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***Case No COMP/M.4034 - TELENOR / VODAFONE SVERIGE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 22/12/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party :

Dear Sir/Madam,

**Subject: Case No COMP/M.4034 – Telenor/Vodafone Sverige**
**Notification of 17 November 2005 pursuant to Article 4 of Council Regulation No 139/2004[1]**

## I. INTRODUCTION

1. On 17/11/2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Telenor ASA ("Telenor", Norway) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Europolitan Vodafone AB (which includes Vodafone Sverige AB, "Vodafone Sverige", Sweden) by way of purchase of shares.

[1] OJ L 24, 29.1.2004 p. 1.

## II. THE PARTIES

2. Telenor is the Norwegian incumbent telecommunications operator. It is the largest fixed and mobile telecommunications provider in Norway. Telenor also provides mobile telecommunications services in Denmark (via its local subsidiary Sonofon), Sweden (via its local subsidiary Djuice), Hungary (via its local subsidiary Panafon) and in other non-EEA countries. Telenor is controlled by the Norwegian State.

3. Vodafone Sverige is the third largest mobile operator in Sweden. It does not have operations outside Sweden. Vodafone Sverige is an indirect wholly-owned subsidiary of Vodafone Group plc.

## III. THE CONCENTRATION

4. On 31.10.2005, Telenor and Vodafone Group plc entered into a sale and purchase agreement for the acquisition by Telenor of Vodafone Sverige. Under this agreement, Telenor will acquire sole control of Europolitan Vodafone AB (which includes Vodafone Sverige AB). The proposed transaction is therefore a concentration within the meaning of Article 3 of the Merger Regulation.

## IV. COMMUNITY DIMENSION

5. The combined aggregate worldwide turnover of Telenor (€7,776 million) and Europolitan Vodafone AB (€[…] million) exceeded €5,000 million in 2004[2], and each of the undertakings had turnover in the Community of more than €250 million (Telenor €[…] million, Vodafone Sverige €[…] million) without achieving more than two-thirds of their respective aggregate Community-wide turnover within one and the same Member State. The transaction is therefore a concentration with a Community dimension.

## V. COMPETITIVE ASSESSMENT

### A. Relevant markets

6. The relevant markets potentially affected by the transaction are the following: retail mobile telecommunications, pan-Nordic retail mobile telecommunications services, wholesale international roaming and call termination on fixed and mobile networks. Access and call origination on public mobile telephone networks is not an affected market as Telenor and Vodafone Sverige are not mobile network operators in the same countries.

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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).

### A.1 Relevant retail markets

*Retail mobile telecommunications market*

7. The parties consider the retail market for mobile services to comprise private and business customer access to second generation (2G: GSM900 and GSM1800) and third generation (3G: UMTS) mobile networks with no need to segment into business and residential, pre-pay and post pay or voice and data segments. They motivate their position by the fact that all network operators offer a full range of services and each of the three 2G network operators in Sweden offers UMTS services. The Commission case-law has, up to date, left the question of sub-segmentation open[3]. It is not necessary in the present case to precisely define the markets involved as the competitive assessment would remain unchanged whatever the delineation under consideration.

8. From a geographic point of view, the parties define a national market (each Member State having its own licensing and frequency allocation regime; and specifically for Sweden, 97% of calls in Sweden on GSM and UMTS phones are national). The Commission agrees with this delineation which is in line with previous decisions[4].

*Pan-Nordic mobile telecommunications services*

9. Telenor, who considers the geographic market for mobile services to be national, does not consider pan-Nordic mobile telecommunications services to end-users to constitute a relevant market. In 2004, the Commission examined whether a distinct market for mobile telecommunications services to pan-Nordic business customers exists. Based on the findings that these services were all provided on a national basis, it concluded that such a distinct market did not yet exist at that time[5].. The market investigation in the present case evidenced that there is a growing interest from large companies with operations in the Nordic countries for the procurement of mobile telecommunication services on a pan-Nordic basis.

