

*Case No IV/M.802 -  
Telecom Eireann*

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 18/12/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.12.1996

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

Registered with advice of delivery:

**To the notifying parties**

**Subject: Case No IV/M. 802 - Telecom Eireann  
Notification of 14.11.1996 pursuant to Article 4 of Council Regulation (EEC)  
No 4064/89**

1. On 14.11.1996 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which PTT Telecom BV ("PTT Telecom") and Telia AB publ ("Telia"), acting together through a joint venture company called Comsource, and the Irish State, will acquire joint control of Telecom Eireann.

**I. THE PARTIES AND THE OPERATION**

2. Telecom Eireann is a limited liability company incorporated under Irish law. It is the national telecommunications operator in Ireland of which all shares are currently owned by the Irish State. Through a 75% shareholding in Cablelink Limited Telecom Eireann is also active in the provision of cable television services in Ireland.
3. The Irish State is in this operation represented by the Minister for transport, Energy and Communications and by the Minister for Finance ("the Ministers"), who are the present shareholders of Telecom Eireann.

4. PTT Telecom is a full subsidiary of Royal PTT Nederland NV. Its main activities are telephony services, mobile communication services and sales of telecommunications equipment. Telia is a limited liability company of which all shares are owned by the Swedish State. Its main activities are the provision of telecommunications services.
5. The concentration involves the establishment of a consortium between PTT Telecom and Telia, named Comsource, and the acquisition by Comsource of 20% of the issued share capital of Telecom Eireann. Comsource shall act solely as a holding company to perform the role of shareholder of Telecom Eireann. As a consequence of this acquisition of 20% of the shares of Telecom Eireann Comsource will acquire control, jointly with the Irish State, of Telecom Eireann. The Ministers will grant Comsource an option to acquire a further 15% of shares in Telecom Eireann.

## **II. CONCENTRATIVE JOINT VENTURE**

### **Joint control**

- (a) Comsource
  6. According to the information provided by the parties PTT Telecom and Telia will each be entitled to appoint four Directors. The Board of Directors has to decide on the major issues of the business policy of Comsource. In such decisions neither of the parties has a casting vote and consequently both parties have a de facto veto right.
  7. Accordingly, PTT Telecom and Telia will have joint control over Comsource.
- (b) Telecom Eireann
  8. With respect to decisions on major issues of the business policy of Telecom Eireann the following provisions apply. [...] <sup>(1)</sup>
  9. It can be concluded that the Irish State and Comsource will be able to veto the major strategic decisions on the business policy of Telecom Eireann and that they thus will be controlling this company jointly.
  10. It follows from the above that PTT Telecom and Telia, through Comsource, and the Irish State, will have joint control over Telecom Eireann.

### **Autonomous full function entity operating on a lasting basis**

11. Telecom Eireann is the national telecommunications operator in Ireland. The parties have entered into a strategic agreement for an indefinite period of time. The parties in Comsource will supply major contributions to a further development of the Irish market and to enhance the competitiveness of Telecom Eireann in the international markets. These contributions will be related to human resources, technologies, operational support systems, and will include mobile and multimedia markets.
12. It can therefore be concluded that the Joint Venture will operate on a lasting basis and will perform all the functions of an autonomous economic entity.

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<sup>(1)</sup> Deleted; business secrets. Description of veto rights of the parties.

### **Absence of coordination**

13. The Irish State is not active in telecommunications or cable television other than through Telecom Eireann. Accordingly, the likelihood of coordination must be assessed with respect to PTT Telecom and Telia.
14. PTT Telecom and Telia can be considered as potential competitors to Telecom Eireann on the telecommunication markets and the market for services supplied by cable operators in Ireland which are liberalized or are to be liberalized. However, it is unlikely that they will enter these markets other than through Telecom Eireann, following the substantial investments to which they are committed within the framework of the present operation.
15. With respect to telecommunications services for which the relevant geographic market is wider than national, PTT Telecom, Telia and Telecom Eireann are actual or potential competitors. It must also be noted that PTT Telecom and Telia are, together with Swiss PTT and Telefónica, partners in Unisource/Uniworld (Case No IV/M.544 - Unisource/Telefonica). It is foreseen that Telecom Eireann will become the distributor of the services of Unisource/Uniworld in Ireland.
16. The possible cooperative aspects of this operation are only of minor importance relative to the operation as a whole. The revenues derived from the value added operations for which the market has to be considered international amount for PTT Telecom and Telia to a very small proportion of less than 1% of their total turnover. Also, the present operation can not be considered as a cause for strengthening of the already existing coordination between the partners in Unisource in any significant way. (Case No. IV/M.570 -TBT/BT/TELE DANMARK/TELENOR pt. 29).
17. It can be concluded that the present operation does not give rise to coordination between PTT Telecom and Telia.
18. Accordingly, the notified operation is a concentration.

### **III. COMMUNITY DIMENSION**

19. The undertakings concerned have a combined aggregate worldwide turnover of more than 5,000 million ECU (Telecom Eireann 1,367m ECU, PTT Telecom 6,255m ECU and Telia 4,743.26m ECU). Each of these undertakings has a Community-wide turnover in excess of 250 million ECU, and they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension according to Article 1(2) of the Merger Regulation.

