

*Case No IV/M.689 -
ADSB / Belgacom*

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

Article 6(1)(b) NON-OPPOSITION
Date: 29/02/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29-02-1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.689 - ADSB/Belgacom

Notification of a concentration pursuant to Article 4 of Council Regulation No 4064/89

1. On 26 January 1996 the Commission received a notification on an acquisition of a shareholding in Belgacom by a Consortium consisting of Ameritech International, Inc. Tele Danmark A/S and Singapore Telecommunications Limited (the Consortium) from the Belgian State.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I THE PARTIES

3. **Belgacom** is the principal provider of domestic and international telephone services in Belgium. The Belgian State currently holds all of the capital stock of Belgacom.
4. **Ameritech International Inc. (Ameritech)** is a wholly owned subsidiary of Ameritech Corporation, a US corporation and one of the largest full-service communications companies in the world. Ameritech International is the entity through which Ameritech Corporation conducts its international activities and investments.
5. **Tele Danmark A/S** is the principal provider of domestic and international telephone services in Denmark.
6. **Singapore Telecommunications Limited (Singapore Telecom)** is the principal provider of domestic and international telephone services in Singapore. It also provides postal services.

II THE OPERATION

7. On 21 December 1995, a Stock Purchase Agreement was signed between on the one hand, the Belgian State and, on the other hand, the consortium consisting of Ameritech, Tele Danmark and Singapore Telecom (the Consortium), pursuant to which the Consortium will acquire 50% minus one share of the capital stock of Belgacom from the Belgian State. The members of the Consortium will acquire the Belgacom shares through a special purpose vehicle company: ADSB Telecommunications B.V. (ADSB). ADSB is a private limited liability company incorporated in the Netherlands which is jointly owned by the members of the Consortium.

III CONCENTRATION

JOINT CONTROL

(a) ADSB

8. The members of the Consortium currently own shares in ADSB as follows:

Ameritech	40%
Tele Danmark	33%
Singapore Telecom	27%

9. A Belgian financial partner may be invited to invest up to 5% of the share capital of ADSB which would be subtracted from the Ameritech shareholding. [...]⁽¹⁾.
10. At the shareholder level of ADSB, 95% of the votes are needed for certain matters [...]⁽²⁾. At board level, [...]⁽³⁾. Each shareholder must have one representative present for the meeting to constitute a quorum and the board member(s) representing each parent exercise the voting rights in proportion to the shareholdings of that parent. A [...]⁽⁴⁾ majority of the shares is required for matters relating to the adoption or amendment of the Business Plan and Budget and to decisions relating to voting behaviour at Belgacom's shareholders meetings.
11. Accordingly, Ameritech, Tele Danmark and Singapore Telecom will have joint control over ADSB.

(b) Belgacom

12. The Belgacom shareholders' agreement (Article 3) provides that shares of Belgacom will be divided into three classes. Class A will include all shares owned by the State or public institutions, Class B shares will be owned by ADSB, and Class C will include shares which could come to be held by persons or entities other than those already mentioned [...]⁽⁵⁾. These C shares would not have voting rights.

⁽¹⁾ Deleted business secrets

⁽²⁾ Deleted business secrets

⁽³⁾ Deleted business secrets

⁽⁴⁾ Business secret - more than 75%

⁽⁵⁾ Deleted business secrets

13. Belgian company law requires a majority of 75% within each class for a number of matters including the increase or reduction of the share capital or the approval of a merger or split-up and 80% for other issues including the redemption of own shares or the change of the corporate object. The shareholders' agreement requires that the disposition of earnings and profits must be approved by a majority of votes in both Class A and Class B as long as [...] ⁽⁶⁾.
14. The management of Belgacom will be conducted by the Board of Directors. The Belgacom Board of Directors will consist of eighteen members, nine of which will be appointed by Belgian State (through Royal Decree) and the other nine by the Consortium Members. The chairman of the Board will be appointed from among the directors appointed by the Belgian State. He will have a casting vote. However, all decisions relating to the strategic commercial behaviour of Belgacom including the adoption or amendment of the Business Plan and of the Budget, any delegation of management powers, strategic acquisitions or alliances, the appointment or removal of Belgacom's Chief Executive Officer, will require a majority of two-thirds or more of the votes cast at Board meetings. In addition, these strategic decisions will demand a quorum of at least two directors representing Class A and two directors representing Class B.
15. Class C shareholders would be entitled to board representation when their shareholding reached 5%. Even if these shareholders had board representation there are several factors which indicate that the structure of the various shareholdings will continue to ensure that ADSB and the Belgian State will hold joint control for the foreseeable future. Belgian law requires the Belgian State to hold at least 50% plus one share of the capital stock of Belgacom. [...] ⁽⁷⁾.
16. The executive management of Belgacom lies with the Chief Executive Officer (CEO) assisted by one or two deputies who will together form the Executive Office. The CEO is formally appointed and removed by a Royal Decree which is taken in accordance with the proposal of the Board of Directors, which requires a majority of at least two-thirds of the votes cast.
17. In the light of the above information and the Commission notice on undertakings concerned ⁽⁸⁾, Ameritech, Tele Danmark and Singapore Telecom, through ADSB, have joint control over Belgacom with the Belgian State.

