

***Case No COMP/M.3776 -
VODAFONE / OSKAR
MOBILE***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 25/05/2005

***In electronic form on the EUR-Lex website under document
number 32005M3776***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.05.2005

SG-Greffe(2005) D/202267

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3776 – Vodafone/Oskar Mobile
Notification of 15/04/2005 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 15/04/2005, the Commission received a notification of a proposed concentration pursuant to Article 4 by which the undertaking Vodafone Group Plc (“Vodafone”), United Kingdom, acquires within the meaning of Article 3(1)(b) of Council Regulation No 139/2004 control of the whole of the undertaking Clearwave N.V. (“Clearwave”), the Netherlands, by way of purchase of shares.

I. THE PARTIES

2. Vodafone is a holding company of a group of companies which are involved in the operation of the mobile telecommunications networks and the provision of mobile telecommunications services. The Vodafone group is active in a number of EU Member States.

¹ OJ L 24, 29.1.2004 p. 1.

3. Clearwave is a holding company for two operating subsidiaries, Oskar Mobil a.s. (Czech Republic) and MobiFon (Romania). Oskar Mobil and MobiFon are active in the provision of mobile telecommunication services.

II. THE OPERATION

4. The transaction consists in Vodafone acquiring, through its wholly owned subsidiary Vodafone International Holdings B.V., 99.99% of the outstanding share capital of Clearwave. As a result of the transaction, Vodafone will acquire indirect sole control over Oskar Mobil and MobiFon.

III. CONCENTRATION

5. Considering the above, this transaction constitutes a concentration pursuant to Article 3(1)(b) of Council Regulation 139/2004.

IV. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5000 million². Each of them 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

7. The parties are active in the same economic sector of telecommunication services. While Clearwave is only active in the Czech Republic and Romania, Vodafone has no activities in the Czech Republic in the mobile telecommunications sector (and in Romania only holds 20% shareholding interest in MobiFon).

Relevant product and geographic markets

8. Based upon the EU telecommunications regulatory framework, the parties submit that mobile telecommunication services may be subdivided at present into the following markets:
 - (1) Retail market for the provision of access to and call origination on a public network;
 - (2) market for the provision of call termination on a public mobile telephone network;
 - (3) wholesale market for access to international roaming on public mobile networks.
9. As concerns wholesale international roaming, the Commission recently concluded on a preliminary basis that, in some Member States, the provision of wholesale international roaming services in certain operator's networks constituted separate markets at least in

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).

the past³. The Commission has not taken any stance as concerns the present situation in those Member States. As concerns retail roaming international services, Vodafone argues that there is no separate market for such services, as these are not purchased by the customer separately, but as a part of a package of services offered to the customer. Competition would take place across the package as a whole and it is not possible to isolate one element of such package.

10. Vodafone submits, and the Commission agrees, that all the product markets concerned are national in their geographic scope in particular taking into account the existing regulatory barriers in the telecommunications sector.
11. In so far as the new technological developments are concerned (UMTS/3G telecommunication services), Vodafone submits, and the Commission agrees, that it is not meaningful to distinguish services based on this platform from telecommunication services based on GSM 900 and DCS 1800 platforms. This is so because the services are developed as being technology agnostic. In the Czech Republic Oskar Mobil only recently acquired a UMTS license.
12. In previous Commission decisions⁴, it was suggested that there is an emerging market for pan-European mobile telecommunication services to international mobile customers and, in particular, multi-national corporations (“MNCs”) which would be European-wide.
13. According to Vodafone, the seamless pan-European mobile telecommunication services offered to internationally mobile customers are not offered on a pan-European basis but nationally. Vodafone submits that this is so due to the following :
 - (i) content services remain a small part of the mobile proposition and are provided through national WAP portals. The Vodafone’s WAP portal is adapted to each country and has a different content in each country;
 - (ii) in spite of its rather extensive network of subsidiaries, Vodafone does not have an integrated network. It has launched recently programs to integrate the network (e.g. combined billing systems serving more than one country), but the integration is still not completed;
 - (iii) as regards the voice and messaging services and content/data services, market conditions and customer preferences are different in the different countries; tariff levels and price structures differ as well; this in effect means that even where flat rate tariff structures across various Member States were created, the price levels differ from country to country; in 2002 Vodafone launched a single tariff “Eurocall Platinum”, which offered the same price in various countries, but it was not successful, [...].
14. According to the market investigation, the seamless pan-European mobile telecommunication services offered on a pan-European basis are still at an emerging

³ See IP/05/161 “Commission challenges international roaming rates for mobile phones in Germany” and IP/04/994 “Commission challenges UK international roaming rates”.

