

***Case No COMP/M.4809 -
FRANCE TELECOM /
MID EUROPA
PARTNERS / ONE***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/09/2007

***In electronic form on the EUR-Lex website under document
number 32007M4809***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21/09/2007
SG-Greffe(2007) D/205613, D/205614

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

Subject: Case No COMP/M.4809 – FRANCE TÉLÉCOM / MID EUROPA PARTNERS / ONE
Notification of 17 August 2007 pursuant to Article 4 of Council Regulation No 139/2004¹

1. On 17/08/2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (*ECMR*) by which the undertakings France Télécom S.A. (hereinafter referred to as "France Télécom" or as "FT", France) and Mid Europa Partners ("MEP", United Kingdom) acquire within the meaning of Article 3(1)(b) of the *ECMR* joint control of the undertaking One GmbH ("One", Austria) by way of purchase of shares.

I. THE PARTIES

2. France Télécom is an electronic communications operator that provides a large range of electronic communications services to all customer segments, including public fixed-line voice, leased lines and data transmission services, telecommunications equipment sales and rentals, television broadcasting and information services. France Télécom provides, through its wholly-owned subsidiary Orange S.A. ("Orange"), mobile telecommunications services in several

¹ OJ L 24, 29.1.2004 p. 1.

European countries, including Belgium (under Mobistar), France, the Netherlands², Luxembourg, Poland, Romania, Slovakia, Spain and the United Kingdom. France Télécom provides fixed communications services in France (FT), Poland (PTK), Spain (FT España) Belgium (Mobistar). Orange participates in the “FreeMove” alliance, one of the pan-European telecommunications alliances together with T-Mobile, Telecom Italia and Telia Sonera³.

3. MEP is a UK-based independent private equity investment firm focused on Central and Eastern Europe. It has shareholdings in mobile and fixed telecommunications companies. It controls Aster, a company providing cable TV, broadband internet and fixed telecommunications services in Poland and Bité, a mobile telecommunications operator with activities in Latvia and Lithuania.
4. One provides mobile telecommunications services in Austria. Through its wholly-owned subsidiary, YESSS!, it is also active on the retail markets for fixed telecommunications services.

II. THE CONCENTRATION

5. For the purpose of the acquisition, the Parties have established a three-tier acquisition structure composed of (i) “the BidCo”, a wholly owned subsidiary of (ii) “Interim HoldCo”, a wholly owned subsidiary of (iii) “TopCo”). The share capital of TopCo is held by Orange Belgium SA, a wholly owned subsidiary of Orange [30-40]% and Stubai [60-70]% a wholly owned subsidiary of MEP. The relationship between Orange and Stubai, as the future shareholders of One, is set out in a Shareholders Agreement. Pursuant to the Shareholders Agreement, Orange will have the right to appoint [minority] and Stubai will have the right to appoint [majority] members of the Shareholders Committee. Each Shareholders Committee member will have one vote. In addition, resolutions will be passed by simple majority vote with the exception of resolutions relating to matters that would require a qualified majority under applicable law and certain strategic decisions relating to One, which will require the approval of at least one member of the Shareholders Committee nominated by Orange (including the initial business plan and further amendments involving up or down modifications of EBITDA or FCF of at least [15-25]%).
6. In addition, Orange will form a strategic partnership with One and will enter into a Framework Agreement and a Brand Licence Agreement, according to which FT will inter alia grant One a non-exclusive licence to use the Orange brand in Austria for a period of [5-15] years. These agreements will lead to the creation of strong economic links between One and Orange. Therefore, given the rights granted to Orange, the strong commonality of interests between Orange and MEP as well as the economic links created by the above agreements between FT and One, the transaction will lead to FT and MEP acquiring joint control of One within the meaning of Article 3(1)b and 3(2) of the ECMR.

² Currently in the process of being sold to T-Mobile. The European Commission approved the concentration on 20 August 2007, see Case COMP/M.4748 – T-Mobile/Orange Netherlands.

