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***Case No IV/M.570 -
TBT / BT / TELE
DANMARK /
TELENOR***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 24/04/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.04.1995

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

PUBLIC VERSION

To the notifying parties

Dear Sirs,

Subject: Case No. IV/M.570 - TBT/BT/TELE DANMARK/TELENOR
Your notification of 17 March 1995 pursuant to Article 4 of
Council Regulation No. 4064/89 (the Merger Regulation)

1. The above operation involves the creation of a joint venture to offer voice and data telecommunication services throughout Sweden. The parents of the proposed joint venture -provisionally to be named TBT Communication AB (TBT)- will be British Telecommunications plc (BT), the main UK telecommunications company, Tele Danmark A/S (TDK), the Danish national telecommunications company, and Telenor AS (Telenor), the state-owned Norwegian telecommunications provider.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that it does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. BT's principal activity is the supply of telecommunications services and equipment. Its main services are local and long-distance telephone calls in the UK, the provision of telephone exchange lines to homes and businesses, international telephone calls made from and to the UK and the supply of telecommunications equipment for customers' premises. BT and MCI Communications Corporation (MCI) are partners

in the "Concert" joint venture, for the provision of advanced business telecom services to multinational companies¹.

4. Tele Danmark is the principal provider of telephone services in Denmark. Other activities include the supply of telecommunications equipment, telephone directories and cable television. Tele Danmark operates under a concession granting to it an exclusive right to provide in Denmark, amongst other services, public voice, leased lines and NMT mobile telephone services and to install and operate the Danish public telecommunications network infrastructure. Tele Danmark also operates one of the two Danish GSM mobile telephone services.
5. Telenor is the principal provider of telephone services in Norway. Other activities include the supply of telecommunications equipment, telephone directories and cable television. Telenor operates under a concession granting to it an exclusive right to provide in Norway, amongst other services, public voice, leased lines and NMT mobile telephone services and to install and operate the Norwegian public telecommunications infrastructure. Telenor also operates one of the two Norwegian GSM mobile telephone services.

II. THE OPERATION

6. Under Article 3.1 of the Joint Venture and Shareholders' Agreement establishing TBT, the objectives of the company will be:
 - to implement, operate and manage a Swedish domestic fixed telecommunications network through the establishment by the company of its own network and through arrangements with third parties,
 - to establish the ability to provide international connections and services in Sweden through appropriate interconnection and distribution arrangements with third parties, and
 - with those network capabilities to market, sell, provide, and service in Sweden domestic and international telecommunication services (voice and data) by itself and through appropriate third party channels.
7. The parents of TBT will transfer to the joint venture all their existing activities in the Swedish voice and data services' markets. However, BT and Telenor will retain outside the joint venture their existing equipment distribution activities in Sweden. This accounts for turnover of ECU [...] ² million compared with the expected turnover of the joint venture in the first year of operation of approximately ECU [...] ³ million. This percentage will decrease markedly in the future as TBT's turnover rises. All three parents will remain on the relevant product markets in other geographic markets eg the UK, Denmark and Norway.

¹ Case No. IV/M.353 - British Telecom / MCI, of 13 September 1993 and Case No. IV/34.857 BT-MCI, of 27 July 1994.

² Deleted business secret.

³ Deleted business secret.

8. The parents will continue to be present in serving the international correspondent services between Sweden and their home territories. In doing so they will only continue to ensure the indispensable interconnection between their home network and the various Swedish networks. In other words, where a customer uses any Swedish network to place a call out of Sweden the latter may use one of the joint venture's parents to connect the call in Norway, the UK or Denmark.
9. The Joint Venture and Shareholders' Agreement also contains a non-compete clause between the parents and the joint venture in respect of voice and data telecommunications services (Article 23). However, the parents will retain the possibility to operate in the following neighbouring product markets (in addition to the correspondent services provision set out in paragraph 8 above): customer premises equipment, integration of telecommunications services with customer premises equipment, data processing, in flight air-to-ground and air-to-satellite communications and distribution of TV programming by satellite.

