

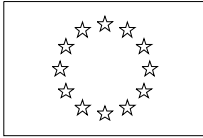
***Case No COMP/M.2016 -
FRANCE TELECOM /
ORANGE***

Only the English text is available and authentic.

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

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

*Also available in the CELEX database
Document No 300M2016*



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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party

Dear Madam/Sir,

Subject: Case No COMP/M. 2016- France Télécom/Orange

Notification of 7 July 2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 7 July 2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ as last amended by Regulation (EC) No 1310/97² by which France Télécom S.A. (“France Télécom”), within the meaning of Article 3(1)(b) of the Regulation, acquires sole control over Orange Plc (“Orange”).
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

3. France Télécom is the incumbent telecommunication operator in France and provides a wide range of telecommunication services to residential, professional and large business customers, primarily in France. France Télécom’s principal businesses are the provision of public fixed-line voice telephony services, leased lines and data transmission services, mobile telecommunication services, telecommunication equipment sales and rentals, cable television and broadcasting services and information services. France Télécom is also active through mobile joint ventures in Belgium, Denmark, the Netherlands, Italy, Portugal and Greece.

¹ OJ L 395, 30.12.1989, p.1, corrigendum; OJ L 257, 21.9.1990, p.13.

² OJ L 189, 9.7.1990, p. 1, corrigendum; OJ L 40, 13.2.1998, p. 17.

4. Orange Plc. is an UK-based mobile telecommunication operator. Its core activities is the Orange network in the UK and the sale and marketing of Orange products in the United Kingdom and other European countries. Orange also has interest in mobile telephony joint ventures in Austria, Belgium, Spain and Switzerland and acts as a service provider for mobile telephony in Germany, France and the United Kingdom.

II. THE OPERATION AND THE CONCENTRATION

5. On 12 April 2000, the Commission approved the acquisition by Vodafone Airtouch Plc (“Vodafone Airtouch”) of Mannesmann AG (“Mannesmann”). The decision was conditioned on the divestiture of the whole of Orange in order to remove the competitive horizontal overlaps in the national markets for mobile telecommunication services in Belgium and the United Kingdom. Following this decision France Télécom entered into a number of agreements with Vodafone Airtouch Plc on 29 May 2000 aiming at France Télécom’s acquisition of Orange.
6. The transaction involves France Télécom acquiring all the shares in Orange from Mannesmann AG. Under the Share Purchase Agreement between Mannesmann and France Télécom, France Télécom will pay Mannesmann part in cash and part in equity. As a result, the Vodafone Airtouch group will hold immediately following the completion of the transaction about 10% of the capital of France Télécom. Through a voting trust agreement Mannesmann has transferred to the Voting Trustee all its voting rights, title and interests in and to the France Télécom shares. As a result, the equity stake in France Télécom will not give the Vodafone Airtouch group any influence or confidential information about the France Télécom group.
7. The parties have entered into a mechanism which allow the Vodafone Airtouch group (including Mannesmann) to sell their stake in France Télécom back to France Télécom. [...]
8. France Télécom also has a call option which grants France Télécom the right [...] to purchase back the shares hold by the Vodafone Airtouch group. The call option may be exercised on a number of occasions and the option will continue until all the shares have been transferred back to France Télécom.
9. In the light of the above, it does not appear that Vodafone Airtouch’s shareholding in France Télécom gives rise to any competition concerns.

III. COMMUNITY DIMENSION

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ (France Télécom: Euro 27 333 million and Orange: Euro 2 860million). Each of France Télécom [...] and Orange [...] have a Community-wide turnover in excess of EUR 250 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.

³ 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.

IV. THE RELEVANT MARKETS

A. Relevant product markets

Mobile telecommunication services

11. In line with previous decisions⁴, the notifying party argues that the relevant product market is the market for mobile telecommunication services encompassing analogue and digital services and different second generation standards such as GSM 900 and DCS 1800. Moreover, the notifying party argues that a further segmentation of the mobile into business and residential customers is inappropriate because many business users do not require services which are different from the services required by residential users. Moreover, business customers routinely place and receive personal calls on the mobile phones and many residential customers utilise their mobile phones for business calls as well. The notifying party also argues that a further segmentation of the market into network operation and distribution of mobile services would be artificial as it would not take into account the fact that mobile telephony services are directly linked to mobile telephony networks.
12. The Commission has so far left open the question whether a further segmentation of the mobile telecommunication services into a market for network operators/service provider is appropriate⁵.
13. The market investigation leads to the conclusion that the product market for mobile telecommunication services encompasses both GSM 900 and DCS 1800 and possibly also analogue platforms and that a further segmentation into network operator/service provider and/or into business/residential customers is not relevant for the purposes of this decision. This issue can, however, be left open since it does not affect the final conclusion in this case.

