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Case No COMP/M.3561 - DEUTSCHE TELEKOM / EUROTEL

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.12.2004

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

<u>Subject</u>: **Case No COMP/M.3561 – Deutsche Telekom/EuroTel**
Notification of 27.09.2004 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 27 September 2004, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Slovak Telecom a.s. ("ST", Slovakia), which is controlled by Deutsche Telekom AG ("DT", Germany), acquires sole control over EuroTel Bratislava a.s. ("EuroTel", Slovakia), which it currently jointly controls with Atlantic West B.V. ("AWBV"), a joint venture of subsidiaries of Verizon Communications, Inc. and AT&T Wireless Services, Inc[2].

2. On 28.10.2004, the Commission declared the notification incomplete based on Art 5(2) of the Implementing Regulation and requested additional information[3]. On 10.11.2004, the parties provided the additional information requested and the notification therefore became effective on this date.

3. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 139/2004 and does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

1 OJ L 24, 29.1.2004 p. 1.

2 AT&T Wireless has recently merged with Cingular Wireless LLC and has been renamed New Cingular Wireless Services, Inc.

3 Commission Regulation (EC) 802/2004, OJ L13, p. 1.

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I. THE PARTIES

4. **Deutsche Telekom AG** is the ultimate parent of the Deutsche Telekom group which, as the incumbent telecommunication operator in Germany, provides the entire range of telecommunication services in Germany and certain other countries, including Slovakia. **Slovak Telekom** belongs to the DT group. DT holds 51% of its shares, 34% are held by the Slovak Ministry of Transports, Posts and Telecommunications and the remaining 15% are held by the National Property Fund of the Republic of Slovakia. ST is the incumbent telecommunication operator in Slovakia and is active in the provision of national and international telecommunication and radio communication services, including the sale and lease of telecommunication devices and networks.

5. **EuroTel** is one of the two mobile network operators ("MNOs") in Slovakia. A majority of its shares (51% of the equity, 53% of the voting rights) are held by ST; the remainder is held by AWBV, a joint venture between the US-based MNOs Verizon Telecommunications and AT&T Wireless Services[4].

II. THE OPERATION

6. The proposed concentration consists of the acquisition by ST of the remaining 49% of EuroTel's shares which are currently held by AW. ST will thus increase its participation in EuroTel from 51% to 100% and acquire sole control over EuroTel. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation 139/2004.

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[5] (DT: EUR 55 838 million, EuroTel: EUR 269 million). Both DT and EuroTel have a Community-wide turnover in excess of EUR 250 million (DT EUR: […] million, EuroTel: EUR […] 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. RELEVANT MARKETS

Product market

8. The notifying party considers that the relevant product market mainly concerns the market for *mobile telecommunication services* and refers to the Commission's previous decisions confirming the existence of such a distinct market. The notifying party has explained why it does not consider a subdivision of this market according to the type of call or type of subscriber appropriate. However, as the competitive assessment does not depend on the exact market definition, for the purpose of this decision it can be left open whether there are distinct product markets for private and business customers, for pre-paid and post-paid services, for data and voice services.

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4 Cf. footnote 2.

5 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, p. 25).

9. The Slovak National Competition Authority (NCA) has put forward that fixed and mobile voice communications services are viewed as close substitutes by some customers, notably price-sensitive customers. It is indeed a particularity of the Slovak market that the fixed line penetration is one of the lowest in the EU (22%) and that it has decreased over the last few years, which is attributed to substitution of fixed lines by mobile lines due to high prices both for the lines and local calls[6]. However, it is not necessary to define a broader market covering both fixed and mobile voice communications for the purpose of the present case, as it does not alter the competitive assessment. It is noted that the NCA has not requested a referral of this case with a view to the application of Slovak national competition law.

10. Both ST and EuroTel provide retail *business data communication services*. According to the notifying party business data communication services connect a company's local area network (LAN) in one location with its LANs located elsewhere. These services can also link third parties to a company's network. The customers for these services are companies with substantial communication requirements, mostly multinational companies. The notifying party considers that the market for business data communications constitutes a distinct market, referring to the Commission's decision in the case *France Telecom/Equant*[7]. However, as the competitive assessment does not depend on the exact market definition, this may be left open for the purpose of this decision.

Geographic market

11. With reference to the Commission's decision in the case *Telia/Sonera*[8] the notifying party submits that the relevant geographic market for mobile communication services is national, in particular because of the applicability of different licensing conditions in Member States, frequency scarcity and […] roaming charges that make it economically difficult for operators to attract customers from other countries. In past decisions the Commission has defined this market as being national in scope.

