

***Case No IV/M.1551 -
AT&T / MEDIAONE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 23/07/1999

*Also available in the CELEX database
Document No 399M1551*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.07.1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

Dear Sirs,

Subject: Case No IV/M.1551-AT&T/MEDIAONE

Notification of 09.06.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 09.06.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which AT&T Corp. ("AT&T") acquires within the meaning of Article 3(1)a of the Council Regulation control of MediaOne Group., Inc ("MediaOne").
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 doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. AT&T, a company incorporated in the United States, is a telecommunications carrier providing domestic and international voice and data communications services. AT&T also has interests in a number of companies active in the European Community, which mainly offer telecommunications, cable and Internet services. It also has entered into an agreement with British Telecommunications plc ("BT") relative to the establishment of a joint venture ("the Global Venture") active in global telecommunications services to multinational companies and international carrier services.
4. MediaOne, also a company incorporated in the United States, is a broadband communications company. In the European Community, MediaOne has interests in several companies active in cable services or mobile telephony.
5. The notified operation consists of a merger within the meaning of Article 3(1)a of the Merger Regulation between MediaOne and a wholly owned subsidiary of AT&T.

II. COMMUNITY DIMENSION

6. AT&T and MediaOne have a combined aggregate worldwide turnover in excess of EUR 5 billion (AT&T, EUR 45.2 billion; MediaOne, EUR 6.9 billion). Each of AT&T and MediaOne has a Community-wide turnover in excess of EUR 250 million (AT&T, over EUR [...]; and MediaOne, over EUR [...]), and they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension. It does not constitute a cooperation case under the EEA Agreement.

III. COMPATIBILITY WITH THE COMMON MARKET

A. Fixed telephony services and Internet services in the United Kingdom

7. Each of AT&T and MediaOne are active in the provision of fixed telephony and Internet access services in the United Kingdom.
8. AT&T operates in that sector through its subsidiaries AT&T Communications (UK) Ltd ("AT&T Comms (UK)") and ACC Long Distance UK Ltd ("ACC (UK)"), which provide telecommunications services in the United Kingdom, and through a jointly controlling stake in Telewest Communications plc ("Telewest"), a company active in cable television and telecommunications services in the United Kingdom. In the context of the BT/AT&T Global Venture, AT&T has agreed to withdraw from [its UK communications business] and has undertaken to sell ACC (UK).
9. MediaOne also engages in fixed telephony and Internet access services in the United Kingdom through a controlling stake in Telewest.
10. The operation will therefore lead to the acquisition by AT&T of MediaOne's interest in Telewest, and will result in a change from joint to sole control over Telewest.
11. However, even on the basis of the narrowest segmentation (whereby each type of services is analysed as a separate product market), the combined shares of AT&T and Telewest in each of these services in the United Kingdom appear to be below 15%. And the overlap

will be further reduced or even eliminated after AT&T has withdrawn from [its UK communications business] and has sold ACC(UK).

12. Consequently, it can be concluded that, in fixed telephony services and Internet Access services in the United Kingdom, the proposed concentration does not lead to the creation or the strengthening of a dominant position as a result of which effective competition in the EEA or any substantial part of that area.
13. In the *BT/AT&T* decision¹, the Commission identified concerns over a possible coordination between BT and Telewest in the provision of telecommunication services and dial-up Internet Access Services. These concerns were removed after AT&T submitted a commitment intended to [create a greater structural separation between AT&T and Telewest].
14. After the completion of the present transaction, AT&T would have a direct interest in Telewest [...]. AT&T could therefore have information and influence over Telewest. To the extent that this would result in a breach of the [commitment AT&T submitted in the *BT/AT&T* case intended to create a greater structural separation between AT&T and Telewest], and therefore to give rise to a likelihood of co-ordination, this would need to be investigated in the context of the implementation of the commitments submitted in the *BT/AT&T* case. However, such conduct would not take place before the completion of the present transaction, and the Commission notes that AT&T undertakes to dispose of MediaOne's interest in Telewest [...].

