

***Case No COMP/M.2099 -  
HUTCHISON / NTT  
DOCOMO / KPN  
MOBILE / JV***

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: 05/09/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05.09.2000  
SG (2000) D/106513

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2099 – HUTCHISON/NTT DOCOMO/KPN MOBILE-JV**  
Notification of 03.08.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 03.08.2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>1</sup> by which the undertakings the Hutchison Whampoa Limited (Hong Kong), NTT DoCoMo, Inc (Japan) belonging to the NTT Group and KPN Mobile N.V. (Netherlands) belonging to the KPN Group acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the UK undertakings Hutchison 3G UK Holdings Limited and Hutchison 3G UK Limited by way of purchase of shares. 3G OpCo has been awarded one of the five third generation (3G) mobile licences in the UK and it will build and operate a UMTS<sup>2</sup> network in the UK.
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 AND THE OPERATION**

3. Hutchison is a Hong Kong based conglomerate with businesses in telecommunications and e-commerce, ports and related services, property and hotels, retail, energy and infrastructure.
4. NTT DoCoMo is the largest mobile operator in Japan and is part of the NTT Group, which primarily provides domestic telecommunications services in Japan.

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<sup>1</sup> OJ L 395, 30.12.1989 p.1; corrigendum OJ L 257 of 21.9.1990, p. 13, last amended by Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997, p.1, corrigendum OJ L 40, 13.2.1998, p.17).

<sup>2</sup> Universal Mobile Telephony Service

5. KPN Mobile belongs to the KPN Group and is the leading provider of mobile telecommunication products and services in the Netherlands. The KPN Group's core activities include provision of services over fixed and mobile network, data communication based on the Internet protocol and Internet, call center and media services.
6. The proposed transaction is part of a strategic co-operation of Hutchison, NTT DoCoMo and KPN Mobile in the field of European third generation mobile multimedia services, which covers four countries, i.e. Belgium, France, Germany and the UK. In Belgium and France the parties intend to work together in relation to UMTS licence award processes. In Germany, a joint venture was established for the limited purpose of bidding for a UMTS licence and building a network<sup>3</sup>.

## II. CONCENTRATION

### *Joint control*

7. As a result of the notified operation, 3G HoldCo, which holds 100% of 3G OpCo, will become a joint venture jointly controlled by Hutchison, NTT DoCoMo and KPN Mobile. NTT DoCoMo and KPN Mobile will acquire stakes of 20% and of 15% respectively. NTT DoCoMo is entitled to appoint 3 directors, KPN Mobile 2 directors and Hutchison 7 directors to each of the 3G HoldCo board and the 3G OpCo board. Decisions by the 3G OpCo board and the 3G HoldCo board are in principle taken by simple majority. However, NTT DoCoMo and KPN Mobile have veto rights on an extensive number of "reserved matters" including issues related to strategic decisions on the business policy of the joint venture, such as major investments and the appointment of senior management.
8. [...].
9. Furthermore, there is a high probability that the parties are carrying out a deliberate common policy. The joint venture has been established to create a new business and it is part of a strategic co-operation of the parties in the field of European third generation mobile multimedia services. Hutchison paid the full amount of the licence fee upfront (GBP 4.385 billion). NTT DoCoMo and KPN Mobile will contribute special know how to the Joint Venture (NTT DoCoMo: i-mode technology a mobile Internet access technology, KPN Mobile: knowledge of the European mobile markets). In these circumstances, the parties may be able to operate the joint venture with full co-operation only with each other 's agreement on the most important strategic decisions even if there was not express provision for any veto rights<sup>4</sup>.

### *Full function joint venture*

10. The joint venture will be a full function joint venture within the meaning of article 3(2) of the Merger Regulation performing all the functions of an autonomous economic entity on a lasting basis. It will commence offering UMTS services to customers from [...], and will have approximately [...] employees by then.

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<sup>3</sup> The creation of the joint venture was notified to the German Bundeskartellamt on 13 July 2000 and cleared on 18 July 2000.