The provision of seamless pan-European mobile telecommunication services to internationally mobile customers

14. In the case M.1975 - Vodafone Airtouch/Mannesmann, the Commission found that there is an emerging market for the provision of advanced seamless pan-European mobile telecommunication services to internationally mobile customers. This market can be qualified as a market closely related to the mobile telecommunication services markets.
15. France Télécom considers in line with the above decision that the emerging market for pan-European seamless mobile telecommunication services can be considered as a separate product market regardless of the technology used (2G⁶ or 3G⁷). Moreover,

⁴ Cases IV/M.1430-Vodafone/Airtouch, COMP/M.1669- Deutsche Telecom/One2One, COMP/M.1795-Vodafone/Mannesmann.

⁵ Case COMP/M.1760- Mannesmann/Orange.

⁶ 2G is an abbreviation for second generation mobile licenses.

⁷ 3G is an abbreviation for third generation mobile licenses.

France Télécom submits that MNCs⁸ have specific requirements with regard to mobile services such as pan-European unified messaging services, international virtual private networks for fixed and mobile.

16. The results of the Commission's market investigation, confirm France Télécom's conclusion that there is a distinct market for the provision of advanced seamless pan-European mobile telecommunication services. Such a distinction arises from the separate demand by internationally mobile customers and MNCs for seamless pan-European or global mobile telephony services for which a patchwork of national services or a package of mobile and fixed solutions is no substitute⁹.

Mobile handsets and mobile telephony network equipment

17. The notifying party has argued that mobile handsets constitute a separate product market and that the retail market should be distinguished from the wholesale market for mobile handsets. Moreover, it has also been argued that there is a separate market for mobile telephony network equipment.
18. In a previous decision (Case COMP/M.1795 - Vodafone Airtouch/Mannesmann) the Commission concluded on the basis of its market investigation that there is a distinct market for mobile handsets and a distinct market for mobile telephony equipment. The results of the Commission's investigation in the current case do not provide any grounds for concluding otherwise. This distinction arises, from the fact that mobile handsets are used by the final consumer to communicate through the network whereas mobile telephony network equipment are used by the network operators to build the mobile telephony infrastructure. A further segmentation of the market for mobile handsets into a retail market and wholesale market can, however, be left open since this will not affect the final conclusion in this case.

B. Relevant geographic markets

Mobile telephony services

19. The notifying party submits that the market for mobile telecommunication services is national in scope. This is in line with the Commission's earlier decisions¹⁰ and has been confirmed by the market investigation in this case.

The provision of seamless pan-European mobile telecommunication services to internationally mobile customers

20. In the Commission's decision in the case COMP/M. 1795-Vodafone Airtouch/Mannesmann the geographic definition of the relevant market was left open. It was, however, stated that a number of respondents had indicated that this market is at least pan-European. For the purpose of this transaction the exact definition of the

⁸ i.e. multi-national companies that have assets in at least two continents and at least two countries and with employees and business centres in more than one continent.

⁹ See Case COMP/M.1795 - Vodafone Airtouch/Mannesmann

¹⁰ Cases IV/M.1430- Vodafone/Airtouch, COMP/M.1795- Vodafone Airtouch/Mannesmann.

relevant geographic market can be left open since the assessment of the case would be the same regardless of whether the market is pan-European or not.

Mobile handsets and mobile telephony network equipment

21. The notifying party considers that both the retail and the wholesale market for mobile handsets and the mobile network equipment market should be defined as at least EEA-wide from a mobile operator's point of view. The notifying party admits that manufacturers would consider the geographic scope of these markets as global.
22. In the Commission's decision (Case COMP/M.1795–Vodafone Airtouch/Mannesmann) it was indicated that a majority of respondents found that the geographic markets for mobile handsets and mobile network equipment were global in scope. The precise definition of the geographic market was, however, left open. It is for the purposes of this case not necessary to define the geographic market, as the assessment of the transaction would be the same regardless of whether the market is considered as at least EEA-wide or global.

