

***Case No COMP/M.2469 -  
VODAFONE / AIRTEL***

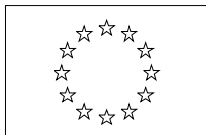
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**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 26/06/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26-06/2001

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PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.2469 – Vodafone / Airtel  
Notification of 18.05.2001 pursuant to Article 4 Council Regulation No 4064/89<sup>1</sup>**

1. On 18.05.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (“the Merger Regulation”) of a proposed concentration by which Vodafone (Europe) B.V., belonging to the Vodafone Group Plc (“Vodafone”) acquires sole control over the Spanish mobile telephony operator Airtel Móvil SA (“Airtel”) by way of purchase of shares. Airtel is currently jointly controlled by Vodafone and British Telecom plc (“BT”).

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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).

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation 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 telecommunications networks and the provision of related telecommunications services. Vodafone controls and has interests in operators in several Member States and around the world. A number of these companies also operate WAP portals.
4. Airtel is only active in the Spanish market. It has a mobile telephony network and offers GSM mobile telephony services and it has a fixed line service licence. Airtel introduced an internet offering in June 1999, through its Navegalia mobile internet portal. It was awarded an UMTS licence in March 2000.

## **II. THE OPERATION**

5. As a result of the current transaction Vodafone will acquire BT's entire shareholding in Airtel. Vodafone will hold 91.6% of Airtel's issued capital and will thus hold sole control over Airtel.

## **III. COMMUNITY DIMENSION**

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

## **IV. COMPETITIVE ASSESSMENT**

### *1. Operation of mobile telephony networks*

7. The Commission has in previous decisions<sup>3</sup> found evidence that there exists a market for the operation of mobile telephony networks (irrespective of whether analogue or digital GSM 900/1800 standards are used). The relevant geographic market for the provision of such services has been considered to be national in scope. The proposed transaction does not lead to any overlaps in the activities of Airtel and Vodafone given that Vodafone is not active as a network operator on the Spanish market except through Airtel and Airtel is not active outside Spain.

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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.

<sup>3</sup> See e.g. Commission decisions in Case No IV/M.1430 *Vodafone/Airtouch* (decision of 21.05.1999) and Case No. IV/M.1439 - *Telia/Telenor* (decision of 13.10.1999).

2. *Internet portals and related services*

8. In the *Vodafone/Vivendi/Canal+* (“Vizzavi”)<sup>4</sup> decision the Commission found that there was a market for Internet portals accessed via *inter alia* mobile phones. It also found that there were separate related services markets for Internet advertising and the provision of paid-for content run on such portals. The Commission left the relevant geographic market definition open but found that the markets for these services tend to be national in scope. In the current transaction it is not necessary to determine the relevant market definitions since irrespective of the definition no competition concerns arise.
9. Vodafone is active as a provider of such services in a number of Member States through the part-owned Vizzavi portal<sup>5</sup>. The Vizzavi portal is not yet launched in Spain. Airtel is however providing mobile portal services through its Navegalia platform. If Vodafone were to decide to have the Vizzavi portal as the default portal on the Airtel network, Airtel would be subject to the conditions imposed on Vodafone in the Vizzavi case. This would mean that Airtel has to ensure that its customers would be able to change to competing portals. This should, therefore, ensure that users would not be prevented from accessing any portal they chose.
10. The Commission’s investigation has therefore focused on whether the proposed transaction would have any significant effects on the market for provision of advanced seamless pan-European mobile telephony services and whether the proposed transaction could lead to any significant foreclosure effects or other concerns on the markets for international wholesale roaming.

3. *Pan-European mobile telecommunications services*

11. In the *VodafoneAirTouch/Mannesmann* decision<sup>6</sup> the Commission identified an emerging market for the provision of advanced seamless pan-European mobile telecommunications services to international mobile customers and, in particular, multinational corporations (“MNCs”). The Commission left the relevant geographic market definition open but indicated that the relevant market was pan-European. The current investigation has confirmed the existence of such a service market. The exact definition of the market can however be left open since no competition concerns arise as a result of the current transaction irrespective of the definition.
12. During the investigation of the current transaction, some third parties have argued that the proposed transaction whereby Vodafone takes full control of Airtel would strengthen Vodafone’s ability to launch pan-European services. The Commission has found that the current transaction will not significantly increase Vodafone’s European footprint and that BT’s exit from Airtel will have no material impact on Vodafone’s ability to offer pan-European mobile telephony services. Vodafone has already launched a pan-

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<sup>4</sup> Case COMP/JV.48, Commission Decision of 20 July 2000. See also Case COMP/M.2463 - *Speedy Tomato*, Commission Decision of 14 June 2001.

<sup>5</sup> See further Case COMP/JV.48.

<sup>6</sup> Case COMP/M. 1795, Commission Decision of 12 April 2000.