12. As to the geographic scope of the market for business data communication services, the notifying party reiterates the reference to *France Telecom/Equant*, where the Commission has examined the market on a global and on a pan-European level as well as on the basis of services provided to customers based in France (i.e. on a national level). However, the precise scope of the relevant geographic market may be left open for the purpose of this case, as it does not alter the assessment.

V. COMPETITIVE ASSESSMENT

Introduction

13. ST and EuroTel effectively being part of the DT group, the notifying party is of the opinion that the transaction will not lead to any change in the market. Although the notifying party considers that there are no horizontally or vertically affected markets, information has been provided on those markets that are implicated by the proposed operation: mobile telecommunication services and business data communication services.

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[6] 1.2 million lines over a population of 5.4 million.

[7] Case COMP/M.2257.

[8] Case COMP/M.2803.

Mobile telecommunication services

14. Two players are active on the market for mobile telecommunication services in Slovakia: EuroTel with a market share of [40-50]% and Orange having a [50-60]% share[9]. Only these two suppliers dispose of the necessary licence and spectrum to offer these services.

15. However, the proposed operation does not result in any horizontal overlap on the market for mobile telecommunication services and, therefore, does not lead to the creation or strengthening of a dominant position in this market.

16. A third party has raised competition concerns, claiming that EuroTel is dominant on this market due to its aggressive customer acquisition strategy, ownership of the country's second largest data network, being the leading NMT[10] provider and having exclusively been assigned a licence to use the 450 MHz frequencies for CDMA data services (EuroTel could upgrade certain parts of the software to offer mobile broadband data services).

17. Given the characteristics of the market, where EuroTel is the second largest player at some distance from the largest one (Orange), and considering the absence of any horizontal overlap in this market, it can be excluded that EuroTel has a single dominant position at present or that it will become dominant as a result of the concentration.

Business data communications

18. If the relevant market for business data communications is considered to be wider than national (European or even wider), the concentration will not lead to the creation or strengthening of a dominant position or to any other significant impediment of effective competition. According to estimates from the notifying party, the combined market share of DT/ST and EuroTel is [5-10]%, whereas the increment due to EuroTel's share is minimal (DT including ST: [5-10]%, ST: [less than 0.5]%, EuroTel: [less than 0.5]%).

19. The assessment does not change under the assumption of a national market in Slovakia. The notifying party estimates their combined market share at [50-60]%, with the caveat that the notifying party was unable to obtain reliable data. However, even under the assumption that EuroTel operates the country's second largest data network, the acquisition of sole control over EuroTel will not lead to a significant impediment to effective competition. EuroTel derives only a small proportion of its revenues from data services ([0-5]%) in a market where its presence is diminishing. According to the notifying party EuroTel developed its data network in the early 1990's, when AWBV – via EuroTel – entered the Czechoslovak market. It developed Frame Relay and X.25 services but did not go much beyond this, for instance by pushing advanced technologies, such as [example]. […] while the market continued to develop both from a technological and from a market volume point of view. EuroTel's parent company ST has built a more extensive data network, generating a large part of its revenues from leased lines. According to the notifying party, competitors such as Telenor or

[9] On the basis of subscriber lines; end of 2003

[10] Analogous mobile telephony of "the first generation".

Orange have managed to generate revenues in this area that are estimated to be similar to those of EuroTel's today but, what is more important, they have been able to do so mainly by expanding in the fastest growing SME segment with advanced IP technologies. In perspective, while revenues from leased lines, X.25 and Frame Relay (where EuroTel and ST are active) will decline or achieve only modest growth, IP VPN services (where their main competitors are active) represent the fastest growing segment. Thus, as competitors will continue to share a larger proportion of the expected growth, ST/EuroTel's shares are likely to decline. Even more importantly, however, from the Commission's investigation it appears that ST is already now in a position to significantly control EuroTel's conduct in the market and EuroTel's market share can therefore already be attributed to ST at present. A change from joint to sole control will therefore not lead to a significant change in the market.

