

***Case No COMP/M.4748 -  
T-MOBILE / ORANGE  
NETHERLANDS***

Only the English text is available and authentic.

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

---

Article 6(1)(b) NON-OPPOSITION  
Date: 20/08/2007

***In electronic form on the EUR-Lex website under document  
number 32007M4748***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20/08/2007

SG-Greffe (2007) D/205101

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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: Subject: Case No COMP/M.4748 – T-MOBILE / ORANGE  
NETHERLANDS  
Notification of 13/07/2007 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 13/07/2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking T-Mobile Netherlands Holding B.V. ("T-Mobile", Netherlands) belonging to the group Deutsche Telekom AG ("DTAG", Germany), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertakings Orange Nederland N.V. ("ONL", Netherlands) and Orange Nederland Breedband B.V. ("ONB", Netherlands) by way of purchase of shares.
2. After examining the notification, the Commission found that the notified transaction fell within the scope of the Merger Regulation and that it did not raise serious doubts as to its compatibility with the common market and the EEA agreement.

## II. THE PARTIES

3. T-Mobile is a Dutch Mobile Network Operator ("MNO") which is ultimately controlled by DTAG through T-Mobile International. DTAG is a telecommunications company, with worldwide activities, offering a complete portfolio of IT and telecom services. T-Mobile international concentrates on mobile telecommunications markets in Western and Central Europe, with majority shareholdings in eleven European States and in the U.S.

---

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

4. ONL and ONB are Dutch telecom companies providing mobile telephone and broadband internet services respectively. They currently both belong to the group headed by France Télécom S.A. ONL is an MNO offering mobile services to retail and business customers with a national network. OBB provides broadband services including high-speed internet and Voice over IP. Controlling its own backbone network, it is able to offer fully unbundled ADSL access with currently 53% national unbundled local loop coverage.

### **III. THE CONCENTRATION**

5. T-Mobile has submitted to France Télécom a draft Share and Purchase Agreement according to which it is willing to acquire ONL and ONB. Upon closing, T-Mobile will hold 100% of the issued shares of both ONL and OBB (hereinafter "Orange").
6. The operation, therefore, constitutes a concentration within the meaning of article 3(1)(b) of the ECMR.

### **IV. COMMUNITY DIMENSION**

7. The operation has a community dimension within the meaning of article 1(2) of the Merger Regulation. The parties' combined worldwide turnover in 2006 was €62 billion; the Community-wide turnover of DTAG in 2006 was €45.9 billion, whereas Orange's was €715 million. Only ONL and ONB achieve more than 2/3 of its Community-wide turnover within the same Member State, namely the Netherlands.

### **V. RELEVANT MARKETS**

8. Both parties operate mobile telephony networks in the Netherlands and are active in the various retail and wholesale markets in mobile telephony. The parties propose to define the relevant product markets in line with previous Commission decisions and along the Commission's Recommendation of 11 February 2003 on Relevant Product and Service Markets (the "Recommendation")<sup>2</sup>. The relevant markets concerning mobile telecommunications services in this case (which are all national in scope) are

- (1) the retail market for the provision of mobile telecommunications services to end-consumers
- (2) the wholesale market for access and call origination on public mobile telephone networks
- (3) the wholesale market for international roaming on public mobile networks<sup>3</sup>
- (4) the wholesale voice call termination on individual mobile network

---

<sup>2</sup> Commission's 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 the European Parliament and of the Council on a common regulatory framework for electronic and network services, OJ L 114, 8.5.2003, p. 45. However, it is worth to note that the Recommendation is without prejudice to the markets that may be defined in specific cases under competition law (recital 18 Recommendation).

<sup>3</sup> Case COMP/M.2803 – Telia/Sonera; Case COMP/M.3530 – TeliaSonera/Orange; Case COMP/M.3776 – Vodafone/Oskar Mobile.

## **1. Retail market for the provision of mobile telecommunications services to end-consumers**

9. In previous decisions the Commission did not further subdivide the market for the provision of mobile telecommunications services to end customers by type of customer (corporate or private, post-paid subscribers or pre-paid customers) or by type of network technology (2G/GSM or 3G/UMTS networks). The Commission consequently assessed the previous cases on the basis of a single market for the provision of mobile telecommunications services to end customers<sup>4</sup>.
10. With respect to the relevant network technology (2G/GSM or 3G/UMTS networks) the Commission found that, at least as far as voice telephony and small-bandwidth data services (e.g. SMS, MMS) are concerned, 2G and 3G networks are substitutable to each other. The Commission, however, left open whether 2G networks constitute a substitute for 3G network regarding large-bandwidth data services, e.g. multi-media services.
11. The market investigation, and, in particular, the replies to questions referring to the market definition addressed to both MNOs and MVNOs<sup>5</sup>, confirmed that it is also appropriate to assess the competitive impact of the present transaction on the basis of an overall market. Also a distinction by type of customer, such as between private and business customers or subscribers and pre-paid customers, does not seem appropriate since there is supply substitutability on the side of network operators and some network operators do not make a clear distinction between corporate and private customers.
12. The market investigation also showed that it was not necessary to distinguish, within the 2G spectrum, between GSM900MHz, DCS1800MHz and E-GSM900 frequencies or between 2G/GSM and 3G/UMTS for the purpose of assessing the present case.
13. KPN/Telfort, Vodafone, T-Mobile and Orange each hold licences for the use of 2G and 3G (UMTS) spectrum and operate parallel 2G and 3G networks in the Netherlands.<sup>6</sup> In areas where 2G and 3G networks are operated in parallel, operators seamlessly route traffic between the two according to network availability, capacity and efficiency considerations. A phone call can be carried on several bearers during its duration. Even if a customer has a 3G telephone, it is possible that not all telecommunications services will be provided over the 3G network as 3G telephones can also operate in 2G networks.
14. Voice telephony small-bandwidth data services, such as text messaging, access to e-mail services or basic Internet access, can be provided both on 2G or 2.5G networks

