

***Case No COMP/M.2282 -
BT / ESAT DIGIFONE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 16/03/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16/03/01

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.2282 – BT / Esat Digifone
Notification of 15 February 2001 pursuant to Article 4 of Council
Regulation No 4064/89¹**

1. On 15.02.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89² (“the Merger Regulation”) by which British Telecommunications plc (“BT”) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the Irish mobile operator Esat Digifone Ltd (“Digifone”) by way of purchase of shares.

I. THE PARTIES

2. **BT** is a British communications provider providing a full range of telecommunications and internet services to residential and private customers, mainly in the United Kingdom. BT is also active internationally, notably through its subsidiary Concert (which was transferred to its 50/50 joint venture with AT&T Corp. on 5 January 2000) and various international joint ventures and operations. In Ireland, BT is active as a fixed line provider, mainly through its wholly owned subsidiary Esat Telecom Group (“Esat”) and Ocean Communications, and as a mobile telephony operator through Digifone.

¹ 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).

² 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).

3. **Digifone** is the second mobile telephony operator in Ireland. It does not have any operations outside Ireland. Esat Digifone is currently jointly controlled by BT and the Norwegian telecommunications group Telenor AS³. Telenor holds a 49.5% stake in Esat Digifone, the remaining 50.5% shareholding is held directly or indirectly by BT.

III. THE OPERATION AND THE CONCENTRATION

4. On 13 January 2000, BT and Telenor signed an Options Agreement under which BT granted Telenor the right to exercise any of the options listed in the Agreement. The put option was exercised on 6 February 2001. As a result of Telenor exercising its put option, BT will purchase Telenor's stake in Digifone and take sole control of the operator.

IV. COMMUNITY DIMENSION

5. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion⁴. Each of BT and Digifone 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

Introduction

6. According to the notification the notified operation leads to no horizontally affected markets or addition in market shares based on national markets. However, if one considers that both Digifone and BT are active in the provision of fixed/mobile WAP portal services which the Commission has identified as a possibly wider geographic market there is a horizontal overlap in the activities of BT and Digifone for such services. Furthermore, there is vertical link concerning the provision of international wholesale roaming services. However, for the reasons set out below, irrespective of the market definitions chosen the notified operation does not lead to either a creation or strengthening of a dominant position.

Provision of fixed/mobile portal services

7. Digifone is active as a fixed ISP/mobile portal/WAP service provider through "Digifone on-line" in Ireland. BT also provides such a service branded "Genie". According to the notification there is no overlap in the activities of the parties for such services based on national markets. In case COMP/JV.48 – *Vodafone/Vivendi/Canal+* the Commission identified an emerging market for the provision of horizontal portals providing WAP based Internet access. It left open whether the relevant geographic market should be considered national, regional, pan-European or wider in scope.

³ See the Commission's Decision in Case No COMP/M.1838 – *BT/Esat*, Article 6(2) decision of 27.03.2000.

⁴ 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.

8. If the relevant market for the provision of the portals providing WAP based services was considered wider than national, Ireland and UK could arguably for the purposes of the current transaction be considered the relevant geographic market on the basis of the English language content on the portals, the number of Irish and UK subscribers roaming when travelling between the two countries etc. On such a hypothetical market the parties would be faced with a number of mobile phone competitors such as Eircell in Ireland and Vodafone (with the pan-European Vizzavi portal), Orange and One2One (with the T-Motion portal) offering WAP portals. If the market is considered pan-European or wider Digifone/BT is faced with an even wider range of competitors such as Deutsche Telekom in Germany, Telecom Italia in Italy and Telefonica in Spain in addition to the Vodafone and France Telecom group of operators. Irrespective of the market definition chosen the proposed transaction would not lead to either a creation or strengthening of a dominant position. Thus, the relevant market definition is left open.

Wholesale roaming services

9. Mobile telephony operators provide international roaming services to allow their customers to use their phones when travelling abroad. In order to provide such services, mobile phone operators enter into international wholesale roaming agreements. Normally operators endeavour to enter into as many roaming agreements as possible to ensure the best quality of service as well as generate the most possible revenue. Under the bilateral agreements operators provide roaming services to foreign network operators and are recipients of inbound international roaming⁵.
10. There already exist a number of vertical relationships between Digifone and the BT group prior to the proposed transaction. First, there are existing roaming agreements between Digifone and BT's other mobile telephony joint ventures and subsidiaries. Of these, BT Cellnet is the most important partner representing about [15-30%] of total volume of traffic (based on minutes) and total wholesale roaming revenue. In fact, according to the notification, the United Kingdom is the most important country in percentage of total roaming revenue and total traffic for Digifone representing more than [30-50%] of both total revenue and traffic. However, for BT Cellnet in the UK, Germany is the most important country with De Te Mobil (Deutsche Telekom) and Mannesmann (Vodafone) representing about [0-15%] each.
11. Secondly, BT Cellnet already has Digifone as its preferred roaming partner in Ireland and Digifone already today offers a tariff option providing for reduced retail tariffs for its customers roaming in the UK on the BT Cellnet network. Thirdly, BT Cellnet and Digifone have already endeavoured to enter into an agreement for reciprocal reductions in interoperator tariffs (i.e. wholesale roaming tariffs). It is anticipated that this agreement will be concluded in the near future. Indeed, already today BT Cellnet applies lower interoperator tariffs to Ireland than to any other country and so does Digifone to the United Kingdom.
12. Finally, it does not appear that the transaction could generate any significant foreclosure effects either in Ireland or in any country where BT has activities as a mobile phone operator. In Ireland, Digifone will continue to be faced with a strong competitor

⁵ 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.

in Eircell (recently acquired by the Vodafone group⁶) and a third mobile phone operator, Meteor, is about to launch its services. These operators are actual and potential roaming partners for operators from other countries. In the United Kingdom, BT Cellnet faces strong competition from Vodafone, Orange (part of the France Telecom group) and One2One (part of the Deutsche Telekom group). The same arguments apply for any other country in which BT is active.

13. Given the above it can be concluded that the transaction does not give rise to any foreclosure effects or creation or strengthening of a dominant position for the provision of wholesale roaming services irrespective of the geographic market. Thus, for the purposes of the current decision, the definition of the relevant market(s) has been left open.

VI. CONCLUSION

14. 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

⁶ See Case No COMP/M.2305 – *Vodafone /Eircell*, Article 6(1)(b) decision of 05.03.2001