



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.12.1997

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sirs,

**Subject: Case No IV/M.1055 - Cegetel/Vodafone - SFR**  
Notification of 18.11.1997 pursuant to Article 4 of Council Regulation (EEC) N° 4064/89

1. On 18.11.1997, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Council Regulation (EEC) No 4064/89 by which the French undertaking Cegetel, belonging to the Group Compagnie Générale des Eaux, and the British undertaking Vodafone Group Plc (Vodafone), acquire joint control of Société Française du Radiotéléphone (SFR) which is currently solely controlled by Cegetel.
2. 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 doubt as to its compatibility with the common market and with the EEA Agreement.

**I THE PARTIES**

3. Cegetel was initially set up in 1996 by Compagnie Générale des Eaux (France) with a view to becoming a full service telecommunications operator in France, addressing all segments of the French liberalised telecommunications market. Compagnie Générale des Eaux is the controlling shareholder of Cegetel, the other minority shareholders being British Telecom, SBC Communications and Mannesmann. Cegetel currently is engaged in three telecommunications activities in France: mobile telephony networks and associated services through its subsidiary SFR; paging ("radiomessagerie"); long distance telecommunications infrastructure network in partnership with the French rail company SNCF.

4. Vodafone is the holding company of a group of companies which is involved in the operation of mobile telecommunications networks and the provision of related services, including data network operation, radio paging, satellite mobile communications and value added network services. Vodafone is mainly active in the United Kingdom. Up to now, its presence in France has been limited to the possession of a minority shareholding of 16% in SFR, and to the provision of retail mobile services using equipment and network of the network operators.
5. SFR is currently controlled by Cegetel with shareholding of 80%, the main other shareholder being Vodafone, as stated above. SFR is engaged in the operation of mobile telephony networks and the provision of mobile telephony services in France. It is not active in any other country. Under licences granted by the French Ministry of Telecommunications, SFR operates an analogue radio-telecommunications network and digital network in France, named Global System for Mobile Communications (GSM).

## **II THE OPERATION**

6. The concentration notified is the change of control exercised over SFR and consists of the passage from sole control by Cegetel to joint control by this company and Vodafone.
7. This joint control results from a 1994 Shareholders Agreement and a SFR Call Option Agreement renegotiated in 1996, which provide that Vodafone, on completion of a call option, can take additional interests in SFR and can exercise certain veto rights concerning SFR's activities. Vodafone decided to exercise this call option at the end of October 1997, thereby increasing its overall interest in SFR to 20% accompanied by certain veto rights.
8. These veto rights concern in particular [...] <sup>1</sup>. As a result Vodafone has the possibility to exercise decisive influence on the commercial policy of SFR jointly with Cegetel.
9. It is clear that SFR, since its creation, has performed on a lasting basis all the functions of an autonomous economic entity. The creation of the joint venture does not give rise to co-ordination of the competitive behaviour of the parent companies. Cegetel is not active in the market for mobile telephony other than through SFR.
10. The Commission has therefore concluded that the operation is a concentrative joint venture within the meaning of Article 3 of Council Regulation.

## **III COMMUNITY DIMENSION**

11. The combined aggregate world-wide turnover of Vodafone and Cegetel (with its ultimate parent which is the Compagnie Générale des Eaux) in 1996 exceeded ECU 5,000 million, with consolidated turnover respectively of ECU 2,231 and 25,552 million. The 1996 aggregate Community-turnover of each of the parties exceeded ECU 250 million, with consolidated turnover respectively of ECU 2,051 and 22,226

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<sup>1</sup> Deleted. Business secrets.

million. The parties do not achieve more than two-thirds of their Community-turnover within one and the same Member State. Therefore, the proposed operation has a Community dimension.

#### **IV COMPATIBILITY WITH THE COMMON MARKET**

##### **Relevant product market**

12. The only product and geographic market concerned by the notified concentration is the French mobile telephony market, which is the business area in which SFR is active as network operator.
13. The parties submit that analogue mobile telephony and digital mobile telephony form one and the same product market. They consider that, having regard to the likely technological evolution and the characteristics of customer demand, the market definition should include all mobile voice services, notwithstanding the standard they use (analogue, GSM, future dual mode mobile handsets...). This issue can be left open since, even on the narrowest product market definition, the operation would not lead to the creation or strengthening of a dominant position.