V. COMPETITIVE ASSESSMENT

The Belgian Market for mobile telecommunication services

23. The Belgian mobile telephony market is an affected market as France Télécom has a presence in the Belgian mobile telecommunication market via its 50,9% owned subsidiary Mobistar SA. France Télécom has sole control over Mobistar. Orange is present in KPN Orange Belgium SA via its 50% shareholding in this company. The other shareholder is the Dutch telecom operator KPN having the remaining 50% shareholding.
24. According to the notifying party, Mobistar has an estimated market share of [$>25\%$], KPN Orange Belgium about [$<5\%$] and Belgacom Mobile (Proximus), which is a subsidiary of Belgacom (75%) and Vodafone Airtouch (25%), has a market share of [$>60\%$] in the Belgian market based on the number of subscribers. The merged entity would have a combined market share of [$>30\%$] and will enable France Télécom that already has sole control over the second mobile operator in Belgium to have joint control, together with KPN, over the third mobile operator in this market. This means that the number of players on the Belgian mobile telecommunication market will be reduced from 3 to 2 through the link between Mobistar and KPN Orange Belgium.
25. Market entry is, as in other member States, regulated at the national level. This entry restricts entry to the market, as all operators must first gain a license from the national regulator. The national regulator's ability to award new licences is restricted by the limited amount of available frequencies. The lack of available spectrum for additional GSM 900 and DCS 1800 mobile licences in Belgium acts as a barrier to new entry in this market and no new GSM 900 and DCS 1800 licences are envisaged to be granted to any new GSM operator. The Belgian authorities will grant four mobile telecommunication 3G licenses in beginning of 2001. The effective operation of the licenses are not foreseen on a short-term basis and consequently this element will not have any impact of the assess of the competitive situation in the Belgian market for mobile telecommunication services.

26. Before April 1999 when Orange started operating on the Belgian mobile telecommunication market, the mobile tariff prices of the two market players Proximus and Mobistar were high. The rates per minute on mobile calls from Mobistar and Proximus' network were in 1997 for both networks around 30 BEF per minute. In 1998, the rates were for calls from Mobistar network 30 BEF/minute and for calls from Proximus network 26 BEF/minute. Thus, the tariff prices of Mobistar and Proximus were kept at a similar level. As Proximus and Mobistar were the only players on the Belgian market for mobile telecommunication and as they had a similar¹¹ and transparent pricing¹², Proximus and Mobistar were in a position to exercise joint dominance and will not have any incentive to deviate from the collusive prices.
27. The mobile tariff prices dropped in 1999 and this tendency continued in 2000. The rates for mobile calls from Mobistar network dropped from 30 BEF/minute in 1998 to 25 BEF/minute in 1999 and in 2000 to 15 BEF/minute. The rates for mobile calls from Proximus mobile network dropped from 26 BEF/minutes in 1998 and 1999 to 20 BEF/minutes in 2000. For Proximus and Mobistar the price reduction from 1997 to 2000 is around 33% to 50% which is an indicator of an increased degree of competition in this market.
28. In the light of the above and given the role played by Orange in breaking the duopolistic pricing behaviour of both Proximus and Mobistar prior to its entry into the market, it can be concluded that the proposed concentration raises serious doubts as to its compatibility with the common market in relation to the Belgian market for mobile telecommunication services.

The French market for mobile telecommunication services

29. France Télécom's division, France Télécom Mobiles, is the largest mobile operator on the French market with a market share of [>40%] based on the number of subscribers. The two other operators on the French market are SFR with a market share of [>30%] and Bouygues Telecom with a market share of [>15%].
30. Through the acquisition of Orange, France Télécom will be the owner of Orange's service provider on the French market, Hutchison Telecommunication (France) SA ("Hutchison Telecommunication"). Hutchison Telecommunication is wholly owned by Orange France Holdings which is owned by Orange. Hutchison Telecommunication has a market share of [<5%]. Hutchison Telecommunication resells mobile services provided by [...].
31. In the segment of mobile telecommunication resale services, the position of Hutchison Telecommunication is stronger. Hutchison Telecommunication has a market share of [>10%] and France Telecom Mobile Service has a market share of [>50%] based on the yearly turnover figures (1999). This gives the merged entity a combined market share of [>60%], with the next competitor in this segment, Coriolis, having [>15%].
32. France Télécom is the incumbent telecommunication operator on the French market for mobile telecommunication services. As such, France Télécom enjoys all the usual

¹¹ The price trend of both companies is exactly the same during the last 4 years.

