



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15/01/1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

Dear Sirs,

Subject: Case No IV/M.1025 - MANNESMANN/OLIVETTI/INFOSTRADA

Notification of 24.10.1997 pursuant to Article 4 of Council Regulation N/ 4064/89 -
Notification declared incomplete on 31.10.1997 - Notification complete on 3.12.1997

1. On 24.10.1997 the Italian company Olivetti S.p.A. ("Olivetti") and the German company Mannesmann AG ("Mannesmann") notified the acquisition of joint control in the Italian communications operator Infostrada S.p.A. ("Infostrada"). Infostrada was previously jointly controlled by Olivetti and the U.S. company Bell Atlantic.
2. On 31.10.1997 the notification was declared incomplete. Indeed, Bell Atlantic still held a controlling interest in Infostrada (33%) but had not notified the operation.
3. On 1.12.1997 Bell Atlantic sold its 33% interests in Infostrada to Olivetti as explained below. Accordingly, the notification became effective on 4.12 1997.
4. 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 raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES' ACTIVITIES

5. Olivetti is a financial and industrial holding that operates through companies specialising in the following sectors: telecommunications, information technology solutions, services and products for home and office markets.
6. Mannesmann is an industrial group engaged in various industrial activities and in the provision of telecommunications services outside Italy.

7. Infostrada is a company active in advanced telecommunications services through a dedicated network capable of providing voice, data, video and other services throughout Italy.

II. THE OPERATION

8. Infostrada is an existing company. It was formed in 1995 and originally jointly controlled by Olivetti and Bell Atlantic. On 1.12.1997 Bell Atlantic sold its 33% interests in Infostrada to Olivetti which in turn will transfer the same interests in Infostrada to Oliman, the vehicle for the transaction as explained below.
9. The notified transaction consists of the acquisition of a controlling interest in Infostrada by Mannesmann and Olivetti (through Oliman, the vehicle for the transaction as explained below).
10. All of Olivetti's shareholding in Infostrada is to be transferred to Olivetti Mobile Telephony Services B.V. (which for the purposes of the transaction is renamed Oliman), a non-operative holding company whose sole activity will be the management of Olivetti's and Mannesmann's direct and indirect participations in Omnitel Pronto Italia S.p.A. ("OPI") and Infostrada. The parties have notified the operation relating to Infostrada under Council Regulation (EEC) No. 4064/89; only this operation is covered by the present decision.
11. Once this transfer has occurred, Mannesmann acquires¹ 25% of the shares of Oliman (the "Phase One"). Subsequently, and prior to 15.3.2000, Mannesmann will increase its shareholding in Oliman to 49.9% (the "Phase Two"). The passage to Phase Two is automatic, and neither Olivetti nor Mannesmann can avoid their obligations in relation thereto save in exceptional circumstances independent of the will of the parties.
12. Article 4 of the shareholders' agreement between Olivetti, Mannesmann and Oliman (the "Shareholders' Agreement") provides for the creation of a Strategic Council which will have responsibility for "the development and implementation of the strategies" of Oliman. This includes "new strategies for the Italian telecommunication market, investment strategies, strategic co-operation, key personnel issues, important contacts with the Government, possible co-operation with partner, competition issues and other issues of strategic importance", decisions and instructions to all relevant persons and corporate bodies of Oliman and Infostrada on the above mentioned issues as well as on the business plan and annual budget, strategic planning and the start of new activities. Mannesmann will be entitled to appoint a number of members (three) equal to those appointed by Olivetti in this Strategic Council. During Phase One only, if the Strategic Council is unable to reach a decision even after a second meeting held within seven days of the preceding one, the decision will be taken by the representatives of Olivetti and Mannesmann in a meeting to be held in the following fifteen days in which Olivetti will have a casting vote. During Phase Two, the casting vote will no longer exist.

¹ Following request of Olivetti and Mannesmann, the Commission adopted on 13.11.1997 an Article 7(4) decision granting a derogation from the suspensive effect as to the acquisition by Mannesmann of the 25% interest in Oliman.