---

<sup>4</sup> Cases COMP/M.3530 – TeliaSonera/Orange, COMP/M.3776 – Vodafone/Oskar Mobile, COMP/M.3916 – T-Mobile Austria – tele.ring.

<sup>5</sup> Replies to questions 5 to 10, 14 to 16 of the questionnaire addressed to competitors, comprising both MNOs and MVNOs,

<sup>6</sup> Orange was the last Dutch MNO to launch its 3G activities at the end of 2006.

(whatever the frequency used by the MNO<sup>7</sup>) and on 3G networks. Other services require faster transmission speed and larger bandwidth which only a 3G network can provide. However, as the present case does not raise any competition concerns with respect to mobile broadband data (and multimedia) services, the exact delineation between 2G and 3G networks can be left open for the purpose of the present case.

15. For the purpose of the present decision, the assessment will therefore be made on the basis of a single market for the provision of mobile telephony services to end customers, in so far as they can be provided on both a 2G and a 3G basis.
16. In accordance with previous Commission decisions, the notifying party suggests that the geographic market should be defined in national terms, i.e. restricted to the Netherlands. The market investigation confirmed the Commission's decision practice.

## **2. Wholesale access and call origination on public mobile telephone networks**

17. This market corresponds to market n. 15 of the Recommendation. Access and call origination are key elements required to provide retail mobile telephony services. Network access and call origination are typically supplied together by a Mobile Network Operator (MNO), hence both services can be considered as part of the same market<sup>8</sup>. MNOs own their mobile networks and constitute the supply side, whereas Mobile Virtual Network Operators (MVNOs) and Service Providers who seek access to one or more of the MNO networks in order to provide their retail services constitute the demand side of this market. Service Providers either distribute SIM cards on behalf of the relevant MNO or issue their own SIM cards and brand services under their own name, while "Full" MVNOs issue their own SIM cards and, in addition, own part of their network (e.g. switching or backbone) and therefore depend to a lesser extent on the network of the "host" operator. In any event, the assessment in the present case would not alter independent on the market definition for the wholesale access and call origination on public mobile phone networks.
18. The geographic scope of the market for wholesale access and call origination on public mobile telephone networks is national. This is due to regulatory barriers, as the geographical scope of the licences granted to MNOs is in principle limited to areas which do not extend beyond the borders of a Member State. Moreover, the coverage of mobile networks tends to correspond to national borders, with the result that the supply of access and origination at wholesale level is national in scope, i.e. the Netherlands in the present case.

---

<sup>7</sup> Notably, KPN/Telfort has licenses for all frequencies; Vodafone for GSM900, DCS1800 and UMTS; T-Mobile for DCS1800 and UMTS and Orange for E-GSM, DCS1800 and UMTS.

<sup>8</sup> See Explanatory Memorandum to 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 the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, O.J. L 114 of 8 May 2003, p.45.

### **3. Wholesale market for call termination on mobile telephone networks**

19. This market corresponds to market n. 16 of the Recommendation. Call termination is the service provided by network operator B to network operator A whereby a call originating in operator A's network is delivered to a user in operator B's network. Call termination (together with interconnection, on which it is based) thus allows users of different networks to communicate with each other. Call termination is a wholesale service which the various network operators provide to each other, on the basis of interconnection agreements, upstream of the provision of communication services to end customers.
20. As established in previous Commission decisions<sup>9</sup>, there is no substitute for call termination on each individual network since the operator transmitting the outgoing call can reach the intended addressee only through the operator of the network to which the addressee is connected "as a guest". Each individual network therefore constitutes a separate market for termination. This applies both to fixed networks and to mobile networks. The Recommendation and the Commission's decision practice, accordingly, regard call termination in each different (fixed and mobile) network as constituting a separate market. The relevant product markets are thus T-Mobile's and Orange's respective mobile networks.
21. Geographic markets for call termination in mobile networks are national in scope. This is essentially owing to regulatory barriers as the geographical scope of T-Mobile's and Orange's licences is limited to the Netherlands. The coverage of T-Mobile's and Orange's mobile networks corresponds to national borders, with the result that the supply of call termination at wholesale level is also national in scope, i.e. the Netherlands.

### **4. Wholesale market for international roaming**

22. This market corresponds to market n. 17 of the Recommendation. International roaming is a service which allows mobile subscribers to use their mobile handsets and SIM cards to make and receive calls<sup>10</sup> even when abroad. In order to be able to offer this service to their customers, MNOs conclude reciprocal wholesale agreements providing access and capacity on mobile networks in the foreign country.
23. From a supply point of view, wholesale international roaming services provide access and capacity to a foreign MNO for the purposes of enabling its subscribers to make and receive calls while on another operator's network abroad. Demand for wholesale international roaming services comes first from foreign mobile operators who wish to provide their own customers with mobile services outside their own network; this wholesale demand reflects the demand of subscribers wishing to use their mobile telephones outside their own countries<sup>11</sup>.