B. Mobile telephony services in the United Kingdom

Relevant markets

15. In previous decisions², the Commission has considered whether mobile telecommunications systems using the GSM standard and systems using other standards belong to different product markets, and it has considered that there is an increasing trend towards a European geographic market for mobile telephony service provision.
16. However, it is not necessary to further delineate the relevant markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Competitive assessment

17. MediaOne owns a 50% interest in One2One, a company active in mobile telephony services in the United Kingdom. AT&T is not active in this sector, but it is engaged in a Global Venture between with BT, which is also involved in mobile telephony in the UK (through BT Cellnet).
18. However, although BT Cellnet and One2One's combined market shares would amount to 47% of subscribers, these two companies will remain subject to the competition of Vodafone (who has a 44% market share) and of Orange (whose market share is 15% and

¹ See IV/JV.15-BT/AT&T

² See case IV/M.1177-Belgacom/TeleDanmark/Tulip and case IV/M.1055-Cegetel/Vodafone/SFR

growing rapidly). It follows that any coordination between BT Cellnet and One2One could not lead to a dominant position by these firms.

19. Given the small number of firms active on the UK market for mobile telephony services, it is also necessary to examine whether the operation could create or strengthen an oligopolistic dominant position in that sector. However, it appears that the UK market for mobile telephony is characterised by substantial growth (+26% in the number of subscribers between March 1997 and March 1998) and by a trend towards product differentiation. Furthermore, there appears to be very little brand loyalty and, by contrast, strong competition in that sector, as is reflected by the important level of customer churn and by the strong variations in the market shares (for instance, One2One's share of subscribers rose by 85% between March 1996 and March 1998). It follows that the market structure provides few incentives for collusion or for conscious parallel conduct.
20. In the light of the above, it can be concluded that, in mobile telephony services in the United Kingdom, the proposed concentration does not lead to the creation or the strengthening of a dominant position as a result of which effective competition in the EEA or any substantial part of that area.

C. Internet Services in Belgium and the Netherlands

Relevant product markets

21. In previous decisions³, the Commission indicated that the following activities appear to constitute separate product markets :
 - (1) Dial-up internet access,
 - (2) Internet advertising,
 - (3) Paid-for content provision.
22. This division is based on the assumption that these different activities earn revenues in different ways and from different sources, and that they are frequently carried out by different undertakings and require substantially different inputs.

Relevant geographic markets

23. In the *@Home Benelux B.V.* case, the Commission indicated that the above markets could either extend to all Dutch speaking regions, or be national, or even be geographically more limited.
24. However, it is not necessary to further delineate the relevant geographic product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Competitive assessment

25. MediaOne owns interests in A2000, which operates the cable networks of the city of Amsterdam and of Hilversum (a city adjacent to Amsterdam). It also holds interests in

³ See, e.g. cases IV/JV.5-Cegetel/Canal+/AOL/Bertelsmann and [IV/JV.11-@Home Benelux B.V.](#)

Telenet, which provides cable, business telephony and Internet access services in the northern part of Belgium. Through its jointly controlling stake in @Home Benelux B.V. (“@Home Benelux”), AT&T is also active in dial-up Internet access provision, as well as in the neighbouring markets for paid-for content provision and for advertising over the Internet.

26. The operation will therefore lead to horizontal overlaps on the market for dial-up Internet access, and to conglomerate aspects on the markets for Internet advertising and for paid-for content provision.
27. However, @Home Benelux will only start its activities in mid-1999, and, given the competitive conditions for Internet services in the Netherlands (as analysed in the @Home Benelux B.V. decision), it appears unlikely that @Home Benelux’s share of dial-up Internet access, Internet advertising and paid-for content should exceed 5% in the Netherlands. This conclusion was reached despite the presence of two of @Home Benelux’s parents on the Dutch Internet sector. Given that these parent companies are not active in Belgium, there is no indication that @Home Benelux could have significant market power in Belgium.
28. Furthermore, Telenet only accounts for less than [0-5%] of Internet connections in Belgium, and A2000 currently has only around 10,000 Internet access customers in the Netherlands.
29. Finally, United Pan-Europe Communications NV (“UPC”) recently announced that it has reached an agreement in principle with MediaOne on the acquisition by UPC of MediaOne’s 50% shareholding in A2000 .
30. In the light of the above, it can be concluded that, in Internet services in Belgium and the Netherlands, the proposed concentration does not lead to the creation or the strengthening of a dominant position as a result of which effective competition in the EEA or any substantial part of that area.