13. On the basis of the above, the Commission concludes that Infostrada will be jointly controlled by Olivetti and Mannesmann. Indeed, as Phase Two is an automatic step already agreed by the parties, it can be considered that Phase One is just a transitional start-up period which is necessarily carried into Phase Two after a maximum of two and a half years². Furthermore, the joint venture will perform on a lasting basis all the functions of an autonomous economic entity and its creation will not give rise to coordination of the competitive behaviour of the parties amongst themselves or between them and the joint venture. Infostrada will not be dependent on its parents for resources and commercial outlets, and it will have sufficient means to carry out its business through capital provided by the parents, as well as by recourse to financing from the financial system. As to the availability of a telecommunications network, Infostrada did on 3.6.1996 enter into an agreement with Autostrade S.p.A. , the operator of the Italian motorway system, according to which Autostrade would make transmission capacity available to Infostrada on a non-exclusive basis. This agreement has expired on 31.12.1997. For a ten-year period subsequent to 1.1.1998. Infostrada and Autostrade S.p.A. have just agreed for a general framework of cooperation in this context (“Accordo programmatico”). As to the risk of coordination, Olivetti will exit the telecommunications market other than through its participation in Infostrada (and OPI as regards mobile telecommunications), and Mannesmann is active on a different geographic market from the one where Infostrada is due to operate (i.e. Italy).

III. COMMUNITY DIMENSION

14. The undertakings’ combined worldwide turnover in 1996 was in excess of ECU 5,000 million (Olivetti, ECU 4,239 million; and Mannesmann, ECU 18,168 million). Each of them has a Community-wide turnover in excess of ECU 250 million (Olivetti, ECU 3,118 million; and Mannesmann, ECU 12,425 million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.
15. The notified operation therefore has a Community dimension, but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

IV. COMPETITIVE ASSESSMENT

A. Relevant product market(s)

16. It is the Commission’s established practice to consider the relevant product markets as domestic and international voice and data telecommunications services, with a segmentation between the voice market (in which both private households and business participate) and the data market (primarily used by business), and further segmentation into domestic and international markets. As in past decisions, however, the precise product market delimitation in this case can be left open since even on the narrowest possible definition the proposed concentration does not create or strengthen a dominant position in the EEA or any substantial part of that area. (see cases IV/M.570 - TBT/BT/Tele

² See paragraph 38 of the Notice on the notion of a concentration under Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings. This paragraph concerns the passage from joint to sole control. The same reasons apply for a passage from sole to joint control.

Danmark/Telenor of 24.4.1995 and IV/M.900 - BT/Tele DK/SBB/Migros/UBS of 16.4.1997).

B. Relevant geographic market(s)

17. The scope of the geographical market in telecommunications is determined:
 - (a) by the extent and coverage of the network and the customers that can economically be reached and whose demands may be met; and
 - (b) the legal and regulatory system and the right to provide a service.
18. Having regard to the licensing and regulatory framework for the provision of domestic and international basic voice and data services in Italy, the geographic market for these services (i.e. domestic services on the one hand and international services on the other) must be regarded as national.³

C. Assessment

19. The operation has to be assessed in the context of liberalisation of the Italian telecommunications sector. Italy is for the moment behind the EU liberalisation timetable and is now starting to implement the relevant directives and, as required by Community law, it has fixed, in Article 2(3) of the Presidential Decree of 19.9.1997, n. 318, the date of 1.1.1998 to liberalise the provision of voice telephony services. Infostrada appears to be a new entrant on this sector, having the profile of a future full public telecommunication operator in direct competition with Telecom Italia.
20. Telecom Italia has until now had a monopoly over public voice telephony in Italy, which was due to come to an end on 1.1.1998. Before this date, competing voice services were allowed only within closed user groups and over private corporate networks.

In this context, the operation appears to be pro-competitive.

21. In view of the market position of the parties to the concentration, which is minimal as they could not until 1.1.1998 compete with Telecom Italia, it appears that the notified operation will have no impact on competition in the EEA. Consequently, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

V. ANCILLARY RESTRICTIONS

22. Non-competition clause: the parties will be bound by a non-competition clause pursuant to which both of them agree to carry out all their telecommunications activities in Italy, San Marino and the Vatican City through Infostrada (and OPI as regards mobile telecommunications), and to refrain from engaging in activities comparable or competing with those of Infostrada directly or through, or in any way in association with, other companies. This clause can be accepted since it expresses the lasting withdrawal of the parents from the market in which the joint venture operates.

³ Case IV/M.975 - Albacom/BT/ENI of 13.11.1997.

VI. CONCLUSION

23. 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,