10. For the purposes of the present case, the question whether it already exists a distinct market for the provision of pan-Nordic mobile telecommunications services to large corporate customers can be left open as the proposed transaction does not raise competitive concerns on such a market.

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[3] See for instance Case N° COMP/M.3778 Vodafone/Oskar Mobile of 25/05/2005 and Case N° COMP/M.3920 France Télécom/Amena of 24/10/2005.

[4] See for instance Case N° COMP/M.3778 Vodafone/Oskar Mobile of 25/05/2005 and Case N° COMP/M.3920 France Télécom/Amena of 24/10/2005

[5] See Case N° COMP/M3750 TeliaSonera AB/ Orange A/S of 24/09/2004.

## A.2 Relevant wholesale markets

*Wholesale international roaming*

11. International roaming services enable customers travelling abroad to give and receive calls with their cell phones. Wholesale international roaming services are thus provided by a domestic mobile network operator (visited network) to a foreign mobile operator (home network). In order to provide such services, home network operators have to engage in agreement with network operators of the visited countries. Usually, operators engaged in bilateral agreements with all operators of other countries.

12. International roaming traffic has traditionally gone through any available operator's network but now operators can increasingly choose the network on which their clients roam out of their home country. This can be done through an OTA-enabled[6] SIM card in the phone of the customer or on a network-based technology (Home Location router LHR) to select the home operator's preferred network. There are currently a minority of SIM cards configured and the LHR technology has only come into use in the past year. The notifying party explains that both Telenor and Vodafone Sverige can technically steer roaming traffic into a selected network. Telenor states this ability to manage redirection of roaming traffic will increase as the technology becomes more refined.

13. In a number of cases, the Commission identified a relevant market for the provision of wholesale international roaming to foreign network operators[7]. In the present case, the provision of wholesale international roaming services is to be considered as a relevant market. The geographic market is considered to be essentially national because of regulatory barriers according to which authorisations to operate a mobile network are only granted for territories which are not wider than national. Mobile networks normally provide national coverage and the scope of the wholesale offer for international roaming is thus national.

*Call termination*

14. Call termination consists of the service offered by a network operator to another operator to terminate traffic originating on another network. Termination services allow thus users of the different networks to communicate with each other. Each operator has to procure call termination at wholesale level in order to be able to terminate calls on other networks. Call termination is indispensable in order to complete a call to its recipient when the call originates from another network than that of the recipient. Call termination is therefore a wholesale service that is resold or used as an input for the provision of downstream services.

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6 Over-the-air technology allows SIM cards to be configured remotely.

7 See for instance Case N° COMP/M.2803 Telia/Sonera of 10/07/2002. See also 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 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.

15. The Commission has identified a relevant market for the provision of wholesale call termination services on public fixed and mobile networks[8]. As there is no substitute for call termination on each individual network (an end-customer on a given network can only be reached by terminating the call on that specific network), each termination access network constitutes a relevant market. The geographic market is considered to be essentially national for the same reasons as those explained above for the wholesale international roaming market (authorisations to operate a network only granted for territories which are not wider than national and national coverage of the mobile networks).

## B. Competitive assessment

### B.1 Non-coordinated effects

#### B.1.1. Retail markets

*Retail mobile telecommunications market in Sweden*

| % 2004[9] | Revenue | Subscribers | Private | Business | Pre pay | Post pay | Voice | Data |
|---|---|---|---|---|---|---|---|---|
| Telenor | [0-5] | [0-5] | [0-5] | [0-5] | [0-5] | [0-5] | [0-5] | [0-5] |
| Vodafone Sverige | [20-30] | 16 | 15 | [15-25] | 11 | 24 | [20-30] | [20-30] |
| **Combined** | [20-30] | [10-20] | [10-20] | [15-25] | [10-20] | [20-30] | [20-30] | [20-30] |
| TeliaSonera | [40-50] | 43 | 39 | [50-60] | 41 | 45 | [40-50] | [45-55] |
| Tele2 | [20-30] | 36 | 39 | [15-25] | 46 | 21 | [20-30] | [10-20] |
| 3 | [0-5] | 3 | [0-5] | [0-5] | 1 | 5 | [0-5] | [0-5] |
| Others | [0-5] | [0-5] | [0-5] | [0-5] | [0-5] | [0-5] | [0-5] | [0-5] |