---

<sup>9</sup> COMP/M.1493 – Telia/Telenor, COMP/M.2803 – Telia/Sonera and COMP/M.3806 – Telefónica/Cesky Telecom.

<sup>10</sup> And to send and receive text messages (and other data services).

<sup>11</sup> "Outbound traffic" comprises the calls which a network operator A's clients make while being abroad. For this traffic, the home network operator A needs to buy "outbound roaming" from the respective foreign "host" network operators B and C etc. "Inbound traffic" describes the calls which are made on a host

24. Originally, the home network operator could not direct outbound traffic onto a specific foreign network. In the absence of effective traffic direction mechanisms, international roaming traditionally took place on any of the available mobile networks in the country in which the end customer was located. It was on this basis that the Commission previously reached the provisional conclusion that each network constituted a separate market for the provision of wholesale international roaming services.
25. Network operators can nowadays to a large extent choose the host network in which their customers can make calls abroad. "Preference lists" are stored on the customer's SIM card and can be amended or adapted over the air (OTA), whereby even the registration of individual customers can be monitored in the foreign host network.
26. Any foreign host network operator may be selected. Operators frequently conclude several roaming agreements in the same country in order to ensure the best possible roaming coverage. This strategy generally does not generate significant costs and allows multiple use of and switching between various roaming suppliers. Roaming agreements can also be concluded with a preferred operator which offers specific conditions, as can be seen in particular in the creation of international roaming alliances such as the Freemove Alliance or the Vodafone Group partners<sup>12</sup>. In recent decisions the Commission considered that all mobile networks in a given country compete with each other for the inbound roaming traffic in that country.<sup>13</sup>
27. In previous decisions<sup>14</sup>, the Commission regarded the market as national in scope. This analysis is based on the fact that wholesale international roaming agreements can be concluded only with companies which have an operating licence in the relevant country and licences to provide mobile services are restricted to national territory.

---

operator's (e.g. B or C) network by "visiting" clients of foreign mobile telecommunication providers (such as A). The host operator (such as B or C) who allows the foreign clients to make these calls on its network sells "inbound roaming" to the respective foreign network operator (such as A).

<sup>12</sup> Vodafone concluded international roaming agreements with its international partners. The Vodafone Group comprises fully owned operators in the United Kingdom, Germany, Spain, Portugal, Italy, the Netherlands, the Czech Republic, Romania, Greece, Malta, Ireland and Hungary. Vodafone has concluded preferred roaming agreements with partner networks in countries where it is not present with a fully owned subsidiary. Such agreements exist for instance with Mobilkom (Austria) and Proximus (Belgium). FreeMove, a strategic alliance, comprises several service providers throughout the EEA and Switzerland, including Orange, T-Mobile Telecom Italia Mobile, TeliaSonera and other operators. The FreeMove alliance operates in the following European countries: Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Liechtenstein, Lithuania, Netherlands, Norway, Romania, Slovakia, Sweden Switzerland and the UK.

<sup>13</sup> COMP/M.4035 - Telefónica/O2; COMP/M.3916 – T-Mobile Austria/tele.ring.

<sup>14</sup> See, for example cases COMP/M.2726 – KPN/E-PLUS, COMP/M.2469 – Vodafone/Airtel, COMP/M.1863 – Vodafone/BT/Airtel, COMP/M.2803 – Telia/Sonera, COMP/M.3806 – Telefónica/Cesky Telecom and COMP/M.3916 – T-Mobile Austria/tele.ring.

## VI. COMPETITIVE ASSESSMENT

### 1. Retail market for the provision of mobile telecommunications services to end-consumers

#### Market structure

28. On the Dutch retail mobile telephony market four Mobile Network Operators (MNOs) are active, namely KPN, Vodafone, Orange and T-Mobile<sup>15</sup>. In 2005, KPN acquired the then fifth MNO, Telfort.<sup>16</sup> The Dutch retail mobile telephony market is further characterised by the presence of approximately 50 Mobile Virtual Network Operators (MVNOs) and Service Providers, with Tele 2 and Debitel being the largest ones. Other important MVNOs and Service Providers include Albert Heijn, EasyMobile, Hema, Scarlet and UPC. Tele 2 operates itself part of the routing and switching of mobile phones calls and is considered as a terminating network by the Dutch Independent Post and Telecommunications Authority (Dutch Regulator), OPTA.
29. The penetration rate of the Dutch retail mobile telephony market is 107%.<sup>17</sup> According to OPTA, post-paid subscriptions grew faster than pre-paid contracts in 2006 resulting in an increase of overall revenues as post-paid customers generate a higher ARPU (Average Revenue Per User).
30. The parties submitted the following data regarding the market structure:

