

***Case No COMP/M.2648 -  
KPNQWEST / EBONE /  
GTS***

Only the English text is available and authentic.

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

---

Article 6(1)(b) NON-OPPOSITION  
Date: 16/01/2002

*Also available in the CELEX database  
Document No 302M2648*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.01.2002

SG (2002) D/228158

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2648 – KPNQwest/Ebone/GTS  
Notification of 3.12.2001 pursuant to Article 4 of Council Regulation  
No 4064/89<sup>1</sup>**

1. On 3/12/2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 as amended (“the Merger Regulation”) by which the Dutch company KPNQwest NV (“KPNQwest”) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control over the Ebone and Central Europe businesses of the Delaware-based corporation Global TeleSystems<sup>2</sup>, Inc. Ebone (“GTS”) by way of purchase of shares and assumption of all of GTS’s bank debt and capital leases (and disclosed liabilities, if any) at closing.
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.

---

<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. **KPNQwest** is a facilities-based, pan-European provider of data-centric communications services. KPNQwest was jointly created and controlled by the Dutch telecommunications provider KPN Telecom B.V. and Qwest Communications International Inc., a U.S. telecommunications company. In a letter dated 12 December 2001, KPNQwest informed the Commission that due to a separate transaction on 11 December 2001 between Qwest Communications and KPN Telecom, KPN Telecom had lost its veto rights over KPNQwest's strategic commercial behaviour and Qwest had obtained sole control over KPNQwest. This latter transaction is not part of the notification.
4. **GTS** is a facilities-based pan-European provider of data-centric communications services. Through its Ebone and Central Europe business units it offers a range of carrier and corporate data network solutions, Internet/IP services, and web-hosting (six cities) in 20 European countries.

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

5. As a result of a Stock Purchase Agreement dated 18 October 2001, KPNQwest will acquire the Ebone and Central Europe businesses of GTS. The transaction is, in part, a response to GTS' need to reduce its public debt burden and obtain necessary funding. The transaction will be effected through bankruptcy proceedings in the Netherlands and the United States.
6. KPNQwest's acquisition of sole control over the Ebone and Central Europe businesses of GTS is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **III. COMMUNITY DIMENSION**

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>2</sup>. Each of KPNQwest and GTS (the acquired Ebone and Central Europe businesses) also 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**

### **A. Relevant Product Markets**

#### *Carriers' carrier services*

8. Both KPNQwest and Ebone are providers of dedicated transit services to other carriers and service providers. The Commission has in previous decisions found that such

---

<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.

services may be part of the market for carriers' carrier services. This market would consist of the leasing of transmission capacity and the provision of related services to third-party telecommunications carriers and services providers. Other services would include switched transit, traffic hubbing offerings and reseller services for providers without their own international facilities<sup>3</sup>.

9. KPNQwest argues that the provision of dedicated transit services should be seen as part of the carriers' carrier market in line with previous Commission decisions. The result of the market investigation also substantially confirms this view. However, given that even on a more narrow market definition no competition concerns arise, the precise definition of the relevant product market can be left open in this case.

*Internet connectivity (wholesale)*

10. In order to be able to provide end-users with access to the Internet, Internet Service Providers (ISPs) needs to enter into agreements with backbone network providers, so-called connectivity providers, to reach the whole of the Internet. Such arrangements can be made either by peering or transit arrangements<sup>4</sup>. Both KPNQwest and Ebone are providers of wholesale Internet connectivity services to ISPs, web-hosting companies, communications operators, multimedia companies and others.
11. The Commission defined in the WorldCom/MCI decision of 8 July 1998<sup>5</sup> a distinct market for the provision of top-level or universal connectivity. This finding was later confirmed in the Case COMP/M.1741 – MCI WorldCom/Sprint<sup>6</sup>.
12. According to the information provided in the Form CO, KPNQwest does not purchase transit in order to achieve universal connectivity, but relies on Qwest, which now, according to information submitted by the parties, solely controls KPNQwest, and which was identified by the Commission in the MCI WorldCom/Sprint decision as a top-level provider. It could therefore be argued that KPNQwest has a tier-one status. However, it is not necessary for the purpose of the current decision to conclude on this matter given that irrespective of whether or not KPNQwest is considered a top-level or second-level connectivity provider, no competition concerns arise as a result of the proposed transaction for the provision of Internet connectivity services (see further below).

