

*Case No COMP/M.2305 -  
VODAFONE GROUP  
PLC / EIRCELL*

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: 02/03/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02.03.2001

SG(2001)D/ D/286587

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2305 – VODAFONE/EIRCELL**

Notification of 1/2/2001 pursuant to Article 4 of Council Regulation No 4064/89<sup>1</sup>

1. On 1 February 2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No. 4064/89, by which the mobile telephony group, the Vodafone Group plc (“Vodafone”), acquires within the meaning of Article 3 (1)(b) of the Regulation sole control of the mobile telephony company Eircom plc (“Eircom”), a subsidiary of the incumbent Irish telecommunications company eircom plc (“eircom”).
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. Vodafone is the holding company of a group of companies involved in the operation of mobile telecommunication networks and the provision of related telecommunications services. Vodafone has operations in a number of EEA mobile markets (Austria, Belgium, France, Germany, Greece, Italy, the Netherlands, Portugal, Spain, Sweden and the United Kingdom).

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

4. Eircell is the mobile telephony business currently owned by eircom, the leading provider of voice, mobile, data and multimedia services in Ireland. Eircell is the leading mobile telecommunication network operator and service provider in Ireland, providing both voice and data mobile services.

## **II THE OPERATION**

5. The operation will result in Vodafone acquiring sole control of the undertaking Eircell. Therefore, it constitutes a concentration within the meaning of Article 3(1) of the Merger Regulation.

## **III. COMMUNITY DIMENSION**

6. The undertakings concerned have a combined aggregate worldwide of more than EUR 5 billion. Each of the undertakings concerned had 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.

## **IV. PRELIMINARY ASSESSMENT**

### **Advanced seamless pan-European mobile services**

7. In case M.1795 - Vodafone AirTouch/Mannesmann, the Commission identified an emerging market for the provision of advanced seamless pan-European mobile telecommunications services to internationally mobile customers, in particular large corporate customers. The geographic scope of the market was considered to be pan-European.
8. Vodafone launched a basic flat rate roaming product, called Eurocall, in January 2001. The acquisition of Eircell will add to Vodafone's existing EEA footprint, which will now cover the Republic of Ireland and leave Vodafone with sole control of 9 mobile phone operators in the EEA.
9. However, this addition does not seem to raise any competition concerns for the following reasons. First, the relatively small size of Eircell's customer base will not significantly change Vodafone's ability to offer advanced pan-European services. It must be borne in mind that the Irish traffic accounts for a negligible part ([0-5]% and below in terms of wholesale roaming traffic and revenues) of the roaming revenues of most EU mobile telephony operators, with the exception of the UK ones (i.e. for the UK operators the revenues generated by the Irish inbound roaming traffic represent between [0-10]% of their overall international wholesale roaming revenues). Second, even if competition concerns were deemed to arise, the commitments given by Vodafone in the Vodafone Airtouch/Mannesmann case prevent the addition of Eircell to Vodafone's network from generating anti-competitive concerns. Pursuant to the Vodafone Air Touch/Mannesmann decision, Vodafone has to provide third parties non-discriminatory access to certain services (i.e. wholesale interconnection services and discounted IOTs) and when the advanced seamless services as identified in the decision are launched by Vodafone up to April 2003. Due to these undertakings, upon completion of the transaction Eircell will be obliged to make such services available to third parties in Ireland on the existing non-discriminatory terms and conditions.

