EN

Case No COMP/M.3245 - VODAFONE / SINGLEPOINT

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 16/09/2003

Also available in the CELEX database
Document No 303M3245

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION OF THE EUROPEAN COMMUNITIES

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 16/09/2003

SG (2003) D/231804

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

<u>Subject</u>: **Case No COMP/M.3245 – VODAFONE/SINGLEPOINT**
Notification of 13 August 2003 pursuant to Article 4 of Council Regulation No 4064/89[1] (Merger Regulation)

1. On 13 August 2003, Vodafone Group Plc notified to the Commission the proposed operation whereby its subsidiary Vodafone UK Limited (‘*Vodafone UK*’) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of two undertakings belonging to the British group Cauldwell Holdings Ltd.: Singlepoint (4U) Limited (‘*Singlepoint*’) and Corporate 4U Limited (‘*Corporate 4U*’).

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 Group Plc is the holding company of a group of companies which is involved in the operation of mobile telecommunications networks and the provision of related telecommunications services, including voice telephony, messaging, data and content services and value added network services. It has subsidiary companies which are mobile operators in several Member States, including Vodafone UK in the United Kingdom.

4. Singlepoint is one of the leading Independent cellular Service Providers (‘ISPs’) in the United Kingdom with about 1.9 million customers, the majority of whom are connected to the Vodafone UK network. It performs all the service provisioning operations including credit checking, connection, tariff management, billing, customer relationship and subscriber life cycle management. Singlepoint acquires corporate contract subscribers via Corporate 4U.

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).

II. THE OPERATION

5. Pursuant to two separate sale and purchase agreements dated 9 August 2003 Vodafone UK will acquire from Caudwell Subsidiary Holdings Limited the entire issued share capital of Singlepoint and Corporate 4U. The acquisition of Corporate 4U is conditional upon completion of the acquisition of Singlepoint.

III. CONCENTRATION

6. As a result of the operation, Vodafone UK will acquire sole control of Singlepoint and Corporate 4U. The operation thus constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation (EEC) No. 4064/89, as amended.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[2]. Each of Vodafone Group and Singlepoint 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

A. Relevant product market

8. According to the parties, the relevant market is the 'market for mobile telecommunications services in the UK' which encompasses both the wholesale (network) level as well as the retail (distribution) level. The parties consider a further distinction between business customers and private individuals, or between pre-pay and post-pay customers not appropriate. According to the parties, mobile operators design their tariff structure on the basis of high, moderate or low usage subscribers rather than along business or personal usage, but within these categories there is broad substitutability. In further support of their view, the parties cite the Vodafone Airtouch/Mannesmann decision[3] where the Commission, as in previous decisions[4], confirmed the existence of a distinct product market for the provision of mobile telecommunications services, and concluded that "further segmentation into network operator versus service provider and/or business versus residential customers is premature".

9. In the United Kingdom, there is a now well-established distribution/retail sector for mobile telecommunications services which includes ISPs and strong independent retailers as well as the operators' own in-house operations. This initially resulted from the United Kingdom's regulatory regime which required operators with market power

---

2 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.

3 Decision of 12 April 2000 in case COMP/M.1795 – Vodafone Airtouch/Mannesmann, recital 11.

4 For example Decision of 13 October 1999 in case COMP/M.1439 – Telia/Telenor, recital 94.

to supply wholesale airtime access to ISPs but recently new agreements have also been signed by mobile operators notwithstanding the removal of these obligations last year[5].

10. ISPs typically have their own customer interface and billing systems and resell airtime services that they buy in bulk - branded or unbranded call minutes - from a mobile network operator. Often, they add value to the network operators' own offering by providing innovative packages for the final customer. These ISPs and independent retailers are prevented from climbing the value chain by the extremely high if not absolute barriers to entry at the network level brought about by frequency scarcity, licensing requirements, and the level of network investment. There is therefore no scope for supply-side substitutability. As such, it seems more accurate to draw a distinction between (i) a retail market for mobile telecommunications services, and (ii) a wholesale (network) market for mobile telecommunications services[6]. This distinction into wholesale versus retail trade was broadly supported by third parties in their responses to the Commission's information requests.

11. The conditions on the wholesale market mean that it could be divided further into narrower markets (for example call access and origination and call termination), in line with the Framework Directive[7] and the Commission's Recommendation of 11 February 2003 on Relevant Product and Service Markets[8]. In their responses to the Commission's information requests, mobile operators, however, did not indicate support for the breakdown of the wholesale market into narrower subdivisions.