## **IV COMPATIBILITY WITH THE COMMON MARKET**

### **A. RELEVANT PRODUCT MARKETS**

20. Telecommunications operators can be regarded as engaging in several different activities. These include the provision of infrastructure to terminate calls, provide the local loop and the provision of services. Telecom Eireann provides both infrastructure (where it currently has a statutory monopoly) and services.
21. Telecommunications services could be grouped into Basic Services and Value-Added Services. Basic services include voice telephony, leased lines, mobile telephony and telex. The main product, voice telephony, accounts for 70-80% of telecommunications services.
22. Value-added services comprise non-public services, as well as, enhanced services to multinational corporations and other intensive users of telecommunications services over intelligent networks. Within this group distinction should be made between a segment concerned with advanced telecommunication services to corporate users and a segment concerned with standardised low-level packet-switched data communication services (see Decisions of 17 July 1996 in Cases No. IV/35.337 - Atlas (at para. 5 et seq) and No.35.617 - Phoenix/GlobalOne (at para 6) and Commission decision of 27 July 1994 Case IV/34.857 - BT-MCI).
23. In previous cases involving concentration of telecommunications' operators (Case No. IV/570 - TBT/BT/TELE DANMARK/TELENOR and Case No.IV/M.689-ADSB/Belgacom), the question of the precise delimitation of the telecommunication services market has been left open by the Commission. In the present case a precise segmentation of services is not required for the assessment of the operation since, even on the basis of the narrowest definition, the operation does not raise serious doubts as to strength the market position of Telecom Eireann.
24. Cablelink Limited (which is 75% owned by Telecom Eireann) is a provider of cable television services in Greater Dublin, Galway City and Waterford. In each of these areas, Cablelink has a monopoly of cable TV services. Other cable TV companies have similar geographic monopolies in their own area. Cablelink's infrastructure could be used to provide telecommunications services.
25. The Commission has recognised the existence of a separate market for services supplied by cable operators to their subscribers. See Commission Decision of 9 November 1994. Case IV/M.469 - MSG Media Service and Commission Decision of 31 October 1995. Case No.IV/M.490 - Nordic Satellite Distribution.

### **B. RELEVANT GEOGRAPHIC MARKETS**

26. Basic services 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. See Case No. IV/570 - TBT/BT/TELE DANMARK/TELENOR and Case No. IV/M.689 - ADSB/Belgacom. For public voice telephony in Ireland, there will continue to be a statutory monopoly until 1 January 2000 which is another factor indicating the national nature of the market.

27. Geographic market for certain value added services is generally considered as at least European and possibly worldwide. Markets for telecommunications services are evolving very rapidly as a result of technical change and liberalisation of the regulatory environment. See Case No. IV/570 - TBT/BT/TELE DANMARK/TELENOR and Case No. IV/M.689 -ADSB/Belgacom. 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 for telecommunications services in the present case.
28. The Commission has considered the market for services supplied by cable operators to their subscribers as national in scope (See Commission Decision of 9 November 1994. Case IV/M.469 - MSG Media Service and Commission Decision of 31 October 1995. Case No.IV/M.490 - Nordic Satellite Distribution).

### **C. ASSESSMENT**

29. Telecom Eireann has the exclusive privilege of providing within Ireland the public telecommunications network, voice telephony services and telex services. The market behaviour of telecommunications operators in Ireland is controlled by regulatory mechanisms which are not yet in place. The legislation which will set up the independent regulatory authority is currently being considered by the Irish Parliament. According to the notifying parties, the regulatory authority should be set up in the early part of 1997. On 27 November 1996, the Commission took a Decision<sup>(2)</sup> to set out in the timetable for the liberalisation of services in Ireland in response to the request from the Irish Government for a derogation from the deadlines for liberalisation proposed in the various telecommunications liberalisation directives.
30. For the provision of telecommunications infrastructure, Telecom Eireann will have a monopoly until 1 July 1997. Potential alternative infrastructure providers would include cable TV networks, the electricity network and possibly some others. Accordingly, the Cablelink network will be an important network immediately available when liberalisation takes place. This is because of its network in Greater Dublin, which contains much of the population and business activity in Ireland.
31. The original acquisition of a majority of shares in Cablelink by Telecom Eireann in 1990 was examined by the Fair Trade Commission<sup>(3)</sup> in Ireland. At that time, the Irish Government secured commitments when authorising the operation<sup>(4)</sup> which included a commitment from Telecom Eireann that Cablelink would be operated on an arms' length basis from Telecom Eireann with management separate from that of Telecom Eireann. According to the Irish Government, these commitments still apply. In addition, the Commission notes that the Irish Government has stated that access to the Cablelink network for telecommunications services will be open to third parties on a cost oriented

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<sup>(2)</sup> Commission decision C (96) 3342 of 27 November 1996 Voice telephony will not be liberalised until 1 January 2000. Providers of alternative infrastructure will be allowed from 1 July 1997. Finally, direct international interconnection of mobile networks will be effective from 1 January 1999.