10. Furthermore, a majority of the respondents to the Commission's enquiry have expressed no concerns as regards this issue. Two respondents maintain that, due to Eircell joining Vodafone's network, the transaction would result in the strengthening of Eircell's dominant position or, at least, in Eircell's becoming dominant in the Irish mobile market. Eircell would become a member of Vodafone's recently launched European retail roaming offer, Eurocall. Customers of the 12 operators participating in the Eurocall will pay a flat rate when roaming on a network of one of the participating operators. As a result, according to one of these complainants, new mobile customers and some of the customers of direct competitors to Eircell in Ireland would migrate to Eircell. Moreover, Eircell would be able to offer IOT discounts similar to those offered by other operators belonging to Eurocall. This will, according to these two respondents, make Eircell more attractive as a roaming partner for foreign operators wanting to roam in Ireland. The two respondents also claim that the current duration of 3 years (until April 2003) of the commitment given by Vodafone, under the Vodafone AirTouch/ Mannesmann decision, is insufficient to permit competing mobile operators to develop and achieve alternative networks during this period. Therefore, it is argued that the relevant commitment should be extended for another 3 years (i.e. until 2006).
11. This argument, however, is not convincing. First, already today the current undertaking grants other operators the possibility to offer seamless pan-European mobile services in competition with Vodafone up to 12 April 2003 (i.e. the end of the commitment). They can thus benefit from the IOT discounts offered by the operators participating in the Vodafone network. The 2003 deadline also allows interested operators to set up arrangements with other operators and provide advanced services. In addition, as regards the recently announced Eurocall by Vodafone, this offer is available to operators outside the Vodafone group of companies. The fact that Eircell is added to the existing Vodafone group of companies, therefore, appears not to have a significant impact on the provision of seamless pan-European services. For these reasons, and taking into account the limited impact of Eircell's addition to Vodafone's network, there are no compelling reasons for Vodafone to extend the duration of the undertaking.

### **Mobile telephony services**

12. The Commission has in previous decisions<sup>2</sup> found evidence that there exists a market for the provision of mobile telephony services (irrespective of whether analogue or digital (GSM 900/1800)). The relevant geographic market for the provision of such services has been considered national in scope. Based on national markets, the current transaction leads to no horizontal overlaps between the activities of Vodafone and Eircell. Eircell operates only in Ireland with a market share (in terms of subscribers) of approximately 60%, the remaining 40% being in the hands of Esat Digifone, which is currently jointly controlled by British Telecom (BT) and Telenor. A third mobile telephony licence has also been awarded to Meteor, which will start its operations in the first quarter of 2001.
13. Vodafone has, as stated above, operations in a number of EEA countries but is not active in Ireland. In the UK, Vodafone is the largest operator with an estimated market share of 30.6%, followed by BT Cellnet with 25.4%, Orange with 23.9% and One2One with 20.1%.

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<sup>2</sup> See e.g. Commission decisions in Case No IV/M.1430 *Vodafone/Airtouch* (decision of 21.05.1999) and Case No COMP/M.1838 BT/Esat (decision of 27.03.2000)

14. It is to be borne in mind that the Irish government is about to launch this year a procedure for the awarding of four 3<sup>rd</sup> generation (UMTS) mobile telephony licences. The exact terms and conditions for the licence procedures are not yet available, but at least one out of four licenses will be reserved for a new entrant. Absent the current transaction, Vodafone would thus in principle be able to bid autonomously for one of these licences and Vodafone could be considered as one of the most likely potential winners of such a license. Therefore, the transaction will result in the elimination of Vodafone as a potential competitor/new entrant in the Irish mobile telephony market. However, the market entry strategy chosen by Vodafone should not adversely affect competition in the Irish market or the future UMTS licenses. There are number of other companies which are also strong potential entrants into the Irish market and they would be able to offer a similar competitive constraint on the incumbent operators in Ireland. For example, the other two UK mobile operators not already active in Ireland, Orange belonging to the France Telecom group, and One2One belonging to Deutsche Telecom, are also strong potential entrants into this market.

### Wholesale roaming

15. As mobile telephony operators, both Eircell and Vodafone are providers 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 recipients of inbound international roaming<sup>3</sup>. There is therefore an existing vertical relationship between the activities of Eircell and the Vodafone group of operators.