¹² The mobile operators publish their tariffs in brochures available in their own stores.

advantages of an incumbent on the market place such as: i) greater brand loyalty as evidenced by the relatively low churn rate of enjoyed by France Télécom as compared to its next competitor SFR and Bouygues Télécom; ii) a much more developed network both in terms of its global reach both nationally and internationally, which will only be strengthened as a result of the proposed merger; iii) the wide range of offerings on the French market which they will be able to improve upon through their acquisition of Orange.

33. Moreover, the barriers to entry are relatively high as the amount of available spectrum is limited and all the available mobile 2G licenses have been awarded. The fact that the French Government will during the course of Autumn 2000 award 3G licenses will not on a short term basis change this situation as the roll-out of the UMTS¹³ licenses are not foreseen to take place before 3 to 4 years.
34. The difficulties associated with the definition of the market for mobile telecommunication services (whether it be at network operator or service provider level) does not permit the Commission, at this stage, to be sure of the existence of serious doubts over whether the acquisition of Hutchison Telecommunication will further strengthen France Télécom's ability to dominate the French market for mobile telecommunication services not only for direct sales but also for indirect sales.
35. In any event, the Commission's investigation has revealed that in the present case, Hutchison has ceased its commercial activities as a service provider [...]. Instead, Hutchison is now active on the market for call-centers. [...] The notifying party has voluntarily presented the Commission with an undertaking to appoint a Trustee to sell Hutchison Telecommunication to an independent third party. The Commission has taken note of the notifying party's voluntary undertaking.

The provision of seamless pan-European mobile telecommunication services to internationally mobile customers

36. With its acquisition of Orange, France Télécom intends to develop a new pan-European brand "New Orange" which will be active in 5 Member States where France Télécom have sole control (Belgium, Denmark, France, The Netherlands, and the United Kingdom). New Orange (based on local partners in which France Télécom has a controlling stake) will have an estimated subscriber base of [...] million and New Orange will be listed publicly end year 2000 or beginning of year 2001. France Télécom will start to provide service under the brand name "New Orange " at the earliest in year [...].
37. France Télécom submits that the market for advanced seamless pan-European mobile telecommunication services is not an affected market by this concentration as the notifying party is not yet present and due to technical reasons and its considerably smaller footprint is not possible to launch seamless pan-European services in competition with Vodafone Airtouch within the next [...] years.

¹³ Universal mobile telecommunication standard.

38. Vodafone Airtouch has previously stated publicly that it is preparing for the launch of a geographically limited offer of such services in the next six months. This timing is well in advance of France Télécom's capabilities to launch its advanced seamless pan-European services and in advance of the possibility of other mobile operators to replicate in this respect. Therefore, it is considered unlikely that France Télécom within a short-term period would become an effective player on this market.
39. Some third parties have raised concerns as to the risk of collective dominance of Vodafone Airtouch and France Télécom. As a result of the transaction France Télécom will increase its European subscriber base from [...] to [...] million and France Télécom will have a footprint in 6 Member States of which it has sole control in 5 Member States (France, Belgium, Denmark, The Netherlands and the United Kingdom) and joint control in one Member State (Italy). Vodafone Airtouch has after the acquisition of Mannesmann sole control in mobile operators in eight Member States (Austria, Germany, Greece, Italy, The Netherlands, Portugal, Sweden and the United Kingdom) and hold joint control of mobile operators in three (Belgium, France, and Spain) and a total European subscriber base exceeding 40 million.
40. It does not appear that the current transaction leads to any collective dominance between France Télécom and Vodafone Airtouch on this market. Indeed, other than the significant asymmetries between Vodafone Airtouch and France Télécom, the market for pan-European services is an emerging market with characteristics including an increasing demand, many types of different services on offer and on price.
41. In the light of the above it can be concluded that the notified transaction does not lead to the creation or strengthening of a dominant position in the market for advanced seamless pan-European mobile telecommunication services a result of which effective competition will be significantly impeded in this market.