IV. CONCLUSION

31. 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,

ANNEX UNDERTAKINGS

1. In the event that MediaOne has not disposed of its interest in Telewest (hereinafter the “Telewest Interest”) prior to the closing of the notified concentration (hereafter the “Closing”), AT&T undertakes (hereinafter the “Undertaking”) to enter into a binding agreement to sell the Telewest Interest to a purchaser within [...] following the Closing. In the event AT&T fails to enter into a binding agreement with a purchaser within such [...] period, it shall use its commercially reasonable efforts to do so as soon as possible thereafter.
2. [...], AT&T shall appoint a Trustee in accordance with the provisions of paragraph 3 to exercise the functions set out in paragraphs 5 and 6 below.
3. (a)[...], AT&T shall propose to the Commission the names of at least two institutions, independent from AT&T, and either of whom AT&T considers appropriate to be appointed as Trustee.
 - (b)The Commission shall have the discretion to approve or reject one or both of the names submitted. If only one name is approved, AT&T shall appoint the institution concerned as Trustee. If more than one name is approved, AT&T shall be free to choose the Trustee to be appointed from among the names approved.
 - (c)If all names submitted are rejected, AT&T will submit the names of at least two further such institutions (“the further names”) within seven days of being informed of the rejection. If only one further name is approved by the Commission, AT&T shall appoint the institution concerned as Trustee. If more than one further name is approved, AT&T shall be free to choose the Trustee to be appointed from among the names approved.
 - (d)If all further names are rejected by the Commission, the Commission shall nominate a Trustee to be appointed by AT&T.
4. As soon as the Commission has given approval to one or more names submitted, or nominated a Trustee, AT&T shall appoint the Trustee concerned within seven days thereafter.
5. The Trustee’s mandate shall include the following functions:
 - (a)to hold the Telewest Interest on trust for AT&T so that AT&T will not be involved in any way in the management of Telewest and will not be entitled to receive information regarding Telewest;
 - (b)to monitor the satisfactory discharge by AT&T of the obligations entered into by AT&T in this Undertaking;
 - (c)to provide written reports (“the Trustee reports”) to the Commission on progress with the discharge of the Trustee’s mandate, identifying any respects in which the Trustee has been unable to discharge his/her mandate. Such reports shall be provided at regular monthly intervals commencing one month after the date of his/her appointment, or at such other time(s) or time periods as the Commission may specify.
6. If AT&T fails to enter into a binding agreement with a purchaser within [...] following the Closing despite having used commercially reasonable efforts to do so, the Trustee shall carry

out the following additional functions (“the Request”), and the Trustee’s mandate shall be deemed to be extended accordingly. The Trustee shall give priority to the discharge of these additional functions:

- (a) to ensure the proper sale of the Telewest Interest;
- (b) in the Trustee’s reports, or in any event within no later than [...] of being notified of the Request, to submit to the Commission a proposal for the method and timescale proposed by the Trustee for the sale of the Telewest Interest. The Commission will, as soon as reasonably practicable, approve the proposal or indicate any changes that it may require;
- (c) within [...] (or such other date as the Commission may specify) of being notified of the Request, to submit to the Commission for approval an agreement for sale of the Telewest Interest to a purchaser, such agreement to be unconditional on both purchaser and seller and irrevocable except for the approvals of any appropriate regulatory body and customary closing conditions.

If the Commission requests the Trustee to carry out the functions set forth in this paragraph 6, the Trustee shall perform such functions subject to the legal and contractual obligations of AT&T and/or MediaOne existing at the date hereof.

- 7. AT&T undertakes to provide the Trustee with all such assistance and information, including copies of all relevant documents, as he may require in carrying out his mandate, and to pay reasonable remuneration for his services.
- 8. AT&T notes the following for the Commission’s information. In the United Kingdom, MediaOne owns a 50% interest in Mercury Personal Communications (“One2One”). The remaining 50% interest is held by Cable & Wireless plc. On 24 March 1999 MediaOne and Cable & Wireless issued a joint press release announcing that they are jointly exploring strategic alternatives regarding their ownership of One2One. Following a recent auction process, MediaOne is currently evaluating bids and negotiating final terms with prospective buyers. [...]