16. As can be seen from the table above, TeliaSonera will remain the leader in most of the market segments, followed by Tele2. Vodafone Sverige is the third largest player. There is no segment where the transaction results in an increment exceeding [0-5]%.

17. Telenor provides mobile services in Sweden through Djuice (launched in 2002), its wholly owned subsidiary which does not have a licence for a mobile network (it is a MVNO[10] operator on Tele2's network).

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8 See *inter alia* Case N° M.2803. See also 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 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.

9 Source : Annual Report 2004 of the Swedish Telecommunications Regulator (PTS) and Telenor's best estimates.

10 Mobile Virtual Network Operator.

18. Telenor and Vodafone Sverige are both losing subscribers despite of subscriptions growing at an annual rate of [5-15]% (and growth rate of [10-20]% for traffic minutes in 2004). From 2002 to 2003, the customer base of Djuice grew from 0 to approximately [50 00-150 000] customers; in 2004, the growth stagnated and from January to the last quarter of 2005, its customer base declined from [50 000-150 000] to [50 000-150 000] customers. Vodafone Sverige number of subscribers also decreased in 2005[11] and its market share by revenue declined from [20-30]% in 2002 compared to [20-30]% in 2005. Conversely, in 2005 TeliaSonera, Tele2 and "3" gained subscribers compared to 2004.

19. The customer base of each party is not similar. Djuice sells mobile services through its Internet website as a low cost provider offering few price plans and a limited range of value added services. Vodafone Sverige focuses on business customers and high-end private customers with higher prices as a result of value added full service offers.

20. It can therefore be concluded that the proposed transaction will have no significant impact in the market for mobile telecommunications market in Sweden or any sub-segment thereof.

21. Some respondents in the market investigation submitted that the proposed transaction would have anticompetitive effects as it will enable Telenor, through its various Swedish subsidiaries, to provide bundled retail offers combining mobile telephony services, fixed telephony services[12] and Internet broadband access (including VoIP)[13]. The occurrence of such anticompetitive effects as a result of the merger can be excluded for the following reasons. First the transaction does not bring about any substantial change in Telenor's ability and incentives to propose bundled offers as it was already pre-merger active as a mobile operator in Sweden and was thus able to combine its various telecommunications offerings in a bundled offer. Second, leveraging strategy by Telenor based on bundled offers would not significantly impede effective competition because of Telenor's shares of each of these markets. Third, there are other competitors, notably TeliaSonera and Tele2, with market shares larger than Telenor's, which are also able to propose bundled services with higher probabilities of leveraging effects[14].

22. A respondent in the market investigation raised similar concerns arguing that such bundled offers by Telenor could also include pay-TV services[15]. Such concerns can equally be excluded. First as indicated above, Telenor was already pre-merger active as a mobile operator in Sweden and was thus able to combine its telecommunication offerings with its pay TV services. Second, there are at least two other competitors,

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[11] [1 400 000-1 600 000] customers in 2004, [1 400 000-1 600 000] customers in 2005

[12] Through Telenor AB, Telenor owns a fixed telephony infrastructure that represents less than [0-5]% of all fixed lines in Sweden.

[13] Telenor controls Bredbandsbolaget which holds a 20% share of the Internet broadband access market.

[14] For instance, TeliaSonera holds a 43% share of the retail mobile market and a 40% share of the Internet broadband access market in Sweden.