<sup>4</sup> COMMISSION NOTICE on the concept of concentration under the Merger Regulation, para. 34

### III COMMUNITY DIMENSION

11. The combined aggregate world-wide turnover of the undertakings concerned exceeds EURO 5 000 million (EURO 6,704.0 million for Hutchison, EURO 67,427 million for NTT DoCoMo and EURO 9,132 million for KPN Mobile). Hutchison and KPN Mobile each have a Community-wide turnover in excess of EURO 250 million (EURO [...] million for Hutchison and EURO [...] million for KPN Mobile). Hutchison and KPN Mobile do not achieve more than two thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation has therefore a Community dimension in accordance with 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.

### IV. COMPATIBILITY WITH THE COMMON MARKET

#### A. Relevant markets

12. UMTS is a recently developed technological standard for mobile telephony services, which enables a whole range of improvements over previous GSM-technology-based standards in terms of multimedia applications and global mobility and coverage, all of which constitute the so called "third generation" of mobile telephony services. Third generation mobile networks should be capable of offering services such as high speed data transmission, video telephony and teleconferencing, high speed Internet access and electronic mailing, interactive user services such as online banking or shopping as well as entertainment such as audio and video on demand and video games.
13. The parties submit that – in line with previous Commission decisions<sup>5</sup> concerning mobile telecommunication services - the relevant market to be considered is the market for mobile telephony services and that this market is national in scope. In COMP/M. 1954 – ACS SONERA VIVENDI XFERA – creation of a joint venture that had been awarded a 3G license in Spain – the Commission did not define a product or geographic market with regard to UMTS mobile telephony.
14. If UMTS mobile telephony were considered to constitute a separate market, there would be four other licensees, the incumbent 2G mobile telephony operators, active in this market and able to develop and offer the same services as the joint venture. If mobile telephony as a whole were considered to be the relevant market, then the joint venture would be a new entrant to this market. Given that in the present case, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area, it is not necessary to further delineate the relevant product and geographic markets.

#### B. Competitive Assessment

15. The 3G Mobile Licences for the UK were awarded by way of auction and are issued for the period to 31 December 2021. The five successful bidders were: 3G OpCo, Vodafone Limited, Orange 3G Limited, BT (3G) Limited (BT Cellnet) and One2One Personal Communications Ltd (Deutsche Telekom). The latter four already operate in the UK with existing 2G networks.

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<sup>5</sup> COMP/M.1795 - Vodafone Airtouch/Mannesmann, para. 9, 23

16. Accordingly, 3G OpCo is the only new entrant in the market for mobile telecommunication services in the UK and the concentration will not lead to the creation or strengthening of a dominant position.

## **V. ANCILLARY RESTRAINTS**

### *Non-compete restrictions*

17. The agreements between Hutchison and NTT DoCoMo and the agreements with Hutchison and KPN Mobile each contain non-competition covenants under which each of the parties agrees that [...] neither those companies nor any of their subsidiaries shall enter into any arrangement to carry on or to be interested as principal, agent, shareholder or otherwise in the business of a Mobile Telecommunications Infrastructure operator operating in the UK or a Mobile Virtual Network Operator operating in the UK in direct competition with the joint venture other than through its holding in 3G HoldCo.

18. The parties claim that these obligations are directly related and necessary to achieve the benefits of the Joint Venture, enabling the Joint Venture to establish an effective presence on the market, and therefore capable of offering products comparable to those of its competitors.

19. In the context of the creation of a joint venture, the acceptable duration of non-competition clauses will depend on the aim of the restriction in question, and may be limited in time or extend up to the life of the joint venture. However, the duration may not extend beyond the termination of the joint venture, as in such cases the restriction is unrelated to the concentration in question and moreover not proportionate to its aim.

20. In view of the very high investments required to develop and operate a UMTS network in the UK, the Commission considers the non-competition covenants as directly related and necessary to the implementation of the concentration and hence to be covered by this decision for a period of [...].

## **VI. CONCLUSION**

21. 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 Mario Monti  
Member of the Commission