#### **Mobile Telephony Market Shares (in number of customers per network)**

Operator / Service Provider	2006		2005		2004	
	Number of Customers	Market Share	Number of Customers	Market Share	Number of Customers	Market Share
KPN/Telfort	[...]	[30-40]%	[...]	[40-50]%	[...]	[40-50]%
Vodafone	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
T-Mobile	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Orange	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Debitel	[...]	[0-10]%	[...]	[0-10]%	[...]	[0-10]%
Tele2 Mobiel	[...]	[0-10]%	[...]	[0-10]%	[...]	[0-10]%
Lebara Mobiel	[...]	[0-10]%	[...]	[0-10]%	-	-
Ortel Mobiel	[...]	[0-10]%	[...]	[0-10]%	-	-
AH Mobiel	[...]	[0-10]%	[...]	[0-10]%	[...]	[0-10]%
Lycamobile	[...]	[0-10]%	-	-	-	-
UPC Mobile	[...]	[0-10]%	[...]	[0-10]%	-	-
Others	[...]	[0-10]%	[...]	[0-10]%	-	-
TOTAL	17,359,005	100%	16,763,398	100%	16,420,573	100%

Source: Annex 12 of Notification. Explanations given by the notifying party: MNOs based on annual reports; MVNOs based on Telecompaper reports (MVNO report every half year); T-Mobile and Orange report customer base excluding MVNO customers. Subscribers figures KPN and Vodafone are corrected for MVNO subscribers.

<sup>15</sup> Each MNO has a network which covers almost 100% of the Dutch territory and does not need to lease capacity from other MNOs.

<sup>16</sup> This concentration was authorised by the Dutch Competition Authority NMa.

<sup>17</sup> OPTA Report 2006.



31. According to OPTA, the market structure was as follows in 2006 (subscribers):<sup>18</sup>

KPN	48.5%
Vodafone	22.3%
T-Mobile	14.1%
Orange	11.4%
<i>Combined</i>	25.5%
Others	3.8%

Source: OPTA Annual Report and Market Monitor 2006

These figures have been largely confirmed by more recent data of Telecompaper for the first quarter 2007 which, however, indicate an increase of the share of "Others" to 4.9%.<sup>19</sup>

32. On the basis of revenues, according to the notifying party, KPN would achieve a market share of [40-50]% ahead of Vodafone ([20-30]%), T-Mobile ([10-20]%), Orange ([0-10]%). The MVNOs and Service Providers would account for the remaining [0-10]%. The data collected by the Commission in its market investigation<sup>20</sup> indicate that the parties underestimate the revenue shares of the MVNOs and Service Providers, in particular those of Debitel and Tele 2.
33. An exact reconstruction of the market shares of all individual players was not possible in the market investigation.<sup>21</sup> However, the Commission was able to check the data for the MNOs and the most important MVNOs and Service Providers. In that respect the market investigation, taking account of the different calculation methods, largely confirmed both OPTA's and the parties' figures. The available data shows that the MVNOs and Service Provider together reach a market share of more than 17% of the subscribers. Many of them have started their operations in 2005 or 2006 and initially focused on prepaid customers. This explains their smaller market share of only 5.5% in terms of revenues. However, the two most important and established Service Provider/MVNO, namely Debitel and Tele2, generate the majority of their revenues from postpaid customers. It can therefore be expected that some Service Provider/MVNO expand their activities to postpaid customers and thereby increase their revenues market share.
34. Following the proposed acquisition of Orange, T-Mobile will become the second-largest operator in terms of subscribers ([20-30]%) and the third-largest operator in terms of revenue. Market leader in terms of both revenues and subscribers remains KPN ([30-40]%) whereas Vodafone ([10-20]%) will become the number three player behind the new entity. A large number of MVNOs and Service Providers will remain present on the retail market. Their combined market share will not be affected by the proposed transaction albeit the size differential between the largest MVNOs/Service

---

<sup>18</sup> The subscribers of some Service Providers are accounted for the MNOs whose network these Service Providers use.

<sup>19</sup> Telecompaper, Dutch Mobile Operators Q1 2007, p. 17.

<sup>20</sup> Replies to question 28, to which only MVNOs were asked to reply, of the questionnaire addressed to competitors, comprising both MNOs and MVNOs

<sup>21</sup> This was due to the lack of complete responses during the summer holidays.

Providers and the smallest MNO will increase. However, their smaller size has not impeded the MVNOs/Service Providers to exert significant competitive pressure on the MNOs and the market investigation<sup>22</sup> has not brought up any evidence that this would change as a consequence of the proposed concentration.

#### Orange's role in the market

35. The market investigation has shown that Orange cannot be considered as a "maverick" which exerted considerable competitive constraints on the other players in the Dutch mobile retail telecommunications market. In that respect the Commission analysed Orange's pricing behaviour, the development of its market shares and revenues, and the switching behaviour of the former and new Orange customers. In addition the Commission examined whether Orange has been the closest substitute to T-Mobile and has thus exerted a particularly strong competitive constraint on T-Mobile.
36. Orange has increased from 2005 to 2006 the total number of subscribers by [0-10]% and its market share of subscribers from [10-20]% to [10-20]%.<sup>23</sup> However, Orange's retail revenues even decreased by [0-10]% from 2005 to 2006.<sup>24</sup> By contrast, T-Mobile increased its retail revenues by [0-10]% during the same period,<sup>25</sup> and the overall market revenues grew by [0-10]%.<sup>26</sup> In terms of revenues, Orange thus lost both in absolute figures and in relation to its competitors.<sup>27</sup>
37. Orange's business strategy rather focuses on prepaid customers as opposed to the other MNOs which are stronger in the postpaid segment which generates higher average revenues. In 2006, postpaid customers only accounted for [30-40]% of Orange's total customers whereas the ratio is [40-50]% for KPN, [50-60]% for T-Mobile and [50-60]% for Vodafone.<sup>28</sup> Accordingly, Orange's revenue share of the postpaid segment was only [0-10]% in 2006 as compared to its [10-20]% share in the prepaid segment.<sup>29</sup> In the light of these figures, it appears that Orange has not been a major competitive

---

<sup>22</sup> Replies to questions 28 to 34, to which only MVNOs were asked to reply, of the questionnaire addressed to competitors, comprising both MNOs and MVNOs.