Mobile handsets and mobile telephony network equipment

42. France Télécom submits that the concentration will not have a significant effect on the market for mobile handsets or mobile network equipment because the buying power of France Télécom in these markets is limited.
43. According to France Télécom, the total purchasing requirements for the whole of the France Télécom Group¹⁴ and Orange will be around [<20%] of total sales in Western Europe. France Télécom's purchases of handsets in total sales of individual handset suppliers for the year 2000 will be as follows: [...].
44. Regarding the mobile network equipment, France Télécom estimates that France Télécom group's total purchasing requirements for the mobile network equipment market is [<5%] of the world-wide market. Moreover, France Télécom Group's purchases of its mobile network equipment as percentage of total sales of individual mobile equipment suppliers will for the year 2000 be as follows: [...].
45. The Commission's market investigation did not reveal any competition concerns in relation to the markets for mobile handsets and mobile network equipment. In the light of the above it can be concluded that the notified transaction does not lead to the

¹⁴ I.e. FT mobiles, Mobistar, Mobilix and Dutchtone.

creation or strengthening of a dominant position in the markets for mobile handsets and mobile network equipment as a result of which effective competition would be significantly impeded in these markets. This conclusion applies regardless of the chosen geographic market definition.

VI. UNDERTAKINGS

46. In order to remove the concerns raised by the operation, France Télécom submitted undertakings in the form of a proposal to modify the operation in accordance with the terms of Article 6(2) of the ECMR.
47. The divestment of Orange's 50% stake in KPN Orange Belgium aims at removing the competitive overlap in the Belgian market for mobile telecommunication services. The divestment relates to all shareholdings in KPN Orange Belgium held by France Télécom or by any member of its group to the effect that following the divestiture France Télécom will hold no equity interest either directly or indirectly in KPN Orange Belgium SA. The divestment will take place [...] after the Commission's decision. An independent Trustee will shortly after the Commission's decision be appointed to monitor the viability and saleability of the divestment in accordance with the undertaking, and to ensure that the rights France Télécom has as a shareholder in KPN Orange Belgium SA are executed on an independent arm's length basis consistent with their status until their divestment to the purchaser. France Télécom will not divulge proprietary confidential information relating to KPN Orange Belgium and received in or in relation to its capacity as shareholder of KPN Orange Belgium to any of its shareholders. The Trustee will represent France Télécom in all bodies of KPN Orange Belgium and will vote the financial interests of France Télécom in KPN Orange Belgium. The Trustee shall not pass onto France Télécom any confidential information relating to Orange, except for information that will be required to honour Orange's regulatory reporting obligations or is required for the purposes of the disposal of the divestment assets. The Trustee is to provide written progress reports.
48. The respondents to the market were in general in favour of the divestment of Orange's Stake in KPN Orange Belgium and Hutchisons Télécommunication France SA. Given that the divestment will eliminate the competitive overlap in the Belgian market for mobile telecommunication services, the undertaking is sufficient to eliminate the serious doubts.

VII. CONCLUSION

49. For the above reasons, and on condition that the undertaking described in paragraph 4[7] of the present decision is fully complied with, 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(2) of Council Regulation (EEC) No 4064/89.

For the Commission,

UNDERTAKING

with respect to the Belgian mobile telecommunications market

Whereas, on 7 July 2000 France Telecom ("FT") notified the proposed transaction between FT and Mannesmann AG (substantially wholly-owned by Vodafone AirTouch) and Vodafone AirTouch Plc ("the Transaction") to the European Commission (the "Commission") pursuant to Council Regulation 4064/89 (the "Merger Regulation");

Whereas, FT wishes to submit commitments pursuant to Article 6(2) of the Merger Regulation to form the basis for a decision pursuant to Article 6(2);

Therefore, FT offers the following commitments to allow the Commission to approve the Transaction pursuant to Article 6(2) of the Merger Regulation.

This Undertaking shall take effect upon the date of the Commission Decision declaring the notified concentration compatible with the Common Market under Article 6(2) of Council Regulation No. 4064/89 as amended (the "Effective Date").

A. DIVESTITURE OF FT'S INTEREST IN KPN ORANGE BELGIUM NV/SA

1. Within [...] from the Effective Date, unless extended by the Commission in accordance with paragraph 30 of this Undertaking,¹⁵ FT will have entered into a binding agreement to sell, or cause to be sold, to a purchaser to be approved by the Commission, all of the interest held by it or by any member of its group in KPN Orange Belgium NV/SA (the "Interest"), to the effect that, following the divestiture, FT will hold no equity interest, either directly or indirectly, in KPN Orange Belgium NV/SA. FT will cause all steps to be taken to ensure that the benefits and burdens of all contracts relating to the Interest will be transferred, assumed or assigned to the purchaser.
2. Pending entry into said binding agreement to sell or cause to be sold the Interest, FT agrees that it will not dispose of or to agree to dispose of any of KPN Orange Belgium NV/SA's licenses, customers, databases, intellectual property or other assets necessary to enable KPN Orange Belgium NV/SA to operate as a going concern.
3. To assist the Commission in determining whether any proposed purchaser of the Interest is suitable, FT shall submit a fully documented and reasoned proposal enabling the Commission to verify *inter alia* that: (i) FT does not own a material direct or indirect interest in the proposed purchaser; (ii) the sale allows KPN Orange Belgium NV/SA to continue to operate as an active competitive force; and (iii) at the time of completion of the purchase, the proposed purchaser has, or can reasonably be expected to obtain, all necessary approvals for the purchase from the relevant competition authorities.

