

***Case No COMP/M.1902 -  
TELIA /  
COMMERZBANK / FNH***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 27/04/2000

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## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.04.2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sirs,

**Subject: Case No COMP/M.1902 – TELIA/COMMERZBANK/FNH**

Notification of 23 March 2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 23 March 2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Council Regulation (EEC) No 4064/89 by which Telia AB (“Telia”) and Commerzbank AG (“Commerzbank”) will acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the Luxembourg company First National Holding (“FNH”), and indirectly through FNH also of OAO Telecominvest (“TCI”), Russia, both currently controlled by Commerzbank AG.
2. After an 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**

3. Telia is the parent company of the Telia Group, a company wholly owned by the Swedish state and active as an international data- and telecommunication service provider.
4. Commerzbank is a large German bank, whose business activities include retail, commercial and investment banking, foreign exchange trading, securities trading and assets management.
5. FNH is a Luxembourg company, the sole purpose of which is to act as a holding company for the purpose of investing and holding shares in TCI, a Russian joint stock company. The only asset of FNH consists of a 51% stake in TCI, which will be raised to 75.1% as a result of the proposed transaction. At present, FNH is controlled by Commerzbank AG.

6. TCI, which was founded in 1995, acts as a holding company with stakes in several joint ventures providing telecommunication services in north-west of Russia, mainly mobile telephony and digital fibre optics network in St Petersburg. The joint ventures of TCI were created during the early 1990's by the two former monopoly operators of local and long-distance telecommunications services in St Petersburg with some Western telecommunication operators. TCI is currently controlled by Commerzbank AG.

## **II. THE OPERATION**

7. According to the parties, the acquisition of joint control by Telia and Commerzbank of FNH, and indirectly also of TCI, takes place through the implementation of the Shareholders Agreement and the Share Subscription Agreement, both dated on 31 January 2000. *The Share Subscription Agreement* is entered into between Commerzbank, First National Holding S.A., Dr Michael Boemke, OAO Telecominvest and Telia. *The Shareholders Agreement* is entered into between FNH, Commerzbank and Telia.
8. Prior to the proposed concentration, FNH's "Capital Social" consisted of 5375 voting shares with a nominal value of 100 USD each. Commerzbank owns a total of 5355 voting shares and Dr Michael Boemke the remaining 20 shares. Following the completion of the concentration, and pursuant to the provisions of the *Share Subscription Agreement*, FNH's "Capital Social" will consist of 10.000 shares. Telia purchases and subscribes for, and FNH issues, 2950 new, fully paid ordinary shares to Telia in a private placement, which corresponds to 29.50% of the share capital of FNH. In addition, FNH issues 1675 new FNH shares to Commerzbank and Dr Michael Boemke transfers his holding in FNH to Commerzbank. Consequently, the total number of FNH shares owned by Commerzbank amounts to 7050 shares corresponding to 70.50% of the shares. Following the completion of the share subscriptions, FNH transfers the proceeds of the transaction to TCI to be used in accordance with the Shareholders' Agreement.

## **III. CONCENTRATION**

### **Joint control and full functionality**

9. As already mentioned, the acquisition of joint control by Telia and Commerzbank over FNH, and indirectly also over TCI, takes place through the implementation of the Shareholders' Agreement and the Share Subscription Agreement. Following the implementation of the notified concentration, Commerzbank has 70.50% ownership interest in FNH and Telia 29.50%. Telia will also contribute by providing the joint venture with its more profound knowledge of telecommunication business.
10. Pursuant to the provisions of the *Shareholders' Agreement*, Commerzbank and Telia intend to exercise influence in Board of Directors of FNH, which consists of 7 members, 5 to be appointed by Commerzbank and 2 by Telia. The Agreement provides that the approval of all members of the Board, and thus the agreement of both Telia and Commerzbank, is necessary for the approval of the most important strategic decisions, including the approval of any major Telecominvest actions or profit or loss statement, the acquisition of FNH of any assets or investment or capital expenditure in excess of 50.000 USD as well as the nomination of the company's Managing Director. Therefore, despite the fact that in the Agreement Telia is referred to as the largest minority shareholder, its influence in the FNH, for the reasons stated above, amounts to joint control together with Commerzbank.

11. The Board of TCI comprises 11 members of which Commerzbank appoints 6 and Telia 2 members (for Telia these must be the same persons as those appointed in the Board of FNH), and the remaining 3 members are appointed by the Russian companies SPMMT, an international and long-distance telecom operator in St Petersburg and PTN, a local telecom operator in St Petersburg. Commerzbank has the right to appoint the Chief Executive Officer of TCI. Although, there is no shareholders' agreement between all of the shareholders in TCI, the Shareholders Agreement of FNH provides that, Telia's consent is required for the most important strategic decisions, including, *inter alia*, the approval or implementation of any annual business plan or annual budget of TCI. It is provided in Section 5.1 (h) and 6.2 of the Agreement that, if both of Telia's appointees on the Board of TCI do not approve of the actions at issue, then Commerzbank shall cause its representatives on the Board of TCI to vote against the proposed actions.
12. Therefore, it is concluded that the Shareholders Agreement of FNH provides that following the proposed concentration, the agreement of both parent companies will be required for the approval of the most important strategic decisions in the Boards of FNH and TCI. Consequently, FNH and TCI, through FNH, will be jointly controlled by Telia and Commerzbank. On the basis of the foregoing and in view of the fact that FNH and TCI are pre-existing companies, the notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

#### **IV. COMMUNITY DIMENSION**

13. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Telia EUR [...] million and Commerzbank EUR [...] million in 1998)<sup>1</sup>. Each of Telia and Commerzbank have a Community-wide turnover in excess of EUR 250 million (Telia EUR [>250] million and Commerzbank EUR [>250] million in 1998), 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.

#### **V. COMPETITIVE ASSESSMENT**

14. The notifying parties consider that the concentration does not lead to any horizontal overlaps in any Member States, in the Community, or in the EEA between Telia and Commerzbank, or between Telia and Commerzbank on the one hand, and FNH and TCI on the other hand.
15. According to the parties, Telia is an international data- and telecommunication corporation based in Sweden and is not involved in business activities related to banking that would overlap with Commerzbank's activities. Commerzbank is active in banking and has no controlling interests in any telecommunication corporation with business activities in the EEA.

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<sup>1</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation for Telia, Article 5(3) of the Merger Regulation for Commerzbank, 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.

16. The sole aim of FNH is to act as a holding company for the purpose of investing and holding shares in TCI. TCI has stakes in a number of joint ventures in the field of telecommunications in Russia but no present or foreseen activities in the EEA. The subsidiaries of TCI and the associated companies' activities include the provision of mobile and fixed communications services, production of telecommunications equipment and billing systems. Given that the only potential overlap could thus be between the activities of Telia and TCI in the markets for provision of telecommunication services, and production of telecommunications equipment, and keeping in mind that Telia and TCI operate in different geographical markets, the proposed transaction, although falling within the scope of the Merger Regulation, does not raise concerns as to its compatibility with the common market and with the EEA Agreement.

## **VI. CONCLUSION**

17. 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,