

***Case No IV/M.1669 -
DEUTSCHE
TELEKOM /
ONE2ONE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 27/09/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.09.1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.1669 – Deutsche Telekom/One2One

Notification of 24 August 199 pursuant to Article 4 of Council Regulation No 4064/89

1. On 24 August 1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ (“the ECMR”) as last amended by Regulation (EC) No 1310/97² by which Deutsche Telekom AG acquires, within the meaning of Article 3(1)(b) of the Regulation, sole control of Mercury Personal Communications Partnership, trading as One2One.

I. THE PARTIES

2. Deutsche Telekom AG (“DT”) is a publicly quoted company with subsidiaries that are active primarily in the telecommunications industry. DT is the ultimate parent of the DT Group. A majority stake in DT (67%) is held by the German government. DT Group provides the entire range of telecommunications services, including mobile communications services through its German subsidiary T-Mobil; DT also provides broadcasting services for analogue and digital radio and television channels.

¹ OJ L 395, 30.12.1989, p.1, corrigendum; OJ L 257, 21.9.1990, p. 13.

² OJ L 180, 9.7.1997, p. 1; corrigendum OJ L 40, 13.2.1998, p.17.

3. One2One is a partnership made up of three privately held holding companies; PCN Partner Ltd., MediaOne UK Ltd., and Cable & Wireless Funding No. 1 Ltd. (“Cable & Wireless”), each jointly controlling, either directly or indirectly 100 % of One2One (respectively 44.303 %, 11.394 % and 44.303 % of the partnership). One2One is one of four mobile communications operators in the United Kingdom. It operates by virtue of a license a GSM 1800 network.

II. THE OPERATION AND THE CONCENTRATION

4. The notification concerns the acquisition by DT of 100% of the share capital of PCN Partner, MediaOne and Cable & Wireless (“the sellers”) in the One2One partnership. The notified operation will therefore result in the acquisition of sole control within the meaning of Article 3(1)(b) of the ECMR.

III. COMMUNITY DIMENSION

5. DT’s worldwide net revenue amounts to € 35.7 billion. DT had a Community-wide turnover in excess of EUR 250 million (€ 33.6 billion) for the financial year ended December 1998. One2One is only active in the United Kingdom with a turnover for the financial year ended 31 March 1999 of € 1.1 billion. Neither undertaking achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.

IV. COMPETITIVE ASSESSMENT

A. Relevant product market

6. According to the Parties, the relevant market is the market for mobile telephony (both GSM 900 and GSM 1800 in principle including also analogue services). They consider that the GSM 900 and GSM 1800 technology are interchangeable from the customer perspective and, hence should be considered as one single product market.
7. The Commission has in an earlier procedure found evidence to support that the relevant product market is the market for mobile telecommunication services encompassing both GSM 900 and GSM 1800 and possibly also analogue platforms. (Case M.1430 – Vodafone/Airtouch). In any event, the definition of the relevant product market may be left open in the present case since the transaction would not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part thereof irrespective of the market definition chosen, as it is set out in the competitive assessment below.

B. Relevant geographic market

8. According to the Parties, the relevant geographic market for mobile communications services is determined, on the one hand, by the extent and coverage of the network and the customers that can economically be reached and whose demands may be met, and, on the other hand, by the legal and regulatory system. On this basis they consider that the market is national in scope.
9. The Commission has in earlier decisions (Cases IV/JV.4 – Orange/Viag and M.1430 – Vodafone/Airtouch) found evidence that given the current conditions in the mobile telecommunications sector the relevant geographic market is national. However, for the purposes of assessment of the present case, the definition of the relevant geographical market for mobile telephony may be left open since, on the basis of the assessment set out below, a dominant position would not be created or reinforced irrespective of the market definition chosen.