III. COMMUNITY DIMENSION

10. The operation has a Community dimension. The worldwide turnover of all the undertakings concerned in their respective last financial year amounts to more than 5000 million ECU. The Community wide turnover of both BT and Tele Danmark exceeds 250 million ECU. The undertakings concerned do not achieve more than two-thirds of their aggregate Community wide turnover within one and the same Member State.
11. Only Telenor has annual turnover exceeding 250 million ECU in the territory of the EFTA states and the combined turnover of the undertakings concerned in the territory of the EFTA states does not equal 25% or more of their total turnover in the EEA territory. Therefore the operation is not an EFTA co-operation case.

IV. CONCENTRATION

Joint control

12. The joint venture agreement between the parties provides for joint control in the sense that the agreement of each of the three parents is required for fundamental decisions regarding the operation and management of TBT.
13. Each party will own one-third of the shares of TBT. [...] ⁴ As such no individual party will have a sufficient majority to control either a shareholders' meeting or a meeting of the Board of Directors.
14. More importantly, certain decisions essential to the strategic commercial decision-making of TBT are effectively subject to veto rights by each of the parties. [...] ⁵.
15. In the light of the above, TBT is jointly controlled by BT, Tele Danmark and Telenor.

⁴ Deleted business secret.

⁵ Deleted business secret.

Full function

16. TBT will perform on a lasting basis all the functions of an autonomous economic entity.
17. Examination of the business plan of TBT clearly shows the parties' intention that the joint-venture operate on a long-lasting basis. There is no limitation on the duration of the Joint Venture and Shareholders' Agreement.
18. TBT will operate in an autonomous manner. Article 3.2 of the same agreement states that TBT "shall carry out its business in a proper and efficient manner and at commercial arms' length terms and conditions also in relation to all transactions entered into by it with (each of) its shareholders".
19. Lastly, TBT will be a full-function joint-venture, performing all the functions normally carried out by other undertakings operating in the same market.⁶ It will be endowed with sufficient financial and other resources including finance, staff, and assets to operate on a long-lasting basis.
20. The parents of TBT will transfer to the joint venture all their existing activities in the Swedish voice and data services markets and have budgeted for a capital expenditure by the joint venture of around ECU [...] ⁷ million over its first 10 years. Its total headcount requirement is estimated at [...] ⁸ for 1995 rising to a forecast [...] ⁹ in 2004. TBT's initial staffing requirement is comparable to that of Tele2 AB, the number 2 telecoms player in the Swedish market after Telia AB, the indigenous state-owned telecom company.
21. TBT will be both a network operator and service provider. It will, in principle, offer communication services throughout all of Sweden. [...] ¹⁰.
22. The fact that TBT will interconnect with other telecom operators does not prejudice its full-function nature. Indeed, interconnection in one form or another is an essential feature of telecom activities. This is most clearly visible in international calls where in order to successfully link the domestic caller (" the A end of the call") to the foreign subscriber ("the B end of the call"), a domestic telecom operator must necessarily be linked either directly or indirectly to the receiving telecom operator. Consequently, this interdependence of telecom operators does not prejudice the full functionality of individual telecom operators.

In conclusion, TBT will perform on a long-lasting basis all the functions of an autonomous economic entity.

Absence of coordination of competitive behaviour

⁶ Commission notice on the distinction between concentrative and cooperative joint ventures, point 13, OJ C385, 31.12.94.

⁷ Deleted business secret.

⁸ Deleted business secret.

⁹ Deleted business secret.

¹⁰ Deleted business secret.

23. The objective of TBT is to create a fully-fledged domestic telecoms operator for voice and data, domestic and international services in Sweden. The parents of TBT provide such services in their respective territories outside Sweden. TBT will also be the exclusive sub-distributor of BT in Sweden for Concert services. Under separate arrangements it is expected that TDK and Telenor will become exclusive distributors of Concert services in Denmark and Norway respectively. The question of whether TBT will serve as an instrument for the coordination of the competitive behaviour of its parents needs to be addressed.