<sup>23</sup> According to Merrill Lynch, European wireless matrix Q1 07, p.44, Orange increased its subscriber market share from [10-20]% (2005) to [10-20]% (2006).

<sup>24</sup> Parties' response to question 6 of questionnaire of 10.08.2007, repeating question 14 of questionnaire of 06.08.2007. In the same period, its cost of sales increased by [10-20]%, see during the same period, see Annual Report Orange 2006.

<sup>25</sup> Parties' response to question 6 of questionnaire of 10.08.2007, repeating question 14 of questionnaire of 06.08.2007.

<sup>26</sup> Source: Notification, p.74.

<sup>27</sup> It appears that Orange only in the first quarter 2007 gained [0-10]% of revenue market share but it is not possible to evaluate whether this indicates a turn-around. Cf. Telecompaper, Dutch Mobile Operators Q1-2007, p.133 et seq.

<sup>28</sup> Merrill Lynch, European wireless matrix Q1 07, p.44.

<sup>29</sup> Telecompaper, Dutch Mobile Operators Q1-2007, p.133 et seq. The Telecompaper does not show the revenues and market shares of MVNOs and Service Providers but rather considers them as revenues of the underlying network.

constraint in the postpaid segment which represents [80-90]% of the overall service revenues in the Dutch mobile retail telecommunications market<sup>30</sup>, and even more than [80-90]% of T-Mobile's overall retail revenues.

38. A pricing analysis submitted by the parties, on the basis of tariffs as of 27 February 2007, suggested that Orange was then not among the cheapest providers, neither for pre-paid nor for post-paid tariffs. The Commission verified the parties' submission on 13 August 2007 on the Dutch tariff comparator "bellen.com". With respect to the post-paid segment Orange's package tariffs were among the cheaper tariff formulas. However, for customers who do not exactly meet the consumption profile, i.e. exceed the maximum number of call minutes or SMS or have a diverging distribution of calls and SMS, several other providers (e.g. Tele 2, Telfort (a brand of KPN), T-Mobile and Vodafone) have more competitive tariff formulas.
39. With respect to the pre-paid segment the Commission's analysis confirmed the parties' submission. There are indeed several MVNOs and Service Provider such as Tele 2, UPC, Carey, Ortel, Rabo and Lebara as well as T-Mobile offering more competitive tariffs than Orange.<sup>31</sup> This analysis shows for both pre-paid and post-paid tariffs that Orange has not been acting as a particularly aggressive player putting pressure on prices.
40. An analysis of the switching flows amongst operators by customers making use of the number portability shows that in 2006 Orange had a negative net balance of 23,033 customers taking their numbers. Although also Vodafone and KPN had a negative net balance of [...] and [...], respectively, these figures have to be seen against the background of their considerably higher total number of subscribers which exceed Orange's number of subscribers by [60-70]% (Vodafone) and more than [200-300]% (KPN). By contrast, Tele 2, T-Mobile and the Service Providers/MVNOs hosted on KPN's Telfort network show positive net balances of [...], [...] and [...] subscribers, respectively. Although these figures only reflect the moves of subscribers making use of number portability and data of the overall switching behaviour is not available, these data still confirm the finding that Orange has not been very successful in attracting customers in 2006.
41. The Commission further investigated whether Orange has shown to be a particularly close substitute to T-Mobile. In 2006, a total of [...] subscribers using number portability switched away from T-Mobile. Orange thereof only acquired [...] which represents about [10-20]% of former T-Mobile's customers<sup>32</sup> Furthermore, [...] customers switched from T-Mobile to Tele2, which represents about [0-10]% of former T-Mobile's customers. Orange thus acquired [...] former T-Mobile customers [...] Tele 2. These figures show that Orange has not been considered by T-Mobile's former customers as a particular close substitute to T-Mobile.
42. On the other hand, T-Mobile acquired [20-30]% ([...]) of the [...] customers switching away from Orange and making use of the number portability. This percentage is higher

---

<sup>30</sup> Telecompaper, Dutch Mobile Operators Q1-2007, p.133 et seq.

<sup>31</sup> [...]

<sup>32</sup> [...]

than T-Mobile's market share on the basis of number of customers – of [10-20]% but still significantly below KPN's ([30-40]% and in some respect similar to Vodafone's ([10-20]%). However, T-Mobile's share can be explained by its considerable growth in the post-paid segment during the last years and its acquisition of [0-10]% additional post-paid customers in 2006 bringing it to a share of [10-20]% of all post-paid customers.<sup>33</sup> Taking into account that post-paid customers tend to make more use of number portability than pre-paid customers, T-Mobile's acquisition share of former Orange customers does not appear particularly high. It can be concluded that under these circumstances it is not likely that T-Mobile would be able to increase tariffs for Orange customers on the assumption that a large part of Orange customers would in any event switch to T-Mobile.

