

***Case No COMP/M.1817 -
BELLSOUTH /
VODAFONE (E-PLUS)***

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

Article 6(1)(b) NON-OPPOSITION
Date: 26/01/2000

***In electronic form on the EUR-Lex website under document
number 32000M1817***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.01.2000
SG (2000) D/100932

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No COMP/M.1817 – BellSouth/Vodafone (E-Plus)

Notification of 15.12.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 15 December 1999, the Commission received a notification pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (“the ECMR”) by which BellSouth Corporation (“BellSouth”) acquires, through its wholly owned subsidiary BellSouth Holding GmbH, Vodafone Airtouch’s plc (“Vodafone”) 17.24% shareholding in the German mobile telephony operator E-Plus Mobilfunk GmbH (“E-Plus”).
2. After examination of the notification the Commission has concluded that the notified operation falls within the scope of the Council Regulation 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. BellSouth is an USA-based international communications services company providing fixed and wireless telecommunications, cable TV, directory advertising and publishing, and Internet and data services.
4. Vodafone is an international communications company involved in the operation of mobile telecommunications network operations, selling/renting of cellular telephone equipment, radio paging and satellite communications.

5. E-Plus is one of the four mobile telephony operators in Germany. E-Plus is currently jointly controlled by BellSouth (22.51%), Vodafone (17.24%) and VR Telecommunications (60.25%).

II. THE OPERATION AND THE CONCENTRATION

6. The notified transaction concerns BellSouth's acquisition of Vodafone's interest in E-Plus. Pursuant to the Commission's decision of 21 May 1999 approving the merger of Vodafone with Airtouch (Case IV/M.1430 *Vodafone/Airtouch*) Vodafone gave an undertaking to the Commission to dispose of its stake in E-Plus. Pursuant to BellSouth's pre-emption rights under the shareholders' agreement over the Vodafone stake, BellSouth provided notice to Vodafone on 8 December 1999 that it would purchase this stake from Vodafone.
7. E-Plus is currently jointly controlled by BellSouth Holding GmbH (a wholly owned subsidiary of BellSouth), Vodafone GmbH (wholly owned indirect subsidiary of Vodafone) and VR Telecommunications ("VRT"), a holding company vehicle and a joint venture entity between VEBA AG ("VEBA") and RWE AG ("RWE"). The notified transaction will lead to a change in the quality of control of E-Plus and result in BellSouth acquiring sole veto rights for *inter alia* the budget and business plan. As a result of the transaction E-Plus will be jointly controlled by BellSouth and VRT, thereby constituting a concentration within the meaning of article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion¹ (BellSouth EUR 20,625 million, Vodafone EUR 10,285 million and E-Plus EUR 686 million). Each of Vodafone and E-Plus has a Community-wide turnover in excess of EUR 250 million (Vodafone EUR 3,285 million and E-Plus EUR 686 million), but 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.

IV. COMPETITIVE ASSESSMENT

9. According to the notifying parties, the relevant market is the market for analogue mobile voice telephony services and digital voice telephony services using both the GSM 900 and DCS (GSM) 1800 standards in Germany.
10. The Commission has in earlier decisions found that there was evidence to support the view that the relevant market is the market for mobile telecommunication services encompassing both the GSM 900 and GSM 1800 standards and possibly also analogue platforms². Furthermore, the Commission has found evidence that given the current

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

² See case M.1430 *Vodafone/Airtouch*

conditions in the mobile telecommunications sector, the relevant geographic market may be national in scope.³ However, even with the narrowest possible market definition (i.e. the German DCS 1800 mobile telephony market) the proposed transaction will not affect any market.

11. Neither BellSouth, VEBA or RWE are active in the market for mobile telephony services in Germany or on any upstream or downstream markets of the market in which E-Plus is active. The concentration will thus not give rise to any horizontal or vertical relationships or increase in market shares.
12. In view of the above, the operation will not lead to the creation or strengthening of a dominant position. Furthermore, the current transaction will eliminate the competition concerns identified in the Vodafone/Airtouch transaction.

V. CONCLUSION

13. 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.

signed
M. Monti
For the Commission,

³ See cases M.1430 Vodafone/Airtouch and M.1669 Deutsche Telekom/One2One).