12. As regards the retail market for mobile telecommunications services, third parties on the whole agreed that it was not appropriate to subdivide it into narrower markets. A few third parties, including ISPs and final customers, considered that there may be a distinction between business customers and private individuals, in particular as corporate customers require a level of account management from their supplier that is not required for residential customers. However, as has also been confirmed in the market investigation, customers can choose from a wide range of tariff packages and if prices for business tariffs were to rise well above a competitive level, corporate customers could, if necessary, switch to residential customer tariffs. The same would apply, conversely, to residential customers.

13. Additionally, with the advent of new and innovative services, there may be separate markets for 3G mobile telecommunications services emerging since certain services

---

5 Vodafone UK and O2 UK were held to hold Market Influence and were required by regulation to supply ISPs with wholesale airtime access on a non-discriminatory basis. The UK Regulator (Oftel) decided that the two operators no longer had market power and that the obligation was becoming counter productive since it did not allow the two operators to develop tailor-made offerings for ISPs. It made a decision on 5 April 2002 to remove the determinations: http://www.oftel.gov.uk/publications/mobile/2002/mide0402.htm.

6 Decisions of 20 November 1999 in case IV/M.1760 – Mannesmann/Orange, recital 7 et seq.; and of 4 August 2000 in case COMP/M.2053 – Telenor/BellSouth/Sonofon, recital 10.

7 Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services ('Framework Directive'), Annex I.2, OJ L108, 24.4.2002, p.33.

8 Commission Recommendation of 11 February 2003 on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, OJ L 114, 8.5.2003, p.45.

such as video calling will not be available on 2G or 2.5G networks. As is confirmed by third party replies, it is still too early to come to any clear view.

14. For the purpose of the present case, however, the exact product market definition may be left open, since in all alternative market definitions, the operation does not seem to raise competition concerns.

B. Relevant geographic market

15. The parties have submitted that the relevant geographic market is national as customers are only able to obtain mobile telecommunications services from licensed network operators, and licensing takes place on a national basis.

16. Although a few third parties have confirmed that a pan-European market for mobile services is emerging due to the demand from large multinational companies, the results from the market investigation have generally confirmed that the geographic scope of the market is national.

17. The Commission concludes that the geographic scope of this market is limited to the United Kingdom, in line with its decisions in previous cases.

C. Assessment

18. Vodafone UK as an operator is active at the wholesale network level but also retails it services through its own tied service providers and retail outlets. Singlepoint as well as Corporate 4U are active at the retail level. Therefore, the operation gives rise to a vertical and a horizontal relationship between the parties. The parties have submitted that as a result of the operation only one affected market can be identified, the market for mobile telecommunications services in the United Kingdom.

Vertical relationship

19. At wholesale level, Vodafone UK is the leading mobile operator in the United Kingdom with market shares of 33% by revenue and 30% by volume, taking into consideration the revenue and volume generated by all subscribers who use the Vodafone network, either through direct contracts with Vodafone or via an ISP. However, it does not enjoy a significant lead in market share over its rivals and in terms of subscribers it is behind Orange and T-Mobile. This has particularly been the case over the last couple of years as the later market entrants[9] (T-Mobile UK and Orange) have built up market share at the expense of Vodafone and particularly O2 UK. Hutchison, the latest new entrant launched its services under the brand name “3” in March 2003 and to date has some 155,000 subscribers out of a total of approximately 50 million subscribers currently in the UK.

---

[9] In the UK network roll-out for 2G was staggered due to the allocation of licences under the Wireless Telegraphy Act 1949 at different times. GSM 900 operators were granted licences in July 1992 (Vodafone and BT Cellnet, now O2 UK). DCS 1800 licences were granted later (Mercury One2One, now T-Mobile UK, in March 1993 and Orange in February 1994).

Table 1: Wholesale mobile market by network operator [10]

% shares	*Vodafone*	O2	T-Mobile	Orange	Hutchison
Volume of call minutes	29.6	21.4	21.9	27.0	n/a
Revenues	33.3	21.8	19.0	25.8	n/a
Subscribers	24.4	24.3	24.6	26.8	n/a

20. Active at the retail level, there are the five licensed network operators including Vodafone UK, as well as a significant number of ISPs and many important retailers. It is more difficult to have an accurate market share breakdown due to the increased number of market players. However, on the basis of estimates provided by the parties, Vodafone UK is still the largest player with a market share of [25%-30%] by revenue; by subscriber it ranks third ([15%-20%]), after Orange (27%) and O2 UK ([20%-25%]). Singlepoint is one of the leading ISPs with 3.8% market share by number of subscribers.

