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Case No COMP/M.3995 - BELGACOM / TELINDUS

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 01/12/2005

In electronic form on the EUR-Lex website under document number 32005M3995

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

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01.12.2005

SG-Greffe(2005) D/206503

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3995 – Belgacom / Telindus**
Notification of 10.10.2005 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 10 October 2005 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("the Merger Regulation") by which the Belgian undertaking Belgacom NV ("Belgacom") acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the Belgian undertaking Telindus Group NV ("Telindus) by way of a public bid announced on 29 September 2005.

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 the functioning of the EEA Agreement.

3. By letter dated 8 November 2005, the Commission received a request from Belgium for partial referral to the competent Belgian competition authorities of the proposed concentration in as far as it threatens to affect significantly competition on a Belgian market for integrated network solutions as well as certain vertically related telecommunication markets (notably, "access markets" in relation to fixed and mobile telecommunications services) in Belgium, with a view to assessing it under Belgian national competition law, pursuant to article 9(2)(a) of the Merger Regulation. By letter

1 OJ L 24, 29.1.2004 p. 1.

dated 29 November, 2005, the Belgian State informed the Commission that this request was withdrawn.

I. THE PARTIES

4. Belgacom is a telecommunications company, based in Belgium and listed on Euronext Brussels. As the Belgian incumbent, Belgacom is active in a full range of telecommunications services providing wholesale and retail services, fixed and mobile telecommunications and voice, data and TV services. Belgacom's NIS (Network and Systems Integration) Division mainly offers IT services and network solutions to corporate customers[2].

5. Telindus is an international provider of network-based solutions, meeting business and public–sector needs. Telindus services these markets as a solutions and sourcing partner delivering secure multimedia network solutions, underpinned by management and support services. Telindus provides consulting, integration and management services in areas such as multimedia convergence, video-surveillance solutions, integrated security, mobility solutions and network access. Its offering includes INSP (Intelligence Network Service Provider) to corporate customers, mainly telecom operators, finance, industry and government sectors[3].

II. THE OPERATION

6. Belgacom has the intention to launch a public offer for all of the shares and all outstanding warrants of Telindus. The public offer was not solicited by the Telindus board of directors or any large shareholder of Telindus. The board rejected the offer on 13 October 2005. The offer is conditional upon regulatory approval from the European Commission and Belgacom acquiring 75% plus one of all outstanding shares of Telindus. The structure and conditions of the public offer are set out in a press release and a draft prospectus, both dated 29 September 2005 and attached to the notification[4].

7. The proposed acquisition fits into Belgacom's Fixed Lines Services strategy towards corporate and public sector customers and will enable it to offer a broader range of services to these customers who are increasingly requesting integrated IT and communication solutions and are looking for providers who can offer and integrate as many components as possible of such solutions. Belgacom expects that the combination of Telindus with its NSI (Network and Systems Integration) Division will create net positive commercial synergies and, to some extent, lead to cost savings and efficiencies.

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2 In Belgium, Belgacom started to provide IT services in 2003 through its newly established NSI Division.

3 Telindus' INSP comprises the design of an optimal network, to combine the most favourite telecom technologies, to optimize local connections, to negotiate the best carrier contracts and to implement and manage the customer's network.

4 The Commission received an amended version of the offer document on 26 October 2005, and was orally informed by the notifying party on 26 November 2005 that a final offer document had been approved by the Belgian Banking, Finance and Insurance Commission ("*Commission voor het Bank, Financie- en Assurantiewezen/Commission Bancaire, Financière et des Assurances*") on 25 November 2005.

III. CONCENTRATION

8. As a result of the operation, Belgacom will acquire sole control of Telindus and, indirectly, its subsidiaries[5]. The operation thus constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion. Each of Belgacom and Telindus 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

IT services

10. Both parties are active in the provision of IT services. Various segments in IT services are identified by market players and consulting companies, such as IDC or the Gartner Group. The notifying party submits that there is one overall product market for all IT services in view of (a) the high degree of supply-side substitutability between the various IT services which is facilitated by the rapid technology changes in the IT sector and (b) the one-stop shopping practices of customers, who increasingly tend to turn to one supplier or a partnership of IT service providers for their entire IT service needs. In previous decisions the Commission has acknowledged this growing tendency towards "end-to-end IT solutions"[6].

