

***Case No COMP/M.2143 -  
BT / VIAG INTERCOM***

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

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Article 6(1)(b) NON-OPPOSITION

Date: 19/02/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19/02/2001  
SG(2001)D/286255

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

SIMPLIFIED PROCEDURE

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.2143 – BT/ Viag Interkom**

Notification of 16 January 2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 16.01.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>1</sup> (“the Merger Regulation”) by which the British undertaking British Telecommunications plc (“BT”) via its wholly owned subsidiary, the financial holding company BT Interkom Verwaltungs GmbH, acquires sole control of the German undertaking Viag Interkom GmbH & Co (“Viag Interkom”), a full-function joint venture currently jointly controlled by BT and E.ON group.

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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; Regulation as 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).

## **I. THE PARTIES**

2. BT is active in the supply of fixed line and wireless telecommunications, data and Internet services and infrastructure and telecommunications equipment to residential and business customers, mainly in the United Kingdom. BT is also a provider of end-to-end customised value-added and enhanced global telecommunications services to multinational corporations through Concert, a joint venture with AT&T.
3. Viag Interkom is a supplier of fixed line and wireless telecommunications services and infrastructure in Germany. Viag Interkom is currently jointly controlled by BT and the German undertaking E.ON.

## **II. THE OPERATION AND CONCENTRATION**

4. The proposed concentration is the acquisition of sole control by BT of Viag Interkom. The transaction was subject to an options arrangement. Under this arrangement, E.ON exercised its option on 15 January 2001 to put its shares on BT. As a result, BT will acquire 45% of the shares of Viag Interkom from E.ON. Following closing of the proposed concentration, BT will hold 90% of the shares. The remaining 10% are currently held by the Norwegian telecommunications provider Telenor. However, this stake does not give rise to any rights of control. Thus, as a result of the acquisition of E.ON's stake, BT will acquire sole control of Viag Interkom.

## **IV. COMMUNITY DIMENSION**

5. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion<sup>2</sup>. Each of BT and Viag 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.

## **V. COMPETITIVE ASSESSMENT**

### *Horizontal issues*

6. Viag Interkom's activities are limited to Germany. In Germany it provides a full range of telecommunications and related services including fixed line and mobile telephony services, dial-up and dedicated Internet access services, directory assisted services, international voice telephony services on the German/UK route and web hosting. BT estimates Viag Interkom's market share to be less than 15% (between 1-5%) for the provision of these services. BT does not currently provide any of these services in Germany outside the Viag Interkom joint venture. The proposed transaction does not therefore lead to any addition in market shares for the provision of any of these services

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<sup>2</sup> 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.

and thus to any horizontally affected markets. Given that irrespective of the market definition chosen no competition concerns arise for these services, the relevant market definitions can be left open.

### *Vertical issues*

#### Provision and distribution of global telecommunications services and related services

7. Even though BT does not directly compete with the services provided by Viag Interkom in Germany, BT is directly or indirectly active in the provision of services that could be considered upstream to the services of Viag Interkom.
8. Concert is a joint venture between BT and AT&T which is set up to provide customised enhanced and value-added global telecommunications services to multinational corporations. In previous Commission's decisions<sup>3</sup>, the Commission has found that there appears to be a distinct global market for the provision of packages of such services, referred to as the market for the provision of global telecommunications services (GTS). The exact range of services included in the package of such services has been left open, however the Commission has found that the product includes end-to-end telecommunications and data services and some degree of management of the services by the service provider. The Commission has also left open whether each service/product line could be considered as a separate markets.
9. Viag Interkom acts as the exclusive distributor of Concert services in Germany. In the BT/Esat decision<sup>4</sup>, the Commission found evidence that there exist a national market for the distribution of such global telecommunications services which is distinct from the provision of such services. In addition to acting as the exclusive distributor of Concert services in Germany, Viag Interkom also acts as a reseller of managed solutions services and outsourcing provided by BT through a German subsidiary. There is therefore a direct vertical relationship in the provision of the services offered by Viag Interkom and BT in Germany as well as indirectly via Concert.
10. It should be noted that the provision of managed solutions/outsourcing services provided by BT are sometimes included in the GTS services offered by Concert itself to its customers. However, Concert may also purchase (outsource) the provision of such services to its parents or third parties.
11. If it were to be considered that there is a distinct product market for the provision of managed solutions/outsourcing, BT's market shares for the provision of these services in Germany is estimated to be less than 1% and on the global market to well below 15%. Even if the market shares of BT and Concert for managed solutions/outsourcing were to be aggregated BT estimates the market share to less than 15%. Given that the proposed transaction does not lead to any addition in market shares nor any creation or strengthening of a dominant position, irrespective of the market definition(s) chosen, the definition of the relevant market for the provision of these services can be left open.