#### *Coordinated effects*

43. The Commission analyzed whether the market, given the presence of only four main players, could be characterized by the presence of a collective dominant position. The only element on which a common understanding could be reached in the mobile retail telecommunications market is the price applied by MNOs to the retail customers. Pricing in this market does not present the characteristic of transparency which would be necessary to reach common understanding on terms of coordination. Each supplier elaborates and proposes several pricing tariffs, which vary on the basis of a great variety of elements: whether the customer is a prepaid or a postpaid one, whether it is classified as business or residential, hours of the day in which phone calls are made, called numbers (there might be preferential called numbers with lower tariffs) etc. In this respect, therefore, the Commission has not found any indications that the four MNOs could reach a common understanding to coordinate their behaviour. Lacking such condition, it is not necessary to investigate the possibility for the players to monitor deviations or to retaliate possible deviating behaviour. Furthermore the presence and the development of fringe competitors does not support the theory of existing coordination. It can be concluded that the market is not currently characterized by the presence of a collective dominant position.
44. The Commission further examined whether the proposed transaction would likely lead to the creation of a collective dominant position in the Dutch mobile retail telecommunications market. However, the Commission has not found evidence that coordination among the three MNOs, i.e. KPN, Vodafone and T-Mobile, would become likely as a result of the merger. As mentioned above the market is not characterised by the degree of transparency necessary to reach a common understanding on the terms of coordination. The reduction of the players from four to three is not going to change this situation. Furthermore, it has to be noted that KPN will remain by far the largest operator in the market ahead of Vodafone and T-Mobile. However, KPN has constantly been losing customer market shares (except for the external growth through the acquisition of Telfort) during the last years. As a reaction KPN has considerable spare capacity which it has tried to use more efficiently in two ways: first, through its own retail budget brands such as Simyo and Telfort, and second, through its expanded activity as seller of capacity to MVNOs and Service Providers on the wholesale market (cf. *infra*).

---

<sup>33</sup> Merrill Lynch, European wireless matrix Q1 07, p.44

45. Furthermore, any possible coordination among the three MNOs would be exposed to significant competitive pressure from the numerous fringe competitors, MVNOs and Service Providers. Many of the approximately 50 MVNOs and Service Providers have so far only been active in the prepaid segment but may extend their activity also to postpaid customers. In any event, the two most important Service Provider and MVNO, i.e. Debitel and Tele 2, are already active in both segments, including a strong presence in the postpaid segment, where they generate the majority of their revenues (see above). Together they account for approximately 9% of the Dutch mobile retail market in terms of customers. As set out in the assessment of the wholesale market for access and call origination on public mobile telephone networks below, it can be expected that MVNOs and Service Providers will continue to have access to the MNO's networks at competitive conditions. In particular Tele 2 appears in the Dutch price comparator "bellen.com" as a price aggressive operator both for prepaid and postpaid tariffs. On the basis of these elements, in particular the competitive pressure exerted by MVNOs and Service Providers, any sustainable coordination appears unlikely.
46. In the light of these elements it can be concluded that the proposed merger would not significantly impede effective competition in the market for the provision of mobile telecommunications services to end-consumers.

## 2. Wholesale market for access and call origination on public mobile telephone networks

47. The notifying party does not consider the market for wholesale access and call origination on public mobile telephone networks to be a technically affected market, as, on the basis of its own calculations the combined market share of the merging parties in terms of revenues in 2006 would be [10-20]%. Nevertheless, the notifying party provided market data which illustrate that, when considering the number of customers, the merging parties' combined market share would be [20-30]%<sup>34</sup>.

*Market for wholesale access and call origination on public mobile telephone networks*

Year	2006		2005		2004	
	revenue	customers	revenue	Customers	revenue	customers
<b>KPN/Telfort</b>	[70-80]%	[40-50]%	N/A	[50-60]%	N/A	[50-60]%
<b>Vodafone</b>	[10-20]%	[20-30]%	N/A	[20-30]%	N/A	[20-30]%
<b>T-Mobile</b>	[10-10]%	[10-20]%	N/A	[10-20]%	N/A	[10-20]%
<b>Orange</b>	[10-10]%	[10-20]%	N/A	[10-20]%	N/A	[10-20]%
<b>combined</b>	[10-20]%	[20-30]%		[20-30]%		[20-30]%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>		<b>100.0%</b>		<b>100.0%</b>

*Source of data: estimates based on Telecompaper and RBB Economics study.*

48. The Commission's market investigation showed that the parties' combined market share in terms of revenues would be around [10-20]% whereas OPTA figures rather confirm the parties' estimate. In any event, the most important player on the wholesale

<sup>34</sup> Total number of customers per network, i.e. "own" customers of the MNO and customers of MVNOs hosted on his network. In that respect the notifying party refers to the Commission Decision COMP/M.3245 - Vodafone/Singlepoint.

access and origination market is KPN which hosts the vast majority of MVNOs and Service Providers and reaches a revenue market share of more than 50% under all calculations. Also Vodafone's revenues on this market exceed the parties' combined revenues under all calculations. With respect to the number of total (own and third parties') customers on the different networks, the market investigation largely confirmed the parties' estimates indicated in the table above.