A Telecommunications services provided by TBT

i) Voice and data services

24. The parents of TBT will transfer to the joint venture all their existing activities in the Swedish voice and data services' markets. Moreover, under Article 23(1) of the Joint Venture and Shareholders' Agreement, the parents have undertaken not to "engage directly or indirectly in the business of selling in Sweden, telecommunication services in competition with the company". Although the absolute amount of investment represented by the joint venture is not very substantial in telecom terms, it is nevertheless significant and it can normally be considered that the parents would not seek to re-enter the Swedish market on their own account¹¹.

ii) Refiling and transit traffic

25. Refiling of telecommunications traffic takes place where traffic from Country A to Country C is routed through Country B and where the TO in Country C is unable to see that the traffic originated in Country A and not Country B. Refiling is only becoming a reasonably common phenomenon in relation to traffic consisting of corporate customers and/or closed user groups. In fact, none of the parties currently generates turnover from refiling of general purpose carrier traffic. As far as corporate customers and/or closed user groups are concerned, this falls broadly into the category of enhanced international telecommunications services and represents less than [...] ¹² of BT's international turnover. Neither Tele Danmark nor Telenor are engaged in this activity.
26. Transit is used to describe the situation where traffic from Country A to Country C is routed through Country B according to an agreement between the TOs involved.. Transit traffic is common where there is no direct link between the TO in Country A and the TO in Country C. The parties estimate that the transit traffic market in Europe is around 1-2% of the overall European international telecommunications market. Unless TBT develops a large network of direct links with other TOs, it is unlikely to develop as a significant transit operator.

¹¹ Commission notice on the distinction between concentrative and cooperative joint ventures, point 18, footnote 19, OJ C385, 31.12.94.

¹² Deleted business secret, between 0 and 5%.

27. In view of the current state of development of the global telecommunications market, there is no appreciable likelihood of co-ordination through refiling or transit traffic.

iii) Concert services

28. BT will transfer its existing Concert activities in Sweden to TBT¹³. The Commission decision in Case No. IV/M.353 - British Telecom / MCI, of 13 September 1993 established that the market for Concert services was global. Thus BT and TBT, as well as potentially TDK and Telenor, can be considered to be in the same world market for Concert services. Concert services are expected to amount to between [...] and [...] ¹⁴ of TBT's turnover.
29. Outside the Americas¹⁵ BT enjoys exclusive rights to the distribution of Concert. BT may sub-licence on an exclusive basis as in the case of TBT. In accordance with the Commission notice on the distinction between concentrative and cooperative joint ventures¹⁶, the only relevant coordination is that produced between the parents as a result of the creation of the TBT. Even if TDK and Telenor do subsequently distribute Concert in Denmark and Norway, it cannot be considered that the mere existence of the TBT joint venture will act in any significant manner as an incremental instrument for coordinating the parents' behaviour in the sale of Concert services beyond that which is already inherent in the relationship between an exclusive distributor and its sub-distributors.

B Activities outside the scope of the joint venture

30. The parents will retain the possibility to engage in certain activities in Sweden. These are covered by a specific exception to the general non-compete clause. In particular, BT and Telenor will retain their equipment supply activities in Sweden (estimated 1996 turnover approximately ECU [...] ¹⁷ million). However, these will have no significant interaction with the joint venture's telecommunications services activities and therefore do not increase the likelihood of co-ordination between BT and Telenor. More generally, the parents will retain in-flight telecommunications activities (BT) as well as distribution of satellite TV programmes in Sweden (Tele Danmark and Telenor) as well as systems integration and data processing. These also have no significant interaction with the joint venture's activities.
31. The parents will also remain active in the field of correspondent services for the provision of the B-end of international calls¹⁸ originating in Sweden, which in the case of calls to Denmark and Norway must of necessity be currently provided by

¹³ The transfer of activities is an indicator for the absence of coordination -Commission notice on the distinction between concentrative and cooperative joint ventures, point 18, OJ C385, 31.12.94.

¹⁴ Deleted business secret, less than 20%.

¹⁵ Case No. IV/34.857 BT-MCI, of 27 July 1994, see point 26(a).

¹⁶ Commission notice on the distinction between concentrative and cooperative joint ventures, point 8, OJ C385, 31.12.94.

¹⁷ Deleted business secret.

¹⁸ See paragraph 22 above.

TDK and Telenor. Consequently there is no scope for increased co-ordination between the parents on the basis of these activities.

C Conclusion

32. In this light, there are no grounds to consider that the establishment and operation of the TBT joint venture will lead to the coordination of the competitive behaviour of independent undertakings, falling within the meaning of Article 3(2), second subparagraph of the Merger Regulation.
33. Thus, the notified operation constitutes a concentration within the terms of Article 3 of the Merger Regulation.