C. Competitive assessment

United Kingdom market for mobile telephony

10. Irrespective of the market definition chosen the transaction does not create or strengthen a dominant position on any relevant market.
11. With the transaction, DT will acquire sole control of One2One. One2One is the smallest of four mobile operators in the United Kingdom with a market share of about 14.8% on the market for mobile telephony. Its main competitors are Vodafone, BT-Cellnet and Orange with market shares of respectively 37.6 %, 30.7 % and 16.9 %. The DT Group is currently not offering, either directly or indirectly through joint venture companies in which DT holds an interest (such as Global One UK), packages of telecommunications services including mobile telephony in the United Kingdom. Even taking the narrowest possible market definition, i.e. GSM 1800, GSM 900 and analogue services in the United Kingdom, no overlap arises as a consequence of the transaction. Furthermore, the acquisition by DT of One2One would not lead to a reduction in competition by the removal of a potential new entrant. DT cannot independently enter the United Kingdom mobile telephony market in the short term, as for the time being no frequencies are available for a fifth new entrant on this market.
12. DT is indirectly active in a market vertically related to the mobile telephony market in the United Kingdom via its associate company Eurobell (Holdings) plc (“Eurobell”), in which DT holds a [...] % stake of the share capital. Eurobell operates in the market for cable television services to end-customers and provides telephony and data services over its own network. It also offers Internet services and, since April 1999, voice telephony through indirect access. The notifying Parties submit that this vertical link does not create any risk of foreclosure in the case of mobile to fixed network calls. Compared to other cable and telephony network operators, such as Telewest and BT, Eurobell is a small player.³ At the end of 1998 Eurobell had only [under 100,000] subscribers to its voice telephony services and the termination of such mobile to fixed

³ In the financial year 1998, Eurobell’s turnover was £ [...] million ([below € 100 million]), BT’s £ 16,039 million and Telewest’s £ 539.2 million according to figures provided by the Party.

calls depends upon the customers' pre-existing link to the Eurobell network. In addition to that, DT does not currently offer packages of mobile and fixed services in the area covered by the Eurobell cable or telephony networks.

German market for mobile telephony

13. It has been suggested by third parties that by acquiring One2One, DT will reinforce its alleged dominant position on the German telecommunications market. In particular, it has been suggested that DT will strengthen the position of T-Mobil on the German market for mobile telecommunications services by introducing low-price, pan-European offers and that the transaction will strengthen DT's position on the German market due to convergence of fixed and mobile telecommunications services.
14. However, there is no indication that the notified operation would create or strengthen a dominant position on the German telephony market. If the German market for mobile telephony services were the relevant market it must be noted that One2One is not active on the German market and neither party is currently offering pan-European services. Even if DT were to start offering services between Germany and the United Kingdom, DT would encounter competition from other mobile operators (such as Mannesmann Mobilfunk, which is jointly controlled by Mannesmann AG and Vodafone/Airtouch) which would be able to offer such services in competition with DT because Vodafone is also operating a mobile service in the United Kingdom. Mannesmann Mobilfunk is the market leader with a share of some 43.5% in the German market. T-Mobil is the second largest operator with a share of 42.6 % of the total subscribers⁴. This is confirmed also by figures provided by the Party, which show that there is currently insignificant traffic between T-Mobil and One2One.⁵ Therefore, the notified operation does not lead to a creation or strengthening of a dominant position.
15. The same argument would apply also if the relevant geographical market would to be considered European wide especially since the market shares of the parties would be even lower.

V. ANCILLARY RESTRAINTS

16. The Parties have identified one restriction which they are requesting to be treated as directly related and necessary to the implementation of the concentration and therefore be assessed in conjunction with the concentration itself.
17. Article 8.4 of the Sales and Purchase Agreement provides that each of the Sellers shall not, within two years of completion entice away from the employment of any member of the DT Group any senior employee, nor intentionally assist any person to do so provided that this shall not prohibit any advertisement or general solicitation (or hiring

⁴ Data provided to the Commission in Case M.1430 – Vodafone/Airtouch from the publication *FT Mobile Communications* (December 1998).

⁵ Orange: [...], BT-Cellnet: [...], Vodafone: [...], One2One: [...]. Figures provided by DT for June 1999, based upon T-Mobil subscribers in the United Kingdom and broken down by United Kingdom operator in terms of revenues.

as a result thereto) that is not specifically targeted at such person nor shall it prohibit the hiring of any such person who initiates employment discussions with a Seller or a Seller's Group Undertaking. The purpose of the clause is to guarantee the transfer to DT of the full value of the business acquired. This provision is directly related and necessary for the implementation of the concentration.

VI. CONCLUSION

18. 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,