[15] Telenor controls Canal Digital Sverige which holds a [20-30]% share of the total pay-TV market in Sweden.

Tele2 and Com Hem, which form part of groups that are able to market such bundled offers including telecommunications services and pay TV[16].

*Retail mobile telecommunications market in Norway*

23. The transaction does not bring about any horizontal overlap in the Norwegian mobile telephony market. According to the notifying party, in 2005, Telenor has a 56% market share by subscribers, followed by TeliaSonera with 34% (through NetCom and Chess), and Tele2 with 6%. The remaining 4% are widely dispersed among around twenty operators (mainly service providers). Only Telenor and TeliaSonera are mobile network operators in Norway. Tele2 is active as an MVNO on Telenor's network as a result of a […] agreement entered into with Telenor in 2002. This agreement gives Tele2 access to Telenor mobile network in Norway while simultaneously providing Telenor with access to Tele2 mobile network in Sweden (under the brand Djuice).

24. The Commission examined whether the proposed transaction could lead to anticompetitive effects in Norway as a result of Telenor becoming a network operator in Sweden with no need anymore to access Tele2's network in this country. This could lead to a change in Telenor's incentives to continue giving Tele2 access to its mobile network in Norway, therefore significantly weakening Tele2's position in the market. In light of the concentrated structure of the Norwegian retail mobile market, where the two main operators collectively hold a 90% market share, such a weakening of the competitive position of the third largest player would have a significant impact on effective competition in this market.

25. The occurrence of such a scenario can however be ruled out for the following reasons. At the outset, it has to be noted that the agreement between Telenor and Tele2 mentioned above runs until […]. It is very unlikely that before that date Telenor can stop providing Tele2 access to its mobile network in Norway. Indeed the agreement provides that […][17]. […][18].

26. Finally Telenor as an operator with Significant Market Power in Norway is bound by general non-discrimination obligations[19]. Due to these obligations Telenor has to provide access to its mobile network to other operators on similar terms and conditions.

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16 Tele2 provides fixed and mobile telephony services in Sweden. It is also a cable operator providing pay-TV ([0-5]% share of the total pay-TV in Sweden) and Internet broadband access. In addition Tele2 is controlled by the Kinnevik Group which also controls Modern Times Group (MTG). MTG controls ViaSat, a DTH pay TV operator in Sweden ([10-20]% share of the total pay-TV in Sweden). Com Hem is a cable operator which provides pay TV ([10-20]% share of total pay-TV in Sweden), broadband Internet access and VoIP in Sweden.

17 Article 2.D.5 of the Framework Agreement.

18 Article 2.D.4 of the Framework Agreement […].

19 Section 3-2 of Norwegian Regulation 1997-12-05 no 1259 regarding public telecommunications network and public telecommunications services. Regulation 1997 no 1259 was repealed with the entering into force of the new Norwegian Electronic Communication Act no 83 of 4 July 2004. However, transitional arrangements (section 13-2 of the Electronic Communication Act and section 10-7 of the Electronic communication regulation of 2004/02/16 no 401) provide that all obligations imposed on SMP-operators by Regulation 1997 no 1259 remain in force until new decisions have been put in place under the new electronic communication framework.

Since Telenor entered in 2005 in MVNO agreements with TDC/Song and Ventelo, it has an obligation to offer MVNO access on non-discriminatory terms. These non-discrimination obligations apply until they will be replaced by the new decision of the Norwegian Telecommunications Regulator on market 15[20] currently under review by the regulator. It can therefore safely be concluded that Tele2 will be able to continue providing retail mobile services in Norway as a MVNO on Telenor's network under the same current conditions until at least […].