Table 2 - Retail market shares (June 2003)[11]

Share (%)	Market share by subscriber	Market share by revenue	Operator/ISP	Market share by subscriber	Market share by revenue
Vodafone	*[15-20]*	*[25-30]*	Virgin mobile	5.8	n/a
Orange	26.7	26.0	*Singlepoint*	*3.8*	*n/a*
O2 UK	[20-25]	[15-20]	Hutchison ('3')	0.1	n/a
T-Mobile	[15-20]	[15-20]	Other ISPs	[<10]	[10-15]*

* All ISP's, including Virgin Mobile and Singlepoint.

21. The acquisition of Singlepoint and Corporate 4U strengthens Vodafone UK's position in the retail market but not significantly. On the basis of subscribers, Vodafone UK's market share will increase only by about 4% and although there are no specific market shares for individual ISPs by revenue, the change in market share figure by revenue is unlikely to be very significant since all ISPs in total control only about [10%-15%] of the market.

22. In terms of the other ISPs, Virgin Mobile (a joint venture with T-Mobile UK) has built a strong market position as a service provider since its launch in 1999. It is the largest ISP with a market share of almost 6% by number of subscribers. More recently, a number of new ISPs have entered the market including the incumbent fixed operator BT Plc (via an ISP agreement with T-Mobile UK) and the major UK supermarket

---

[10] Oftel Market Information, January – March 2003. These market shares are derived from supply at the retail market and supply by independents is allocated to the appropriate network operator.

[11] Subscribers based on figures from 'Mobile Communications' publication, 1 June 2003. Revenue based on Vodafone figures for Vodafone and Oftel Market Information.

chain Tesco (via an ISP agreement with O2 UK). There are also important retailers, such as Car Phone Warehouse, which have started to provide services as an ISP. The entry of new ISPs with different industry backgrounds is evidence that barriers to entry are relatively low. It also shows that operators are continuing to enter into agreements with ISPs, notwithstanding the removal of the regulatory obligation in April 2002.

23. The market investigation has evidenced that distributors and retailers are in a position to exert some countervailing bower power when dealing with network operators. Moreover, ISPs have indicated that they would consider switching to an alternative supplier of wholesale airtime, should Vodafone UK start to supply ISP's on unfavourable terms. This would involve certain switching costs, however.

24. As part of its obligations under the New Regulatory Framework Oftel has recently carried out a review of the wholesale market for access and origination[12]. The review draws its conclusions to a large extent from an analysis of the retail market. Oftel found that no supplier had significant market power (equivalent to the concept of dominance) either individually or in combination with one or more suppliers. Oftel notified the conclusions of its market review as part of its EC obligations and the Commission made comments pursuant to Article 7(3) of the Framework Directive, but did not dispute the overall findings that no operator enjoyed significant market power[13].

25. As Vodafone UK does not have a dominant position at the wholesale level, and there would seem to be significant competition in the retail market, it must be concluded that, following the vertical integration of the parties, foreclosure of other players in the retail market for mobile telecommunications services does not seem likely.

Horizontal relationship

26. There is some horizontal overlap at the retail level, however, the acquisition by Vodafone UK of Singlepoint does not raise any competition concerns in view of the minor incremental market share. The overlap will not lead to the creation of a position of single dominance of Vodafone, nor to the creation of a collective dominant position. It is correct that the merger will lead to the removal of one important independent service provider in the UK. Even after the merger, the significant changes in relative shares that have taken place over the last five years and the low barriers of entry to the retail market as an ISP (as shown by the rapid growth of Virgin Mobile, and the entry of Tesco and BT) will continue to point against collective dominance.

VI. 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

---

[12] Oftel, Mobile Access and Call Origination and Services Market, Identification and Analysis of Market and Determination on Market Power, Explanatory Statement and Notification, 4 August 2003. See www.oftel.gov.uk

[13] Case No UK/2003/0001: Mobile network access and call origination – Comments pursuant to Article 7(3) of Framework Directive. Adopted 28 August 2003. Not yet published.

Mario MONTI
Member of the Commission