¹⁵ [...].

4. FT undertakes to appoint a Trustee in accordance with paragraphs 7 to 11 below, to carry out the functions defined in paragraph 14. If FT has not entered into an agreement to sell, or cause to be sold, to a purchaser to be approved by the Commission, all of the Interest within [...] from the Effective Date, FT shall in addition give an irrevocable mandate to the Trustee to effect the divestiture within an additional period of [...], noting that the deadline can be extended by the Commission in accordance with paragraph 30 of this Undertaking.

B. CONFIDENTIAL INFORMATION

5. FT further undertakes:
 - (a) not to divulge any proprietary confidential information relating to KPN Orange Belgium NV/SA and received in or in relation to its capacity as shareholder of KPN Orange Belgium NV/SA to any of its shareholders or officers.
 - (b) not to divulge any proprietary confidential information relating to Mobistar and any other company of the FT Group and received in or in relation to its capacity as shareholder of Mobistar or such other company to KPN Orange Belgium NV/SA or any of its shareholders or officers.
6. Immediately following the closing of the Transaction, FT shall cause any member of the bodies of KPN Orange Belgium NV/SA appointed by Orange to be replaced by the Trustee himself or by representatives of the Trustee.¹⁶ FT shall refrain for a period of [...] from the Effective Date from appointing the above mentioned Orange appointees to any body of Mobistar.

C. TRUSTEE

7. A Trustee will be appointed according to the provisions set out below.
8. FT shall propose to the Commission, within one week after the Effective Date, the names of at least two individuals or institutions, independent from FT, with the necessary experience and competence in the field of telecommunications, either of whom FT considers appropriate to be appointed as a Trustee.
9. The Commission shall have the discretion to approve or reject one or both of the names submitted. If only one name is approved, FT shall appoint or cause the individual or institution concerned to be appointed as Trustee. If more than one name is approved, FT shall be free to choose the Trustee to be appointed from among the names approved.
10. If all the names submitted are rejected, FT will submit the names of at least two further such individuals or institutions within one week of being informed of the rejection. If more than one further name is approved, FT shall be free to choose the Trustee to be appointed from among the names approved. If only one name is

¹⁶ In principle, the Trustee himself should take care of all representation of FT in KPN Orange Belgium NV/SA bodies. Should, in an exceptional case, the Trustee have to appoint a sub-representative to take care of certain tasks, that sub-representative should normally be a member of the same organization as the Trustee. In any event, the Commission shall be informed of, and have an opportunity to object to, any appointment by the Trustee of a sub-representative.

approved, FT shall appoint or cause the individual or institution concerned to be appointed as Trustee.

11. If all further names are rejected by the Commission, the Commission shall nominate a suitable Trustee which FT will appoint or cause to be appointed. In such case, the Trustee shall be an investment bank or accountancy firm of international standing.
12. As soon as the Commission has given approval to one or more names submitted, or nominated a Trustee to be appointed, FT shall appoint or cause the Trustee concerned to be appointed within one week thereafter.
13. The Trustee may be removed by FT with the prior approval of the European Commission in the event that the Trustee has not acted in accordance with the provisions of this undertaking or any other good cause. Regarding the appointment of a new Trustee the same procedure applies as described above.
14. Following the Commission's approval of a proposed Trustee, FT shall immediately enter into a mandate with the Trustee whose terms shall have previously been agreed with the Commission and which shall include the functions as set out hereunder:
 - (a) to represent FT in all bodies of KPN Orange Belgium NV/SA and in general take care of the financial interests of FT in KPN Orange Belgium NV/SA. In particular, the Trustee will:
 - (1) vote the Interest in the financial interest of FT until legal title to the Interest has been passed to the purchaser,
 - (2) appoint and instruct a sub-representative, if necessary¹⁷,