27. As regards the situation after this date, it should be stressed that Tele2 accounts for roughly [5-15]% of the total traffic on Telenor's network in Norway. As such, Tele2 is by far the largest user of this network and Telenor's largest customer. The notifying party explains that Tele2 will therefore enjoy a significant bargaining power vis-à-vis Telenor when the current MVNO agreement will expire, as the loss of Tele2 will represent a significant loss for Telenor. The notifying party also contends that for this reason, and because of the sunk costs it incurred in the roll-out of 2G and 3G networks in Norway[21], Telenor' objective and incentive will be to retain Tele2 as an MVNO on its mobile network.

28. In this respect, one can argue that the loss of Tele2 will be a blow for Telenor only if Tele2 has the ability to switch at little cost to the sole other mobile network in Norway (i.e. that of TeliaSonera). Such an alternative is credible (and therefore constitute a real incentive for Telenor to retain Tele2) only if TeliaSonera has both the technical capacity and the incentive to enter into an MVNO agreement with Tele2.

29. As regards capacity, on the assumption that Tele2 share of traffic and share of subscribers (roughly [5-15]%) are similar[22], Tele2 would account for roughly [10-20]% of the total traffic on TeliaSonera's 2G network[23]. Therefore even assuming that TeliaSonera's 2G network is fully saturated, TeliaSonera would have to increase its capacity by [10-20]% as to be able to respond to such an increased traffic. In light of Norwegian licenses for GSM operation, especially as regards frequency access, and in light of the technical means available to operators[24], it appears that it would be possible for TeliaSonera to accommodate a [10-20]% traffic increase by […] (i.e. when the current MVNO agreement between Telenor and Tele2 will expire).

30. In any case it has to be borne in mind that over the last three years the mobile traffic growth in Norway was significantly higher than [10-20]% per year (see below section on coordinated effects), which means that on average each Norwegian network operator

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[20] Wholesale market for access and call origination on public mobile telephone networks under Article 7 of Directive 2002/21/EC.

[21] […].

[22] This is a conservative approach as Tele2 customer's base is predominantly composed of residential customers.

[23] For the time being an overwhelming share of mobile traffic in Norway is on 2G networks.

[24] Such as increasing the number of frequencies on one or more base stations, increasing the number of trunks between one or more pair of nodes in the core network, increasing the number of base stations or base stations controllers, number of switches, frequency re-planning.

had to increase each year the capacity of its network by a figure which exceeds the current mobile traffic generated by Tele2's customers.

31. In addition, it is likely that by […] there will be a significant increase in the number of 3G subscribers[25]. As at the end of 2004 there were more than 102 mobile telephones per 100 inhabitants[26], it is expected that a significant share of the 3G subscribers will be former 2G subscribers. This should leave spare capacity in the 2G networks in Norway in the years to come. As TeliaSonera has a 3G network in Norway[27], this will therefore facilitate a migration of Tele2's traffic from Telenor's to TeliaSonera's network.

32. Finally, migration of a large number of customers from a mobile network to another has proved to be possible in a recent past, as evidenced by the migration of Chess's subscribers from Telenor's network to TeliaSonera's following the acquisition of Chess by TeliaSonera in 2005[28].

33. As regards TeliaSonera's incentive to enter into a MVNO agreement with Tele2 in Norway, it does not appear that TeliaSonera systematically opposes giving access to its networks to other operators, as evidenced by the fact that it had granted access to its network to Chess, an independent service provider.

34. In addition, TeliaSonera incurred significant sunk costs for the roll-out of its 2G network and it is currently incurring significant additional sunk costs for the roll-out of its 3G network. As noted above, TeliaSonera's share of the Norwegian retail mobile market is much lower than that of its prime contender, Telenor (34% versus 56%). As TeliaSonera and Telenor are licensed for 2G and 3G operations on identical conditions (in particular in terms of geographic coverage) such an asymmetry in market shares means that TeliaSonera is a sub-scale operator with higher average costs than those of Telenor. TeliaSonera has therefore strong incentives to increase traffic on its network, as evidenced by the agreement with Chess and the subsequent acquisition of this operator. Therefore TeliaSonera could regard a proposal by Tele2 to migrate its customer base to its network as an opportunity to increase its traffic while in the same time reducing that of Telenor. The costs involved for TeliaSonera in increasing its network capacity will not make this opportunity less attractive as these costs (incurred for instance by increasing the number of frequencies) will likely be balanced by the substantial additional revenues that will be generated by Tele2[29].

