

***Case No COMP/M.2642 -  
BT / CONCERT***

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: 17/12/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17/12/2001

**SG (2001) D/292852**

In the published version of this decision, some information has been omitted pursuant to Article 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2642 – BT/Concert  
Notification of 14 November 2001 pursuant to Article 4 of Council  
Regulation No 4064/89<sup>1</sup>**

1. On 14 November 2001, the Commission received a notification of a proposed concentration by which the UK-based undertaking British Telecommunications plc (“BT”) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of parts of the Dutch-based undertaking Concert BV (“Concert”), jointly controlled by BT and the US-based undertaking AT&T Corp. (“AT&T”) by way of purchase of assets.
2. The Commission has concluded that the notified operation falls within the scope of Council Regulation No 4064/89 (the “Merger Regulation”) and does not raise serious doubts as to its compatibility with the common market.

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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**

3. BT is an operator providing a broad range of telecommunications services, both local and long distance, in the UK and other Member States like Spain, Germany, Belgium and Ireland.
4. Concert is a joint venture created by AT&T and BT<sup>2</sup> that provides primarily global telecommunications services (“GTS”) to multinational business customers and international carrier services (“ICS”) to carriers world-wide. Concert appointed the parent companies as its exclusive distributors in the US and the UK, respectively.

## **II. THE OPERATION**

5. The proposed transaction will take place within the framework of a de-concentration operation by means of which BT and AT&T will basically recoup the assets initially contributed to the joint venture, the latter not existing any longer as an autonomous entity in the above-mentioned markets.
6. According to the corresponding “Termination Agreement”, the transfer to AT&T of the following assets will take place : (i) AT&T’s equity interests in Concert , and (ii) some of Concert’s assets. Following that first step, BT will acquire AT&T’s 50% share in Concert, except those entities and assets which have passed to AT&T.[...].
7. Transition agreements have been entered into by the parent companies with a view to ensuring the maintenance of customer service, as well as quality and network integrity.

## **III. COMMUNITY DIMENSION**

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>3</sup> (BT: EUR 33.2 billion; part of Concert being acquired: EUR [...]). Each of BT and Concert have a Community-wide turnover in excess of EUR 250 million (BT: EUR [...]; part of Concert being acquired: EUR [...]), 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. THE RELEVANT MARKETS**

9. The product markets which are relevant for the assessment of the proposed transaction are the provision of: (i) GTS to multinational business customers; (ii) ICS to carriers

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<sup>2</sup> See case No.IV/JV.15 – BT/AT&T, 30 March 1999.

<sup>3</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.

world-wide; (iii) advanced mobile telecommunications services to business customers and mobile telecommunications services in UK/Ireland; and (iv) certain telecommunications services in the UK/Ireland.

10. As to the geographic scope of the product markets identified above, the Commission has defined it as : global as regards GTS and ICS, regional with regard to the mobile services to business customers, and national in relation to the provision of mobile and other services in UK/Ireland<sup>4</sup>.
11. However, for the purposes of the present transaction it must be noted that, since the operation does not give rise to significant competition concerns even on the narrowest product and geographic market definition, the question of how to precisely define the relevant markets can be left open.

## **V. COMPETITIVE ASSESSMENT**

### **Horizontal aspects**

12. The planned operation will not lead to horizontal overlaps in the GTS and ICS markets, since the agreements setting up Concert basically provided for the withdrawal of the parent companies from the markets of the joint venture dealing with the provision of GTS and ICS, as well as the ownership, operation or management of global network facilities.
13. From the investigation, it appears that the only potential area of horizontal overlap could have been the market for teleconferencing services, where both BT and Concert were present. However, on the basis of the information submitted by BT, Concert has withdrawn from the market concerned on 1 December 2001, in accordance with a decision taken independently of the Concert unwind. Furthermore, even before its withdrawal from such market, Concert not only achieved a negligible market share (about 2%), but it also outsourced all of its teleconferencing requirements . Therefore, the concentration will not allow BT to achieve or strengthen a dominant position in the UK teleconferencing market.

