

***Case No COMP/M.4591 -  
WEATHER  
INVESTMENTS /  
HELLAS  
TELECOMMUNICATIO  
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Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 04/04/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04.04.2007

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4591 - Weather Investments / Hellas  
Telecommunications  
Notification of 28/02/2007 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 28/02/2007, 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 Italian undertaking Weather Investments S.p.A. ("Weather") acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Hellas Telecommunications ("Hellas") of Greece by way of purchase of shares.
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 EEA Agreement.

#### **I. THE PARTIES**

3. **Hellas Telecommunications** is a provider of mobile communications services and fixed telecommunications services. The activities are carried out through subsidiaries in Greece. Hellas Telecommunications is currently controlled by Apax Partners and TPG<sup>2</sup>. Hellas controls TIM Hellas, the third largest mobile telecommunications operator in

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

<sup>2</sup> See Case N° COMP/M.4036 – TPG IV/APAX/Q-Telecom, Commission decision of January 13, 2006.

Greece. TIM Hellas, together with its subsidiary Q-Telecom, operates a range of mobile telecommunications services, and is an alternative fixed-line provider. Hellas Telecommunications does not have any operations outside of Greece.

4. **Weather Investments** is active in private equity investments in medium-sized companies in the Middle East, Africa, South Asia and Europe. Its portfolio companies are active mainly in mobile communication systems. It is the holding company for Orascom Telecom and Wind. Orascom Telecom does not have any operations in Europe<sup>3</sup>. Wind, however, is the third largest mobile telecommunications operator in Italy, and also offers fixed telephony and communications services in Italy. Through its joint venture Tellas, it is also an alternative fixed line provider in Greece. Wind does not have operations in other European countries. Mr Naguib Sawiris, together with his family, controls Weather Investments.

## **II. THE OPERATION**

5. Weather will acquire all of the issued share capital of Hellas Telecommunications and, accordingly, sole control over it.

## **III. CONCENTRATION**

6. The operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **IV. COMMUNITY DIMENSION**

7. In 2005, the combined aggregate worldwide turnover of all the undertakings concerned exceeded EUR 5,000 million<sup>4</sup>. The aggregate Community wide turnover of each party exceeds EUR 250 million<sup>5</sup> without either party achieving more than two-thirds of their respective aggregate Community-wide turnover within one and the same Member State. The proposed concentration therefore has a community dimension.

## **V. RELEVANT MARKETS**

8. The Parties have identified two relevant product markets: the mobile telecommunications services market and the fixed telephony and communication services market.

### *Provision of mobile communication services*

9. Both Weather and Hellas are providers of mobile telecommunications services, Weather in Italy and Hellas in Greece. With reference to previous cases<sup>6</sup>, the parties have identified a distinct product market for mobile communication services, which must be distinguished from fixed line telephony services. The parties consider the relevant

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3 Orascom Telecom is a mobile telecommunications company operating GSM networks in seven markets in the Middle East, Africa and South Asia.

4 Weather: EUR 7,811 million; Hellas: EUR 1,006 million.

5 Weather: EUR 4,586 million; Hellas: EUR 1,006 million.

6 See e.g. Case COMP/M.2803. Telia/Sonera, Commission decision of July 10 2002; Case COMP/M.1795, Vodafone Airtouch/Mannesmann, Commission decision of April 12, 2000; Case COMP/M.3245 - Vodafone/Singlepoint, Commission decision of September 16, 2003.

geographic market to be national, i.e. Greece, due to the fact that mobile telecommunication services are provided exclusively by nationally licensed operators. In this respect the parties also make reference to the Commission's decision regarding the merger between TIM Hellas and Q-Telecom.

10. In a number of decisions, the Commission has established that mobile telecommunication services cannot be regarded as a substitute to fixed line telephony services<sup>7</sup>, and that the market for mobile telecommunication services is distinct from the emerging market for advanced seamless pan-European mobile telecommunication services<sup>8</sup>. The Commission has not further segmented a mobile telecommunication market, but left open whether distinct product markets exist for (i) digital and analogue mobile telecommunications; (ii) private and business customers; or (iii) pre-paid and post-paid subscriptions<sup>9</sup>.
11. With reference to the Commission's decisional practice<sup>10</sup>, and in particular in light of the national licensing requirements and the procedure for spectrum allocation, it is concluded that the relevant product and geographic market to be assessed is the national market for mobile telecommunication services.