<sup>(3)</sup> Under the Mergers, Take-overs and Monopolies (Control) Acts 1978 and 1987.

<sup>(4)</sup> Contained in a press notice from the Department of Industry and Commerce dated 8 June 1990.

and non-discriminatory basis. This open access will be supervised by the new regulatory authority when it is formed.

32. Value added and mobile services and the infrastructure for the provision of mobile services is liberalised and subject to licensing by the Minister for Transport, Energy and Communications. In the light of information provided by the notifying parties, for the period to March 1996, the products in which Telecom Eireann has [...] <sup>(5)</sup> market shares in Ireland comprise: voice telephony services, leased private circuits, data services, telemessage and telegram, mobile telephony, value added services and telephone directories. However, liberalised telecommunications services (mainly value-added) are presently provided in Ireland by 38 licensed service providers including the main European telecommunications' operators. Value-added income represents approximately [...] <sup>(6)</sup> of Telecom Eireann revenue. Esat Telecom ([...] <sup>(7)</sup> market share on liberalised services), TCL ([...] <sup>(6)</sup>) and other important players such as Cable & Wireless and BT are currently gaining market shares in various market segments. In addition, BT, Mercury and Cabletel, which have a presence in Northern Ireland, are expected to expand their operations in Ireland. In October 1995 the second licence for GSM was awarded to the ESAT DIGIFONE consortium with Esat and Digifone as the major shareholders. ESAT DIGIFONE will start operating at the end of 1996.
33. Geographically, the areas of market overlap between PTT Telecom, Telia and Telecom Eireann are very limited since all three conduct the bulk of their operations in their respective home territories in the markets for basic services. In the market for value added telecommunications services, which activity has been generally defined as broader than national, the activities of PTT Telecom, Telia and Telecom Eireann are relatively small. Also even taken into account the fact that PTT Telecom and Telia participate in Unisource/Uniworld the present operation does not give rise to dominance in this market as Unisource/Uniworld is one among other strong players.
34. For non-liberalised services in Ireland, the operation does not change the present position of Telecom Eireann until liberalisation takes place. Telecom Eireann is, at present and by itself, strong enough and well rated by the financial markets and it is in the short term technologically sufficient. The support of the new partners will improve the efficiency of the company but it is unlikely that, in the light of ongoing liberalization proces, it will strengthen its present market position.
35. The support of the new partners consequent on their shareholding is likely to improve the efficiency of the company and strengthen its financial and technical position. However, this developement will not affect the change in the competitive position brought about by the liberalisation due on 1 July 1997. Telecoms liberalisation is to take place in Ireland according to a clear timetable set out in the Commission's decision. Under that decision, alternative infrastructure providers will be entitled to obtain licences to enter the market from 1 July 1997. The present decision permits PTT Telecom and Telia to become shareholders in Telecom Eireann but this joint venture agreement does not bring about the development of a supplier or distributor relationship between Telecom Eireann and either Unisource or Uniworld.

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<sup>(5)</sup> Deleted; business secrets - more than 95%.

<sup>(6)</sup> Deleted; business secrets - less than 5%.

<sup>(7)</sup> Deleted; business secrets - between 12% and 16%.

Even if the proposed operation will, in the long term, strengthen technically and financially Telecom Eireann's capacity to provide services on liberalised markets, Telecom Eireann will face competition from other strong players such as BT, Concert, GlobalOne and Atlas and other telecommunications operators.

36. Cablelink has 313,000 subscribers in Ireland and 63% of the Irish market for services supplied by cable operators to their subscribers. However, neither PTT Telecom nor Telia have any special knowledge or expertise which would strengthen Cablelink's market position in the provision of cable TV services over and above that which would be provided by another cable operator or consultant.
37. Accordingly, in the light of the above information, there is no creation or strengthening of a dominant position within the meaning of Article 2 of the Merger Regulation.

## **V ANCILLARY RESTRAINTS**

38. The notifying parties have requested that the clauses and agreements described below be considered as ancillary to the concentration.
39. Article 11 of the Agreement on Strategic Co-operation provides that Comsource, PTT Telecom and Telia shall neither individually or collectively nor through subsidiaries, engage in certain activities during the Agreement on Strategic Co-operation and two years after. These activities include competition with Telecom Eireann, soliciting orders from Telecom Eireann's customers or soliciting Telecom Eireann's employees. This provision is directly related and necessary to the implementation of the concentration and should be considered as ancillary to the operation.
40. The agreements provide for the conclusion of an agreement between Telecom Eireann and Unisource and Uniworld whereby Telecom Eireann will become the distributor of and the preferred supplier to Unisource/Uniworld in Ireland. This provision should not be considered as ancillary to the concentration. Prior to this operation, Telecom Eireann exists already as a full function telecommunications operator. It can not be considered that the acquisition of control by PTT Telecom and Telia can only be implemented under the condition of the conclusion of these distribution/supply agreements. They should therefore be assessed under the scope of Article 85 and 86 of the Treaty.

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,