



EUROPEAN COMMISSION
DG Competition

Case No COMP/M.2803 - TELIA / SONERA

Only the English text is available and authentic.

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

Modification of Art. 6(2) with conditions & obligations
Date: 27/09/2006



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.09.2006

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PUBLIC VERSION

MERGER PROCEDURE
MODIFICATION OF ARTICLE
6(2) DECISION

To the notifying party

Dear Sirs,

Subject: Case No COMP/M.2803 – Telia/Sonera – review of commitment

1. On 10.07.2002, the Commission adopted a conditional clearance decision (“original decision”) pursuant to Article 6(2) of Council Regulation (EEC) No 4064/89 (“Merger Regulation”) by which the undertaking Telia AB of Sweden acquired within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Sonera Corporation of Finland by way of an exchange of shares.
2. By letter of 16 March 2006, TeliaSonera requested a modification of a commitment entered into as a condition for the Commission’s clearance of the merger between Telia and Sonera. More specifically, TeliaSonera requested that the commitment that ensures that its fixed and mobile network businesses are held in separate legal entities (cf. §119 of the Commission’s 2002 decision) be waived in respect of Finland, as the company wishes to combine its Finnish fixed and mobile network businesses with its retail activities.
3. After examination of TeliaSonera’s arguments for modification and in the light of the changed market circumstances and the prevailing regulatory regime in the telecommunications markets in Finland and in Sweden, the Commission has decided to accede to TeliaSonera’s request and grant a waiver of the legal separation commitment in respect of Finland, exceptionally before the end of the waiting period expiring on 1 June 2008 as specified in the original decision, for the reasons set out below.

Commission's decision of 10 July 2002 and attached Commitments

4. The Commission's decision of 10 July 2002 was adopted subject to a set of commitments offered by Telia ("the Commitments"), including the divestitures of Telia's *mobile communications services business in Finland* and *Telia's cable TV network and related distribution business in Sweden*.
5. Further to these, Telia had also offered some additional commitments such as the legal separation and the non-discrimination obligation¹. These additional commitments were expected to provide for an increase in transparency and non-discrimination in the provision of network services by the merged entity.
6. In particular, the commitment to legally separate the fixed and mobile (NMT, GSM and UMTS) network businesses of TeliaSonera in Finland and in Sweden was considered necessary in order to maintain transparency in the merged entity's setting of termination costs in these countries (third parties feared rising termination costs for competitors)(§135 et seq.).
7. Without Telia's commitments, given the already existing strong, possibly dominant position of Telia for fixed and mobile telephony services in Sweden and that of Sonera for mobile communications services in Finland, the Commission concluded "*that the proposed transaction will increase the merged entity's ability to leverage its strong positions in the mobile communications services market in Finland, data communications services in Finland and Sweden and (international) fixed voice services in Finland through bundling into broader markets such as the market for customized corporate communication services in Finland and Sweden*" (§108 of the Commission's decision).
8. In particular, without the additional commitments of legal separation and non discrimination, it was feared that on the one hand Telia was sufficiently strong upstream in the Swedish fixed and mobile communications markets in order to raise Sonera's competitors' costs downstream in Finland (e.g. by raising call termination prices for competitors), and *vice versa* it was also considered that Sonera was sufficiently strong upstream in the Finnish mobile communication market to raise competitors' costs and foreclose downstream markets in Sweden (§§83-86 of the Commission's decision).
9. As regards the possible review of the Commitments, pursuant to §21 of the Commitments, the Commission may, upon Telia's request, waive or modify the legal separation Commitment in the event that:
 - (i) the competition concerns identified in the decision are no longer present, and
 - (ii) the commitment is hampering Telia's ability to compete on an equal footing with its major European competitors having regard *inter alia* to developments in the competitive and/or regulatory environment.

¹ The fast track dispute resolution system had been a further additional commitment offered by Telia.

10. According to §52 of the Commitments no review will be possible until 5 years from implementation of legal separation (i.e. until 1 June 2008).