⁴ E.g. case No. COMP/M.1795 Vodafone Airtouch/Mannesmann (Commission Decision of 12/04/2000), COMP M. 2469 Vodafone/Airtel (Commission Decision of 26/06/2001).

stage. It seems that no provider is currently able to offer truly seamless services (players claim pan-European coverage but set it up mainly through the association of “in-country” partnership arrangements). Some responses have stated there may be a market, in particular from a demand-side perspective for pan-European or global mobile telecommunications services, but it is fragmented across national lines. It appears that so-called pan-European services or global services are still offered on national level with the focus being on offering conditions to national customers which apply throughout Europe or within a wider geographical space. Even if it can be considered an emerging European dimension market (some clients being affected by offers from operator in another country), it remains that most of the services are country-specific in terms of price, contractual terms and legislation.

15. As regards MNCs, which purchase mobile telecommunication services in more than one country, Vodafone submits that there is no separate European-wide market for pan-European services for such customers. Vodafone argues that, although many MNCs wish to conclude a single contract covering various countries, the different market conditions and customer requirements in each country mean that until now MNCs have negotiated separately prices for each country, including prices for international roaming services. Vodafone also claims that it is rare for MNCs to purchase mobile telecommunication services from a single provider. These customers are offered a number of enhanced services, but the contractual relationship, pricing and service remain national, even though these are negotiated centrally.
16. As of 1 April 2005 the negotiation of the contracts with MNCs was further centralised within Vodafone, including the negotiation of prices. Vodafone, however argues that prices will continue to vary between the participating countries. According to Vodafone, MNCs use their purchasing power to cherry-pick the best offers in each country irrespective of the operator who offers it. Thus, according to Vodafone, in spite of the recently created alliances of European mobile operators (FreeMove and StarMap) to provide cross-border telecommunication services to business travellers and MNCs, it would be too early yet to identify a separate market for cross-border services for MNCs with a European geographic dimension.
17. The conclusion of the market investigation is that both Vodafone as well as the two strategic alliances (FreeMove and StarMap) are currently offering pan-European services for MNCs with the objective of satisfying their demand for advanced services of mobile communications throughout different countries. At this stage they only subscribe contracts for these services at national level although they are negotiating these services at a single contact point and the services offered are not seamless for the time being.
18. Nevertheless it is not necessary in the present case to take a position on the possible existence of a seamless pan-European mobile telecommunication services market and on its geographical dimension given that the concentration will not significantly impede effective competition in the common market or in a substantial part of it, in particular, as a result of the creation or strengthening of a dominant position.

Retail market for the provision of access to and call origination on a public network

19. As regards the Czech mobile telecommunications market, there are three operators present in this market. Oskar Mobil accounts for 17% of the market (as at 01/01/2005, based on number of subscribers), Eurotel 43% and T-Mobile 40%. Vodafone is not active in this market in the Czech Republic. Vodafone submits that the acquisition of Oskar Mobil will enable it to better compete against the incumbent operator Eurotel and second largest operator T-Mobile. In this respect it should be noted that Eurotel is controlled by Cesky Telecom, an incumbent fixed operator who is currently being acquired by Telefónica (Spain). The market investigation has confirmed that there was no effect on competition to be expected following the transaction.