*Provision of fixed telephony and communication services*

12. Both Weather, through its joint venture Tellas, and TIM Hellas are active in the market for the provision of fixed telephony and communication services in Greece. The parties submit, therefore, that the relevant product market is the provision of fixed telephony and communication services. This market, they submit, is also national, i.e. Greece. Reference is made to the Commission's previous practice according to which the factors to be taken into account would be (a) the extent/coverage of the network, as well as the customers that can be reached and whose demands may be met economically; (b) the legal and regulatory framework<sup>11</sup>.
13. With reference to the Commission's decisional practice, and in particular in view of the national scope of the fixed telephony network, it is concluded that the relevant product and geographic market to be assessed is the national market for fixed telephony services.

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<sup>7</sup> See e.g. Case COMP/M.2803 – *Telia/Sonera*, Commission decision of July 10 2002; Case COMP/M.1795 – *Vodafone Airtouch/Mannesmann*, Commission decision of April 12, 2000; Case COMP/M.3245 – *Vodafone/Singlepoint*, Commission decision of 16 September 2003.

<sup>8</sup> Case COMP/M.2016 – *France Telecom/Orange*, Commission decision of August 11, 2000.

<sup>9</sup> Case COMP/M.3530 – *Teliasonera/Orange DK*, Commission decision of 24 September, 2004.

<sup>10</sup> E.g.; case M.4036 – *TPG IV/ Apax / Q-Telecom*, Commission decision of 13 January 2006; case COMP M.3916 – *T-Mobile Austria / Tele.ring*, Commission decision of 26 April 2006.

<sup>11</sup> Case No COMP/M.2565 - *PPC / WIND / JV*, Commission decision of November 28, 2001.

## VI. COMPETITIVE ASSESSMENT

### *Provision of mobile communication services*

14. The parties to the combination are both providers of mobile communication services, but in different geographic markets.
15. Tim Hellas, the third largest of three providers of mobile communications services in Greece, has a market share of 27% by number of subscribers as of June 2006<sup>12</sup>. Tim Hellas does not operate in Italy.
16. Wind is the third largest of four providers of mobile communications services in Italy, with a market share of 19% by number of subscribers<sup>13</sup>. Wind does not offer mobile communications services in Greece.
17. In the absence of any overlapping activities, it can be concluded that the proposed transaction will not significantly impede effective competition in the provision of mobile communication 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.

### *Provision of fixed telephony and communication services*

18. Both Weather, through its joint venture Tellas, and Hellas Telecommunications through its subsidiary Q-Telecom are active in the market for the provision of fixed telephony and communication services in Greece. According to the most recent data available, the parties' combined market share in this sector amounts to an affected market.
19. The most recent market share figures provided by the parties, calculated on the basis of the 2005 total market data published by the Greek National Telecommunications and Post Commission (EETT) in its 2005 annual report (approximately 5.5 million fixed lines in total), show that the combined market shares of Q-Telecom and Tellas in 2005 would amount to [10-20%] (Q-Telecom: [0-5%], Tellas: [10-20%])<sup>14</sup>.
20. Given the very small incremental market share of Q-Telecom, the proposed operation would not appear to significantly impede effective competition in the fixed telephony and communication sector in Greece. Hellenic Telecommunications Organisation (OTE), the incumbent, with an estimated market share 71.3% in 2005<sup>15</sup>, would continue to be the dominant player in the market. As for other competitors, the parties have confirmed that there is no reliable public source presenting market shares of individual operators in the fixed-line telephony market. Nevertheless, on the basis of the parties'

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<sup>12</sup> Estimate of the parties.

<sup>13</sup> Estimate of the parties; [http://www.wind.it/eng/investitori/chi\\_siamo/profilo/profilo.php](http://www.wind.it/eng/investitori/chi_siamo/profilo/profilo.php).

<sup>14</sup> According to the parties no public data are yet available for the total fixed line market in the year 2006.