European offer – the so-called Eurocall scheme<sup>7</sup>. The move from joint to sole control will not significantly affect the incentive or ability of Airtel, which has already joined Eurocall, to participate in this pan-European service offering. Even if competition concerns were deemed to arise, the undertakings given by Vodafone in VodafoneAirTouch/Mannesmann (the “Mannesmann undertakings”) should prevent any addition to Vodafone’s network from generating anti-competitive concerns that could not be addressed by the Commission in the context of the existing undertakings. Pursuant to the Mannesmann undertakings, Vodafone has to provide third parties non-discriminatory access to certain wholesale services necessary for the launch of competing pan-European offers (i.e. wholesale interconnection services and discounted inter-operator roaming tariffs) when the services as identified in the decision are launched by Vodafone. This obligation runs up to April 2003. Airtel which will be fully controlled by Vodafone will be bound by these commitments and as such obliged to make the underlying wholesale services available to third parties in Spain on non-discriminatory terms and conditions. Therefore, the transaction should not generate any significant effects on the retail market for pan-European services to corporate customers. The investigation has not shown that an extension of the Mannesmann undertaking is justifiable (see further below).

#### 4. *International wholesale roaming services*

13. The Commission found in the *Vodafone/BT/Airtel* decision<sup>8</sup> that there are distinct wholesale markets for international roaming which are national in scope. International roaming agreements are bilateral agreements between mobile telephony operators in different countries. Most operators have more than one international roaming agreement per country. The provision of international wholesale roaming to foreign mobile network operators satisfies primarily a demand by foreign mobile network operators whose main objective is to enable them to offer their own subscribers a ‘seamless service’, not limited to the territory in which they have their own physical network<sup>9</sup>. In addition, downstream there is a demand from users (i.e. subscribers) to be able to use their mobile phones while outside their home countries without having to acquire a new SIM card, or to enter into another subscription. This demand appears to be distinct from national roaming, airtime provision, indirect access through carrier pre-selection (i.e. call origination) or pre-selection.
14. Both Airtel and Vodafone are active in such markets. Airtel provides wholesale roaming services in Spain to various network operators established in foreign countries, including the Vodafone group operators. Correspondingly, Vodafone group operators supply wholesale roaming services to several operators, including Airtel.
15. The Commission has examined whether following the current transaction Vodafone will have an incentive or a stronger incentive to impair access to the international wholesale

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<sup>7</sup> In Case COMP/C1/38.074 – Vodafone Eurocall and IOT discount scheme notified to the Commission under Regulation 17/62 on 1 February 2001.

<sup>8</sup> Case COMP/M.1863 (decision of 18.12.2001)

<sup>9</sup> See further Commission's Working Document on the sector enquiry into roaming 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)

roaming services markets and in particular to impair (foreclose) access to the Airtel network.

16. It has been found that the acquisition of sole control would not lead to any significant concerns since there are a number of alternative actual and potential competitors to Vodafone for the provision of these services. In Spain Airtel competes with Telefónica Móviles and Amena. There are also significant competitors in the other countries where Vodafone has interests in mobile network operators. Due to the presence of these alternatives, Vodafone will not as a result of the notified operation significantly benefit from refusing access to Airtel's network to foreign roaming services in Spain since these operators could in principle turn to the competitors. The same argument applies in respect of a possible discrimination by Vodafone against Telefónica Móviles and Amena regarding inbound roaming into the United Kingdom and other Member States where Vodafone has a presence.
17. Some third parties have argued that Vodafone would by the current transaction have an increased incentive to discriminate against third parties for the provision of wholesale roaming services, in particular as regards pan-European services.
18. These respondents have not indicated that Airtel would be dominant in the Spanish wholesale roaming market. Even presuming that this would be the case, Airtel, as part of the Vodafone Group, would be bound by the Mannesmann undertakings not to discriminate regarding access to its networks. Any breach of those undertakings would mean that Vodafone is in breach of a condition for clearance of its acquisition of Mannesmann, and could therefore be remedied by the Commission in this context. In addition, the wholesale discount scheme for third party access under the commitments is the subject of a notification for negative clearance or exemption that is currently under consideration by the Commission's services.<sup>10</sup> A majority of respondents to the Commission's investigation also appears to agree that the Mannesmann undertakings should remedy potential concerns of discrimination. However, some consider that the three-year duration of the Mannesmann undertakings is insufficient and should be extended.
19. The Commission considers that the duration of the Mannesmann undertakings was set in the light of the anticipated timetable for the rolling out of new technological developments in the mobile industry, and in particular of the UMTS network infrastructure. Furthermore, the three-year time limit was set to ensure that competitors of the Vodafone group would have a continued incentive to compete with Vodafone for the provision of pan-European offerings in competition with Vodafone either by themselves or through alliances with other operators. A number of competitors of Vodafone have increased their European footprint since the VodafoneAirTouch/Mannesmann decision. Operators such as Orange, Telecom Italia and KPN have also started to compete with Vodafone through the launch of competing pan-European flat rate offerings. Even though these operators cannot match the footprint of the Vodafone group the change from joint to sole control over Airtel should have no material effect on the ability of Vodafone to launch pan-European services nor on its incentive to foreclose the market for wholesale roaming services to any significant

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<sup>10</sup> In Case COMP/C1/38.074 – Vodafone Eurocall and IOT discount scheme

degree. Thus, an extension of the duration of the Mannesmann undertakings is not justified.

## **V. CONCLUSION**

20. 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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