

*Case No IV/M.1177 -  
BELGACOM / TELE  
DANMARK / TULIP*

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION

Date: 19/05/1998

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## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.05.1998

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

Dear Sirs,

**Subject:**     **Case No IV/M.1177 - Belgacom/Tele Danmark/Tulip**  
Notification of 16.04.1998 pursuant to Article 4 of Council Regulation (EEC) N° 4064/89

1. On 16 April 1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Council Regulation (EEC) No 4064/89 by which Belgacom S.A./N.V. ("Belgacom") and Tele Danmark A/S ("Tele Danmark") notified the proposed creation of a joint venture (BruCop Netherlands B.V.) which is due to operate on the telecommunications market in the Netherlands
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. Belgacom is the principal provider of domestic and international telecommunications services in Belgium. Belgacom is jointly controlled by the Belgian State and, through a vehicle company, by Ameritech International Inc. ("Ameritech"), Tele Danmark and Singapore Telecommunications Ltd ("Singapore Telecom")<sup>2</sup>
4. Tele Danmark is the principal provider of domestic and international telecommunications services in Denmark. Ameritech has a shareholding in Tele Danmark which allows it to exercise *de facto* control over Tele Danmark<sup>1</sup>. Tele Danmark is active in the Netherlands through the company Talkline, as a mobile telecommunications service provider.

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<sup>1</sup>O.J. L 395, p.1; corrected version O.J. L 257 of 21.9.1990, p. 13; as last amended by Regulation (EC) No. 1310/97, O.J. L 180 of 9.7.1997, p. 1; corrigendum in O.J. L 40 of 13.2.1998, p. 17.

<sup>2</sup>See Case No. IV/M.689, 29.02.1996.

5. BruCop Netherlands B.V. (“Tulip”) will be a mobile telecommunications network operator and provider in the Netherlands.

## **II. THE OPERATION**

6. The operation is the creation of a company, Tulip, which is going to be a mobile telecommunications network operator and provider in the Netherlands. For this purpose exclusively Belgacom and Tele Danmark have created a company, BruCop 1998 B.V. (“BruCop”) which is jointly controlled by Belgacom and Tele Danmark.
7. On 26 February 1998 Tele Danmark was awarded four licences to operate a DCS 1800 mobile telecommunications network in the Netherlands. Pursuant to an agreement concluded between Tele Danmark and Belgacom on 7 April 1998, which is *i.a.* subject to the approval of the Dutch Minister of Transport, Public Works and Water Management (“Dutch Minister”), these licences will be transferred to Tulip, which is currently a 100% subsidiary of BruCop.

### **Joint Control**

8. Belgacom currently owns [.....] of the capital of BruCop and Tele Danmark [....] Major strategic decisions in BruCop (including the adoption of a ten year business plan and the adoption of the yearly budget) have to be taken with a supermajority of [....]<sup>6</sup> of the issued shared capital at the level of the general meeting of shareholders, or with the affirmative approval of all the board members at the level of the supervisory board (for these decision both Belgacom and Tele Danmark have to be represented by at least one member). BruCop is therefore jointly controlled by the parties. This structure of ownership may be altered because of specific requirements of the Dutch Minister; [...] there will continue to be joint control by Belgacom and Tele Danmark over this company.
9. Tulip is currently a 100% subsidiary of BruCop. [...]
10. On the basis of the above it is concluded that through BruCop, Belgacom and Tele Danmark will exercise joint control over Tulip.

### **Full-function character**

11. Tulip is going to perform on a lasting basis all the functions of an autonomous economic entity. In particular, Tulip will have all the resources (including personnel) to operate independently on the market. Tele Danmark is going to transfer the licenses obtained to install, maintain and operate a DCS 1800 mobile telecommunications network in the Netherlands. [...] The parties have stated that, should the Minister not approve the transfer to Tulip of the licences obtained by

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<sup>3</sup>See Case No. IV/M.1046, 5.12.1997.

<sup>4</sup>Deleted. Business secret.

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

<sup>6</sup>Deleted. Business secret

<sup>7</sup>Deleted. Business secret

<sup>8</sup>Deleted. Business secret

<sup>9</sup>Deleted. Business secret

Tele Danmark, [...]° This last provision does not affect the full-function character of Tulip.

12. 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**

13. The combined aggregate world-wide turnover of Belgacom and Tele Danmark in 1996 exceeded ECU 5,000 million, with turnovers respectively of ECU 3,530 and 3,875 million. The 1996 aggregate Community-turnover of each of the parties exceeded ECU 250 million, with turnovers respectively of [...]¹ and [...]¹². 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**

14. The only product and geographic market concerned by the notified concentration is the Dutch mobile telephony market, which is the business area in which Tulip is going to be active.
15. The parties submit that analogue mobile telephony and digital mobile telephony (including both DCS 1800 and GSM) 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...). On the other hand the Commission has recently considered the emerging market of local mobile telephony services (Italy, DECT). In any case, 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**

16. The parties submit that, although currently competition in the mobile telecommunications business continues to take place primarily at the national level, this market is increasingly European in scope. This conclusion is drawn because of *i.a.* the compatibility between the different systems, the diminishing gap between international and national prices, increasing conclusion of interconnection arrangements.
17. 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 Dutch territory,

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since the proposed operation does not raise serious doubts, whatever the geographic definition of the relevant market.

### **Competitive assessment**

18. The creation of Tulip will not give rise to co-ordination of the competitive behaviour of the parent companies. In particular, Tulip does not appear to reinforce any risk of co-ordination that may already exist as a result of previous links existing between the parent companies.

*with regard to Europe as a whole*

19. Both Belgacom and Tele Danmark are mobile telephony operators in the EEA. This market as a whole is experiencing rapid growth in cellular-telephone subscribers and in new players. In less than four years, 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 at 1 January 1998, Belgacom and Tele Danmark would hold together a market share of [...] in the EEA. However, each company is active as network operator either only or mainly in its own domestic territory, namely Belgium for Belgacom and Danmark for Tele Danmark.

*with regard to the Dutch territory*

20. The penetration of mobile telephony in The Netherlands is relatively low compared to other countries in Europe with comparable *per capita* GD. In 1997, The Netherlands had about 15% penetration compared to 50% in Finland. Because The Netherlands is lagging behind in terms of market penetration, the market has considerable growth potential before the penetration levels of the Scandinavia countries are reached. The rate of growth in the number of subscribers to mobile telephony services is currently running at 75% year-on-year, compared to an European average of 53%.
21. Digital mobile telecommunications were introduced in The Netherlands in 1994, when the national operator KPN started operating the first GSM network in the Netherlands. In 1995, Libertel -a consortium headed by ING bank- was granted a licence to operate a second GSM network. On 31 January 1998, Libertel had a market share of about 32%, PTT Telecom (the mobile telecommunications division of KPN) of about 68% in the Dutch mobile telecommunications market. With the auction of 26 February 1998 KPN was granted 7 DCS 1800 narrow spectrum licences and Libertel 2 DCS 1800 narrow spectrum licences. At the same time, Federa (a consortium between France Télécom, ABN Amro Bank and Rabobank) and Telfort (a joint venture between the Dutch Railways and British Telecom) were awarded each a DCS 1800/GSM licence, Telfort a further DCS 1800 narrow spectrum licence, Orange Site Interests B.V. two DCS 1800 narrow spectrum licences [...]<sup>4</sup> With the above mentioned auction, Tele Danmark was awarded the four DCS 1800 narrow spectrum licences [...]<sup>5</sup> To date, Tele

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<sup>1</sup>Deleted. Business secret, less than 5%.

<sup>4</sup>Deleted. Business secret

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

Danmark was not active in The Netherlands as a mobile telephony network operator, and therefore the operation does not lead to any addition of market share.

22. To date Tele Danmark's activity has been limited to the provision of services in the mobile sector through the company Talkline: an end-user, willing to subscribe to one of the network operators, will have commercial relationships with the retail service provider, who will interface with the operator chosen by the end user and will assume risks and costs of attracting clients. In 1997 Talkline had about [...] of the total number of mobile telecommunications subscribers in the Netherlands. As a service provider Talkline currently faces competition from both independent and integrated suppliers.
23. Given the number of end users concerned and since both KPN and Libertel can use both independent service providers and integrated commercial channels, the effects of this operation do not raise any serious doubts in terms of dominance.

#### **ANCILLARY RESTRAINTS**

24. Belgacom and Tele Danmark have agreed a non-compete clause not to compete with Tulip [...]<sup>17</sup>.
25. [...]<sup>18</sup>
26. [...]<sup>19</sup> to the extent that the non-compete obligation agreed by the parties would be limited to the situation where the parent companies enjoy a controlling stake in Tulip, the non-compete clause would aim at expressing the reality of the lasting withdrawal of the parents from the market assigned to the joint venture. Therefore, this decision only covers this non-compete clause for so long as the parent companies hold a controlling stake in Tulip.

#### **VI. CONCLUSION**

27. 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.
28. 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,

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<sup>17</sup>Deleted. Business secret, less than 15%.

<sup>18</sup>Deleted. Business secret

<sup>19</sup>Deleted. Business secret

<sup>19</sup>Deleted. Business secret