##### **Relevant geographic market**

14. The parties submit that the relevant geographic market is France. In the past, the Commission has held that there is an increasing trend towards a European market for GSM service provision due to a certain degree of substitutability throughout Europe between the various subscriptions which can be taken in the different Member States as well as given the prospects of evolution in the medium term.<sup>2</sup>
15. However, in the present case, it is not necessary to decide whether the geographic market has a European dimension, or whether it is limited to the French territory, since the proposed operation does not raise serious doubts, whatever the geographic definition of the relevant market.

##### **Competitive assessment**

*with regard to Europe as a whole*

16. SFR and one of its parent companies, namely Vodafone, are significant mobile telephony operators in Western Europe. The western European market as a whole is experiencing rapid growth in cellular-telephone subscribers and in new players. From 01.12.1993 to 01.09.1997, the number of subscribers has multiplied by a factor of 5,5 and the number of operators has grown by more than 34%. On the basis of the total number of subscribers known in September 1997, SFR and Vodafone would held together a market share of [...] <sup>3</sup> in Western Europe. However, each company is active as network operator either only or mainly in its own

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<sup>2</sup> See the decision of 27.03.1995 on the case N°IV/M.538 - OMNITEL (point 19 to point 23).

<sup>3</sup> Deleted. Business secrets, between 5% and 15%.

domestic territory, namely France for SFR and the United Kingdom for Vodafone (this company also has subsidiaries active in Greece and Malta).

*with regard to the French territory*

17. The mobile telephony market is a new market which has been recently liberalised in France. The French market is characterised by an intensive competition and a strong growth. It is increasingly becoming a mass consumer market. The number of subscribers has gone up from 839,000 on 01.12.1994 (about 1.4% of the population) to 4,315,000 subscribers on 30.09.1997. Within the last six months, the growth of the total number of subscribers has been 48%. It is expected that the threshold of 5 million subscribers will be reached before the end of 1997 and this number will be doubled at the end of 1998 (about 17% of the population in France). Over the last four years, the number of operators active in France has increased from one (France Telecom) to three with the entry of SFR, and Bouygues Telecom. Each newcomer has benefited from a quick and strong development of sales. The well-developed competition and numerous new promotional offers have resulted in a sharp decrease in subscription costs. SFR has currently 37.8% of market share (about 26% in 1994) while France Telecom is the leader with 55.5% of market share (but about 74% in 1994) and Bouygues Telecom has a market share of 6.7% (but zero in September 1996). To date, Vodafone was not active in France as a mobile telephony network operator, and therefore the operation does not lead to any addition of market share.
18. As stated above (point 4), to date, Vodafone's activity in France, in the sector concerned, has been limited to the provision of retail services in the mobile sector: an end user, willing to subscribe to one of the network operators, will have commercial relationships with the retail services provider, who will interface with the operator chosen by the end user and will assume risks and costs of attracting clients. Since 1995, the number of Vodafone's customers has been on average only [...] <sup>4</sup> of the total number of subscribers in the French market. A significant part of Vodafone's customers are subscribers to the SFR network, and they are therefore already included in the market share of SFR, as given above (point 17). The other part of Vodafone's customers have subscribed to France Telecom. Given the small number of end users concerned, and since France Telecom, which is currently the leader in the market, can use both numerous independent service providers and integrated commercial channels, the effects of the present operation do not raise any serious doubts in terms of dominance.

## **V ANCILLARY RESTRAINTS**

19. The SFR Shareholder Agreement contains a non-compete provision [...] <sup>5</sup> whereby the Vodafone Group agrees not to compete directly or indirectly with SFR's radio-telecommunications business in France. The SFR Shareholder Agreement also provides [...] <sup>5</sup>.
20. These non-competition restrictions, contained in [...] <sup>5</sup> the SFR Shareholder Agreement, represent a lasting withdrawal of the new controlling parent company

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<sup>4</sup> Deleted. Business secrets, less than 10%.

<sup>5</sup> Deleted. Business secrets.

(Vodafone) from the French market in which the joint venture is active, and can therefore be considered as an integral part of the concentration.

21. The Commission takes note that the non-competition provisions are limited in their scope insofar as the SFR Shareholder Agreement provides also that Vodafone shall be free to carry on the business of services providers in France, and that any of the shareholders may engage outside France in any business competitive with the business to be conducted in France. The Commission interprets the reference in SFR Shareholder Agreement to “the business of services providers” as referred to the retail services in the mobile sector described in paragraph 18 above.

## **VI CONCLUSION**

22. It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the common market or in a substantial part of it.
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,