Access to network of ST

20. The same third party claimed that following the merger, a strengthening of EuroTel's position in mobile telecommunication services would be possible due to the dependence of any competitor to EuroTel on the provision of wholesale services by the incumbent operator, its parent ST. In order to make calls from this competitor's network to ST's fixed lines, the competitor needs interconnection with ST's network. Moreover, it needs access to co-location rooms, i.e. rooms on ST's premises where it can place its equipment to physically connect with ST's networks. Such a competitor is also dependent on being supplied leased lines by ST. As regards mobile telecommunication services, only the "last mile" between the handset and the base station is realised over the air, whereas the conveyance of the call between base stations is usually done over fixed lines. The third party stresses the possibility that discriminatory behaviour by ST (e.g. in the form of higher prices compared to prices charged to EuroTel) with respect to the provision of such leased lines and network access would have immediate effects on the retail market for mobile telecommunication services. In this context, it is inter alia pointed at the absence of a workable specific regulatory regime constraining ST's market power at wholesale level for interconnection services, currently enabling ST to charge its competitors above cost interconnection and termination fees, according to the third party.

21. The Commission notes that it continues to monitor the regulatory situation in Slovakia. The Commission currently assesses the conformity with the EU *acquis* of the transpositions of the EU regulatory framework in all Member States, including Slovakia[11]. However, as explained in paragraphs 22-25 below, the proposed operation as such - a change from joint to sole control - does not give rise to a significant change in the ability or incentives of ST to engage in discriminatory behaviour in the wholesale access markets (e.g. the provision of call termination, transit and leased lines services). Moreover, the third party itself has confirmed that already today it encounters discriminatory behaviour consisting in a delay in the provision of interconnection and leased lines. Therefore, any incentive the incumbent network operator may have to raise rivals' costs exists irrespective of the proposed transaction.

Ability and incentive post-merger

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[11] European Electronic Communications Regulation and Markets 2004 (10th Report), dated 02.12.2004 COM (2004) 759 final.

22. Crucial for the assessment of this case is whether ST and EuroTel should already now, i.e. pre-merger, be regarded as one competitive unit. If ST has the ability and the incentive to treat EuroTel as a part of its group to date, it has to be assumed that the concentration will not have significant effects on the market and therefore would not significantly impede effective competition.

23. On the basis of our inquiries it cannot be said that following the proposed concentration ST or EuroTel's ability and incentives will change in such a way that the concentration will significantly impede effective competition in the common market as opposed to the pre-merger situation.

24. The merger will not lead to a changed *ability* regarding the competitive behaviour of ST in the relevant markets. As regards ST, it is evident that it can decide in its own right without having to consult first with AWBV or having to take into consideration AWBV's interests. As for the behaviour of EuroTel in the market, at present ST has to take into consideration AWBV's interests given the situation of joint control[12]. However, even though EuroTel is jointly controlled by ST and AWBV, documents provided by the notifying party indicate that the actual influence of DT/ST over EuroTel is much stronger than the influence that AWBV exerts over the company. It seems that it is essentially DT/T-Mobile who manages EuroTel and decides on its business strategy. Moreover, three of the five members of the Board, including the Chairman, are nominated by DT/ST and the management of EuroTel is strongly integrated in the management of T-Mobile. Out of the top nine managers only the CTO is an AWBV nominee[13]. Furthermore, the notifying party has demonstrated that EuroTel is already at present integrated into the DT/ST/T-Mobile group with respect to [examples of areas of integration]. It must therefore be concluded that T-Mobile has shaped and continues to shape EuroTel's strategic behaviour without being significantly hindered by AWBV. In the light of this, the exit of AWBV from the joint venture is unlikely, in reality, to lead to any significant change post-merger.

25. Concerning *incentives*, already pre-merger, it would be in ST's interest to discriminate in favour of EuroTel. The aforementioned third party has indeed brought examples of such conduct to the Commisson's attention. It is acknowledged that the incentives for ST to engage in such behaviour could change to some extent, given that - whilst bearing 100% of the costs of such behaviour both pre-merger and post-merger - following the merger ST will gain 100% of the benefits of any such conduct, compared to 51% before the merger. However, considering the arguments set forth in the paragraphs above, the concentration does not change in a decisive way the *incentives* of ST to engage in any discriminatory behaviour. It is thus considered unlikely that the effects of this possible reinforcement of ST's incentives to engage in discriminatory behaviour vis-à-vis its competitors would change the competitive situation in the market in such a way that a significant impediment to effective competition would arise as a consequence of the concentration.

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12 Veto rights exist, for instance, regarding approval of the business plan and annual financial budget and any material modification thereto, and the election, dismissal and remuneration of members of the Board of Directors and of members of the Supervisory Board of EuroTel.

13 Chief Technology Officer.

VI. CONCLUSION

26. 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 (EC) No 139/2004.

For the Commission
Neelie KROES, signed
Member of the Commission