<sup>15</sup> The figure is based on EETT's 2005 Annual Report – Analytical Market Overview [http://www.eett.gr/export/sites/default/sites/EETT\\_EN/Publications/Proceedings/Proceedings2005\\_Analytical/Ch\\_1\\_4.pdf](http://www.eett.gr/export/sites/default/sites/EETT_EN/Publications/Proceedings/Proceedings2005_Analytical/Ch_1_4.pdf); the market share has been calculated on the outgoing calls volume (except dial-up calls). The parties indicated, on the basis of OTE's 2005 annual report, that OTE's market share for fixed line services based on revenue was, for 2005, 73%.

best estimates, the main competitors are TelePassport, which holds a 4% market share in the relevant market, and FORTHnet, which holds a 4% market share.

21. Based on the above it can be concluded that the proposed transaction will not significantly impede effective competition in the provision of fixed-line telephony 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.

*Third party concerns*

22. A competitor has expressed concerns regarding some possible anti-competitive vertical effects arising from the proposed transaction. This party has, in particular, submitted that PPC Telecommunications S.A. (a company controlled by PPC S.A., Greece's electricity incumbent) has built, alongside its nationwide electricity grid, a backbone dark optical fibre network. Since PPC and Weather (through its subsidiary Wind) jointly control Tellas, it is claimed that a "combined Weather/Hellas/TIM" would have exclusive and preferential access to the grid of PPC and to TIM's well established customer base. According to the competitor, the backbone would be an upstream market (wholesale broadband access) for the provision of mobile services (i.e. retail mobile broadband services). Such access would constitute, in the view of the third party, a significant competitive advantage vis-à-vis other actual and potential players on the Greek market, possibly resulting in a future rise of prices to the detriment of consumers.
23. The competitor also submitted that the entity resulting from the merger might benefit from illegal state aid through cross-subsidisation flowing from the public utility incumbent (PPC) to the mobile telephony services operator (TIM Hellas). It is claimed that the expansion of the entity's mobile telephony services could be funded by electricity fees generated by the state owned PPC.
24. The Commission has verified these claims and found that, according to the Greek National Regulator's (EETT) analysis of March 2006, there is only one provider in the national market for wholesale broadband access<sup>16</sup>, the national incumbent (OTE). OTE has a market share equal to 100% in this market. Accordingly, since PPC is not a market player in this market n. 12, no actual vertical relationship exists between PPC (upstream) and Tellas or TIM Hellas (downstream). In addition, the latter's market shares on the retail broadband services (fixed and mobile) market in Greece are small (TIM Hellas has a share of [0-5%] and Tellas has a [0-10%] share<sup>17</sup>) and could not amount to an affected market.
25. The Commission has also verified the terms of the agreement (the Backbone Agreement) signed by PPC and Tellas in 2002, which regulates the construction and lease of the Backbone by PPC to Tellas on an exclusive basis. This agreement was submitted by the parties to EETT for evaluation of its compliance with competition law.

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<sup>16</sup> Market 12 of the Commission recommendation of 11 February 2003 on relevant product markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, OJ 8.5.2003, L 114/45.

<sup>17</sup> Estimates of the parties, based on the total number of Broadband customers in the Greek market provided by the EETT Report on the Development of Broadband, Q4 2004.

In EETT's decision<sup>18</sup> the provision of exclusive rental of the dark fibre network from PPC to Tellas was found not to infringe competition law, and therefore PPC can still legitimately lease to Tellas the fibre constructed for it on an exclusive basis. The decision also requires PPC to negotiate with other operators if they request PPC to use its rights of way in order to install fibre and lease it to them.

26. Given the small combined market share of Tellas / TIM in the Greek downstream market for retail broadband services and the non-existing presence of PPC in the upstream market for wholesale broadband access, the proposed operation would not lead to a significant impediment of effective competition as a result of a vertical relationship.
27. As for the alleged risk of cross-subsidisation, the Commission's analysis of the contractual relationship between the undertakings involved in the merger showed that the commercial terms of the Backbone agreement and the accounting separation and transparency obligations imposed on PPC<sup>19</sup> eliminate such concerns.

## **VII. CONCLUSION**

28. 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  
Jan FIGEL  
Member of the Commission

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<sup>18</sup> EETT Decision n. 342/69/4-2-05.

<sup>19</sup> PPC is an undertaking that enjoys special and exclusive rights and, therefore, is subject to the Transparency Directive, Commission Directive 2006/111/Ec of November 2006, transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings, OJ 2006/L 318/17.