FULL FUNCTION AUTONOMOUS ECONOMIC ENTITY

18. Belgacom has been operational as the Belgian national telecommunications provider for a considerable period. Its net cash flow of Belgacom in 1994 amounted to 1,351 million BF and at the end of 1994 it employed about 27,000 staff.
19. According to Article 11 of Exhibit M to the Stock Purchase Agreement dated 21 December 1995 the parties to the Joint Venture have entered into the Agreement for a term of thirty years which will be automatically renewable for two successive terms of ten years. In addition, as stated above, the Belgian Government is required by law to hold at least 50% plus one share of the stock of Belgacom and [...] ⁽⁹⁾.

⁽⁶⁾ Deleted business secrets

⁽⁷⁾ Deleted business secrets

⁽⁸⁾ OJ C 385 of 31.12.94 paragraph 29

⁽⁹⁾ Deleted business secrets

20. Accordingly, Belgacom will perform as a Joint Venture on a lasting basis, all the functions of an autonomous economic entity, on grounds of disposal of assets, staff and financial independence, in the field of the provision of telecommunication services.

ABSENCE OF SCOPE FOR CO-ORDINATION OF COMPETITIVE BEHAVIOUR

21. The Belgian State is not active in telecommunications other than through Belgacom. Accordingly, the likelihood of coordination must be measured between the members of the Consortium.
22. The parent companies are potential competitors to Belgacom following the liberalisation of telecommunications and services in Belgium. It is unlikely that the parent companies would enter the market following the substantial investment which they have made in acquiring the stake in Belgacom. Even if they were to offer services in Belgium following liberalisation, the number and strength of the other potential competitors in Belgium would make any co-operative behaviour insignificant. This is confirmed by the non-compete clause in which the Consortium members have undertaken not to compete with Belgacom directly or indirectly in the provision of telecommunications and related services offered in Belgium. Limited exceptions apply for activities which account for less than 0.5% of Belgacom's revenues in any one year, for the publication of industrial directories by Ameritech (through Wer Liefert Was?) and for electronic commerce services through GEIS.
23. With the exception of those services which are offered by Belgacom on a national basis (and where the Consortium members have agreed not to compete with Belgacom), most remaining services have geographical market definitions which have been considered to be at least European wide. These services include certain data communications services, cellular telephone services, certain non cellular mobile activities and certain value added services (as set out in the market definition section V below).
24. Tele Danmark's international activities (which account for under 2% of its turnover) include paging services and Telenordia, a joint venture in Sweden with BT and Telenor, which offers communications services to companies in Sweden. Ameritech currently has activities in the EU for industrial directories (primarily in Germany but also with turnover in neighbouring countries) and certain activities through GEIS for electronic commerce services on an European basis. Singapore Telecom has EU activities in the UK and Sweden through cable TV operations. There is no overlap between Tele Danmark and Singapore Telecom's activities in Sweden and the Ameritech activities in Belgium are of such a limited extent that there is no likelihood of significant co-ordination.
25. As liberalisation takes place across the EU, the opportunities for new entrants to enter telecommunications markets on an EU wide basis will increase. Even though all of the Consortium members will be potential competitors on these markets; and that they have activities already in the EU/EEA; the potential restriction of competition will not have a significant effect on competition given the number and strength of existing and potential competitors on this market. For those services which have world-wide market definitions, the absence of any anti-competitive effect is even stronger, given the relative absence of economic power of the parties against the competition which they do or will face.

26. In the light of the above information, there is no likelihood of co-ordination amongst Ameritech, Tele Danmark and Singapore Telecom or between them and the Belgian State through Belgacom.
27. Accordingly, the notified operation is a concentration.

IV COMMUNITY DIMENSION

28. The undertakings concerned have a combined aggregate worldwide turnover in excess of 5,000 million ECU (Belgacom: 2,951 million ECU, Ameritech Corporation: 10,747 million ECU, Tele Danmark: 2,366 million ECU, Singapore Telecom: 1,927 million ECU), following their latest reports and accounts. At least two undertakings concerned have a community-wide turnover of more than ECU 250 million (Belgacom: [...] ⁽¹⁰⁾, Tele Danmark: [...] ⁽¹¹⁾). The undertakings concerned do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same member State. Therefore, the operation has a Community dimension.

V COMPATIBILITY WITH THE COMMON MARKET

A RELEVANT PRODUCT MARKETS

29. The relevant product market in this operation are a wide range of telecommunications and related services.

According to the notifying parties, Belgacom operates in the following product areas.

- Local telephone services (PSTN and ISDN)
- Domestic long distance telephone services
- International telephone services (inc.VPN)
- Leased lines
- Data communication services (inc. MAN&LAN, Telex, Telegraph, EDI)
- Cellular telephone activities
- Non-cellular mobile activities (paging, calling card, pay phones, maritime radio services)
- Value added services (inc.centrex,operator services)
- Supply and service of CPE
- Telephone directories publishing
- Telephone directories data
- Telecommunication and engineering consulting

30. However, a precise product market definition is not necessary as, given the respective market positions of the parties in the sectors referred to above or even in separate narrower markets, such a definition would not alter the Commission's conclusion with regard to dominance in this case described under Assessment below.