11. The notifying party believes the geographic market to be EEA-wide or at least Western European (i.e. all "EU15" member states plus Norway and Switzerland) in scope. In previous decisions, the Commission has already observed a trend towards internationalisation of the IT services market and its segments[7].

12. The exact product market and geographic market definitions may, however, be left open, since in all alternative market definitions the operation does not raise competition concerns.

13. Based on 2004 figures that the notifying party has provided, in a Western European market the parties' combined position would be [0-5] %. Even under each of the categories of IDC's segmentation of the market for IT services: (i) planning, (ii)

5 [Belgacom's intention to divest its stake in Mobistar].

6 Commission decision of 31 January 2002, Case No COMP/M.2609 – HP/Compaq, § 26; Commission decision of 23 September 2002, Case No COMP/M.2946 – IBM/PwC Consulting, § 9.

7 Commission decision of 26 March 2004, Case No COMP/M.3398 – Hewlett Packard/Triaton, § 10; Commission decision of 9 September 2004, Case No COMP/M.3555 – Hewlett - Packard/Synstar, § 11; Commission decision of 18 November 2004, Case No COMP/M.3571 – IBM/Maersk Data/DMdata, § 16.

implementation, (iii) support services, (iv) operations and (v) training and education, the competitive assessment does not lead to a different outcome[8].

14. When considering a Belgian market for IT services, the combined market share would still be limited, approximately [0-10]%. If narrower markets existed in Belgium, in accordance with the categories described above, this would not alter the assessment either (the combined position being [5-10]% at most, in "operations").

15. Important competitors in the market for IT services on a Western European scale - that are much stronger than the parties - include: IBM Global Services (Western European market share in 2003 of around 9%), HP Services (4%, 2003), EDS (idem.), Accenture and Capgemini (each 3% in 2003). In Belgium, the parties would continue to face competition from international players such as IBM Global Services (14.4%), HP (7.9%), EDS (6.2%) and Siemens Business Services (5.5%).

16. Based on the above it can be concluded that the proposed transaction will not significantly impede effective competition in the provision of IT services 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.

Networking equipment

17. Both Belgacom and Telindus resell hardware products (e.g. network switches, modems, routers) manufactured by companies such as Cisco, Alcatel, Siemens and Juniper, and integrate them in their customer solutions. Belgacom does not manufacture any networking equipment itself and it does not have the intention to do so in the future. Furthermore, Belgacom has no exclusive distribution rights and manufacturers of networking equipment often have their own direct sales organisation. Telindus, however, designs, manufactures, assembles and markets a limited range of broadband access products (such as DSL modems). In the light hereof, the notifying party considers that the <u>market for networking equipment</u> constitutes the second area of overlap between the parties to the concentration.

18. In its decisional practice, the Commission has identified the provision of data networking equipment as a separate product market, with a possible distinction between WAN and LAN products[9]. In addition, in a previous decision (EADS)[10], the Commission considered the possibility that, within networking equipment, also Private Branch Exchanges (PBXs) may represent a distinct product market[11].

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8 The notifying party has submitted in the notification (p.31) that the IDC study provides the most detailed and reliable market information available. The Gartner study, which uses seven segments identified by the Commission in previous decisions, does not provide any details for Belgium. Regardless of the classification, however, the notifying party is of the opinion that the proposed transaction will not impede effective competition within the relevant market. In any event, the use of this alternative data source would not lead to a different competitive assessment.

9 See, e.g., Commission decision of 21 August 1998, Case No IV/M.1263 – Nortel/Bay, § 9-14.

10 See, Commission decision of 11 May 2000, Case No IV/M.1745 - EADS, § 37-38

11 PBXs are private telecommunications switches used for switching incoming and outgoing calls. The last generation includes IP PBX.