### *Ireland*

16. Eircell and Esat Digifone are currently the only two suppliers of wholesale roaming services in Ireland. Eircell and Esat Digifone both provide wholesale roaming services to a wide variety of mobile networks operators from other countries, including mobile operators belonging to the Vodafone group and operators in which BT has a stake.
17. The Commission's investigation has revealed that the majority of wholesale roaming traffic originating from subscribers outside Ireland comes from the UK. For example, it represents about [70-80]% of Eircell's overall inbound wholesale roaming (based on volume of traffic). Vodafone's UK wholesale roaming traffic represents around [20-30]% of Eircell's inbound wholesale traffic. Eircell in turn meets [60-70]% of Vodafone's requirements from the UK into Ireland (the remaining [30-40]% going to other Irish operator Esat Digifone). Eircell's second main roaming customer is BT Cellnet, with [25-35]% of Eircell's overall inbound wholesale roaming traffic. Eircell's most significant non UK customer is the German D2 (which is part of the Vodafone group), which accounts for only [0-10]% of its roaming traffic.
18. The main effect of the current transaction will be the vertical integration of Vodafone and Eircell in the provision of wholesale roaming services. The Commission has, therefore, examined whether the transaction could generate foreclosure effects in the

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<sup>3</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

markets for wholesale roaming services into Ireland. The Commission has found that the parties will be prevented from pursuing such foreclosure roaming strategy because Esat Digifone will remain a strong alternative to Eircell in Ireland. Moreover, a new competitor, Meteor, is just about to enter the market and is currently building its own network. UK companies have indicated that these competitors represent valid alternatives for them as roaming partners in Ireland. The parties have also indicated that Eircell, once it becomes part of the Vodafone group, will also become subject to the undertakings given to the Commission in the Vodafone Air Touch/Mannessmann transaction. These undertakings prevent Vodafone from entering into exclusive roaming agreements.

#### *The UK*

19. BT Cellnet, Orange, Vodafone and One 2 One are the four mobile networks able to provide wholesale roaming services in the UK.
20. The same argument as used for Ireland above apply in respect of foreclosure by Vodafone against Esat and Meteor in respect of inbound roaming into the UK. In the UK there are a significant number of competitors constituting valid alternatives to the Vodafone group of companies. Given the interest of mobile operators to have as many roaming partners in other countries as possible, Esat and Meteor are very likely to have roaming agreements with these operators. As mentioned above, the parties maintain that as a result of the transaction Eircell will also become subject to the undertakings given to the Commission in the Vodafone Air Touch/Mannessmann transaction. These undertakings prevent Vodafone from entering into exclusive roaming agreements. Finally, because of the presence of three strong valid competitors in the UK, including one which is already present in the Irish market, Vodafone could not credibly pursue a foreclosure strategy (i.e. not offering competitive pricing or degrading the quality of connection) vis-à-vis other operators.

#### **V. ANCILLARY RESTRAINTS**

21. The parties have entered into a Collateral Deed setting out certain non-compete undertakings to be given by eircom to Vodafone. As a result of these undertakings, eircom will not carry on or have any financial interest in a mobile telecommunications business in the Republic of Ireland during three years from completion of the deal. However, Vodafone has granted eircom the option of becoming a “service provider” on the Eircell network. If eircom exercises this option it will re-sell Eircell’s services using Eircell’s brand.
22. It is to be borne in mind that the Collateral Deed sets out a general non-compete restriction, which is completed by certain specific restrictions. These specific restrictions are designed to give full effect to the general non-compete restriction and can be seen as a whole. One of these specific restrictions is a clause prohibiting eircom from participating in the Irish bidding process for a third generation licence. In the course of the procedure the parties have withdrawn this clause. On this basis, and following the withdrawal, the Commission considers that the non-compete clause is ancillary to the concentration in so far as it relates to second-generation mobile telecommunications services, as it is necessary to effectively transfer the value of the goodwill and know-how of Eircell to Vodafone. As to the service provider clause, the Commission considers that this clause cannot be regarded as ancillary to the concentration, the rationale of which is breaking the link between Eircell and Eircom.

## **VI. CONCLUSION**

23. 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,*  
Mario MONTI  
Member of the Commission