TeliaSonera's request for a waiver of the legal separation commitment

11. TeliaSonera now wishes to restructure its business and combine its Finnish fixed and mobile network businesses with its retail activities, which requires a partial waiver of the Commitments entered into vis-à-vis the Commission in July 2002. In particular, TeliaSonera requests a waiver of the legal separation commitment to the extent necessary for its restructuring, with a view to becoming more efficient and competitive.
12. TeliaSonera argues that such a waiver would be justified for a number of reasons. Its main arguments are: (i) that the new regulatory environment in Finland and in Sweden has created a level of transparency which should address the Commission's concerns raised in the 2002 decision and (ii) that the Finnish and the Swedish telecommunications markets have changed since the Commission's decision.
13. As regards the *regulatory framework*, TeliaSonera has brought forward that, subsequent to the Commission's decision, significant changes have taken place in the Finnish and Swedish telecoms regulatory environment. In 2003, both Finland and Sweden implemented the core directives of the current regulatory framework into national law. The respective national regulatory authorities of Finland and Sweden, FICORA and PTS, have completed their market analyses in compliance with the new communications legislation and identified companies with Significant Market Power ("SMP").
14. TeliaSonera has submitted that FICORA has issued a total of 462 decisions concerning all 18 markets defined by the Commission. In each of wholesale markets 8 and 9 (call origination and call termination on individual fixed networks), 11 (wholesale unbundled access) and 16 (voice call termination on individual mobile networks) TeliaSonera is subject to a range of obligations, including transparency, non-discrimination, cost-orientation, the use of cost accounting systems and accounting separation. Similar obligations apply under the Swedish regulatory regime, where PTS has decided that TeliaSonera has SMP on both the fixed and mobile termination markets.
15. TeliaSonera has argued that the prevailing accounting separation obligation requires a separation of its activities related to interconnection and access. TeliaSonera must also produce cost calculations for these regulated products. Additionally, TeliaSonera is required to submit to the respective national regulatory authorities the calculations required under the regulatory framework. According to TeliaSonera, these regulatory obligations should provide for sufficient transparency to address the Commission's concerns about an undue rise in the termination costs or price-squeezing.
16. In relation to the *changed market circumstances*, TeliaSonera has pointed out that, as a result of the amendment of the Communications Market Act in force in Finland, mobile number service portability became possible from 25 July 2003, which has led to the entry onto the mobile communications market of mobile virtual network operators (MVNOs). The entry by these players has intensified competition in the

telecommunications sector. Furthermore, prices of mobile calls and SMS messages have fallen dramatically and at present mobile call prices in Finland are the lowest in Europe. Additionally, churn has become extremely high. Due to these factors, according to TeliaSonera, the net sales of mobile service providers have dropped substantially, whereas marketing and customer acquisition costs have increased significantly. Thus, the profitability of TeliaSonera's business in Finland has rapidly plummeted. In response to these changes in the Finnish telecommunications market, TeliaSonera wishes to restructure its Finnish business, as part of an overall cost-saving plan.

17. As a way to further support its claims, TeliaSonera has submitted public information on the development of mobile call prices in 18 European countries². A comparison of the development of prices of mobile calls from 2001-2005 in these 18 countries shows that the price of mobile calls in Finland has dropped by 40%, in Sweden by 36,5% over this period, whereas on average the prices in all 18 countries had decreased by about 27%. Moreover, as was the case in 2005, in (April) 2006 the lowest price level of mobile calls was still found in Finland. These data clearly underline the competitive nature of the Finnish and Swedish mobile telecommunications markets and are in support of TeliaSonera's claims on the current circumstances in the Finnish and Swedish mobile telecommunications sector set forth above.

Assessment of the requested modification to the Commitments

18. The main reason for the Commission to seek remedies was the strong, possibly dominant, position of Sonera in the provision of mobile telecommunications services in Finland and that of Telia in the fixed and mobile communication services in Sweden at the time of the adoption of the decision. Therefore, in the following it is examined how the parties' position has changed since 2002 in the light of the originally identified competitive concerns.

Finland

19. According to publicly available data since July 2002 TeliaSonera's position on the wholesale mobile call termination market has significantly decreased from around [50-65]% (as indicated in §86 of the Commission's decision) to 43% in 2005.^{3 4} Although TeliaSonera is still the largest in the mobile call termination segment, it is closely followed by Elisa, its main competitor (which has 39%). A similar development has occurred throughout the past years in the wholesale international roaming market where TeliaSonera's market share (calculated on the basis of minutes) has dropped from around 58% to 46% while the second biggest operator, Elisa's market share has earned up to 39% of the market until 2005.