V. COMPATIBILITY WITH THE COMMON MARKET

Relevant Product Market

34. The parties have identified the relevant product markets as domestic and international, voice and data telecommunication services and enhanced global telecommunications (eg Concert services). As regards segmentation, the parties have drawn a distinction between the voice and data markets, the latter being primarily used by business whereas both private households and business participate in the former. In addition, voice and data markets may be further split into domestic and international segments. The precise relevant product market delimitation can be left open since even on the narrowest possible basis ie four separate relevant product markets, the proposed concentration does not give rise to the creation or strengthening of a dominant position.

Geographical Reference Market

35. Having regard to the licensing, regulatory and supervisory framework, current market participants and their market shares, as well as the physical interconnection arrangements for telecom operators, the geographical reference market for domestic and international, voice and data telecommunication services in Sweden can be considered to be at least national.
36. The geographical reference market for enhanced global telecommunications is to be considered worldwide for the reasons already indicated above.
- 37.

Competitive assessment

38. The markets for telecommunications services are evolving very rapidly as a result of technical change and liberalisation of the regulatory environment. Sweden (along with the UK) has one of the most liberalised telecommunications regulatory regimes in Europe. This has led to a number of overseas telecommunications companies setting up operations in Sweden to take advantage of this regime. Nevertheless, despite the establishment of these competitors, the state owned national telecom operator -Telia- still enjoys an overwhelming market share for the voice market (90%

according to the parties) and a strong market share in data communications (70% of which 20% is achieved through its joint venture, Unisource).

39. In comparison, the market share acquired by new entrants has been relatively small - none has a market share exceeding [...] ¹⁹ for either voice or data. AT&T Nordics - the Swedish subsidiary of AT&T established in 1985 - has a market share of less than [...] ²⁰ for voice, BT's existing Swedish subsidiary has less than [...] ²¹ of voice and less than [...] ²² of data whilst Tele2 (the only Swedish operator apart from Telia to hold a Recognised Private Operating Agency status) has secured a market share of only [...] ²³ of voice and [...] ²⁴ of data since its formation in 1991.
40. A detailed breakdown of the market shares of the parents in the four segments corresponding to domestic and international, voice and data services is given in the Annex. The total market share of the parties is significantly less than 15% in all segments. The thrust of the operation is essentially pro-competitive.
41. With regard to enhanced global telecommunications, the combined market share of BT, TDK and Telenor is also significantly less than 15%, even at the Community level.
42. For the above reasons, the concentration will not create or strengthen a dominant position in the EEA territory or a substantial part of it.

VI. ANCILLARY RESTRAINTS

43. The parties have expressly requested that the restrictions contained in Article 23(1) and (4) of the Joint Venture and Shareholders' Agreement be considered as ancillary to the concentration.
44. The non-competition clause contained in Article 23(1) reflects the permanent withdrawal of the parents from the markets to be served by the joint venture and can therefore be recognised as an integral part of the concentration.
45. [...] ²⁵
46. [...] ²⁶

VII. CONCLUSION

¹⁹ Deleted business secret, all figures between 0 and 5%.

²⁰ Deleted business secret, all figures between 0 and 5%.

²¹ Deleted business secret, all figures between 0 and 5%.

²² Deleted business secret, all figures between 0 and 5%.

²³ Deleted business secret, all figures between 0 and 5%.

²⁴ Deleted business secret, all figures between 0 and 5%.

²⁵ Deleted business secret.

²⁶ Deleted business secret.

47. For the foregoing reasons, the proposed concentration does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

For the Commission,

Market Share of the Parties in the domestic and international, voice and data telecommunications services in Sweden

1994 MECU	Market	BT Mkt. share	TDK Mkt. share	Telenor Mkt. share	Total Mkt. share
Voice Domestic	2077	[...] ²⁷	[...]	[...]	[...]
Internation'l	330	[...]	[...]	[...]	[...]
Tot. Voice	2407	[...]	[...]	[...]	[...]
Data Domestic	158	[...]	[...]	[...]	[...]
Internation'l	24	[...]	[...]	[...]	[...]
Tot. Data	182	[...]	[...]	[...]	[...]
TOTAL	2589	[...]	[...]	[...]	[...]

Note: International data includes both ordinary and enhanced data services

²⁷ Deleted business secrets, all figures less than 15%.