the insurance business.
5. BTC operates a fixed and mobile data and other telecommunication networks and data systems in Bulgaria.

II. THE CONCENTRATION

6. AIG CP will acquire approximately 90% of the share capital BTC. After closing, AIG CP intends to launch a tender offer for the remaining BTC shares.
7. By the acquisition, AIG CP will acquire sole control of BTC. Hence, the proposed transaction constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion² (AIG CP: [...], BTC: EUR 515.7 million; figures relate to 2006). Each of the parties have a Community-wide turnover in excess of EUR 250 million (AIG CP: [...], BTC: [...]), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. In Bulgaria, AIG CP achieves a turnover of EUR [...], whereas BTC's turnover of EUR [...] is solely generated in Bulgaria. The notified operation therefore has a Community dimension under Article 1(2) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

1. Fixed (line) phone services

9. The notifying party submits that fixed line telephony 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. With reference to both the European regulatory framework for telecommunication services³ and previous Commission decisions⁴, they delineate the product market further and distinguish between wholesale and

² 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).

³ Decision 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks (OJ L114, 8.5.2003, p45)

⁴ Cases COMP/M.2803 – Telia/Sonera, COMP/M.3245 – Vodafone/Singlepoint

retail level. Furthermore, the notifying party refers to previous Commission decisions⁵, in which it took the view to consider fixed and mobile telephony to be separate markets.

10. With respect to the geographic dimension, the notifying party submits that the market for fixed line telephony would be national in scope and refers to a previous Commission decision⁶ in this respect.
11. Since AIG CP has no activities in this market or in a vertically related market in the EEA and hence no competition concerns arise from the proposed transaction under any possible delineation of the market, the precise definition can be left open.

2. Leased line services

12. According to the notifying party, a leased line is a symmetric telecommunications line connecting two locations together. Those lines do not have a telephone number, each side of the line being permanently connected to the other. They can be used for telephone, data or Internet services. Dedicated capacity or leased lines may be required (at wholesale level) by telecom operators which require (e.g.) network capacity to connect two cities, without owning a corresponding network. In previous decisions, the Commission has identified leased lines as a separate product market⁷.
13. With reference to previous Commission decisions⁸, the notifying party concurs with the Commissions' view that the market for leased line services is national in scope.
14. Since AIG CP has no activities in this market or in a vertically related market in the EEA and hence no competition concerns arise from the proposed transaction under any possible delineation of the market, the precise definition can be left open.

3. Mobile telephony services

15. The notifying party submits that mobile telephony services comprise all mobile telecommunication services based on the 2G/GSM standard, 3G/UMTS, none voice services such as short message services ("SMS"), multimedia messaging Services ("MMS") and other data services, all made available to residential and business subscribers. In previous decisions⁹, the Commission took the view that mobile telecommunication services constitute a separate product market. With respect to further delineations as to digital and analogue mobile telecommunications, residential and business customers, pre-paid and post-paid contracts, however, the Commission ultimately left open the precise market definition¹⁰.

⁵ Cases COMP/M.2803 – Telia/Sonera, COMP/M.1795 – Vodafone Airtouch/Mannesmann, COMP/M.3245 – Vodafone/Singlepoint

⁶ COMP/M.4442 – Carphone Warehouse Group plc/AOL UK

⁷ Case No IV/M.689 *ADSB/Belgacom*; Case No IV/M.1046 *Ameritech/Tele Danmark*.

⁸ Case No IV/M.689 *ADSB/Belgacom*; Case No IV/M.1046 *Ameritech/Tele Danmark*.

⁹ Cases COMP/M.2803 – Telia/Sonera, COMP/M.1795 – Vodafone Airtouch/Mannesmann

¹⁰ Case COMP/M.3530 – Teliasonera/Orange DK

16. Furthermore, the notifying party considers in their notification a number of specific wholesale telecommunications markets, including that for international roaming services and that for call termination on individual mobile networks. Moreover, the notifying party identified another distinct product market in relation with telecommunication services which is the market for mobile phone handsets. They concur in their view with that of the Commission in a previous decision¹¹.
17. With respect to mobile telecommunication services, the notifying party concurs with the Commission's view expressed in a number of decisions that the geographic dimension of such market is national in scope.
18. However, the precise definition can be left open since under any market definition, the proposed transaction would have no horizontal overlaps as AIG CP has no telecommunications activities in the EEA nor does it have any sales activities world-wide with respect to telecommunications equipment.

4. Broadcasting of radio and TV signals

19. According to the notifying party, supplying transmission services to broadcasters for their signals was identified as a product market by the Commission¹². Delineation into further sub-segments was ultimately left open.
20. Due to the national scope of the network coverage, the notifying party proposes the geographic market definition to be national.
21. However, the precise definition can be left open since under any market definition, the proposed transaction would have no horizontal overlaps as AIG CP has no such broadcasting activities in the EEA.