35. Finally, as regards the possibility that TeliaSonera would not grant Tele2 access to its Norwegian mobile network as a result of coordinated effects, such a scenario can be ruled out for the reasons set out below (see Section on coordinated effects).

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25 TeliaSonera, Tele2, 3 and Vodafone Sverige have recently developed 3G networks that cover approximately 85% of the population (and 5% of the total subscriber base).

26 Annual Report 2004 of the Norwegian Telecommunications Regulator (PT).

27 TeliaSonera opened its 3G network in February 2005.

28 Chess was an independant service provider of mobile services on both Telenor's and TeliaSonera's networks. It had a market share (in number of subscribers) of 8%.

29 In 2005 the MVNO Agreement provides revenues to Telenor of approximately NOK […] million.

*Pan-Nordic mobile telecommunications services*

36. Prior to the proposed transaction, Telenor is active in the provision of retail mobile services in Norway (where it is the market leader), in Denmark and, as a MVNO[30], in Sweden. Telenor does not offer mobile telecommunication services in Finland. As a result of the proposed transaction, Telenor will become a network operator in Sweden but it will still lack a mobile network in Finland. By contrast, TeliaSonera, who appears to be its main competitor in the Nordic area, is already active as a mobile network operator in these four Nordic countries, being the market leader in Finland and Sweden. For this reason TeliaSonera appears to be in a better position to propose seamless solution to large corporate customers on a pan-Nordic basis. In addition, the market investigation evidenced that other market players (TDC, Tele2) are also able to offer such pan-Nordic services through partnerships.

37. Therefore, should a distinct market for the provision of pan-Nordic mobile services to large corporate customers exist or emerge in the short-term, it is unlikely that the transaction will lead to a significant impediment of effective competition.

### B.1.2 Wholesale markets

*Wholesale international roaming*

38. Telenor estimates its market shares to be above [20-30]% in Norway ([45-55]%) and Denmark ([30-40]%). Vodafone Sverige estimates its market share in Sweden to be approximately [20-40]%.

39. Even if Telenor (including its Danish subsidiary Sonofon) received all of the international roaming traffic generated in Norway and in Denmark by Vodafone Sverige's customers roaming in these countries, this would not have a significant effect on Telenor's position in the Danish and Norwegian international roaming markets. Indeed, according to the parties, Vodafone Sverige represents around [5-15]% of the total inbound international roaming traffic in Denmark and around [5-15]% in Norway. The additional international roaming traffic that can be in reality directed to Telenor in Denmark and Norway is even less important. Indeed a significant share of Vodafone Sverige roaming traffic in these countries is already directed to Telenor's network[31].

40. Telenor and Telenor/Sonofon represent respectively around [15-25]% and [0-5]% of the total inbound international roaming traffic in Sweden. However a significant share of this traffic is already directed to Vodafone Sverige[32].

41. In any case, there will remain post merger alternative suppliers of international roaming services in each of the three Nordic countries where the parties are active (Denmark:

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30 Mobile Virtual Network Operator.

31 [10-20]% of Vodafone Sverige international roaming traffic in Denmark is already directed to Telenor Sonofon and [50-60]% of Vodafone Sverige international roaming traffic in Norway is already directed to Telenor Norway.

32 [10-20]% of Telenor international roaming traffic in Sweden is already directed to Vodafone Sverige. [10-20]% of Telenor/Sonofon international roaming traffic in Sweden is already directed to Vodafone Sverige.