### **Vertical aspects**

14. As to the vertical aspects of the operation, the notifying party has identified some upstream/downstream relationships existing between the markets where the parties to the concentration are present. However, only the following vertically related markets constitute also affected markets, because BT holds on them a market share exceeding 25%: (i) the UK market for business and residential retail basic voice; (ii) the UK backhaul market; (iii) the UK domestic value added data services market; (iv) the UK teleconferencing market; and (v) the market for the national distribution of GTS in Ireland.

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<sup>4</sup> See Cases No. IV/JV.15 – BT/AT&T; COMP/M.1865 – FT/Global One; COMP/M.2257 – FT/Equant; COMP/M:1795 – Vodafone/Manesmann; IV/M.1396 – AT&T/IBM Global Network; COMP/M.1741 - MCIWorldcom/Sprint; COMP/M.1838 - BT/Esat.

15. According to the notifying party, the existence of vertically affected markets does not raise any competition concern. To substantiate its statements, and based on a number of Commission precedents<sup>5</sup>, BT claims that:
- (a) *There will be no reinforcement of BT's market position because:* (i) BT is basically recouping the assets initially contributed to Concert, which have in the meantime lost a substantial part of their value; (ii) the already existing vertical relations between BT and Concert will not change when BT will have repurchased Concert assets, and (iii) BT already (jointly) controls Concert, but will, following the notified operation, lose control over the assets that AT&T will repurchase from Concert, and Concert itself had not acquired any significant assets that BT will retain;
  - (b) *There will be no foreclosure on any vertically affected markets where BT is active:* although it is true that currently Concert can source certain inputs from BT competitors on the UK market, after Concert disappears, BT will be in a position to find it efficient to source these inputs from its competitors. Furthermore, Concert will be replaced at the retail level by two players (BT/AT&T) who will compete on the GTS and ICS markets where, currently, only Concert is active;
  - (c) *BT will have stronger incentives to efficiently operate both in the upstream and downstream markets:* since all operational results, both positive and negative, will be borne by BT, it will be in BT's interest to maximise the use of its in-house upstream resources. In turn the profitable utilisation of such resources will have a positive impact on BT's ability to compete in the downstream markets, thus encouraging an efficient behaviour therein;
  - (d) *The affected markets are dynamic and competitive:* given the existence of a suitable number of players, low entry barriers allowing access for newcomers and the fact that price is the main factor for customers to choose a supplier.
16. The market investigation undertaken by the Commission has focused on the vertical aspects of the operation, in order to assess whether the disappearance of Concert from the market, and the acquisition of part of its assets by BT, might allow the latter to achieve or strengthen a dominant position on any affected upstream/downstream UK telecommunications market.
17. With regard to BT's mobile telephony business it should be noted that, according to the forecasts initially referred to by the notifying party in the Form CO and later confirmed by additional documents, BT's mobile interests in Europe do no longer constitute a part of the present transaction as notified to the Commission on 14.11.2001. In effect, subsequent to court approval on 19.11.2001 and in the framework of the corresponding restructuring, those interests (formerly "BT Cellnet") have been de-merged from BT and are currently being held by a separately listed public company (mmO2) which BT does not control. In the light of these considerations, mobile markets will not be taken into account for the purposes of the assessment of the present transaction.

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5 Cases No. IV/JV.15 – BT/AT&T; COMP/M.1865 – FT/Global One; COMP/M.2257 – FT/Equant; COMP/M.1838 - BT/Esat.

18. The replies received have substantially confirmed BT's assertions with regard to the lack of significant competition concerns as a result of the proposed operation. A large majority of respondents point towards the maintenance of BT's current *status quo* without leading to a reinforcement of its position.
19. The UK/Ireland markets where BT is present, as well as the markets where Concert is and has been active, appear competitive in terms of number of players and choice of customers/end users, level of prices, possibilities to change suppliers, etc. Furthermore, existing entry barriers, if any, will not be strengthened following the operation. In other words, the planned acquisition of assets will not have a appreciable impact either on the overall competitive structure of the UK/Ireland markets where BT is present, or on the businesses of Concert's customers.
20. In the light of the above, it can be concluded that the present transaction will not lead to the creation or strengthening of a dominant position on any of the above relevant markets.

## **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