² Source: prices of mobile calls in 2005, Publications of the Ministry of Transport and Communications, http://www.mintc.fi/oliver/upl950-Julkaisu%2079_2005.pdf. The countries examined are: the Netherlands, Belgium, Great Britain, Spain, Ireland, Iceland, Italy, Austria, Greece, Luxembourg, Norway, Portugal, France, Sweden, Germany, Finland, Switzerland and Denmark.

³ All data on wholesale markets is publicly available and have been published in FICORA's decisions.

⁴ As in termination markets each network constitutes a distinct market this position is calculated on the basis of the traffic terminating. The data was published by FICORA.

20. In July 2002 (cf. §59 of the Commission's decision) Sonera's position in retail mobile telecommunications services amounted to [55-70]%, on the basis of subscribers, a market share twice the size of its closest competitor in the Finnish market, Radiolinja, with a market share of about [20-35]%⁵.
21. In that regard, based on figures for Q1/2004-Q1/2006 it must be concluded that TeliaSonera's position in the provision of retail *mobile telecommunications services* has dropped considerably compared to its position on 10 July 2002, when the Commission's decision was adopted.
22. Market data regarding the development of the mobile telecommunications market over the past few years indicate that, by comparison, TeliaSonera's market share in Q1/2006 had dropped from [55-65]% in 2002 to [40-50]% by subscription ([40-50]% by revenue). This means that Sonera's market share is around one quarter lower than at the time of the adoption of the Commission's decision. TeliaSonera's biggest competitor in Q1/2006 (Elisa) represents [30-40]% by subscription ([30-40]% by revenue), i.e. the gap between the market leader and the second player in this market has become much narrower. It is also worth noting that the second player, Elisa, is present both in mobile and in fixed telephony. In fact, according to TeliaSonera, Elisa was the fixed voice telephony leader in Q1/2006, with a market share of [30-40]% (compared to [25-35]% for TeliaSonera, being the third player in the market after Finnet with a share of [30-40]%). Its market share has remained stable over the period Q1/2004-Q1/2006 (around [25-35]%, by subscription and by revenue).
23. FICORA's recently published first market review that, among other things, includes mobile operators' market shares based on the number of mobile subscriptions⁶, confirms TeliaSonera's statements. According to this review, TeliaSonera's market share is 48%, Elisa's 36%, and DNA's 15%.
24. It must therefore be concluded that, while maintaining its position as market leader, TeliaSonera has indeed become a less significant competitor in the Finnish mobile telecommunications market.
25. The Finnish competition authority has confirmed that TeliaSonera is not in as strong a position in relation to its competitors as it used to be in 2002. In their view, the market situation has changed since 2002 in a manner where an alleviation of the original legal separation obligation may be considered proportionate.⁷
26. Additionally, both the Finnish telecoms regulator, FICORA, and the Finnish competition authority have confirmed TeliaSonera's claims relating to the recent developments in the Finnish telecommunications market.

⁵ Finnish wireless operator Radiolinja operated as a wholly-owned subsidiary of the telecoms group Elisa Communications Corp at the time of the adoption of the Commission's decision; subsequently it has merged into Elisa Corporation.

⁶ http://www.ficora.fi/suomi/document/Markkinakatsaus_1_2006_Korjattu2_PDF.pdf

⁷ The Finnish competition authority has made the reservation that this does not mean that there would be no dominance in the market, as they have not carried out a market investigation.

27. *FICORA* has indicated that especially the implementation of mobile number portability has increased competition at retail level. In addition, *FICORA* has pointed out that the Finnish communications market is undergoing a significant technological transition towards next generation networks and IP based services, and that in the near future IP services will be seamlessly provided through various networks.
28. Additionally, *FICORA* has confirmed that the accounting separation of TeliaSonera Finland's fixed and mobile activities will stay in force even if the Commission decides to waive the legal separation commitment. According to the present SMP decisions, TeliaSonera provides three separate accounts: (i) Sonera Carrier Networks, including three calculations: fixed access, fixed interconnection and other activities which includes, among other things, all retail activities; (ii) Auria, an independent legal entity owned by TeliaSonera, also provides three calculations that are similar to the ones provided by Sonera Carrier Networks; and (iii) Sonera Mobile Networks provides TeliaSonera's third separate account which includes two calculations: on mobile interconnection and on other activities.
29. While acknowledging that *FICORA* has not yet fully implemented the cost-orientation obligation imposed in wholesale market 16 (wholesale voice call termination on individual mobile networks) in conformity with article 9 of the Access Directive which means that there is still a lack of transparency due to the fact that no cost accounting *methodology* was imposed by *FICORA* on mobile operators (this, *inter alia*, has led to the launch by the Commission of an infringement procedure against Finland) it must be noted that the deficit brought about by the lack of a reliable accounting methodology is present, irrespective of whether or not the legal separation commitment remains in place or not. Accounting separation will in any case permit transfer prices between the relevant operational units of TeliaSonera to be transparent, even if they are not cost-based. This is the chief consideration in preventing cross-subsidisation, in that TeliaSonera would be impeded from charging discriminatory prices to competitors.

