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*Case No COMP/M.4302
– O2/The Link*

Only the English text is available and authentic.

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

Article 4 (4)
Date: 18/08/2006



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18-VIII-2006

SG-Greffe(2006) 204679

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 4 (4) DECISION

To the Notifying Party

To the Office of Fair Trading

Dear Sir/Madam,

**Subject: Case No COMP/M.4302 – O2/The Link
Reasoned submission pursuant to article 4(4) of Regulation No 139/2004
for referral of the case to the United Kingdom**

1. On 20/07/2006, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Council Regulation (EC) No 139/2004 (“EC Merger Regulation”) with respect to the transaction cited above. A copy of this submission was transmitted to Member States on the same day.
2. In support of their referral request, the submitting parties have mentioned in the Reasoned Submission that the geographic focus of the proposed concentration is on the territory of the United Kingdom.
3. On 31 July 2006, the UK Competition Authority, the Office of Fair Trading (hereinafter referred to as “OFT”) after receiving the submission has agreed in writing to the referral request.

I. THE PARTIES

4. **O2 UK Limited** (“O2”) is a mobile network operator providing mobile communications services in the UK, Germany and Ireland. O2 is controlled by Telefónica S.A which is a global telecommunications group present in Europe, Latin America and Africa.

5. **The Link Stores Limited** (“The Link“) is an independent dealer of mobile telecommunications services active only in the UK. Through its network of 300 retail outlets in the UK, The Link sells post-pay and pre-pay mobile connections with a variety of different mobile service providers (including the five UK mobile network operators (“MNOs“) and a number of other virtual mobile service providers such as Virgin Mobile and BT Mobile (“MVNOs“)) along with accessories and handsets.

II. THE OPERATION AND COMMUNITY DIMENSION

6. O2 already owns 40% of the issued shares of The Link. The contemplated concentration concerns the acquisition by O2 of the remaining 60% of the share capital of The Link from DSG, with whom it currently jointly controls the company. The target will become a wholly-owned subsidiary of O2, which will acquire sole control over The Link. The proposed concentration, therefore, constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
7. The concentration has a Community dimension since it meets the thresholds of Article 1 (2) of the Merger Regulation.

III. ASSESSMENT

A. Relevant product markets

8. On the basis of the information submitted in the Reasoned Submission, the relevant product market is the market for the retail sales of mobile connections and handsets. This market, where retailers compete for the sale of mobile connections and handsets should be distinguished from the activities of mobile service operators (MNOs and MVNOs) which compete on the retail market for mobile services as defined in previous Commission decisions¹.
9. An alternative market definition could be - from the point of view of the operators - the market for the provision of retail services to MNOs and MVNOs, which definition however would not do any difference as to the scope and size of the market.
10. In addition, due to the possible vertical relationship between O2’s activities as a mobile network operator and the Link’s retailer activities, a further relevant market is the market for the provision of mobile telecommunications services.
11. However, the exact definition of the relevant product markets can be left open since it would not in any case affect the assessment of whether the proposed concentration meets the criteria for an Article 4(4) referral.

B. Relevant geographic market

12. As regards the market for the sale of mobile connections and handsets the parties submit that the geographic market is national. First, it is submitted that as all major retailers and mobile network operators have shops in major towns and cities throughout the UK, they set most of their prices on a national level, with national advertising campaigns, pricing and terms and conditions. While at the same time the

¹ Case COMP/M.3245 - *Vodafone/Singlepoint*, Commission decision of 16 September 2003

parties do not believe that the affected markets are local since retailers are equally available across the whole country, they argue that from the point of view of customer demand and in view of the footprint of the chain of retail stores of the parties this market is at most national in scope, as customers would be unlikely to travel too far in order to purchase mobile connections.

13. Secondly, O2 also argues that the market for the provision of retail services to MNOs and MVNOs would also be national in scope. It is suggested in some of the Commission's past decisions regarding the sector that MNOs and MVNOs compete for customers on a national basis. To the extent that they require the services of retailers, operators therefore seek to procure these services across the UK. However, the exact definition of the geographic market for can be left open for the similar reasons as mentioned above in the market for retail sales of connections and handsets (para. 13) since it would not in any case affect the assessment of whether the proposed concentration meets the criteria for an Article 4(4) referral.
14. Finally, the mobile retail services markets are confined to national boundaries on account of regulatory and industry-specific distribution systems which results in customers invariably being in the same country as the retailers of mobile telecommunications services.
15. Overall, it seems that the relevant markets could be local and/or regional but at most are UK-wide in scope, and in any case both the acquirer and the target companies have retailer activities only in the UK. Therefore, the exact definition of the geographic market for the retail sales of mobile connections and handsets, or alternatively for the provision of retail services to MNOs and MVNOs, and finally for the mobile retail services market can be left open since it would not affect the assessment of whether the proposed concentration meets the criteria for an Article 4(4) referral.

C. Assessment

16. The concentration would give rise to horizontally affected markets only in the UK where the target company exclusively operates. On the basis of the number of sold mobile connections The Link has [0-10%] of the market via its 300 high-street stores across the UK, while O2 which only offers its own connections and handsets in the proprietary retail outlets has a [10-20%] market share within the UK. With respect to both market alternatives, i.e. the market for the retail sales of handsets and connections and - from the point of view of mobile operators - the market for the provision of retail services to MNOs and MVNOs, the proposed transaction would therefore lead to a combined market share of approximately [20-30%] in the UK. It is worth noting, that the Parties include also operator-owned outlets into this market. If those were to be excluded, these market shares might be higher on the potential market for the provision of retail services to MNOs and MVNOs.
17. The proposed transaction would also give rise to vertical links between O2's activities as a mobile operator and The Link's activities as a retailer. Although according to the British telecoms regulator's data, O2's market share in the provision of mobile network services within the UK is approximately 26 %, this figure excludes the sales of 3 and that of the MVNOs. Therefore, in the parties' view the vertical relationship would not amount to an affected market as overall O2 has a market share below 25% (an estimated [15-25%] when measured by reported customer base and an estimated

[15-25%] when measured by net additions) on the total market for the mobile telecommunications services in UK.

IV. REFERRAL

18. On the basis of the information provided by the parties in the Reasoned Submission, the Commission considers that the case meets the legal requirements set out in Article 4(4) of the EC Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market.
19. In particular, the concentration is liable to have a potentially significant impact on competition since with the merger a major independent dealer of mobile telecommunication services in the UK will be included into the group of one of the strongest mobile operators, O2. The Commission moreover considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition, if any, of the concentration would take place on the distinct market of the UK or on local markets within the UK and is therefore confined to a single Member State in line with point 20 of the Commission notice on case referral².

V. CONCLUSION

20. For the above reasons, and given that the OFT has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the OFT. This decision is adopted in application of Article 4(4) of Council Regulation (EC) No 139/2004.

For the Commission,
[p.p. Humbert DRABBE]
Philip LOWE
Director General

² http://europa.eu.int/comm/competition/mergers/legislation/consultation/case_allocation_tru.pdf