

***Case No COMP/M.1957 -
VIAG INTERKOM /
TELENOR MEDIA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 14/06/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, **14/06/2000**

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 IV/M. 1957 – VIAG INTERKOM GmbH & Co/ TELENOR MEDIA AS/ JV

Notification of 05 May 2000 pursuant to Article 4 of Council Regulation No 4064/89.

1. On 5 May 2000 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings Telenor Media AS (Media), a subsidiary of Telenor AS, and VIAG Interkom GmbH & CoKG (Interkom), which is jointly controlled by Telenor AS, VIAG AG and British Telecommunications plc acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of a newly formed enterprise Isartor Holding Elfte GmbH (Newco).
2. After examination of the notification the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No. 4064/89 ('the Merger Regulation') and does not raise serious doubts as to its compatibility with the common market or with the functioning of the EEA agreement.

I. THE PARTIES AND THE OPERATION

3. Telenor Media, a subsidiary of the Norwegian Telenor group, is active in the sector of printed and electronic telephone directories inter alia in Norway, Spain, Sweden, France and several non- EU-countries but not in Germany. The Telenor group, a telecom, IT and media group, holds inter alia stakes in fixed telephone providers in

Germany (Interkom), Sweden and Norway and mobile telephone providers in Austria, Germany (Interkom), Greece, Ireland and Norway.

4. Interkom holds the fourth mobile telephony licence in Germany (E2) and provides fixed network telephone services and Internet ISP- services in Germany. Directory assistance services of a limited scope are offered by a third party under the brand of Interkom. In 1998 the turnover of Interkom's activities in the German telephony market was about EUR 179 million. Interkom is jointly controlled by Telenor AS (10%), VIAG AG (45%) and British Telecommunications plc (45%). Viag is a diversified group, being active inter alia besides via Interkom in Germany in the mobile telephony sector in Austria, Liechtenstein and Switzerland. BT provides a wide range of telecommunication, IT and Media services, among which are Interkom's businesses in Germany and activities in the mobile and fixed telephony sector in the UK, Ireland, Netherlands, Spain, in the mobile telephony sector in France and in the fixed telephony sector in Switzerland. BT operates directory assistance services with more than 5% market share in the UK and Ireland. Telenor's activities are already mentioned above.
5. Newco will provide directory assistance services in Germany.

II. CONCENTRATION AND COMMUNITY DIMENSION

6. When operative Newco will be jointly controlled by its parent companies Media and Interkom, whereby Media will hold 51% and Interkom 49% of the equity capital of the JV. The joint control will be through the exercise of their voting rights and through the composition of both the board of directors and the shareholders meeting. The joint venture agreement provides that a number of important matters, inter alia [...] require the prior consent of the shareholders meeting with a majority [...]. Since there are only two shareholders, unanimity is required for these decisions. The joint venture will therefore be jointly controlled by Media and Interkom. Furthermore, the joint venture will have the financial ability and the staff to perform on a lasting basis all the functions of an autonomous economic entity and its creation will not give rise to co-ordination of the competitive behaviour of the parties amongst themselves or between them and the joint venture. Interkom and Media will not have any activity on the markets of the joint venture.
7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion¹, [...] Each of them has Community-wide turnover in excess of EUR 250 million [...] and 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 within the meaning of Article 1(2) of the Merger Regulation but does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

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.

III. COMPETITIVE ASSESSMENT

Relevant Product Markets.

8. The parties argue that the product market is the provision of directory assistance services in Germany where a customer can retrieve information on publicly available telephone numbers, names and addresses (including E-mail addresses) in Germany (national directory assistance service NDA) or abroad (International Directory assistance IDA) via a call centre. The customer is charged via his telephone bill. A supplemental service is “call completion”, that is the direct interconnection to the requested telephone number. The information service is not restricted to the network of the provider. As telephone directories in printed form and in electronic form (CD-Roms, Internet) are handled and used differently and have a different pricing structure, they are not part of the same 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.
9. The relevant geographic market is Germany. It is technically impossible to use the joint venture’s telephone numbers from abroad, as there is no mechanism to invoice customers calling from abroad.

Competitive Assessment

10. As only Interkom provides directory assistance services in Germany and these will be transferred to the JV, there will not be any market overlap. There are nine telephone directory assistance numbers in Germany, the largest being Deutsche Telekom AG with a market share of [75 to 85%], Telegate with a market share of [15 to 25%] and Talkline with about one per cent market share, whereas the market share of Interkom [...] is less than 1%. If the larger market for telephone directory information was considered the market shares would even be lower. In view of the market position of the parties to the concentration, it appears that the notified operation will not have impact on competition in the EEA.
11. On the related market for mobile telephones and fixed network telephone Interkom’s position is about 1 % (1999) for fixed line telephony and about 1.5% (1999) for mobile telephones. In these markets Interkom faces strong vertically integrated competitors like Deutsche Telekom.
12. 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. ANCILLARY RESTRAINTS

13. The notifying parties request that the following matters be covered by this decision as restrictions ancillary to the concentration, on the grounds that they are directly related and necessary to it (Article 6(1)(b) Merger Regulation).
14. According to Article 17 para 2 of the Co-operation agreement Interkom shall for an initial time of [...] neither offer nor provide directory assistance services to third parties in Germany. The parties consider these restrictions to be directly related to the notified

operation, and necessary to it in order to preserve the value of the business. [...] The Commission considers this non-compete clause as an integral part of the concentration.

15. Under Article 6 of the co-operation Agreement Interkom grants to Newco the exclusive right to use its brand for directory assistance services. However, Newco may also provide those services under a non-Interkom brand. The parties consider these restrictions to be directly related to the notified operation, and necessary to it in order to preserve the value of the business. This restriction can be considered directly related and necessary to the implementation of the concentration.
16. According to the Cooperation agreement, Article 11(6) Newco will for an initial time [...] exclusively use VIAG Interkom's network in connection with the concerning directory assistance numbers 11881, 11882 and 11889 owned by Newco. [...].
17. The parties consider the mutual supply and purchase obligations described in point 17 as necessary in order to preserve the value of the business. In view of the high volume necessary to break even in the sector of telephone directory assistance services, and the very small market share of Interkom and Newco, these restrictions can be considered directly related and necessary to the implementation of the concentration.

V. 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,