³ FreeMove is an initiative between operators to offer international innovative mobile communications on a Pan-European and – later - global scale. Another alliance used to exist between some European operators, named Starmap. Starmap is dissolved since 31st December 2006. One was part of the Starmap alliance which was launched on October 2003 and initially comprised One, O2 (Germany, UK and Ireland), Pannon GSM (Hungary), Sunrise (Switzerland), Telenor Mobile (Norway), Sonofon (Denmark) and Wind (Italy).

III. COMMUNITY DIMENSION

7. The undertakings concerned had a combined aggregate worldwide turnover of more than EUR 5 billion in 2006. Each of them had a Community-wide turnover in excess of EUR 250 million, but they did not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The concentration therefore has a Community dimension within the meaning of Article 1(2) of the ECMR.

IV. RELEVANT MARKETS

8. According to previous Commission decisions and standard regulatory practice in the industry, fixed telecommunication services constitute a market distinct from mobile telecommunication services⁴.

Mobile communication services

9. According to the parties, mobile telecommunications services can be divided in the following markets, in line with previous Commission decisions and the Recommendation on relevant markets⁵.

(i) retail access and call origination services on mobile networks (hereafter referred to as the market for retail mobile communications services); (ii) wholesale access and call origination services on mobile networks; (iii) wholesale call termination services on mobile networks; (iv) wholesale international roaming services and (v) seamless pan-European mobile telecommunications services⁶.

4 Explanatory Memorandum to the Commission Recommendation of February 11, 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 communications networks and services, § 4.2.1 and, e.g., Commission Decision of April 26, 2006, Case No. COMP/M.3916 – T-Mobile Austria/tele.ring, §18; Commission Decision of 10 June 2005, Case No. COMP/M.3806 - Telefonica/Cesky Telecom, § 17; Commission Decision of April 4, 2007, Case No. COMP/M.4591 – Weather Investments/Hellas Telecommunications, §10, Commission Decision of October 24, 2005, Case No COMP/M.3920 France Télécom/Amena.

5 Commission Recommendation of February 11, 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 communications networks and services.

6 See Commission decision in case M.3920 – France Télécom / Amena, at paras 21-22, in which such market has been defined as follows "*In previous decisions the Commission has discussed the existence of a possible market for pan-European mobile telecommunication services to international mobile customers, in particular multi-national corporations (MNCs). This market would essentially enable multinational companies to strike better price deals through European-wide requests of proposals, and to rationalize more effectively their mobile phone expenses thanks to the combination of billing systems. It would also possibly include advanced services such as messaging services and content/data services and the possibility for roaming customers to move from a country to another with no difference in the service.*"

10. In line with previous Commission's decisions, according to the notifying parties, the geographic scope of all of these markets is national⁷, except for the market for the provision of seamless pan-European mobile telecommunications services, which is likely to be at least pan-European⁸.
11. France Télécom, mainly through Orange, is active in Belgium (Mobistar), France, the Netherlands⁹, Luxembourg (Vox), Poland (PTK), Romania, Slovakia, Spain and the United Kingdom. MEP (through Bité) is active in Latvia and Lithuania. One is active in Austria. Orange, Bité (to a very limited extent) and One are active on the pan-European market for the provision of seamless pan-European mobile telecommunications services.

Fixed telecommunications services

12. According to the parties, fixed telecommunications services can be divided in the following markets in line with previous Commission decisions and the Recommendation on relevant markets¹⁰:
 - (i) retail fixed voice services (further split into (a) retail access to public telecommunication network, and (b) retail call origination services (due to the introduction of fixed carrier selection systems);
 - (ii) wholesale fixed voice services (further split into: (a) wholesale access services to fixed networks, (b) wholesale call origination services in fixed networks, (c) wholesale domestic transit services in fixed networks;
 - (iii) wholesale call termination services on fixed networks,
 - (iv) retail Internet access (further segmented in narrowband, broadband and dedicated access markets);
 - (v) wholesale Internet access;
 - (vi) enhanced global telecommunications services (GTS).
13. According to the notifying parties, the geographic scope of all of these markets is national, except for the market for the provision of enhanced global telecommunications services, which is likely to be global in scope¹¹.
14. France Télécom is active in France and (through Telekomunikacja Polska) in Poland, and has also limited presence in Belgium and Spain. MEP (through Aster) has (very limited) activities in

⁷ Commission Decision of April 26, 2006, Case No. COMP/M.3916 - T-Mobile Austria/tele.ring; Commission Decision of May 25, 2005, Case No COMP/M.3776 – Vodafone/Oskar Mobile and Commission Decision of June 10, 2005, Case No. COMP/M.3806 - Telefónica/Cesky Telecom.

⁸ Commission Decision of January 10, 2006, Case No. COMP/M.4035 – Telefonica/O2; Commission Decision of June 10, 2005, Case No. COMP/M.3806 - Telefonica/Cesky Telecom; Commission Decision of April 4, 2007, Case No. COMP/M.4591 – Weather Investments/Hellas Telecommunications.

⁹ Currently in the process of being sold to T-Mobile. The European Commission approved the concentration on 20 August 2007, see Case COMP/M.4748 – T-Mobile/Orange Netherlands.

¹⁰ Explanatory Memorandum of the Commission Recommendation of February 11, 2003, pre-cited, and, e.g. Commission Decision of January 10, 2006, Case No. COMP/4035 – Telefonica/O2, Commission Decision of October 24, 2005, Case No COMP/M.3920 France Télécom/Amena, Commission Decision of April 24, 2001, Case No. COMP/M.2222 – UGC/Liberty Media.

¹¹ Commission Decision of January 16, 2002, Case No. COMP/M.2846 - KPNQwest/Ebone/GTS, §§ 17 and 18; Commission Decision of March 21, 2001, Case No. COMP/M.2257 - France Télécom/Equant, §§ 18 to 21; Commission Decision of September 21, 1999, Case No. COMP/M.1679 – France Télécom/STI/SRD, § 9; Commission Decision of July 30, 1999, Case No. COMP/M.1553 – France Télécom/Editel Lince, § 9.

Poland. One (through YESSS!) is active in Austria, but only as a reseller using the incumbent's network infrastructure. Only France Télécom (through Orange) is active on the market for GTS.

V. COMPETITIVE ASSESSMENT

Affected markets

Horizontal relationships

15. The concentration concerns mobile and fixed telecommunications services. FT and MEP have operations in the sector of mobile telecommunications services, but not in Austria where One is active. Therefore there is no horizontal overlap as regards Austria as well as other national markets. As regards the emerging market for seamless pan-European mobile communications services, Orange and One are active on this market. It should be noted, however, that One's position is currently very limited (only [35-45] small scale business customers essentially in Austria). Accordingly, the transaction will not alter the current conditions of competition on this market, be it in Austria and *a fortiori* at a pan-European level.

Vertical relationships

(i) Wholesale international roaming in connection with the retail mobile market in Austria

16. The transaction determines a number of vertical relationships due to the link between the retail mobile communication services provided by One in Austria and the various national markets for wholesale international roaming in the countries where FT/Orange and MEP/Bité operate (Belgium, France, the Netherlands¹², Poland, Slovakia, Spain, Romania, Luxemburg, and the United Kingdom for Orange, as well as Latvia and Lithuania for Bité). In particular, although the market share of One in retail mobile communication in Austria is -[15-25]% in terms of subscribers and [10-20]% in terms of minutes billed (i.e. below 25%), the market shares of each of the notifying parties in wholesale international roaming determine affected markets in Belgium (Mobistar:[30-40]%), France (Orange:[40-50]%), Spain (Orange:[20-30]%), Romania (Orange:[35-45]%), Slovakia (Orange:[45-55]%) and Lithuania (Bité:[30-40]%)¹³.

Effects on the retail mobile market in Austria

17. Bearing in mind that One has a market share of [15-25]% in the retail mobile market in Austria and is n°3 player after Mobilkom ([30-40]%) and T-Mobile ([30-40]%)¹⁴, an attempt by Orange or Bité to foreclose/discriminate One's competitors in Austria (T-Mobile and Mobilkom, H3G) and to increase their costs by means of the wholesale international roaming services in these vertically related countries (Belgium, France, Slovakia, Spain and Romania for Orange and Lithuania for Bité) is not likely to be successful. Firstly, these countries are of limited importance for Austrian customers who mainly purchase roaming services in Germany [30-40]%, Italy [10-20]%, Hungary [0-10]% and Switzerland [0-10]%.

¹² Currently in the process of being sold to T-Mobile. The European Commission approved the concentration on 20 August 2007, see Case COMP/M.4748 – T-Mobile/Orange Netherlands.

¹³ Source Form CO, data in volume (minutes billed).

¹⁴ Source Form CO, data based on n° of subscribers. Market shares in volume (minutes billed) would be: Mobilkom [30-40]% and T-Mobile [30-40]%, One [15-20]%

18. In addition, the market investigation has shown that One's competitors (T-Mobile and Mobilkom) are able to offset such an attempt by Orange or Bité to foreclose/discriminate them in their home wholesale roaming markets by redirecting their outbound roaming traffic to other networks in the respective countries within a short time frame and at limited cost¹⁵. Therefore, these actions would only have a limited effect as regards the Austrian mobile retail market. Consequently the transaction does not impede effective competition in this market.

Effects on national wholesale roaming markets (outside Austria)

19. The impact of the transaction on the vertically affected national markets for wholesale international roaming services (Belgium, France, Spain, Romania, Slovakia and Lithuania) crucially depends on the volume of roaming traffic generated by One's subscribers on these national wholesale markets as compared to the overall volume of roaming traffic in these countries. Roaming traffic from Austrian clients to these countries is limited in comparison to the overall volume of traffic generated from visiting customers. Thus, even though post merger One should be able to send all of its roaming traffic to Orange in Belgium, France, Spain, Romania and Slovakia or to Bité in Lithuania, this traffic increase is likely to be limited. One is the third largest operator in Austria and the amount of traffic sent by One to Orange or Bité in these countries would only give rise to a limited increase of their market shares (between [0-5]%). The operation will not have therefore a significant impact on these national markets for wholesale international roaming services. Therefore the transaction does not impede effective competition in the international wholesale roaming markets in Belgium, France, Spain, Romania, Slovakia and Lithuania.

(ii) Wholesale international roaming in connection with retail mobile markets outside Austria

20. The transaction determines a number of vertical relationships due to the link between the wholesale international roaming services provided by One in Austria and the various national markets for retail mobile communication services in the countries where FT/Orange and MEP/Bité operate (Belgium, France, the Netherlands¹⁶, Poland, Slovakia, Spain, Romania, Luxemburg, and the United Kingdom for Orange, as well as Latvia and Lithuania for Bité). In particular, although, the market share held by One on the Austrian market for wholesale international roaming services is below 25% ([10-20]%), Orange holds market shares exceeding this threshold on the markets for the provision of retail mobile communications services in Belgium ([30-40]%), France ([40-50]%), Poland ([30-40]%), Slovakia ([50-60]%) and Romania ([40-50]%). For its part, Bité only holds a market share above 25% in Lithuania ([25-35]%)¹⁷. These are therefore affected markets.

Effects on the wholesale roaming market in Austria

21. In the wholesale roaming market in Austria One has a rather distant position ([15-25]%) in comparison to that of the two major competitors active on that market, T-Mobile ([35-45]%) and

¹⁵ In addition margins for manoeuvres as regards roaming tariffs are reduced by virtue of Regulation n° 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/EC, OJ L 171 of 29 June 2007.

¹⁶ Currently in the process of being sold to T-Mobile. The European Commission approved the concentration on 20 August 2007, see Case COMP/M.4748 – T-Mobile/Orange Netherlands.

¹⁷ Source: Form CO, data in volume (minutes billed). Market shares based on number of subscribers are the same except for Slovakia where Orange market share is [45-55]%.

Mobilkom ([40-50%])¹⁸. Customers purchasing international roaming services in Austria mainly come from Germany ([45-55%]), Italy ([0-10%]), The Netherlands ([0-10%]), Switzerland ([0-10%]) and Hungary ([0-10%]). Among these countries Orange is only present in Switzerland and the Netherlands (as mentioned Orange Netherlands is in the process of being divested). In this respect, roaming traffic from Orange customers in Austria is limited in comparison to the total volume of traffic generated from visiting customers. Thus, even though Orange should be able to send more roaming traffic to One post-merger, this traffic increase is likely to be limited and would not have a significant impact on the Austrian wholesale markets for international roaming services. The parties estimate a maximum increase of around [0-10%] for One, in case all roaming traffic sent to Austria from Orange and Bité - stemming from the affected markets in question - would be steered to One post-merger. This is regardless of the incentive that both Orange and Bité may still have post-merger to maintain roaming agreements with the other Austrian operators to ensure optimal coverage for their customers roaming in Austria.

22. In addition, even in a situation in which One were to join FreeMove after the merger, the increase of traffic from other FreeMove members would not likely be materially different from the one mentioned above ([0-10%]), because T-Mobile (an important member of FreeMove) is likely to continue sending the vast majority of its roaming-out traffic in Austria to its subsidiary, T-Mobile Austria. Therefore the transaction does not impede effective competition on this market.

Effects on other national retail mobile markets (outside Austria)

23. An attempt by One to foreclose/discriminate vis-à-vis Orange's competitors in Belgium, France, Poland, Slovakia and Romania and vis-à-vis Bité's competitors in Lithuania by for example increasing their costs by means of the wholesale international roaming services in Austria is unlikely to be successful. In this respect, all respondents to the market investigation have indicated that MNOs are able of swiftly (re)direct outbound roaming traffic, in case One should offer worsened roaming tariffs post merger. In this context, T-Mobile and Mobilkom and also H3G (for 3rd generation mobile communications) represent effective alternatives to One for the provision of international roaming services in Austria. Therefore home network operators appear to be able to switch between Austrian visited networks with limited switching costs and within a short time frame. Finally, it has to be noted that the margins for discriminating MNOs through roaming tariffs are now narrower than in the past by virtue of the existing European regulation which has introduced price caps at both wholesale and retail level¹⁹.
24. Under these conditions it is unlikely that One would refuse access to competitors of Orange and Bité. Therefore the merger will not have a significant impact on these retail markets.

(iii) Call termination services in connection with fixed and mobile retail telephony services

25. The transaction determines a number of vertical relations due to the link between the retail mobile communication services provided by One in Austria and the various national markets for wholesale mobile call termination services in the countries where FT (Orange: Belgium, UK, the Netherlands, France, Poland, Spain, Romania, Luxembourg and Slovakia) and MEP (Bité:

¹⁸ Source Form CO data in volume (minutes billed) in Austria.

¹⁹ Regulation n° 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/EC, OJ L 171 of 29 June 2007.

Lithuania and Latvia) operate. In these countries each of Orange and Bité both have by definition 100% market share on their respective mobile call termination services on their networks.

26. The same is true as regards the vertical link between the retail mobile communication services provided by One in Austria and the various national markets for wholesale fixed call termination services in the countries where FT is active (Belgium, France Poland and Spain) and MEP/Aster operate (Poland) (both having by definition 100% market shares on their respective fixed call termination services on their networks).
27. In addition, since One has a 100% share of the Austrian market for call termination services on its mobile network, the transaction gives also rise to vertically affected market in respect of wholesale mobile call termination services provided by One in Austria in connection with retail (mobile and fixed) telephony services provided by respectively Orange and Bité (both in mobile), and by FT and Aster (both in fixed) in all countries where they are active.
28. As regards these vertically affected markets, it is unlikely that the merger gives rise to any foreclosure/discrimination be it against One's competitors in Austria or against Orange, Bité, FT and Aster' competitors in all countries where they are active. This discrimination would be technically difficult/unlikely to implement since One in Austria, as well as Orange operators and Bité in the countries where they are active receive most of their international traffic from international carriers (who act as intermediaries between the telecommunication operators) and, therefore, cannot identify in most cases the exact origin of the international traffic terminated on their mobile networks (it is only possible to identify the exact origin of the international traffic terminated on a network where there is a direct interconnection with the foreign telecommunications operators, which is notably the case for intra-group call traffic).
29. In any event, an attempt by Orange or Bité to foreclose One's competitors in Austria by means of the (increase of) wholesale call termination services in their countries would hardly affect the cost structure of One's competitors in a significant manner given that only a limited portion of outgoing mobile calls from Austria are terminated in these countries²⁰. Similar arguments are valid as regards wholesale fixed call termination services (in the countries where FT and Aster are active)²¹.
30. In addition, also a possible discriminatory policy to be undertaken by One in respect of termination services on its Austrian mobile network against competitors of Orange or Bité (as to mobile services), FT and Aster (as to fixed services) would be technically unlikely since One mostly receives its traffic from international carriers and cannot identify the exact origin of the international traffic terminated on its networks. In addition an attempt of One to discriminate by means of the wholesale call termination fees would hardly affect their cost structure in a significant manner given that only a limited portion of international calls from these countries are terminated in Austria and One only holds a limited position on the Austrian market for the provision of retail mobile communications services.

20 The parties stated that the five main destination countries of outgoing calls (fixed and mobile) from Austria are Germany ([30-40]% of Austria's total outgoing traffic), Italy ([0-10]% of Austria's total outgoing traffic, Switzerland ([0-10]% of Austria's total outgoing traffic), Turkey ([0-10]% of Austria's total outgoing traffic) and the United States ([0-10]% of Austria's total outgoing traffic). Those countries together account for more than [45-55]% of Austria's total outgoing traffic. Orange is only present in Switzerland whereas Bité is present on none of these markets.

21 The parties estimate that international fixed and mobile call traffic from Austria represents less than [0-5]% of the total international traffic actually terminated on the fixed networks of FT and Aster.

(iv) Possible coordination effects in fixed telephony services (broadband access)

31. As mentioned above, France Télécom is active (through Telekomunikacja Polska) in fixed telephony services in Poland, and MEP (through Aster) has limited activities in Poland. In particular, Aster is the fourth cableTV provider which also offers broadband Internet packaged with TV offers and/or telephony services (Voice over IP) as part of its broadband multi-play offering. Aster offers triple-play services (CableTV, broadband internet and telephony) to residential customers in three cities Warsaw, Krakow and Zielona Gora.
32. As regards broadband Internet access in Poland (with or without triple play/VOIP offerings), the market share picture is the following: Telekomunikacja Polska (France Télécom): [40-50]% Aster: [0-10]% UPC Polska: [0-10]% Multimedia Polska: [0-10]% Other operators are VectraNet, Dialog, Netia, etc. with smaller shares.²².
33. As regards broadband Internet access only (including xDSL, cable and other technologies, but excluding triple/quadruple play offerings), the market picture is following: Telekomunikacja Polska (France Télécom): 58.8%, Aster: 3.7%, UPC Polska: 7.1%, Multimedia Polska: 4.4%. Other operators are VectraNet, Dialog, Netia, etc. with smaller shares²³.
34. The asymmetry in the market structure, the limited market share and geographic scope of Aster in Poland, the fact that Telekomunikacja Polska (France Télécom) and Aster have different business focus (Aster is primarily a CableTV operator), the fact that potential benefits of any coordination would be anyhow limited due to small market share of Aster make it unlikely that any coordination of the competitive behaviour of Telekomunikacja Polska (France Télécom) and Aster could successfully occur in Poland post-merger as regards broadband Internet access.

C. Possible effect of One joining the FreeMove alliance

35. The market investigation has brought to the attention of the Commission some critical remarks stemming from the possibility that One would abandon the status of "independent" Mobile Network Operator ("MNO") due to its likely integration into the FreeMove Alliance (post merger), to which France Télécom already adhered. This seems to create some concerns, particularly on the part of a few independent MNOs outside Austria, both as regards possible adverse conditions to be expected in respect of the wholesale roaming in Austria (loss of the preferred roaming partner in Austria, increase/discrimination in roaming tariffs) and in their home market (loss of inbound roaming traffic stemming from One).
36. In this respect the following can be noted: One was a member of the "Starmap" alliance, one of the pan-European telecommunications alliances. However, this alliance was dissolved as per 31 December 2006. The parties indicated that they have not yet internally adopted a position on whether One would remain independent or join the FreeMove alliance.
37. The parties submit, however, that the possible integration of One in FreeMove (to be approved by the other members of the alliance) could not lead to adverse effects on the Austrian wholesale market for the provision of international roaming services. They contend that Orange's pricing policy towards independent MNOs is not substantially different than towards MNOs that are

²² Parties' estimates.

²³ Source: report of UKE " State of the market", 2006 in the fixed (xDSL and cable as well as other technologies) Internet access market in Poland:

members of FreeMove. Indeed, while it is true that FreeMove partners have under certain conditions traffic steering obligations towards each other, the tariffs offered within FreeMove, on a bilateral basis, are in general in accordance with market conditions²⁴. In addition, it has to be noted that the margins for discriminating/increasing roaming tariffs are now narrower than in the past by virtue of the existing European regulation which has introduced price caps at both wholesale and retail level²⁵.

38. Although it is likely that One will capture more/all of Orange's roaming traffic to Austria, this traffic increase would be still limited given the current level of roaming traffic sent by Orange to Austria relating to the Austrian market for the provision of wholesale international roaming services (based on the parties' estimate a maximum increase of 4% is expected for the market share for One). One is therefore interested to maximising its inbound roaming traffic by concluding agreements with other MNOs.
39. Furthermore the fact that One would cease to be the preferred roaming partner in Austria for other independent MNOs does not impede these independent MNOs roaming in Austria to negotiate/conclude/maintain roaming agreements with other Austrian MNOs.
40. The market investigation has in any event indicated that roaming-in traffic in Austria is a very small part of the overall traffic absorbed by the Austrian MNOs networks and that One's competitors (Mobilkom, T-Mobile, H3G) could easily absorb a further increase in roaming traffic without incurring substantial costs. In addition, the percentage of roaming traffic sent to Austria by (independent and other) MNOs which responded to the Commission's investigation is generally a rather limited or (at times) represents a minimal fraction compared to the overall outbound roaming traffic of such operators, and that, pre-merger, this traffic was not necessarily steered to One only.
41. Finally, while it can be expected that One, in particular if it joins the FreeMove alliance, will send more traffic to the mobile telephony companies belonging to France Télécom and to the FreeMove alliance and these companies will send more traffic to One, however, the total roaming traffic sent by One in each country where the FreeMove alliance operates represents a negligible part of the total international roaming traffic in each of these countries. Therefore the impact of the merger on these (independent and other) MNOs would not be significant as well.
42. Therefore, the transaction does not appear to modify the pre-existing situation in Austria and elsewhere to a significant extent. Under these circumstances, it is highly unlikely that the transaction would significantly impede effective competition, in the common market or in a

24 The parties indicated that FreeMove members have benefited in Q4 2006 from Code of Conduct tariffs as any other signatories of the Code of Conduct, i.e. tariffs for wholesale roaming (IOT) at €[...]/minute. Other signatories such as Telenor, Vox, Wind have equally benefited from those tariffs even though they were not part of FreeMove. Vodafone – who did not sign the Code of Conduct and is not a member of FreeMove - also signed an agreement with Orange on a group-to-group basis with IOTs at € [...] / minute for Q4 2006. Other examples (from bilateral agreements) are Orange France which executed an agreement with Wind (in 2007) at prices amounting to [...] €min for balanced traffic and -[...] €min for incremental traffic. Similarly, an agreement was executed with Meteor (in September 2006) at prices of € -[...] and € -[...] per minute for balanced and incremental traffic respectively. Orange UK also executed bilateral agreements in 2006 that are within the range of tariffs negotiated by Orange Group for FreeMove members. They range from -[...] €min paid by KPN Netherlands or -[...] €min by O2 Ireland to - [...] €min paid by SFR or -[...] €min paid by Wind.

25 Regulation n° 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/EC, OJ L 171 of 29 June 2007.

substantial part of it, in particular as a result of the creation or strengthening of a dominant position.

VI. CONCLUSION

43. 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