*Dedicated Internet Access (retail)*

13. Both KPNQwest and Ebone provide dedicated Internet access services to corporate customers.

---

<sup>3</sup> Case No IV/35.830 - Unisource, Commission decision of 29.10.1997 (OJ L 318 of 20.11.1997); Case No IV/JV.15 – BT/AT&T, Commission decision of 30.03.1999.

<sup>4</sup> For further information about the Internet including transit and peering arrangements see the Commission's decision in Case COMP/M.1741 – MCI WorldCom/Sprint, in particular para. 16-51.

<sup>5</sup> Case IV/M.1069 – WorldCom/MCI (II), OJ L 116 of 4.5.1999.

<sup>6</sup> Commission decision of 28.06.2000.

14. The Commission has in previous decisions indicated that there is a distinct market for the provision of Internet access services and it has suggested that there may be discreet markets for dial-up access via a personal computer (PC) modem and dedicated (private/leased lines) connections. It has also found that it could be possible to distinguish between the provision of dial-up services to residential and business customers since business customers may more generally require dedicated Internet access, while residential end-users prefer dial-up.<sup>7</sup>
15. KPNQwest argues that a distinction, given the significant differences in demand (standards and price) and supply (profit maximisation), could be made between corporate and household customers. The Commission's market investigation has also indicated that there is in general a distinction in the demand between corporate and residential customers. However, the investigation has shown that the demands of residential customers and corporate customers are converging since the introduction of xDSL and Internet access via cable networks.
16. For the purposes of the current transaction, however, it is not necessary to decide on the relevant market definition(s) given that irrespective of the definition(s) chosen the proposed transaction does not raise serious doubts for the provision of these services.

#### *Global Corporate Telecommunications Services*

17. Both parties are active in the provision of managed data services to corporate customers. The Commission has in previous decisions indicated that the provision of such services is part of the wider market for global corporate telecommunications services (GCTS or GTS) of packaged enhanced cross-border telecommunications solutions to large national and international corporate customers<sup>8</sup>. In the FT/Equant decision<sup>9</sup> the Commission considered that there might be discrete market segments within the provision of corporate data telecommunications services. In this latter case the Commission made a distinction between (a) so-called "managed solutions", consisting of higher level end-to-end services meeting the specific requirements of the client and combining the management of network/equipment and the provision of related services; and (b) "unmanaged solutions", consisting of basic services with a lower degree of management and customisation.
18. The Commission's previous findings of the provision of GCTS were substantially confirmed in the current proceeding. However, for the purpose of the current transaction it is not necessary to conclude on the relevant product market since irrespective of market definition chosen, no competition concerns arise.

#### *Web-hosting*

---

<sup>7</sup> See Case COMP/M.1838 – BT/Esat, Commission Decision of 27.3.2000, para. 7; Case COMP/M.2222 – UGC/Liberty Media, Commission Decision of 24.04.2001.

<sup>8</sup> See cases JV.15 – BT/AT&T and COMP/M.1741 - MCIWorldCom/Sprint *supra* and Case No IV/M856– British Telecom/MCI (II), Commission decision of 14.05.1997.

<sup>9</sup> Case No COMP/M.2257 – FT/Equant.