TeliaSonera, TDC and “3”; Norway: TeliaSonera; Sweden: TeliaSonera, Tele2 and “3”). All these operators have similar mobile networks both in terms of geographic coverage and quality of services than that of the parties in each of these countries. This has been confirmed by the market investigation. Therefore any attempt by the merged entity to foreclose its competitors by refusing them access to its mobile networks in Norway, Sweden and Denmark or by increasing their costs to access these networks would be vain.

*Call termination*

42. As indicated in the Telia/Sonera decision[33] and in numerous decisions, according to Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, call termination in fixed and mobile networks can be used upstream in one country to distort competition downstream in the other country.

43. In Sweden, Vodafone Sverige holds a 100% market share in the provision of termination services on its mobile network. This market is vertically linked to the different national retail markets for international call services from a fixed network (Norway) and from a mobile network (mainly in Norway and Denmark) where Telenor is active.

44. However it does not appear that the proposed transaction could generate foreclosure effects in any of these markets. Indeed, the cost of call termination for telecommunications operators on Telenor’s or Vodafone Sverige’s networks is limited, even for other Nordic operators. For example, only [0-10]% of the total cost of international mobile termination for Vodafone Sverige is accounted for by call termination on Telenor’s Norwegian network. Similarly only [0-10]% of total cost of international mobile termination for Telenor is accounted for by call termination on Vodafone Sverige’s network. The market investigation has confirmed that cost figures are roughly similar for competitors. Therefore, even if the parties engaged in a discrimination policy against their respective competitors by raising their cost to access their networks, this would not have a significant impact on these competitors’ cost structure.

45. Furthermore, it should be recalled that in light of Vodafone Sverige’s share of the Swedish mobile market (16% by subscribers, [20-30]% by revenue), any attempt by Telenor to discriminate in favour of Vodafone Sverige will likely not significantly impede effective competition in Sweden. For the same reason, any attempt by Vodafone Sverige to discriminate in favour of Telenor will likely not significantly impede effective competition in Norway and Denmark.

46. Finally, in principle, discrimination by the merged entity against its competitors would not be technically possible. Telenor explains that it cannot identify within traffic terminating on its networks which is traffic carried for a third party (by a carrier provider) and which is traffic originating in the operators own networks. Vodafone Sverige explains that it cannot identify accurately whether traffic terminated on its network has a domestic or international origination. This is because traffic terminated through national operators with a direct connection to Vodafone Sverige’s network will include both international and national traffic.

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33 Case N° COMP/M.2803 – Telia/Sonera

### C.2 Coordinated effects

47. The proposed transaction will result in Telenor acquiring the third largest mobile network operator in Sweden (market share of 16% by subscribers), TeliaSonera's home market (where it holds a market share of 43%). Prior to the transaction, TeliaSonera was already the second largest mobile operator in Norway (market share of 34% by subscribers), Telenor's home market (where it holds a market share of 56%).

48. In light of this situation, the Commission examined whether the transaction could lead to modifying the current incentives of Telenor and its main competitor in the Nordic region, TeliaSonera, to compete against each other. In this respect, one should outline that the proposed transaction by increasing symmetry between Telenor and TeliaSonera could result in these companies having greater ability and incentive to reach terms of coordination in Norway and Sweden. In light of Telenor's and TeliaSonera's respective market positions in these countries, such an outcome would equate to a significant impediment of effective competition.

49. The occurrence of any coordinated effect can be ruled out because of several characteristics of the retail mobile market in Norway and Sweden which have been confirmed by the market investigation.

50. First, it should be outlined that the concentration level in Sweden is barely affected by the proposed transaction, as Telenor, which is until now a marginal player, will replace Vodafone as the third largest (network) operator.