⁽¹⁰⁾ Business secret - more than 250 million ECU

B RELEVANT GEOGRAPHIC MARKETS

31. Basic services related mainly to reserved services in Belgium (e.g. fixed national and international voice, leased lines, telex) have traditionally been considered as a national geographic market due to the still prevailing regulations and the role of the national telecommunications operators.
32. The geographic market for certain value added services is generally considered as at least European and possibly worldwide. In any case the markets for telecommunications services are evolving very rapidly as a result of technical change and liberalisation of the regulatory environment.
33. However, given that the operation does not result in any problem of dominance in the EU/EEA area, for the reasons exposed in the assessment below, it is not necessary to define the relevant geographic market in the present case.

C ASSESSMENT

Belgium

34. The market behaviour of telecommunications operators in Belgium is controlled by regulatory mechanisms which are being put into place. A telecommunications regulatory authority is already in existence and legislation which will provide some of the conditions necessary for competition is in place. Further measures are envisaged, and will be necessary, in order for the proper competitive conditions to exist for new entrants to compete effectively with Belgacom on the markets in which it currently has a monopoly.
35. Belgacom holds very high market shares (including 100% for some services). Following the operation, it appears that this position will not change until liberalisation of services and infrastructure becomes effective in Belgium. In European and worldwide markets, Belgacom should become a stronger competitor following the operation and will be able to take advantage of the liberalised telecommunications markets in most of the EU which should take place by the beginning of 1998. Belgacom will compete on those European markets with strong competitors such as BT, Unisource, Deutsche Telekom and France Telecom. However, in the short term, the possibility exists that Belgacom may undergo a financial and technical strengthening without having to face actual competition on the markets for its currently non liberalised activities.
36. In the light of information provided by the notifying parties, the products in which Belgacom has [...] ⁽¹¹⁾ of sales in Belgium comprise: local and domestic long distance telephone services, international telephone services, leased lines, value added services and telephone directories data. It has in excess of [...] ⁽¹²⁾ of sales in Belgium for data communication services, cellular telephone services, non cellular mobile services, payphone services and paging services and [...] ⁽¹³⁾ for the publishing of telephone directories and [...] ⁽¹⁴⁾ in the telecommunications and engineering consulting sector. Also,

⁽¹¹⁾ Business secret - close to 100%

⁽¹²⁾ Business secret - at least 90%

⁽¹³⁾ Business secret - between 30% and 40%

⁽¹⁴⁾ Business secret - between 35% and 45%

Belgacom was responsible for [...] ⁽¹⁵⁾ of the supply and service of Customer Premises Equipment in Belgium in 1995.

There are only two very limited areas of overlap between any of the Consortium members and Belgacom in Belgium. These are a limited number of sales of industrial directories by a German subsidiary (Wer Liefert Was?) of Ameritech into Belgium and the activities of GE Information Services (GEIS) in which Ameritech has an interest, which offers electronic commerce services throughout Europe, including, to a limited extent, Belgium. Neither of these activities, combined with those of Belgacom, give rise to the creation or strengthening of a dominant position. This is because, as far as directories are concerned, the addition of market shares is insignificant and with regard to electronic commerce services there is no direct overlap between Ameritech and Belgacom. The issue of potential competition is covered in paragraph 22 above.

37. There are no overlapping activities of any significance in Belgium between different Consortium members. Ameritech, Tele Danmark and Singapore Telecom conduct the bulk of their operations in their respective home territories.
38. Accordingly, in the light of the above information, there is no creation or strengthening of a dominant position in Belgium within the meaning of Article 2 of the Merger Regulation.

Outside Belgium

39. Belgacom is active only in Europe. Apart from its activities in Belgium, it has the limited interests in Russia as described above. Ameritech, Tele Danmark and Singapore Telecom also have activities in the EU/EEA as set out above. This operation involves no addition of market shares in those countries.

For the services which have a market definition which is Europe or even world wide, the combined market shares of Belgacom and Tele Danmark in Europe and Belgacom and all the consortium members on world wide markets, the transaction does not raise any competition problems.

Conclusion

In the light of the above information, the notified operation does not raise serious doubts as to its compatibility with the common market.

VI ANCILLARY RESTRAINTS

40. [...] ⁽¹⁶⁾ the Consortium members undertake not to compete with Belgacom in the provision of telecommunications services and related services in Belgium. An exception is provided for operations which represent less than 0.5% of Belgacom's revenues for the publication of directories by Ameritech and for electronic commerce services provided through GEIS. Ameritech has given a similar non compete undertaking for it and its controlled affiliates. This clause is a normal consequence of the parent companies' investment in the joint venture and reflects the parent companies' withdrawal as potential

⁽¹⁵⁾ Business secret - between 50% and 70%

⁽¹⁶⁾ Deleted business secrets

competitors in the Belgian market. Insofar as this is a restriction of competition, this provision is directly related and necessary to the implementation of the concentration.

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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,