5. Internet access

22. The notifying party describes internet access of consisting essentially of the supply to subscribers of an internet address, provision of the relevant software to enable messages to be sent and received in the correct electronic format used for internet traffic and connectivity (i.e. access to all other networks which together make up the internet). Other features may also be supplied as part of an access package, such as search engines, or gateway or content services. A physical connection between the final user or subscriber and the internet services provider (ISP) is usually made either through "dedicated access", that is to say, a dedicated fixed line cable link between the final user and his ISP, or by "dial up" access. ISPs traditionally provide dial-up internet access to individual customers via personal computers connected via a modem to the telephone network. However, alternative means of accessing the Internet such as cable and other broadband systems, GSM, satellite are emerging.
23. With reference to previous Commission decisions¹³, the notifying party distinguishes three common forms of internet access namely dial-up service, higher bandwidth services and dedicated access.

¹¹ Case COMP/M.1795 – Vodafone Airtouch/Mannesmann

¹² Case COMP/M.3355 – Apollo/JP Morgan/PromaCom

24. According to the notifying party, which agrees with the Commission's view expressed in previous decisions, internet access is national in scope.
25. Since AIG CP has no activities in this market or in a vertically related market in the EEA and hence no competition concerns arise from the proposed transaction under any possible delineation of the market, the precise definition can be left open.

6. Data transmission

26. A further telecommunication market was identified by the notifying party which is that for business data transmissions. Again, the notifying party views the geographic dimension of this market to be national, as also viewed by the Commission¹⁴. Since AIG CP has no activities in this market or in a vertically related market in the EEA and hence no competition concerns arise from the proposed transaction under any possible delineation of the market, the precise definition can be left open.

7. Pay phones

27. In the notifying party's view, pay phone services comprises the installation and operation of a nationwide card payphone network as well as the installation and operation of the respective systems for management and control of payphones. While the majority of mobile customers appear to use pay phones less or not at all as a result of owning a mobile phone, the notifying party concludes that mobile phones caused the decline of pay phones and hence they possibly belong to the same product market. However, the exact delineation of the product market can be left open as even considering that pay phone service would constitute a separate market, no competition concerns would arise.
28. As regards the geographic definition of such market, the notifying party claims that a market for pay phone services would be national in scope.
29. While previously the Commission has no precedence in this respect, the precise market definition can be left open since AIG CP has no such activities in the EEA or in a vertically related market.

8. Call centre services

30. Finally, the notifying party submits that BTC has activities related to call centres, providing such services internally and to third parties, which would be the relevant product market to consider. BTC provides internal call centre customer support for BTC's fixed and mobile operations. It also provides call centre support for several Bulgarian and international companies including [...].
31. AIG CP manages a private equity fund which has a minority stake (approximately [...]) in a business process outsourcing (BPO) company. The BPO company controls a small call centre in the UK which provides only in-house services for the BPO company and is limited in its activities to the UK.

¹³ Case No COMP/M.3914 *Tele2/ Versatel*.

¹⁴ Case No COMP/M.2334 – *Dmdata/Kommunedata/e-Boks JV*

32. AIG CP submits that call centre services should be considered to be at least national in scope as they may be offered independently of the location of the service user.
33. The exact delineation of the market can be left open as no competition concerns arise under any possible market definition. Since AIG CP has no activities in this market or in a vertically related market in the EEA and hence no competition concerns arise from the proposed transaction under any possible delineation of the market, the precise definition can be left open.

9. Assessment

34. On the basis of the above, it can be concluded that the parties' activities do not overlap under any relationship either horizontally or vertically as AIG CP is not active on any of the telecommunications markets, as defined above, in the EEA in which BCP operates (for the market for call centre services see below). On this basis, given that the parties are not engaged in business activities in the same product and geographical market and neither of the parties is engaged in business activities which are upstream or downstream of a product market in which the other party is engaged, the concentration does not give rise to competition concerns.
35. As regards call centre services, AIG CP is not active in this sector in Bulgaria. Hence, no overlap would occur if the market is considered national in scope. Even on a wider geographic scope, no overlap would occur since, on the one hand, the language used in the call centres (English and Bulgarian) clearly constitutes an essential quality of the service provided and it appears unlikely that call center services would be set up in Bulgaria or in the United Kingdom using, respectively, the English or the Bulgarian language... On the other hand, if the market should be wider than national and include Bulgaria and the UK, it has to be noted that the call centre in the UK, in which AIG CPO holds a minority stake only provides in-house services to the BPO company and is not active on the market for the supply of such services to third parties. In any case, given the very limited activities of this call centre, any hypothetical overlap on such a much wider than national market would be *de minimis*.
36. Competition concerns do not arise from the consideration, either, that the financial strength of the AIG group would cause a strengthening of BTC's position. The purchase of an undertaking by a company with a high worldwide and Community-wide turnover cannot be as such considered as leading to a real risk that the transaction may have a significant adverse impact on competition in a certain market, even if the target company holds already a dominant position. Also, the mere fact that the purchaser possesses a strong financial capacity does not, per se, indicate that competition concerns would arise. No special circumstances in this case suggest that the assessment should lead to a different evaluation.
37. Given the above, the proposed transaction does not give rise to any competition concerns.

V. CONCLUSION

38. 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