(1) and (2) always being subject to the duties and obligations of FT or members of its group imposed by law (in case of conflict between any of the foregoing duties and obligations of FT or members of its group and any of the provisions of this Undertaking, the provisions of this Undertaking shall prevail) and pursuant to all agreements in connection with the holding of the Interest and in particular the rights and obligations resulting from shareholder agreements and the Articles of Association of KPN Orange Belgium NV/SA and
 - (b) to forward to FT non-market related data and commercially non-sensitive data, and decisions relevant to FT's shareholding in KPN Orange Belgium NV/SA, excluding at all times any information that might be considered as confidential or commercially sensitive. In particular, the Trustee is prohibited from forwarding any market related information (except such financial data as would normally be

¹⁷ In principle, the Trustee himself should take care of all the duties laid out in this Undertaking. Should, in an exceptional case, the Trustee have to appoint a sub-representative to take care of certain tasks, that sub-representative should normally be a member of the same organization as the Trustee. In any event, the Commission shall be informed of, and have an opportunity to object to, any appointment by the Trustee of a sub-representative.

made available to shareholders in a publicly listed company, such as the annual accounts) and/or commercially sensitive information (including but not limited to business projects and strategies of KPN Orange Belgium NV/SA) to FT. However, if FT requires any confidential information relating to KPN Orange Belgium NV/SA for the purpose of the disposal of the Interest, the Trustee will supply that information directly to FT's legal accounting or banking advisors on condition that none of those advisors work in-house for FT and that the information is not otherwise communicated to FT or any member of FT's group. If this is not practicable, then the Trustee will apply to the European Commission for directions and will act in accordance with those directions.

- (c) to monitor the maintenance of the viability and saleability of the Interest in accordance with this Undertaking, and to ensure that the rights FT has as a shareholder in KPN Orange Belgium NV/SA are executed on an independent arm's length basis consistent with their status, until their divestment to the purchaser;
 - (d) to monitor the satisfactory discharge by FT of the obligations entered into in this Undertaking;
 - (e) to inform and advise the Commission as to the adequacy of the procedure for selecting the purchaser and as to the conduct of the negotiations;
 - (f) to inform and advise the Commission as to whether prospective purchasers with whom FT is or intends to negotiate are likely to satisfy the Commission's requirements.
 - (g) to inform and advise the Commission as to whether the agreements with the purchaser will properly provide for a divestiture of the Interest as provided for herein.
 - (h) the Trustee shall be entitled to cause FT to break off negotiations if it appears to the Commission that the negotiations concerned are being conducted with an unsuitable purchaser.
 - (i) to provide written reports to the Commission about the Trustee's mandate, identifying any respects in which the Trustee has been unable to discharge his mandate. Such reports shall be provided at regular monthly intervals commencing one month after the date of his appointment, or at such other time(s) or time periods as the Commission may specify.
15. In the event that the Interest has not been sold within [...] specified in paragraph 4 above, FT undertakes to immediately give the Trustee an irrevocable mandate to find a purchaser for all of the Interest and to conduct negotiations with such potential purchaser(s).
16. If (in accordance with paragraph 4 above), the Trustee obtains an irrevocable mandate to conduct negotiations with, and propose a purchaser, the Trustee shall:
- (a) notify the Commission and FT as soon as practically possible concerning the identity of purchasers with whom it has initiated negotiations and advise the

Commission why it believes such purchasers are suitable, in view of the criteria specified above;

- (b) end negotiations with any prospective purchaser, if the Commission determines that the negotiations are being conducted with an unsuitable purchaser; and
 - (c) carry out the negotiations with the view to concluding a binding contract for the divestiture of the assets that takes into account the financial interest of FT (*i.e.*, to obtain the best price and terms possible within the context of the Trustee's mandate).
17. FT undertakes to provide the Trustee with all reasonable assistance and information necessary for the execution of such sale and shall be kept informed by the Trustee of all negotiations regarding finding a purchaser for the Interest.
 18. The Trustee will provide FT with all reasonable assistance required to ensure compliance with the Undertaking. FT will always provide or cause to be provided to the Trustee all such assistance and information, including copies of all relevant documents accessible to FT, as he may require in carrying out his mandate and to pay reasonable remuneration for his services as agreed in an engagement agreement.
 19. At the Commission's reasonable request, FT shall modify the proposed mandate, if necessary, to ensure that it is in accordance with the provisions of these Undertakings. Once the mandate has been executed, FT shall not make any changes to such mandate without the Commission's approval. Any instruction or request to the Trustee from FT which conflicts with the Trustee's mandate will be considered null and void.
 20. As soon as the specific remedy with which the Trustee has been entrusted has been implemented, the Trustee shall request the Commission to be discharged. However, the Commission may at any time require the reappointment of the Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