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<sup>3</sup> See e.g. Case IV/JV.15 – *BT/AT&T*, decision of 30.03.1999 (not yet published); Case IV/M.1396 *AT&T/IBM Global Networks*, decision of 22.4.1999, OJ and Case COMP/M.1741 – *MCI WorldCom/Sprint* (not yet published)

<sup>4</sup> Case COMP/M.1838 – *BT/Esat*, decision of 27.03.2000

### The provision of wholesale roaming

12. Viag Interkom's market share for the provision of mobile telephony services in Germany is estimated to be around 5.3% in June 2000 with Deutsche Telekom's DeTeMobilNet (D1) and Vodafone's Mannesmann Mobilfunk (D2) being its largest competitors with estimated market shares (based on number of subscribers) of 39.7% and 39.9 percent respectively.<sup>5</sup>
13. As a mobile telephony operator, Viag Interkom is a provider of mobile telephony services to end-users (retail services) and wholesale services such as the provision of wholesale roaming services to foreign network operators as well as the recipient of inbound international roaming<sup>6</sup>. The cross-border element of roaming means that there is a vertical relationship between on the one hand Viag Interkom and mobile telephony operators in which BT has a stake. In particular, in the United Kingdom BT has a wholly owned subsidiary, BT Cellnet, which is one of the main providers of mobile telephony services in the United Kingdom.
14. The vertical link between BT and Viag Interkom existed already prior to the proposed transaction. The Commission's investigation has not revealed that the withdrawal of E.ON from the joint venture will have any significant impact on the competitive behaviour of either Viag Interkom or BT. In particular, E.ON was not active as a mobile telephony operator anywhere else but as a partner in the joint venture with BT. Even if BT were to decide that *e.g.* its wholly owned subsidiary BT Cellnet should have Viag Interkom as its exclusive roaming partner in Germany, there is no risk of foreclosure on the German-UK route given that alternative suppliers exist both in the United Kingdom and Germany. For example, Deutsche Telekom and Mannesmann/Vodafone are active as mobile telephony operators in both Germany and the UK. The information provided by the notifying party also shows that Viag Interkom represents only a *de minimis* (less than 1%) share of BT Cellnet's total inbound wholesale roaming traffic (based on minutes and value) into the UK. As regards the German market, Viag Interkom has less than 10% of the mobile telephony market and it has only recently started to provide inbound international roaming.
15. It can therefore be concluded, irrespective of the market definition chosen, that the transaction does not give rise to either a creation or strengthening of a dominant position. Thus, for the purposes of the current decision, the definition of the relevant markets have been left open.

### **VI. ANCILLARY RESTRAINTS**

16. BT has requested that a non-compete clause under which E.ON group shall for a period of 12 months beginning from the implementation of the transaction not directly or indirectly hold an interest in an entity competing with the activities of Viag Interkom be considered as ancillary. The non-compete clause is intended to protect the full value

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<sup>5</sup> Source: Estimates provided by the notifying party

<sup>6</sup> For a more detailed description of different types of roaming services/markets see *e.g.* the Commission's working document on the initial findings of the sector inquiry into mobile roaming charges at: [http://europa.eu.int/comm/competition/antitrust/others/sector\\_inquiries/roaming/working\\_document\\_on\\_initial\\_results.pdf](http://europa.eu.int/comm/competition/antitrust/others/sector_inquiries/roaming/working_document_on_initial_results.pdf). See also case COMP/M.1863 – Vodafone/BT/Airtel JV, decision of 18.12.2000

of the assets purchased from E.ON. Given that the non-compete is limited in time to 12 months and to the activities of Viag Interkom it can be considered as ancillary to the concentration.

## **VII. 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,  
Mario Monti  
Member of the Commission

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