

***Case No IV/M.1536 -  
WIND / ENEL STC***

Only the English text is available and authentic.

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

---

Article 6(1)(b) NON-OPPOSITION  
Date: 29/06/1999

*Also available in the CELEX database  
Document No 399M1536*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.06.1999

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sirs,

**Subject: Case No IV/M.1536 –WIND/ENEL STC**

Notification of 28/5/1999 pursuant to Article 4 of Council Regulation No 4064/89

1. The case was notified on 28 May 1999 by Wind S.p.A. ("Wind"). The proposed operation consists of the acquisition by Wind of sole control over a part of an Enel S.p.A.'s ("Enel") division known as Enel STC by way of purchase of assets.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

**I. THE PARTIES**

3. Wind is a joint venture between Deutsche Telekom AG ("DT"), Enel and France Telecom S.A. ("FT") active in the telecommunications sector in Italy. In particular, Wind operates in Italy in fixed line telecommunications services, data transmission, mobile telephony, enhanced global services.
4. Enel STC is currently a division within Enel, which installs, maintains and operates Enel's internal telecommunications network in addition to providing telecommunications services to Enel.

## **II. THE OPERATION**

5. Enel is the principal provider of electricity in Italy. Enel STC constitutes Enel's private telecommunications network, which is used not only for the provision of telecommunications services, but also for ensuring the security of Enel's electricity network (e.g. for signalling purposes) and continuity of its distribution activity, as well as to achieve efficiency in performing the task entrusted to it (e.g. by re-routing the electricity flow in case of discontinuity of the network or of the overcharging thereof).
6. The concentration is realised with the acquisition by Wind of Enel STC's assets, employees, concessions, contracts and liabilities. The assets include Enel's private telecommunications network. The shareholders of Wind will subscribe to an increase in its share capital: DT and FT will contribute in cash through their jointly controlled holding DT/FT Holding; Enel will contribute in kind by the transfer of Enel STC.
7. The transaction is therefore a concentration within the meaning of article 3(1) (b) of the Merger Regulation.

## **III. COMMUNITY DIMENSION**

8. The operation has a Community dimension. The combined aggregate world-wide turnover of the undertakings concerned exceeds EUR 5 000 million (Wind having around 59 Mio). The aggregate Community wide turnover of at least two of the undertakings concerned exceeds EUR 250 million (Wind largely exceeds this figure, [...]). They do not achieve more than two-thirds of their turnover in one and the same Member State.

## **IV. THE RELEVANT MARKETS**

### **A. Relevant product markets**

9. The relevant product markets in the context of the proposed operation are fixed line telecommunications services, mobile telephony, data transmission, enhanced global services. In addition, as Wind will have the availability of a telecommunications network, the further market of resale of transmission capacity has to be considered as relevant. Precise product markets delimitation in this case can however be left open, since even on the narrowest possible definition the proposed concentration does not create or strengthen a dominant position. The assessment below will not deal with data transmission, enhanced global services and resale of transmission capacity, as the proposed operation does not produce a direct impact on these markets.

### **B. Relevant geographic market**

10. 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.
11. For enhanced global services, given that these services are provided via global networks, the related geographic market is world-wide. For mobile telephony, it is not necessary to decide whether the geographic market has a European dimension, or

whether it is limited to the Italian territory, since the proposed operation does not raise serious doubts, whatever the geographic definition of the relevant market. For all the other services, having regard to the licensing and regulatory framework for the provision of these services in Italy, the geographic market must be regarded as national.

## **V. ASSESSMENT**

12. Wind's market share is less than 15 % in any possible product market definition. As to mobile telephony in Italy, as of 15.5.1999, Wind had less than 15% market share in any possible relevant market. As to fixed line telecommunications services, Wind has [...] private fixed line customers and [...] business customers, against a total number of customers of around 24.5 million private customers and 500.000 corporate customers. The operation therefore appears to be rather pro-competitive

## **VI. ANCILLARY RESTRAINTS**

13. Wind and Enel have concluded an Outsourcing Agreement, which provides that Wind will provide telecommunications services to Enel on an exclusive basis for a period of [...] years. This agreement is considered to be directly related and necessary to the implementation of the concentration for a period of five years. The reasons are the following.
14. The agreement is necessary, in the context of the Italian telecommunications market, for Wind to become a larger competitor on a market on which Telecom Italia is still by far the largest player. In particular, with this agreement Wind is granted an important source of revenue in this developing phase of its business. Moreover, the increased volume of traffic will afford Wind increased economies of scale, which will, in turn, allow it to make greater investments in its network and services portfolio. On the other hand, the Commission considers that the agreement can be considered directly related and necessary to the implementation of the concentration only for a period of five years, given the insufficient reasoning provided by the parties as to the necessity of a longer period of exclusivity. This position is in line with previous practice in this field<sup>1</sup>.

## **VII. CONCLUSION**

15. 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,

---

<sup>1</sup> See for example Case n° IV/M.975 - ALBACOM/BT/ENI, Decision of 13.11.1997.