D. RING-FENCING OF KEY PERSONNEL

21. Throughout the divestiture period and for [...] following divestiture, FT undertakes to refrain from hiring, or approaching with a view to hiring, for a position at Mobistar such KPN Orange Belgium NV/SA personnel who have had (or currently have) access to sensitive business, commercial, R&D, or other proprietary information, due to his or her professional position or function with KPN Orange Belgium NV/SA.

E. COMMISSION APPROVALS

22. If the Commission has not within ten (10) working days following receipt of a fully documented and reasoned request rejected in writing any proposal submitted to it for approval pursuant to this Undertaking, the proposal shall be deemed to be approved. With respect to any other proposals, the Commission's failure to decide within ten (10) working days from receipt of FT's, or the Trustee's as the case may be, fully

documented and reasoned request shall constitute an exceptional circumstance for purposes of paragraph 30.

23. Provided that the procedure for approval of potential purchasers has been complied with, FT or the Trustee as the case may be shall be free to accept any offer or to select the offer it considers best in the event of a plurality of offers for the interests or assets to be divested. If the selection is made by the Trustee, he or she is to have due regard to the financial interest of FT (i.e., he or she should strive to obtain the best price and terms possible within the context of the his mandate).
24. Any requests or proposals requiring Commission approval shall be addressed to the Director of Directorate B of the Commission's Directorate General for Competition, 70 Rue Joseph II, 1000 Brussels. Any communications to FT shall be addressed to persons to be determined and communicated to the Commission before the Effective Date.

F. USE OF THE ORANGE BRAND IN BELGIUM

25. FT undertakes to respect the terms of the contract (or contracts as the case may be) which, according to information offered to FT, have been concluded between the KPN Group, the Orange Group and KPN Orange Belgium NV/SA with regard to *inter alia* the right for KPN Orange Belgium NV/SA to use the Orange brand only in Belgium in connection with mobile telecommunications services. Nevertheless, it is the intention of FT to enter into negotiations with KPN in order to terminate any such right.

G. GENERAL PROVISIONS

26. This Undertaking is governed by Belgian Law.
27. The Undertaking is subject in all respects to the general duty of trust and good faith and to the terms of all agreements relating to the Interest, in particular shareholder agreements and the Articles of Association.
28. The Commission may on its own initiative or at the request of the Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this undertaking.
29. FT shall submit progress reports in English on the implementation of each of the above remedies to the Commission each month from the Effective Date until the Undertaking is fully implemented.
30. At FT's or any Trustee's request, the Commission may extend any period in these Undertakings allowed for the conclusion of a binding contract for the divestiture of FT's stake in KPN Orange Belgium NV/SA. Such request shall specify the exceptional circumstances that in FT's or the Trustee's opinion justify an extension. Any such delay shall not prevent FT from taking the necessary preparatory steps with a view to completing any of the envisaged divestitures. Such exceptional circumstances shall also include any delay in the Commission's response to any

request or proposal pursuant to these Undertakings beyond the time periods accorded to the Commission in these Undertakings.

31. FT shall be deemed to have complied with its commitments under these Undertakings if within the relevant period (including any possible extensions), it has entered into a binding contract with a purchaser approved by the Commission.
32. If the approval of the Transaction by another antitrust authority is made subject to requirements that are potentially inconsistent with these Undertakings or that would together with the obligations in these Undertakings result in the divestiture of assets or businesses beyond what is necessary to eliminate overlap between FT in any relevant markets, FT may request a review and adjustment of these Undertakings in order to avoid such inconsistencies or any obligations beyond the obligation to eliminate such overlap.
33. FT shall provide the Commission with such information as the Commission may require in connection with these Undertakings within ten (10) working days from receipt of the Commission's reasoned request.
34. Nothing in these Undertakings shall require FT to take, or refrain from taking, any action, if such action or inaction would violate any applicable laws and regulations, nor shall it be interpreted so as to prevent FT from gaining access to information which it needs to comply with its obligations under financial reporting, tax and securities laws.

IN WITNESS WHEREOF, the undersigned have caused this Undertaking to be executed as of 10 August 2000:

For France Telecom: