

EN

***Case No COMP/M.5584 -
BELGACOM/ BICS/ MTN***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 26/10/2009

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EUROPEAN COMMISSION

Brussels, 26.10.2009

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5584 – Belgacom/ BICS/ MTN
Notification of 21 September 2009 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 21 September 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation No 139/2004 on the control of concentrations between undertakings ("the Merger Regulation") by which Belgacom S.A. ("Belgacom", Belgium) will acquire sole control of the whole of the undertaking Belgacom International Carrier Services S.A. ("BICS", Belgium). As part of the proposed transaction, BICS will also acquire sole control of international wholesale telecommunications activities (known as MTN International Carrier Services, "MTN-ICS") from MTN (Dubai) Limited.
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 functioning of the EEA Agreement.

¹ OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES

3. Belgacom is the traditional telecommunications operator in Belgium active in the full range of telecommunications services providing wholesale and retail services, fixed and mobile telecommunications, voice and data services mainly at national level.
4. BICS is a global carrier of voice, data and value added services to wireless and wireline and service providers.
5. MTN-ICS is the international wholesale carrier services business of the MTN group² providing international telecommunications services to MTN group companies and affiliates and to a smaller extent also to third parties.

II. THE OPERATION

6. Currently, BICS is jointly controlled by Belgacom (72%) and Swisscom (28%) through a JV Agreement conferring veto rights to each shareholder in relation to the strategic decisions of BICS.³
7. On 18 February 2009, the JV Agreement was amended to provide, *inter alia*, for a change in the control structure over the JV “*if there are two or more minority shareholders in BICS*”. In that event, the directors representing those minority shareholders in the Board of Directors of BICS shall only be able to block board decisions over strategic matters if the directors of more than one shareholder vote against the decision⁴.
8. In a second step, Belgacom and Swisscom entered into an Investment Agreement with MTN on 25 June 2009, on the basis of which BICS will acquire MTN’s international wholesale activities and the current customer base, assets and liabilities related to these international wholesale activities.⁵ Part of the consideration payable to MTN in respect of this acquisition will be a non-controlling minority shareholding of 20% in BICS.⁶ As such, this transaction realises the scenario of the entry of an additional minority shareholder into the capital of BICS.
9. As a result of the entry of MTN as a minority shareholder in BICS, the shareholding structure of BICS will change as follows: Belgacom will hold 57.60%, Swisscom will hold 22.40% and MTN will hold 20% of the shares in BICS.

² The MTN group is predominantly a mobile group with mobile operations in a number of African and Middle-East countries.

³ The acquisition by Belgacom and Swisscom of joint control over BICS was cleared unconditionally by the Commission in 2005 in Case *COMP/M.3764 – Belgacom/Swisscom/JV*, 19 May 2005.

⁴ Clause 6(a) of the Amendment of 18 February 2009.

⁵ Clause 1.1 of the Investment Agreement.

⁶ Clauses 2.1, 2.2 and 2.4 of the Investment Agreement.

10. On 25 June 2009 MTN, Belgacom and Swisscom entered into a Shareholders' Agreement in order to regulate the rights and obligations of the respective shareholders in relation to BICS, as well as the activities, governance and organisation of BICS. In terms of the Shareholders' Agreement, the board of directors of BICS will be composed of nine members. Five of these members will be appointed by Belgacom. Swisscom and MTN will appoint two directors each. Whereas the Shareholders' Agreement provides that decisions of the board of directors normally require a simple majority of votes cast, the said agreement also stipulates that as of from 1 January 2010⁷, any action or decision in connection with the Board Reserved Matters (including the adoption of the business plan, the approval or amendment of the annual budget and major investments), shall only be validly taken if the approval of either (i) at least one Belgacom director and one Swisscom director or (ii) at least one Belgacom director and one MTN director has first been obtained.
11. Therefore, as of 1 January 2010 Belgacom will acquire negative sole control of BICS since only Belgacom will be able to veto the strategic board decisions in BICS (including the adoption of the business plan, the approval or amendment of the annual budget and major investments). By contrast, neither of the two minority shareholders, Swisscom and MTN, will similarly be in a position to veto such decisions. They will therefore not enjoy the same level of influence in BICS. It is therefore concluded that Belgacom will acquire sole control, within the meaning of the EC Merger Regulation, over the enlarged activities of BICS.
12. Both transactions (acquisition of the MTN-ICS assets and change to sole control by Belgacom) are interdependent *de iure* because Clause 1.3 of the Shareholders' Agreement provides that "*this Agreement shall take effect between the parties as from Closing*", which is defined in Schedule 10 of the Investment Agreement as "*completion of the Contribution in accordance with the terms of this Agreement.*" "*Contribution*" is further defined in Schedule 10 and Clause 1.1 of the Investment Agreement as the contribution of the relevant assets and businesses of MTN, MTN-ICS and Uniglobe SA to BICS.
13. Accordingly, as the Shareholders' Agreement will not legally take effect until Closing of the transactions contemplated by the Investment Agreement, the revised governance arrangements of BICS are conditional on the contribution of the MTN-ICS assets to BICS *de jure*. The new governance rules of BICS in the proposed Shareholders' Agreement and the contribution of the MTN-ICS assets to BICS are, accordingly, interdependent in the sense that without the contribution of the MTN-ICS assets to BICS the control structure in BICS would not change (from joint to sole control) and that this contribution directly leads to the situation of sole control by Belgacom over BICS. On this basis, both transactions have to be

⁷ Clause 3.3(f) of the Shareholders' Agreement explicitly states that "*until and including 31 December 2009, any action or decision in connection with the matters set out in Clauses 3.3 to (xii) (the Board Reserved Matters) shall only be validly taken if approval of one A Director, one B Director and one C Director has first been obtained. As from 1 January 2010, any action or decision in connection with the Board Reserved Matters shall only be validly taken if the approval of either (i) at least one A Director and one B Director or (ii) at least one A Director and one C Director has first been obtained*". Since the date on which the new governance rules will take effect (1 January 2010), is provided for in a legally binding way in the Shareholders' Agreement without there being any conditions to it and the period of joint control is shorter than one year, the criteria in paragraph 34 of the Commission Consolidated Jurisdictional Notice are met and the concentration is an acquisition of sole control.

treated as a single concentration according to paragraphs 28 et sq of the Commission Consolidated Jurisdictional Notice.⁸

III. COMMUNITY DIMENSION

14. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁹ (Belgacom: EUR 5 910 841 489; BICS: EUR 1 127 945 115; MTN-ICS: EUR [...]). Two of the undertakings concerned have a Community-wide turnover in excess of EUR 250 million (Belgacom: EUR [...]; BICS: EUR [...])¹⁰. Belgacom achieves more than two-thirds of its aggregate Community-wide turnover within Belgium. However, neither BICS nor MTN-ICS achieve more than two-thirds of their respective aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

IV. COMPETITIVE ASSESSMENT

A. Relevant Product and Geographic Markets

1. International wholesale telecommunications carrier services.

Relevant product markets

15. The notifying party submits that the relevant product market is the market for international wholesale telecommunications services¹¹ (without the need for further segmentation).
16. In previous decisions¹², the market for international wholesale telecommunications carrier services¹³ has been defined very broadly as comprising the lease of transmission capacity and the provision of related services to third-party telecommunications carriers and other service providers, with the most relevant of such services being switched transit, traffic hubbing offerings and reseller services for service providers without their own international facilities.

⁸ The Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1) ("Consolidated Jurisdictional Notice").

⁹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Consolidated Jurisdictional Notice.

¹⁰ MTN-ICS has a Community-wide turnover of EUR [...].

¹¹ The term "international wholesale telecommunications services" is synonymous to the term "international wholesale telecommunications carrier services" used in this decision.

¹² See in particular case *IV/JV.15 – BT/AT&T*, 30 March 1999.

¹³ As stated by the Commission at paragraph 13 of the decision in case *COMP/M.3764 – Belgacom/Swisscom/JV*, "[t]he provision of...international wholesale carrier services corresponds to "the market for carriers' carrier services"".

17. However in previous decisions, including *Deutsche Telekom/OTE*¹⁴ and *Belgacom/Swisscom/JV*, when considering the market for international wholesale telecommunications carrier services, the Commission left open the possibility to breakdown this broad carriers' carrier services market into several relevant product markets on the basis of types of services provided. Yet, the only segments explicitly considered in the past have been (i) international voice carrier services¹⁵; and (ii) wholesale top-level (or universal) Internet connectivity services¹⁶.
18. In light of the above, the notifying parties have submitted their own hypothetical segmentation of the market for international wholesale telecommunications services into the following four more narrowly defined markets: (i) international wholesale voice services; (ii) international wholesale mobile data services; (iii) international wholesale capacity services; and (iv) international wholesale Internet connectivity services.
19. Some respondents to the market investigation confirmed the view that all the international wholesale telecommunications carrier services discussed above could constitute a single product market to the extent that international wholesale carrier services suppliers offer most of the said services. However, a number of respondents have expressed that some of the international wholesale telecommunications carrier services discussed above could be regarded as separate markets due to different technical requirements and potential customer segmentations. In any event, the precise product market definition can be left open in the present case as the proposed transaction does not give rise to any competition concerns even on the narrowest possible segmentation of the market for international wholesale telecommunications carrier services.

Relevant geographic market

20. The notifying party submits that the market for international wholesale telecommunications carrier services and the hypothetical markets discussed above are at least European-wide in scope if not global.
21. In previous Commission decisions, including *Belgacom/Swisscom/JV*, the Commission left open the question whether the geographic market for international wholesale telecommunications carrier services and the other hypothetical markets listed in paragraph 17 above (with the exception of the market for international wholesale voice services) are European-wide or wider in scope.
22. On the other hand, and only as regards the international wholesale voice carrier services segment, the Commission in the past has held that it might be necessary to identify two

¹⁴ *COMP/M.5148 - Deutsche Telekom /OTE*, 2 October 2008.

¹⁵ See in particular case *COMP/M.3764 – Belgacom/Swisscom/JV*, case *IV/JV.15 – BT/AT&T* and *IV/M.856 – British Telecom/MCI(II)*, 14 May 1997.

¹⁶ See case *COMP/M.3764 – Belgacom/Swisscom/JV*.

distinct geographic markets within any international route each comprised of the originating bilateral traffic from the countries concerned (country-pair).¹⁷

23. The notifying party submits that due to technical progress a number of different possibilities exist to route calls between different countries and therefore, that looking only at direct country pairs is not relevant. According to the notifying party, indirect or alternative means of linking two countries include the following: (i) the handing over of traffic to be terminated in a particular country to another operator in the country of origin or in another country. The third party operator would then ensure conveyance of the traffic towards the country of destination (refiling/traffic hubbing); and (ii) use of the public Internet network to convey voice traffic to alternative termination providers in the country of destination (VoIP).
24. In previous decisions dating back to 1997 and 1999,¹⁸ which have however not been relied on in later decisions,¹⁹ the Commission considered that from the demand side, the possibility of hubbing (re-routing traffic through third countries) did not appear to be a viable commercial substitute as under the existing accounting rates and proportionate return, it would be more expensive than direct routes.
25. Most respondents to the market investigation have indicated that they consider the geographic market for international wholesale telecommunications carrier services and the other hypothetical markets discussed above (with the exception of the market for international wholesale voice services) as being global in scope. However, most of such respondents also indicated that prices for international wholesale telecommunications carrier services differ from one EEA country to another and from one EEA region to another. Yet, these differences in price appear to reflect different termination rates in different countries.
26. As regards the international wholesale voice carrier services segment specifically, the market investigation has confirmed that indirect routing of voice traffic, such as refiling/hubbing, has become a viable method to transport voice traffic in more sophisticated geographies where there are established infrastructures of high quality. However, according to some respondents it is unclear whether this is also the case for developing regions such as Africa. As the proposed transaction will not give rise to any competition concerns in relation to this possible narrower geographic market definition, the precise geographic market definition can be left open in the present case.

¹⁷ See in particular case *COMP/M.3764 – Belgacom/Swisscom/JV*, case *IV/JV.15 – BT/AT&T* and *IV/M.856 – British Telecom/MCI(II)*.

¹⁸ See cases *IV/JV.15 – BT/AT&T* and *IV/M.856 – British Telecom/MCI(II)*.

¹⁹ See *COMP/M.5148 - Deutsche Telekom /OTE*, 2 October 2008.

2. Retail fixed voice telephony services

Relevant product markets

27. As regards fixed voice telephony services, the notifying party refers to the following markets identified by the Commission in the Commission Recommendation of 11 February 2003 on Relevant Product and Service Markets²⁰: (i) publicly available local and/or national telephone services provided at a fixed location for residential customers; (ii) publicly available international telephone services provided at a fixed location for residential customers; (iii) publicly available local and/or national telephone services provided at a fixed location for non-residential customers; and (iv) publicly available international telephone services provided at a fixed location for non-residential customers.
28. The precise product market definition can be left open in the present case since the proposed transaction will not give rise to any competition concerns under the narrowest possible market definition.

Relevant geographic market

29. The notifying party submits that the markets for fixed telephone are generally considered to have a national dimension but that in some instances a narrow market definition might be considered relevant. The notifying party submits that such a narrower geographic market definition is not relevant in the present case. The precise geographic market definition can be left open in the present case since the proposed transaction will not give rise to any competition concerns under the narrowest possible market definition.

3. Retail mobile telephony services

Relevant product market

30. As regards mobile telephony services, the notifying party refers to past Commission decisions²¹ distinguishing between the markets for fixed and mobile telephony. The notifying party submits that the retail market for mobile telephony comprises all aspects of the mobile telecommunications service, including in particular access to the mobile telephony network, national, international and roaming calls, calls to value added services, SMS, MMS, and any other kind of data service. The notifying party also states that generally no distinction is made

²⁰ 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 and network services, OJ L 114, 8.5.2003.

²¹ See cases *COMP/M.3530 – TeliaSonera AB/Orange AS*, 24 September 2004, *COMP/M.3914 – Tele2/Versatel*, 7 September 2005, and *COMP/M.3995 – Belgacom/Telindus*, 1 December 2005.

between the services provided to residential and to professional customers. These matters have been left open in several Commission decisions.²²

31. The precise product market definition can also be left open in the present case since the proposed transaction will not give rise to any competition concerns under the narrowest possible market definition.

Relevant geographic market

32. In line with previous Commission decisions²³, the notifying party submits that the market for mobile telephony is generally considered to be national in scope. The precise geographic market definition can be left open in the present case since the proposed transaction will not give rise to any competition concerns under the narrowest possible market definition.

4. Broadband internet access

Relevant product market

33. As regards broadband internet access, referring to past Commission decisions²⁴, the notifying party states that the market for retail broadband internet access generally considered separate from narrowband Internet access²⁵ and dedicated Internet access and that it that includes both offerings based on ADSL technology and offerings based on cable modem technology. The notifying party considers that a segmentation of the market according to customer type (residential, small and/or large business customers) is irrelevant in the present case.

34. The precise product market definition can be left open in the present case since the proposed transaction will not give rise to any competition concerns under the narrowest possible market definition.

Relevant geographic market

35. The notifying party submits that the market for retail broadband Internet connectivity services are generally considered to have a national dimension but that in some instances a narrow market definition might be considered relevant. The notifying party submits that such a narrower geographic market definition is not relevant in the present case. The precise geographic market

²² See cases *COMP/M.3914 – Tele2/Versatel*, 7 September 2005, *COMP/M.3920 – France Telecom/Amena*, 24 October 2005 and *COMP/M.4043 – Telenor/Vodafone Sverige*, 22 December 2005.

²³ See in particular case *COMP/M.3530 – TeliaSonera AB/Orange AS*, 24 September 2004 and *COMP/M.3920 – France Telecom/Amena*, 24 October 2005.

²⁴ See cases *COMP/M.4442 – Carphone Warehouse/AOL UK*, 7 December 2006 and *COMP/M.4521 – LGI/Telenet*, 26 February 2007.

²⁵ The notifying party has confirmed that the Belgacom group has stopped providing narrowband Internet access services.

definition can be left open in the present case since the proposed transaction will not give rise to any competition concerns under the narrowest possible market definition.

B. Competitive Assessment

36. Essentially, the proposed transaction concerns a change from joint control to sole control of BICS and therefore, in principle, would fall to be assessed under the simplified procedure.²⁶ The only new aspect of the proposed transaction is the acquisition of the MTN-ICS assets, which represent a very limited portion of the market for international wholesale telecommunications services and possible segments thereof.²⁷

1. Horizontal overlaps

37. The notifying party submits that the proposed transaction will not lead to any affected markets. The market share estimates submitted by the notifying party in relation to the market for international wholesale telecommunications carrier services and the other hypothetical markets

	EEA		World-wide	
	BICS	MTN-ICS	BICS	MTN-ICS
International wholesale telecommunications carrier services	<10%	<2%	<10%	<2%

discussed above are indicated in the table below.

International wholesale telecommunications carrier services	<10%	<2%	<10%	<2%
International wholesale voice services	<10%	<2%	[0-5]%	[0-5]%
International wholesale mobile data services	<15%	0%	<10%	0%
International wholesale capacity services	<5%	0%	<2%	0%
International wholesale Internet connectivity services	<5%	0%	<2%	0%

²⁶ Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004, paragraph 5(d).

²⁷ Please refer to the table below for estimates of MTN-ICS' share of these markets on an EEA and worldwide level.

38. The notifying party submits that numerous competitors exist on each of the possible hypothetical markets discussed above. Moreover, MTN-ICS currently only provides wholesale mobile data services, international wholesale capacity services and international wholesale Internet connectivity services to companies within the MTN group. Therefore, the notifying party submits that there is in fact no overlap between the parties in these hypothetical markets.
39. The majority of respondents to the market investigation have confirmed that on a global level, the market for international wholesale telecommunications carrier services is very fragmented between numerous providers, with each of them holding a relatively modest share of the market.²⁸ The market investigation revealed that BICS and MTN-ICS do not appear to be each others' closest competitors in relation to the market for international wholesale telecommunications carrier services. Where, in relation to a possible segment of the market, respondents listed BICS as a close competitor to MTN-ICS, other competitors were also indicated²⁹ as close competitors.³⁰
40. In light of the above and in particular, the limited strength of BICS and MTN-ICS on each of the possible hypothetical markets discussed above, it is concluded that the proposed transaction will not lead to competition concerns in relation to the horizontal overlaps between the activities of BICS and MTN-ICS.

2. Vertical links

41. A vertical link between BICS (on the upstream market/s for international wholesale telecommunications carrier services) and Belgacom and Swisscom (on the downstream retail markets on which they are active) already exists.³¹ However, the proposed transaction will lead to an enlargement of the activities of BICS resulting from the acquisition of the MTN-ICS assets. Thus, the vertical links between the enlarged BICS entity and each of Belgacom and Swisscom must be considered. Another vertical link which will be brought about by the proposed transaction is that between BICS and the MTN group's activities in the EEA.

Input foreclosure

42. The notifying party submits that BICS lacks the ability and incentive to foreclose access to inputs. Moreover, the notifying party submits in particular that there are several competing

²⁸ See replies of respondents to question 27(a) and (b) of the questionnaire addressed to customers and competitors during the market investigation ("Questionnaire").

²⁹ See replies of respondents to question 28.

³⁰ As regards the possible hypothetical markets for wholesale mobile data services, international wholesale capacity services and international wholesale Internet connectivity, from the information provided by the notifying party, it is clear that the value MTN-ICS' services to companies within the MTN group in relation to each of these possible hypothetical markets is significantly smaller than the value of BICS' activities in relation to each such possible hypothetical market.

³¹ Belgacom and Swisscom currently jointly control BICS.

providers on the upstream market for international wholesale telecommunications carrier services.

43. MTN currently does not provide any international wholesale mobile data services, international wholesale capacity services, and international wholesale Internet connectivity services to third parties. In any event, post transaction, BICS will lack a significant degree of market power on the upstream market for international wholesale telecommunications carrier services and on each of the possible hypothetical markets discussed above.³² Therefore, it is concluded that the proposed transaction will not lead to any competition concerns in terms of input foreclosure.

Customer Foreclosure

44. Belgacom is active in retail fixed telephony, mobile telephony and broadband Internet access in Belgium. Referring to a decision of the national regulatory authority in Belgium³³, the notifying party submits that Belgacom's market shares in relation to fixed telephony were as follows in [...]: (i) as regards the residential market for international voice telephony Belgacom held a market share of 30% in terms of traffic volume and 47% in terms of value; and (ii) as regards the non-residential market for international voice telephony Belgacom held a market share of 51% in terms of traffic volume and 64% in terms of value. From the information provided by the notifying party, it appears that Belgacom holds a market share of [40-50]% in relation to its mobile telephony activities.³⁴ As regards broadband access services, Belgacom held a national market share of 50% in 2008.³⁵
45. However, notwithstanding Belgacom's relatively high market shares on certain retail markets, it appears that the proposed transaction will not lead to any competition concerns in terms of customer foreclosure in Belgium. From the information submitted by the notifying party, it appears that during 2007 and 2008, Belgacom already acquired a very large portion of its required international wholesale telecommunications carrier services from BICS. For example, it acquired international wholesale voice services exclusively from BICS.³⁶ Therefore, Belgacom is not, at present, an important customer of upstream international

³² Please refer to the table above for estimates of BICS and MTN-ICS' share of these markets on an EEA and worldwide level.

³³ Decision du Conseil de L'IBPT, 11 August 2006.

³⁴ This market share is based on the number of active SIM cards.

³⁵ Source: Analysis Mason and Hogan & Hartson, Report at the request of the Belgian national regulatory authority ("BIPT") on the "development of the broadband market in Belgium". Belgacom held market shares of 60% in Brussels, 42% in Flanders and 67% in Wallonia in 2008.

³⁶ Assuming the narrowest market definition for the upstream market, the purchases by Belgacom from third parties can be regarded as de minimis because, in total, they amounted only to EUR [...] million in 2008 (international wholesale mobile data services: EUR [...]; international wholesale Internet connectivity services: EUR [...]; and international wholesale capacity services: EUR [...]. In this last regard, purchases by Belgacom from third parties may be regarded as limited in relation to the international wholesale capacity services market size which was identified a EUR [...] million market by BICS in its 2005 forecasts.)

wholesale telecommunications carrier services suppliers. At any rate the notifying party has confirmed that Belgacom did not purchase any such services directly from MTN in 2007 and 2008.

46. In light of the above it is concluded that the proposed transaction will not lead to any competition concerns in terms of customer foreclosure in Belgium.
47. In the EEA, Swisscom is [...] ³⁷ only active in downstream retail markets in Italy through Fastweb, which is a provider of voice, data and Internet services. From the information submitted by the notifying party, it is clear that Swisscom does not enjoy a significant degree of market power in relation to fixed voice telephony (in relation to which it holds a [5-10]% market share) and broadband Internet access (in relation to which it holds a market share of [10-20]%) in Italy.
48. In light of the above it is concluded that the proposed transaction will not lead to any competition concerns in terms of customer foreclosure in Italy.
49. In the EEA, MTN is only active in downstream retail markets in Cyprus (through MTN Cyprus). MTN is also active in the sale of pre-paid minutes in the United Kingdom (through Spacotel UK Limited) yet from the information submitted by the notifying party, it is clear that these activities are very limited. ³⁸
50. Although only two mobile operators are active in Cyprus, MTN Cyprus only holds a market share of approximately 15% ³⁹ and therefore does not enjoy a significant degree of market power in relation to mobile telephony in Cyprus. Similarly, from the information provided by the notifying party, it appears that MTN Cyprus currently only holds market shares of [0-5]% and [0-5]% in relation to its Internet access and fixed telephony activities respectively.
51. Moreover, from the information submitted by the notifying party, it may be concluded that the amount of each international wholesale telecommunications carrier service purchased by MTN Cyprus from third parties represents a very small percentage of the total market size of each such international wholesale telecommunications carrier service. For example, whilst the total market size of the international wholesale voice services market was of 365 000 million minutes in 2007, MTN Cyprus' purchases in 2007 in relation to this service amounted to only approximately [...] minutes.
52. In light of the above it is concluded that the proposed transaction will not lead to any competition concerns in terms of customer foreclosure in the UK and Cyprus.

³⁷ Should read "*in essence*".

³⁸ Spacotel UK Limited has an annual turnover of EUR [...].

³⁹ See case CY/2009/0874: Wholesale voice call termination on individual mobile networks in Cyprus – Comments pursuant to Article 7(3) of Directive 2002/21/EC, SG-Greffe (2009) D/930, 18 February 2009, p.3.

3. Wholesale international telecommunications carrier services to Africa

53. A minority⁴⁰ of respondents to the market investigation have submitted that the proposed transaction may give rise to competitive concerns in certain African countries, although no precise identification of the countries concerned and the alleged competition issues in relation thereto were provided. These respondents implied that MTN may have a gatekeeper role in some African countries and that the proposed transaction would reinforce such role.
54. Therefore, the market investigation focused on assessing the competitive conditions in relation to wholesale international telecommunications carrier services to African countries in which MTN is active and in which call termination services are liberalised.⁴¹ In this regard, the Commission found that wholesale international telecommunications carrier services to Africa are carried out by means of submarine cables and satellite capacity. Neither BICS nor MTN-ICS have exclusive or privileged access in relation to capacity on the said submarine cables and satellites. Rather, BICS and MTN-ICS co-own (with other third parties) or make use of a few of the existing submarine cables to Africa. The percentage of the rights of co-ownership or use held by each of BICS and MTN-ICS in relation to these submarine cables are in turn also very limited.⁴² As regards satellite capacity, neither BICS nor MTN[...]⁴³ own or operate any satellite ground infrastructure in Africa. Moreover, the capacity held by BICS and MTN-ICS in satellites covering the African footprint is limited when compared to the total capacity of such satellites.⁴⁴ As regards call termination to African countries in which MTN is an important mobile operator, the market investigation has revealed that BICS has no retail activities in these countries and that MTN is not the incumbent telecommunications provider in these countries. Furthermore, in each of these countries, there are at least two other mobile operators and at least one fixed line operator (the incumbent telecommunications operator).

⁴⁰ Two out of nine respondents.

⁴¹ As regards non-liberalised countries in which MTN is active, the notifying party has confirmed that MTN does not enjoy a privileged position in relation to the incumbent telecommunications operators.

⁴² BICS' co-ownership and/or IRUs (as the case may be) overlap only in relation to four submarine cables in Africa and the Middle East, namely, [...]. The notifying party has submitted information indicating that there currently exist 30 submarine cables to Africa and the Middle East. A further 24 are under development. On the [...] cable, BICS co-owns (with other third parties) [...]% of capacity. MTN-ICS only has [...]. On the [...] cable, BICS co-owns (with other third parties) [...]% of capacity. MTN-ICS only has [...]. On the [...] cable, BICS has IRU's amounting to [...]% of capacity. MTN-ICS only has [...]. On the [...] cable, BICS co-owns (with other third parties) [...]% of capacity. MTN-ICS only has [...].

⁴³ Should read "-ICS".

⁴⁴ The notifying party has submitted information indicating that BICS is currently utilising [...] for more than [...]% of its capacity to in satellites. MTN-ICS is currently using [...]. BICS currently has approximately [...] in satellites oriented to Africa and the Middle East. This capacity is equivalent to [...] transponders. MTN-ICS currently has approximately [...] on satellites oriented to Africa. This capacity is equivalent to [...] transponders. The total number of [...] satellite transponders covering Europe, Africa and the Middle East is more than 1 000. The total number of [...] satellite transponders covering Europe, Africa and the Middle East is estimated at 100.

VI. CONCLUSION

55. 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