49. In its analysis of the Dutch market for wholesale access and call origination on public mobile telephone networks the OPTA<sup>35</sup> concluded, on the basis of the number of total network customers and a series of other criteria, that none of the Dutch MNOs had significant market power on this market. This conclusion was confirmed also in view of KPN's acquisition of Telfort. Some of the arguments put forward by OPTA in its decision are also relevant for the assessment of the present concentration and will thus be discussed in the following paragraphs.
50. The Dutch mobile retail telecommunications market is characterised by the presence of a high number of MVNOs and Service Providers, which has increased from 40 in September 2006 to more than 50 in March 2007<sup>36</sup>. These MVNOs and Service Providers all purchase their capacity on the wholesale market for access and call origination on public mobile telephone networks. The high number itself and its increase indicate that there have been no barriers to accede capacity until now.
51. The market investigation showed that all operators have granted access to their networks. Both Orange and T-Mobile have concluded agreements with MVNOs and Service Providers (e.g. Debitel, Lycamobile, Rabomobiël, UPC and Scarlet). For instance, T-Mobile's sales of capacity to Lycamobile accounted for [0-10]% of the total minutes of use of T-Mobile's network in the first semester 2007. KPN, also after the acquisition of Telfort, has increased the number and volume (e.g. in minutes) of its agreements with MVNOs and Service Providers and Vodafone recently announced an additional agreement. This shows that all MNOs have been willing and able to grant MVNOs and Service Providers access to their network.
52. The Commission investigated whether the proposed merger would alter the access opportunities for MVNOs and Service Providers. The market investigation showed that all MNOs will continue to own unutilised spectrum capacity and that they would continue to have an incentive to host the existing and additional MVNOs and Service Providers in order to improve their network utilisation. According to the parties, the current as well as the future (post-merger) network utilisation rate will allow for a significant increase of traffic by third parties.
53. For example, T-Mobile submitted that its "today's owned spectrum and infrastructure could accommodate an increased traffic of [...] of what is carried today with very limited or no cell split impact". According to the parties, the migration of Orange's customers onto T-Mobile's network will only add [40-50]% of T-Mobile's current

---

<sup>35</sup> 'Besluit marktanalyse mobiele telefonie - Toegang en gespreksopbouw op openbare mobiele telefoonnetwerken': OPTA/TN/2005/203186, published on OPTA's website on 14-11-2005 <http://www.opta.nl/download/Besluit+Mobiele+Toegang+en+Gespreksopbouw+%2D+OPENBAAR%2Epdf>

<sup>36</sup> Source: Telecompaper, Market overviews of second and third quarter 2006 and first quarter 2007.

minutes of use. In addition, T-Mobile stated that it would add a maximum of [...] TRXs<sup>37</sup>, which can also be called carriers, to its network thereby increasing the average number of TRX per cell from [...]. These figures show that T-Mobile, also after the integration of Orange's customers, will still have sufficient capacity available to host MVNOs and Service Providers.

54. The existing four MNOs currently have been allocated the following spectra:

	GSM900	E-GSM	DCS1800	UMTS
KPN/Telfort	2 x 12.4 MHz	2 x 5 MHz *	2 x 35 MHz	2 x 25 MHz FDD + 10 MHz TDD
Vodafone	2 x 11.4 MHz	-	2 x 5.2 MHz	2 x 15 MHz FDD + 5 MHz TDD
T-Mobile	-	-	2 x 16.8 MHz	2 x 10 MHz FDD + 5 MHz TDD
ONL	-	2 x 5 MHz	2 x 15 MHz	2 x 10 MHz FDD + 5 MHz TDD

\* As of 1 September 2007, it will be used by T-Mobile

55. Following the merger KPN will continue to have the largest amount of spectrum available both in 2G and 3G. T-Mobile which will acquire Orange's frequency licences will become the second largest player in terms of spectrum. Although Vodafone will have somewhat less 2G frequencies than KPN and T-Mobile, the market investigation did not provide any indications that Vodafone would suffer from a serious lack of spectrum. In addition, Vodafone still does not use 90% of its 3G network capacity and is planning to increment the number of MVNOs hosted on its networks. First, the progressing roll-out of UMTS whose capacity is currently used only at approximately 10% by all MNOs, will provide additional capacity. Second, Vodafone recently concluded a wholesale access agreement with a MVNO which illustrates that it still considers having sufficient capacity for third parties.
56. The market investigation, including discussions with third parties, with OPTA and with the Telecom Agency of the Dutch Ministry of Economic Affairs which is competent for the allocation of mobile telephony spectrum, showed that the MNOs, and more particularly KPN and T-Mobile which will have the largest parts of spectrum, will have no incentive to withdraw capacities from the wholesale access market. This is first illustrated by KPN's behaviour following the acquisition of Telfort where KPN rather increased its activities on the wholesale market. Second, [...] maintaining the wholesale business of Orange was one of the key assumptions for the transaction planning. Finally, in view of the structure of the Dutch mobile telephony market, MNOs withholding available capacity on the wholesale market

---

<sup>37</sup> The capacity of a mobile network can be determined only roughly using a series of indicators, but it is not possible to give a single, absolute indicator on account of the wide variety of different technical parameters. In the present case it would therefore seem appropriate to assess existing network capacity by comparing all networks. One important indicator is the number of carriers, also called TRX, installed as this determines the maximum possible number of calls that can be conducted simultaneously. The higher the number of carriers, the higher the capacity of each cell and hence the higher the capacity will be of the entire network.

would forego revenues which they cannot expect to compensate through higher retail revenues.