51. Second, the Norwegian and Swedish retail mobile markets exhibit a significant growth rate as indicated in the tables below.

| Annual growth rate of mobile subscribers[34] | 2002 | 2003 | 2004 |
|---|---|---|---|
| Norway | 8% | 7% | 13% |
| Sweden | 12% | 9% | 10% |

| Annual mobile traffic growth rate[35] | 2002 | 2003 | 2004 |
|---|---|---|---|
| Norway | 17% | 15% | 19% |
| Sweden | 14% | 7% | 13% |

[34] Source : Annual reports 2004 of the Norwegian and Swedish Telecommunications Regulators (PT and PTS)

[35] Source: Annual Reports 2004 of the Norwegian and Swedish Telecommunications Regulators (PT and PTS)

52. The traffic on mobile networks in Norway and Sweden is expected to continue to grow at a significant rate over the next years as customers are increasingly migrating from fixed to mobile telephony. The fixed to mobile voice migration has so far been slower in Norway and Sweden than in Finland. The mobile share of voice traffic in 2004 was 21% in Sweden and 31% in Norway compared to 53% in Finland. In addition, the recent launch of 3G services in Norway and Sweden should contribute to an additional increase of mobile traffic in both countries.

53. Third, mobile markets are characterised by a high level of technological change as a result of the roll-out of 3G networks and the recent launch of 3G services by Telenor and TeliaSonera in Norway and Vodafone Sverige, Tele2, "3" and TeliaSonera in Sweden. This technological change creates market uncertainty and strong incentives to compete. Indeed, all these operators have sunk huge investments in the roll-out of 3G networks that will only be recouped if their 3G customer base sharply increases in the coming years. As 3G services are much more sophisticated than 2G services, pricing models and levels that will prevail in the future are still unknown.

54. Fourth, the Norwegian and Swedish retail mobile markets exhibit a low level of transparency as regards at least the business segment of the market. The market investigation confirmed that corporate customers negotiate discounts off public tariffs. As corporate customers account for a significant share of retail sales of mobile services[36], this means that real prices are unknown to competitors for a substantial segment of the market.

55. Fifth, there are other players (in particular Tele2 and "3") which would undermine any attempt by the Telenor and TeliaSonera to coordinate in Sweden. As indicated both Tele2 and "3" are 3G network operators with strong incentives to compete. In addition, "3" is a new entrant whose current market share does not accurately reflect its competitive strength[37]. As any attempt by Telenor and TeliaSonera to coordinate would be undermined by outsiders in Sweden, it is unlikely that these two companies start coordinating in Norway as a result of the proposed transaction.

56. For the reasons stated above, it does not appear that the proposed transaction will increase the likelihood that a consensus between Telenor and TeliaSonera to implement a coordinated anticompetitive strategy could be reached and sustained over time in Norway and in Sweden. For the same reasons, it is very unlikely that such a coordinated strategy would include Tele2. In addition, it is more difficult for three players than it is for two to implement and sustain a coordinated strategy over time.

57. Finally the Commission assessed whether the proposed transaction could lead to modifying the current incentives of the largest mobile operators (Telenor, TeliaSonera Tele2 and TDC) to compete against each others in the Nordic countries[38]. In this respect it should be outlined that there is no change brought about by the proposed transaction: TeliaSonera will remain the largest player in Sweden and Finland, TDC the

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36 Approximately [35-45]% in Sweden.

37 « 3 »entered the market in 2003. Its current market share by revenue is [5-15]% for the first semester of 2005 ([0-5]% in 2004).

38 Finland, Denmark, Norway and Sweden.

largest player in Denmark and Telenor the largest player in Norway. In addition to the asymmetries at the national level, asymmetries are also strong at the Nordic level. Indeed, only TeliaSonera provides mobile services in all four Nordic countries as a network operator. By contrast Telenor provides mobile services in Norway, Denmark and Sweden (but not in Finland), TDC only in Denmark (and in Norway as an MVNO), and Tele2 only in Sweden (and in Denmark and Norway as an MVNO).

58. In light of the foregoing, it can be concluded that the proposed transaction will not significantly impede effective competition in the common market or in any substantial part of it or in the EEA.

## VI. Conclusion

59. 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