

***Case No COMP/M.1926 -
TELEFONICA / TYCO /
JV***

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

Article 6(1)(b) NON-OPPOSITION
Date: 11/08/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11. 08. 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject: Case No COMP/M.1926 – TYCO / TELEFONICA / JV

Notification of 11.07.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 11.07.2000, the Commission received a notification of a proposed concentration by which the Telefónica Internacional S.A. (TISA), belonging to the Telefónica group and Tyco International Ltd (Tyco) acquire joint control by way of purchase of shares of the newly created company Telefónica SAm S.A. (SAm).
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. Tyco is a diversified Bermuda based company that through its subsidiaries designs, manufactures and distributes electrical and electronic components, medical supplies, fire detection systems, flow control products and undersea cable communication systems and other products.
4. Telefónica is mainly a telecommunication operator providing a full range of telecommunication services based in Spain. TISA, the subsidiary of Telefónica for Latin America, provides both fixed and cellular telephone services in Latin American countries including Brazil, Argentina, Chile, Peru, El Salvador, Guatemala and Port Rico (USA).
5. The transaction consists of the creation of a joint venture SAm which will install, operate and market an undersea fibre optic cable ring for telecommunications around Latin America. TISA will hold [...] of the shares and Tyco [...], but Tyco will have veto rights over

strategic decisions on the business policy of the Joint Venture. SAM will fulfil all the requirements of a full function joint venture. The parties entered an escrow agreement, by which Tyco made its payments for a [...] share to an escrow agent but cannot exercise its voting rights. The escrow agreement will be terminated upon clearance by the Competition Authorities.

II. COMMUNITY DIMENSION

6. Tyco and Telefónica have a combined aggregate worldwide turnover in excess of EUR 5,000 million (Tyco, EUR 20,433 million; and Telefónica 17,465 million). Each of them has a Community-wide turnover in excess of EUR 250 million (Tyco, EUR [...] million; and Telefónica, EUR [...] 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.

III. COMPETITIVE ASSESSMENT

7. In the following the market for telecommunications transmission capacity in Latin America and the market for submarine fibre optic cable network equipment will be analysed.

A Telecommunications transmission capacity for Latin America

A.1 Relevant markets

8. After having built a telecom undersea cable ring with several interconnection points within Latin America and one within the US, SAM will market its transmission capacity to third party telecom operators as well as to TISA on an arms length basis. The joint venture will therefore have an affect on the markets for “international telecommunications infrastructure” in Latin America. It will compete with operators of other undersea cables, like MCI-Worldcom, AT&T, Telecom Italia and others as well as with several national telecom operator’s transmitting capacity via terrestrial networks and satellite networks. In previous decision concerning the telecommunications sector, the European Commission has held that it is possible to subdivide the markets for network infrastructure into separate submarkets (Case M.1439 Telia/Telenor, Case M.1650 Acea/Telefonica). However, it can be left open whether the capacity of undersea telecom infrastructure networks forms a market on its own or whether the relevant market includes the capacity of terrestrial networks and satellite communications, because in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.
9. The parties held that the geographic market comprises Central and South America and Florida. In former decisions, the Commission held that the geographic markets for long distance or international infrastructure were national or, when appropriate, “country pairs” (Case M.1439 Telia/Telenor), which would include Central and South America and Florida. Therefore the relevant geographic market comprises Central and South America and Florida

A.2. Competitive assessment

10. The joint venture will increase telecommunications capacity, which will be marketed to third parties and to TISA and is therefore pro competitive. It will provide additional capacity of 1.9 Tbits which signifies a [15 to 25] percent share on the most narrow relevant

market definition, the provision of capacity for telecom infrastructure within Latin America via undersea cables at the starting date of SAm. The joint venture will face competition from undersea cable networks inter alia of Global Crossing, (Pan American crossing (1.4 Tbits), mid Atlantic crossing (1.4 Tbits), South American crossing (1.4 Tbits)), Globenet (Atlantica 1, (1.4 TBit) and other undersea networks owned by consortia (e.g. Americas 1 (1.7 Tbits), Americas 2 (40 Gbits), Americas 3 (2.6 Tbits), Atlantis) as well as terrestrial networks. It will not have any competitive effects on any EEA-market.

11. Tyco is planning to offer similar services in respect of its proposed undersea global network “Tycom”. Yet, according to the parties this network will be located in different geographic areas (mainly between cities in the US, Europe and Japan) and no direct link between it and the Sam-1 network is envisaged. Therefore this network will have no competitive effects in relation to the notified operation.

B: submarine fibre optic cable system equipment

12. The equipment needed by SAm, that is to say undersea fibre optic cables, switching systems and its installation, which will be provided by Tyco. As Tyco has a market share of about [30 to 40]%, the worldwide market for manufacture, supply and installation of submarine fibre optic telecommunications cable systems is vertically affected.

Relevant markets

13. Tyco Submarine Systems Ltd (TSSL), a subsidiary of Tyco designs, manufactures, supplies and installs submarine fibre optic cable systems. On this market Tyco competes with other producers like Alcatel Optics and the KDD-Group for supply contracts for networks. Vertically affected markets are therefore the markets for supply contracts for manufacture and installation of undersea telecommunications cable systems. The relevant geographic markets are global.
14. TSSL also provides repair and maintenance services for undersea cable systems. These services are provided on a worldwide basis using ships fitted with specialist equipment. 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

15. In the highly dynamic market for supply contracts for manufacture and installation of undersea telecommunications cable systems, the French Alcatel Optics ([45 to 55]% market share) group is the market leader followed by Tyco ([30 to 40]%) and the Japanese KDD-Group ([10 to 20]%). On the market for repair and maintenance services for undersea cable systems the market share of Tyco is about [15 to 25]%, facing the same main competitors. As the JV will not be active on these markets for third parties and the JV agreement does not contain any exclusivity clauses for any other project, these vertical relationships do not appear to give rise to any competitive concerns.
16. In view of the market position of the parties to the concentration and strong competitors, it appears that the notified operation will have no significant impact on competition in the EEA. Consequently, 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.

IV. 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,

Signed by Pedro SOBLES MIRA
Member of the Commission