57. Moreover, in view of the progressing roll-out of UMTS networks and handsets, all three MNOs will have even more capacity to make available to MVNOs and Service Providers who typically require only GSM capacity. The transfer of current GSM users, which already have a UMTS handset, to UMTS will free further capacity in the GSM network<sup>38</sup>.
58. The market investigation revealed that also KPN, with a significantly higher market share in terms of revenues, minutes and subscribers, continued to enter into agreements with MVNOs or Service Providers also after the merger with Telfort. The Commission analysis found no elements indicating that the notified merger would change the incentives of ONL or T-Mobile to further conclude similar agreements.
59. The market investigation also showed that, notwithstanding the post-merger increase of T-Mobile's market share, MVNOs do not fear harmful effects as regards the supply side of the market, especially because of the substantial role that will continue to be played by KPN/Telfort and by Vodafone.
60. Furthermore, taking into consideration the past behaviour of the MNOs and their incentives to utilise their network capacities, the Commission found no indications that the MNOs would start to co-ordinate their behaviour with respect to granting access of MVNOs and Service Providers to their networks. .
61. In the light of these elements it can be concluded that the proposed merger would not significantly impede effective competition in the market for wholesale access and call origination on public mobile telephone networks.

### **3. Wholesale market for call termination on mobile telephone networks**

62. Each supplier has a monopoly for the call termination on its own network due to the lack of substitutes for call termination on a given operator's network. The notifying party submits that the proposed concentration would not have any horizontal impact on the mobile call termination markets as the monopoly situation would not be altered. The notifying party further argues that it would not be possible to discriminate against other operators because the originating network of inbound traffic could not be identified.<sup>39</sup>
63. In any case, a recent decision<sup>40</sup> of the OPTA found that KPN, Vodafone, T-Mobile, Orange and Tele2 each hold Significant Market Power (SMP) in the markets for voice

---

<sup>38</sup> For operators of both, a GSM and a UMTS network, the use of the GSM network can be largely reserved for alternative purposes, such as selling capacity to MVNOs, when shifting voice traffic of their users who have a UMTS handset onto their UMTS network.

<sup>39</sup> At the date of notification there was no termination regulation in force following the annulment of OPTA's decision by the national courts.

<sup>40</sup> OPTA Decision of 31 July 2007 ("Market analysis for call termination on the mobile networks of KPN, Orange, Tele2, T-Mobile and Vodafone") within the scope of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for



call termination on their respective mobile (virtual) networks. OPTA consequently imposed certain obligations<sup>41</sup> on all mobile network operators in the wholesale call termination market, including with respect to termination fees. The purpose of the decision is to avoid access refusal and charging of excessively high prices.

64. In the light of these elements it can be concluded that the proposed merger would not significantly impede effective competition in the wholesale market for mobile call termination.

#### **4. Wholesale market for international roaming**

65. All four MNOs are active in this market in the Netherlands. Both T-Mobile and Orange are members of the Freemove Alliance. The alliance provides to all the subscribers of the member MNO a seamless mobile service throughout seventeen countries in the EEA. Vodafone has a preferential relationship with its sister companies in many European and non-European countries and with the Vodafone partner networks (such as Proximus from Belgium and Mobilkom from Austria). KPN does not belong to any alliance but negotiates preferential roaming tariffs with individual operators in most countries.
66. A subscriber's mobile phone, when being called abroad or when calling abroad, will generally choose the network of the partner operator, thanks to the programming of the SIM cards and the enhanced function of the handset. Operators cannot, though, because of technical reasons, steer all of its subscribers' roaming traffic on a partner's network. The Commission investigation also confirmed that subscribers of service providers belonging to one alliance also roam on other network operators' networks, i.e. in case of a failure or gap in the partner's network.
67. As regards the market structure, the investigation revealed that Vodafone has been so far the market leader in terms of inbound roaming traffic, and that the merger would create the second player with a similar market share, between 30% and 40%. KPN/Telfort would be the third player, holding a market share between 20% and 30%.
68. Generally, any foreign operator will therefore have the choice between three viable alternative networks with a nationwide coverage for its roaming traffic in the Netherlands. According to the market investigation, those networks will have sufficient capacity to host international roaming.
69. Also taking into account the existing alliances in the Netherlands, the merger does not lead to competition concerns. The merger brings together two members of the same alliance. KPN, still remains not aligned to any alliance and has the largest Dutch network. Hence, after the merger, foreign operators not only will have a choice between three operators, but will also be able to choose an "independent" operator in the Netherlands, if they do not belong to any alliance.

---

electronic communications networks and services (Framework Directive), OJ L 108/33 of 24 April 2002.

<sup>41</sup> Namely, (i) the obligation to comply with reasonable requests for interconnection for purposes of mobile call termination; (ii) the obligation to comply with reasonable requests for access for purposes of mobile call termination; (iii) the obligation to supply at non-discriminatory conditions; (iv) the obligation to supply in a transparent manner; (v) price regulation based on cost orientation.

70. Furthermore, the new Regulation (EC) 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21<sup>42</sup> introduced a "price cap" on wholesale tariffs. This regulation will likely have a significant impact on the market for international roaming as well as on the activities of the alliances.
71. In the light of these elements it can be concluded that the proposed merger would not significantly impede effective competition in the Dutch wholesale market for international roaming.

## **VII. CONCLUSION**

72. 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

---

<sup>42</sup> O.J. L 171 of 29/06/2007, p.32. The relevant provision (article 3) regarding the wholesale level will enter into force on 30 August 2007.