Sweden

30. As regards wholesale call termination on mobile and fixed networks, TeliaSonera's market share has increased from [75-85]% to [80-90]% in fixed however it decreased from [45-55]% to [40-50]% in mobile (share of traffic terminating, expressed in minutes). TeliaSonera's market shares in the wholesale international roaming markets in Sweden have remained relatively stable, around [45-55]%, during the 2002-2005 period.
31. At the same time in the retail markets TeliaSonera's market share has dropped from [65-75]% to [60-70]% in the fixed telephony markets (by revenue) and in parallel Tele2 has managed to gain a significant presence reaching a [10-20]% market share by 2005. Even though TeliaSonera's market share in mobile has slightly increased from [45-55]% to [45-55]%, it is worthwhile to note that in 2004 a new operator, "3", has entered the market carving out for itself a small but measurable presence in the Swedish mobile business ([0-10]).

Conclusion

32. The above presented weakened market position of the merged entity demonstrates that the original competitive concern is not expected to resurface even if the legal

separation remedy is lifted. The likelihood of leveraging was based on the fact that Telia and Sonera were sufficiently strong on the relevant upstream markets. However, due to above indicated significant weakening of the parties' market position in the communications markets concerned, in particular (as the legal separation is being reviewed only in respect of Finland) TeliaSonera's loss of market shares in the Finnish wholesale mobile call termination segment and its weakened position in retail mobile telephony, and its stable but non-leading position in fixed voice services demonstrate that the risk of leveraging a strong if not dominant position in the mobile communications services market in Finland through bundling into broader markets such as a possible market for customized corporate communication services (cf. §108) is considered to be very unlikely.

33. Moreover, in such a broader market for customised corporate communication services, which effectively concern integrated voice fixed/mobile and IP-based data and voice communication solutions, TeliaSonera's position has changed noticeably. In Finland, TeliaSonera's position in mobile telephony has dropped significantly whereas in fixed telephony where it is the third player, its share has remained stable over the past few years (see §§22-23 above). As regards IP-based communication solutions, TeliaSonera has a market share of [25-35]%, followed by Elisa with [20-30]%. In Sweden, TeliaSonera's position in fixed telephony has dropped by around [0-10]% during the last few years, compared to only a minor increase of [0-5]% in mobile telephony (§31). In the provision of IP-based communications solutions TeliaSonera has a [25-35]% market share, at some distance from market leader TDC ([30-40]%). In light of the (changed) position of TeliaSonera in the above market segments and given the presence of several competitors, there is no longer any ground for the serious doubts relative to which the legal-separation commitment was deemed necessary to protect the market structure.
34. In those cases where the decision fixed a waiting period for a possible review of a commitment, the Commission should waive a condition imposed in the decision only in exceptional circumstances.
35. On the one hand, TeliaSonera has submitted evidence that the legal separation obligation imposes additional costs upon it and hampers it in the execution of certain cost-saving projects which it considers to be commercially necessary in order to confront more competitive conditions in the various relevant Finnish markets. On the other hand, the changes in the structure of the Finnish mobile communications market and the conditions of competition as outlined above are considered to be of considerable significance. Thus, exceptionally, a waiver before the end of the waiting period can be granted.

Conclusion

36. In view of the developments in the regulatory environment in the Finnish and Swedish telecommunications market and in the light of the changed market circumstances, it must be concluded that the position of TeliaSonera in the relevant telecommunications markets has changed noticeably since 2002. In addition, the prevailing regulatory obligations ensure that the accounting separation of TeliaSonera's fixed and mobile activities in Finland will stay in force, even in case of a waiver of the legal separation commitment.

37. For the above reasons, the Commission has decided to accede to TeliaSonera's request for a waiver of the legal separation commitment in respect of Finland. This decision is adopted in application of Article 6(2), amending the original decision.

For the Commission

(Signed)

Neelie KROES

Member of the Commission