19. The notifying party submits that the geographic scope of the networking equipment market is at least EEA-wide and may even be worldwide, as was suggested by earlier Commission decisions[12]. As regards PBX equipment, the Commission has previously concluded that the geographic scope of the market could be national[13]. In fact, in the investigation in the aforementioned *EADS* case the Commission found that (i) distribution is usually organised on a national basis and, (ii) as PBXs provide interfaces to be connected to public networks, they normally require approvals on a national basis.

20. For the purpose of this case the exact product market and geographic market definitions may be left open, since in all alternative market definitions the operation does not raise competition concerns.

21. On a Western European market, based on 2004 data provided by the notifying party, Belgacom and Telindus would have a combined market share of only [0-10]% in networking equipment (Belgacom: [0-5]% Telindus: [0-10]%). If the market would be defined according to various product categories[14], a market study (EITO report 2005) demonstrates that the combined share of the new entity would be around [0-10]% across all categories.

22. On the basis of a narrower geographic market, comprising Belgium and Luxembourg, the notifying party estimates Belgacom and Telindus' combined position at [10-20]% (Belgacom: [0-10]%; Telindus: [0-10]%). Only if the market were to be defined more narrowly, therefore, would the transaction technically give rise to an affected market. However, in the light of the limited combined share on this market, it is not likely that any competition concerns would arise as a result of the proposed concentration.

23. Moreover, there are a number of strong competitors in the market for networking equipment (and any sub-segments thereof), marketed on a stand-alone basis. Considering a narrower product market of *LAN hardware*, the main competitors in Belgium are IT service providers such as IBM, HM, EDS, Getronics, Dimension Data and Dolmen. Regarding *WAN equipment*, this is offered by IT service providers and telecom operators offering VPN services. . Having submitted that, at supplier's level, Cisco is the worldwide market leader for networking equipment (including LAN and WAN equipment) with 58%, followed by Juniper Networks with 14.8%, Alcatel and 3Com., the notifying party considers that their respective positions are an indication of their position on a smaller, Belgian market. As regards *other data communications equipment*, including broadband access modems, competitors are e.g. other telecom operators offering broadband devices (over DSL as well as over cable). The main worldwide suppliers in this sub-segment are the following: Alcatel, Siemens, Cisco, Thomson, Motorola and Linksys, etc. The above suppliers are and will remain present in Belgium post-merger.

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12 Commission decision of 21 August 1998, Case No IV/M.1263 – Nortel/Bay, § 16; Commission decision of 11 May 2000, Case No IV/M.1745 – EADS, § 39-41.

13 See Commission decision of 11 May 2000, Case No IV/M.1745 - EADS, § 40.

14 LAN Hardware, PBX and key systems, Packet Switching and Routing Equipment, Circuit Switching, Cellular mobile radio infrastructure, Transmission, Other Data Communications, Other Network Equipment.

24. Based on the above it can be concluded that the proposed transaction will not significantly impede effective competition in the supply of networking equipment (including any sub-segments thereof) 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.

PBXs (Private Branch Exchanges)

25. As regards PBXs, on a Western European market, based on 2004 data provided by the notifying party, Belgacom and Telindus would have a combined market share below [0-10]%. Additionally, based on the notifying party's estimates, Belgacom and Telindus would have a combined market share of around [40-50]% in Belgium/Luxembourg (Belgacom [40-50]% and Telindus around [0-10]%). These calculations would be assuming a "worst-case scenario" where all revenues accruing to PBX products are considered (sales, renting, installation, maintenance, services). However, it should be noted that Belgacom and Telindus are active in this market essentially as resellers and not as manufacturers. Data provided by Telindus has largely confirmed the limited market share of Telindus in this segment.

26. According to the notifying party, the offering of Belgacom and Telindus of PBXs are complementary rather than substitutable: Belgacom mainly provides PBXs with *less than 100 extensions* (which are generally considered to be the "low-end" of the PBX market), whereas Telindus' offering is exclusively or almost exclusively focussed on PBX equipment *with 100 extensions or more*.

