EN

Case No COMP/M.1840 - KKR / BOSCH TELECOM PRIVATE NETWORKS

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 29/02/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.02.2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Madam/Sir,

Subject: Case No COMP/M.1840 – KKR/ Bosch Telekom Private Networks
Notification of 28.01.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 28.01.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the Canadian undertaking KKR European Fund L.P. belonging to the Kohlberg, Kravis Roberts & Co group ("KKR") acquires through the vehicle MWW Dreißigste Vermögensverwaltung GmbH within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Bosch Telekom Private Networks ("BTPN") from Robert Bosch GmbH by way of purchase of shares and assets.

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[1] and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. KKR is an investment fund group specialised in equity investments through either controlling ownership or strategic minority investments. The portfolio currently held by KKR comprise investments, inter alia, in the retail and banking systems business, recreation resorts, food retailing, assurance companies. Most of these

[1] OJ L 395, 30.12.1989, p.1; corrected version OJ L 257 of 21.9.1990, p. 13; as last amended by Regulation (EC) No 1310/97, OJ L 180, 9.7.1997, p. 1, corrigendum in OJ L40, 13.2.1998, p. 17.

investments are companies in the US. KKR holds its investment for an average time of eight years and runs its portfolio firms separately and independently from each other.

4. BTPN comprises the private networks activities of the telecommunications equipment business of Robert Bosch GmbH.

5. KKR will acquire BTPN by way of purchase of shares and assets.

II. CONCENTRATION

6. The transaction consists of the acquisition by KKR of sole control of the whole of BTPN within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The undertakings KKR and BTPN have a combined aggregate worldwide turnover in excess of EUR 5000 million […]. Each of them has a Community-wide turnover in excess of EUR 250 million […]. Only BTPN achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The notified operation, therefore, has a Community dimension according to Article 1(2). It does not constitute a co-operation case under the EEA Agreement pursuant to Article 57 of that Agreement.

IV. COMPETITIVE ASSESSMENT

A. Relevant product market

8. The notifying parties state that the relevant product market concerned by the proposed operation is the market for private telecommunication systems which comprises letting and selling of Telephone switchboards (Private Automatic branch exchange "PABX") for businesses and private institutions including corresponding terminals as well as solutions for voice communication over data network. The maintenance and installation of these solutions form a second part of that business. In M.1439 (Telia/Telenor) the Commission considered, whether small PABXs models with capacity of less than 100 lines belong to the same relevant product market as large, and whether the aftermarket, i.e. supplying upgrades to customers already having PABX systems (whether large or small), and service contracts with customers following installation to provide ongoing maintenance and support forms a separate market. However, it is not necessary to further delineate the relevant 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.

B. Relevant geographic market

9. The parties emphasise that multinational customers centrally procure private telecommunication systems for all branches and that all major competitors are active across Europe and therefore maintain an at least EEA-wide market. In M.1439 (Telia/Telenor) the Commission defined the geographic market for the distribution of PABX-systems as national. Across countries, highly diverging

market shares would also indicate national markets. However, it is not necessary to further delineate the relevant product and geographic 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.

C. Competitive Assessment

10. Neither KKR nor any other company owned or controlled by KKR is active in the market of private telecommunication systems. Therefore, the proposed operation would not lead to any addition of market shares or vertical relations within the EEA. With a market share of [below 10%] on the EC market of private telecommunication systems, BTPN is fifth following Siemens ([20-30%]), Alcatel ([10-20%]), Ericsson ([below 10%]) and Nortel ([below 10%]). BTPN is active in most EC member states (Austria, Belgium, Germany, France, Italy, the Netherlands, Spain and the UK) but achieves [more than two thirds] of its turnover in Germany where it holds a market share of [10 –20%], after Siemens ([40 to 50%]) and ahead of Alcatel ([5 to15%]) and DeTeWe ([below 10%]). According to its investment principles KKR finances and manages each portfolio company separately and does not use cash flow of one company in another. Moreover, KKR currently holds no other portfolio company with important licences or know- how which could significantly strengthen BTPN's position, therefore the creation or strengthening of a dominant position can be excluded.

11. There is a vertical aspect in that BTNP purchases [electronic connectors] from Amphenol Corp., a KKR portfolio company. However, in the EC Amphenol holds a market share of [below 10%] and Amphenol's sales to BTNP are *de minimis* ([below one] million EUR/year out of a market of 150 to 300 million EUR/year). The connectors are standard products which are produced by a large number of companies like AMP, Framatome and Molex.

Conclusion

12. In view of the above information, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

V. ANCILLARY RESTRICTIONS

13. In order to guarantee to the acquirer the transfer of the full value of the acquired business, the parties agreed, in Article 17 of the sales and purchase agreement a non-competition clause whereby the seller of BTPN, Robert Bosch GmbH and Bosch Telecom GmbH (Bosch) will not compete with BTPN and KKR in the BTPN business for a period of [..] years for the countries and activities of the sold business. Moreover, Article 17.3 contains a non-solicitation clause whereby the seller will not solicit any employee from BTPN for a period of [..] years. According to Article 18.1, Bosch undertakes to keep confidential all confidential business information, trade secrets and technical know how of KKR and of BTPN for a period of not longer than [..] years. The Commission considers that these restrictions are directly related and necessary to the notified

transaction and therefore are covered by the present decision as long as they do not exceed a period of three years.

14. KKR submitted a transitional service agreement under which KKR and Bosch agreed to provide each other with a number of services for a specified minimum time period of up to [..] years. The services to be provided by Bosch to BTNP include inter alia personnel administration, facility management and purchase support, services to be provided by the BTNP to Bosch comprise inter alia accounting, training production and supply of specific products and operation of software systems. Mutual services contain inter alia the technical adoption of a computer based order-management system. The notifying party emphasises that these transitional agreements are necessary to continue the respective business without interruption and are therefore necessary to secure the full value of the businesses to be transferred which the Commission accepts. As far as these service agreements do not exceed a period of three years and are on non-exclusive bases, the Commission considers that these restrictions are directly related and necessary to the notified transaction and therefore are covered by the present decision.

15. According to Article 19.3 of the sales and purchase agreement, KKR and Bosch agreed to an irrevocable, non-exclusive licence for the seller to use some of the transferred intellectual property rights on a world-wide base for unlimited time. Vice versa, those intellectual property rights which remain at Bosch and are necessary for BTPN-business are licensed to BTPN on a world-wide base for unlimited time. As far as the seller grants licences to the purchaser, these are in line with chapter III B of the Commission Notice on restrictions ancillary to concentrations[2]. As far as the purchaser grants licences (outside the scope of non-competition) to intellectual property rights, which are transferred under the agreement to the seller, these are necessary to ensure that the non-competition-clause is not excessive and to maintain the activities of Bosch. Therefore, the Commission considers that these restrictions are directly related and necessary to the notified transaction and therefore are covered by the present decision.

VI. CONCLUSION

16. 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

[2] OJ C 203, 14.8.1990, p.5.