19. In KPNQwest's view, at least four market segments can be identified within the general web-hosting sector, based on the range of different services and products offered by web-hosting providers to satisfy customers' specific needs. These markets segments are: (a) the local (limited to the area where the web-hosting centre is located) supply of basic co-location services such as connectivity, power, and the facilities; (b) the national supply of shared and dedicated hosting consisting of hosting a customer's web-site on the web host's servers and providing the necessary support applications; (c) the national, possibly cross-border regional, supply of managed services to outsource complex enterprise applications and support infrastructure, including "front-end" and "back-office" applications hosted on the providers' platforms (so-called ASP), and (d) the national supply of content delivery services (CDS) such as Streaming Content Delivery Services and Static Content Delivery Products.
20. KPNQwest's view was largely substantiated by the Commission's investigation in this case. However, since no competition concerns arise irrespective of the market definition used, it is not necessary to conclude on this issue.

## **B. Relevant Geographic Markets**

21. As to the geographic scope of the product markets identified above, the notifying party considers them to be:
  - (i) at least European-wide and possibly global as regards carriers' carrier services in line with the Commission's finding in the BT/AT&T case;
  - (ii) global with regard to the Internet connectivity services, as found by the Commission in the MCI WorldCom/Sprint case;
  - (iii) essentially national in scope in relation to the provision of Internet access services (retail), as found by the Commission in Telia/Telenor and confirmed in the UGC/Liberty Media case<sup>10</sup>;
  - (iv) at least EEA-wide and possibly world-wide with regard to GCTS services, in line with the FT/Equant and MCI WorldCom/Sprint decisions;
  - (v) local for co-location, and national for shared and dedicated hosting, ASP and CDS services even though some of these services may be provided on a cross-border basis.
22. A majority of respondents to the market investigation have substantially agreed with the above geographic segmentations with the exception of the provision of Internet connectivity for which some respondents have argued that there is a relevant market for the provision of pan-European Internet connectivity. Some also argued that there is less reliance on US backbone providers due to increased European content and capacity and consequently increased intra-European traffic. KPNQwest rebuts all these arguments as indications of a European market for Internet connectivity. According to KPNQwest these changes should have no bearing on the geographic market definition since more than 50% of total Internet traffic still is US centric (KPNQwest estimates), the world's largest websites continue to be located in the USA and that even though some US websites have established European sites and large backbone networks have been

---

<sup>10</sup> Case No IV/M.1439 – Telia/Telenor; Case No IV/M.2222 – UCG/Liberty Media.

established in Europe, this has not appreciably affected traffic flows. Ultimately, European customers continue to remain dependent on US based suppliers. Overall respondents also acknowledged that there is a demand from end-customers of universal or global connectivity and that it is not possible to sell only pan-European connectivity. The market investigation moreover largely supported the view that second-tier providers cannot constrain the competitive behaviour of top-level providers.

23. For the purpose of the current transaction is it not, however, necessary to conclude on the precise definition of the relevant geographic market/s since irrespective of geographic market definition chosen, no competition concerns arise.

### **C. Assessment**

24. According to the information submitted in the Form CO the proposed transaction does not lead to any horizontally affected markets, i.e. irrespective of the market definition chosen the combined market shares of the parties amount to less than 15% for the services identified above. The market investigation has also largely substantiated this view. However, for the provision of Internet connectivity services, some third parties have argued that the merged entity will have market shares of between 25% and 40%.

#### *Internet connectivity (wholesale)*

25. According to estimates provided by the parties, the merged entity would have a market share of less than [0-10 %] in the global market for Internet connectivity. At a European level the parties have estimated their market shares to be less than [0-10%] on the basis of both sales and traffic.
26. At a global level the merged KPNQwest/Ebone would thus according to KPNQwest's estimates be relatively small compared to other top-level providers such as WorldCom, Sprint, Cable&Wireless and AT&T. Even with the addition of Qwest's market shares the market investigation has not revealed that the merged entity would reach a significant market position (Qwest is not independently active in the EEA). According to recent studies submitted by third parties during the course of the investigation, Qwest is ranked fifth in the world, with Ebone and KPNQwest 18 and 49 respectively in this market. It should also be noted that even though third parties have argued that the merged entity will be one of the largest providers in Europe, the market investigation has shown that the new entity will continue to face strong competition from not only (other) top-level providers active in Europe but also a number of European second-tier providers.

### **V. CONCLUSION**

27. 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