27. PBX equipment with 100 extensions or more (including the accompanying IT services) is mostly sold by PBX manufacturers, such as Siemens, directly or by their resellers/partners such as NextiraOne (an Alcatel reseller) or Ascom (a Nortel reseller). Moreover, sales of "traditional" PBX equipment (as opposed to IP PBX) are in decline according to the abovementioned EITO study. Contrary to "traditional" PBX equipment, IP PBX equipment (i.e. high-end PBXs) is part of the service offering of leading IT service providers such as IBM, Getronics and Dimension Data.

28. Given the presence of strong competitors in the provision of PBX equipment[15] and the limited incremental market share of Telindus in this market segment, it appears unlikely that post-merger Belgacom – despite its significant market share in Belgium/Luxembourg - would be able to negatively affect its competitors, for instance by bundling its IT services with PBX offerings, or that the merger would bring about an important increase in market share so as to result in a significant impediment to effective competition in a market for the supply of PBX equipment in Belgium/Luxembourg, in particular as a result of the creation or strengthening of a dominant position.

National telecommunication markets

29. Belgacom, as the Belgian incumbent, is active in various national telecommunication markets, namely fixed telephony services (access and retail provision), mobile

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[15] According to 2003 data submitted by the notifying party, the top nine vendors in Western Europe remained unchanged: Alcatel (17%); Siemens (16%); Ericsson (9%); Tenovis and Nortel (8% each); EADS Telecom (6%); Avaya (5%); Samsung (4%); Ascom and Philips (3% each); others accounted for 21%.

telecommunications and broadband access markets. According to an established practice of the Commission in respect of the electronic communication sector, these markets are considered national in scope. In this case, this is confirmed by several factors: i) the existence of a national regulatory regime enacted by the national regulator (the IBPT, Belgian Institute for Postal services and Telecommunications), ii) the demand and supply patterns, which clearly respond to a national dimension of the services; iii) the national coverage/dimension of the infrastructure (be it the incumbent's one or the more limited infrastructure of other operators), iv) the pricing policy of the incumbent as well as its competitors, which is clearly set at national level, and given national trade patterns.

30. Belgacom's position is particularly strong in (i) the fixed telephony services market (as regards retail access to the public telephone network at a fixed location and as regards the retail provision of telecommunication services at a fixed location; (ii) the market for mobile telecommunications services (especially as regards the business segment), where it is active through its subsidiary Belgacom Mobile (Proximus); and (iii) the market for access to broadband, especially at wholesale level.

31. Given that Telindus does not provide telecommunication services, there is no horizontal overlap in this respect. In the past, Telindus has teamed-up with several telecom operators in Belgium (in particular Mobistar) in respect of bundled offerings of integrated network solutions (essentially IT and telecom services) made to business customers[16]. However, there are no grounds to conclude that the merger would have an appreciable impact on Belgacom's position on the above mentioned telecommunication markets and result in a strengthening of a possible dominant position of Belgacom, which could justify serious doubts as to the compatibility of the merger with the common market.

32. In this respect, it has to be recognised that the number of consortia where Telindus participated in bundled offerings together with other telecommunication operators is limited and the customer base covered by these projects is marginal as compared to the overall size of the business customer segment in the Belgian telecommunication markets. Furthermore, even if Telindus were to play in some instances an advisory role with respect to telecommunication services in the framework of this kind of consortia, it would not have the power to determine the provider of the telecommunication services. Thus, the size of the business accruing to Belgacom due to the acquisition of Telindus, if any, would be very limited. On the other hand, there are sufficient alternatives to Telindus (Alcatel, Cisco, Siemens, Nortel, etc.) in Belgium to enable other telecommunication providers to enter into similar consortia as they did in the past with Telindus in the context of the supply of integrated network solutions.

[16] These bundles include both classical telecom services (offered by traditional telecom operators) and technology solutions (offered by operators such as Alcatel, Cisco, Siemens, Nortel, or to a lesser extent Telindus). IT (software applications) products may be added on top of these products/services by operators such as IBM, or others.

VI. CONCLUSION

33. 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
signed
Neelie KROES
Member of the Commission