Mobile call termination services

20. As regards international call termination services, no Vodafone operator purchases mobile call termination from any Czech mobile operator. Vodafone purchases its international connectivity from fixed carriers such as Cable & Wireless and Belgacom, who in turn purchase (and will continue to purchase) the mobile call termination from Oskar.
21. As a result of the integration of both parties in one and same entity, it could be argued that Vodafone would have an incentive to raise (or not decrease) international termination charges to calls from the Czech market. High termination charges would be an advantage for Oskar Mobil since they do not constitute a real cost, but only an internal transfer within the merged Vodafone/Oskar Mobil entity. Vodafone could use other means (for example, the application of particular technical standards, requirement to have traffic handed over at inconvenient interconnection points and degrading quality of termination etc.) to increase Oskar Mobil's competitors' costs and re-inforce Oskar Mobil's position. A similar argument can be applied in the other directional transit (Oskar Mobil foreclosing Vodafone's competitors).
22. Nevertheless, it has to be taken into account that Vodafone and Oskar Mobil do not have sufficiently strong positions in most of the countries where they operate. Vodafone's European subsidiaries or associated undertakings retail market shares are below 40%⁵ except in Belgium (50% of market share but through 25% of ownership in Belgacom Mobile), Ireland (51%) and Malta (54,6%) to really influence the cost structure of Oskar's mobile competitors. In view of the limited market share of Oskar Mobil which has only 17% of Czech subscribers, it is highly unlikely that any attempt by Oskar Mobil to foreclose Vodafone's competitors will significantly impede effective competition in Belgium, Ireland and Malta. In addition if the relevant undertakings would make the conditions of international call termination more onerous, there would be an opportunity for arbitrage between international and domestic call termination services. Other operators in the relevant countries could provide transit services to the competitors of the Vodafone group. Domestic call termination charges of all mobile operators which have been designated as having significant market power are regulated under the EU regulatory framework for electronic communications. In Belgium, Ireland and Malta domestic call termination

⁵ Market shares measured in terms of number of subscribers.

on the networks of the Vodafone group companies must be cost-oriented. Given the possibility of arbitrage between both, this regulation of domestic call termination charges constraints indirectly the ability of the relevant companies to increase international call termination charges.

Wholesale international roaming

23. As regards wholesale international roaming, [15-25]% of purchases of these services in the Czech Republic were made from Oskar Mobil, [...] % from Eurotel and [...] % from T-Mobile (this estimate is based on Vodafone's own purchases of these services). [...] is one of the largest Oskar Mobil's customers. Vodafone submits that following the transaction Vodafone will send more traffic to Oskar Mobil whilst Oskar Mobil will be able to participate in the Vodafone group discount negotiations. This would make it a stronger competitor in the Czech market. It has been checked by the market investigation that Oskar Mobil's purchases of wholesale international roaming services are insignificant. Under these circumstances, the impact of Oskar Mobil's purchases of international roaming in the Vodafone group will be negligible. Moreover, the market investigation indicates that the transaction should not have a detrimental impact on existing roaming agreements: the incentives of the Vodafone group and Oskar Mobil to enter or maintain roaming agreements with third parties, respectively in the Czech Republic and in countries where the Vodafone group is active, should remain in the future (in order to attract traffic and to ensure their customers a better coverage). Having regard to the above, the transaction will not significantly impede effective competition in the common market or in a substantial part of it, in particular, as a result of the creation or strengthening of a dominant position.

Possible market for pan-European mobile telecommunication services to international mobile customers and, in particular, MNCs

24. As regards a possible impact on a pan-European mobile telecommunication services to international mobile customers and, in particular, MNCs, Oskar Mobil does not have any MNCs since it only operates in one Member State and does not participate in any of the recently formed international alliances of mobile operators. In the corporate segment in the Czech Republic, Oskar Mobil has a market share of only [0-10]%, as it was focusing on small businesses and consumers. According to Vodafone, the acquisition of Oskar Mobil will provide Vodafone with an opportunity to compete for the business of the MNCs in the Czech Republic, where it will compete with Eurotel and T-Mobile, which are each members of the recently established international alliances. For these reasons, in case the possible market for the provision of pan-European mobile telecommunication services to international mobile customers and, in particular, MNCs would be national in scope, the concentration would be pro-competitive. In case the geographic dimension would be pan-European the concentration will not significantly impede effective competition in the common market or in a substantial part of it, in particular, as a result of the creation or strengthening of a dominant position in view of the fact that Oskar Mobil does not have MNCs and taking into account that the Vodafone network will only be extended to a very limited territory.

VI. CONCLUSION

25. 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
Member of the Commission
signed