



EUROPEAN COMMISSION

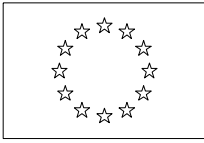
DG Competition

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: 02/08/2010



EUROPEAN COMMISSION

Brussels, 02.08.2010

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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(2) DECISION

To the notifying party:

Dear Sir/Madam,

Subject: Case No COMP/M.2803 – TELIA / SONERA – review of commitments

1. On 10 July 2002, the Commission adopted a decision pursuant to Council Regulation (EEC) No 4064/89 approving the transaction whereby Telia AB ('**Telia**', Swedish incumbent telecommunication operator) acquired control of the whole of Sonera Corporation ('**Sonera**', Finnish incumbent telecommunication operator) subject to a number of commitments which were attached to the decision ('**2002 Decision**').
2. By letter dated 17 September 2008, TeliaSonera AB ("TeliaSonera") requested the Commission to waive the commitment requiring that TeliaSonera's fixed and mobile network activities should be held in separate legal entities distinct from the related retail activities in Sweden ('**legal separation commitment**')¹.
3. In 2006, TeliaSonera had already requested a waiver of the legal separation commitment in relation to Finland. The Commission acceded to this request by decision of 27 September 2006 modifying the original decision pursuant to Article 6(2) of the Council Regulation (EC) No 139/2004 ("the Merger Regulation").

¹ Commission decision COMP/M.2803 – Telia/Sonera, paragraph 119 and Section F (a) of the Commitments.

4. The Commission has examined and verified TeliaSonera's arguments for waiver of the legal separation commitment in Sweden, in particular by seeking information and data from the Swedish Post and Telecom Agency ("PTS") and the Swedish Competition Authority.
5. In light of the current regulatory framework and changed market conditions in Sweden and Finland, the Commission has decided to accede to TeliaSonera's request and grant the waiver of the legal separation commitment in Sweden for the reasons set out below.

I. THE 2002 DECISION AND THE COMPETITION CONCERNS ADDRESSED BY THE LEGAL SEPARATION COMMITMENT

6. Before the merger, both Telia and Sonera were telecommunication operators active *inter alia* in fixed and mobile communications, including international services, local loop access and cable services. Telia held a strong position in the market for fixed and mobile communications services in Sweden and Sonera had a strong position in the market for mobile communications services in Finland.
7. The proposed transaction raised both horizontal and vertical concerns. The competition concerns raised by the proposed transaction were addressed by two structural remedies and two behavioural remedies (the '*commitments*').
8. The structural remedies involved the divestment of Telia's mobile communication business in Finland and Telia's cable TV network and related distribution business in Sweden. The behavioural remedies were:
 - a. a commitment that the fixed and mobile network activities of TeliaSonera should be held in separate legal entities distinct from the related retail activities in Sweden and Finland²; and
 - b. a non-discrimination obligation for a duration of three years³. These behavioural commitments were expected to increase transparency and non-discrimination in the provision of network services by the merged entity.
9. In its 2002 Decision, the Commission found that, 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 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. This will particularly be the case for customers with pan-Nordic*

² Commission decision COMP/M.2803 – Telia/Sonera, paragraph 119 (c) and Section F (a) of the Commitments.

³ Commission decision COMP/M.2803 – Telia/Sonera, paragraph 119 (d) and Section F (b) of the Commitments.

and pan-Nordic/Baltic cross-border requirements that covers the Finnish and Swedish countries⁴.

10. In particular, it was feared that given Telia's strong position on the upstream markets for wholesale call termination on its fixed and mobile networks in Sweden and for wholesale international roaming in Sweden, the merged entity would have the ability and incentive to raise the costs of Sonera's competitors on the downstream markets for mobile communications and corporate communications in Finland (for example by raising call termination prices for its competitors), and *vice versa* (Sonera's strong position in the mobile communications market in Finland upstream would allow the merged entity to raise the costs of and foreclose Telia's competitors on the downstream markets in Sweden).
11. In order to remedy these concerns, Telia committed to ensure that its wholesale fixed and mobile (NMT, GSM and UMTS) network businesses in Sweden and Finland would be held in separate legal entities ('*Network Companies*'), distinct from TeliaSonera's related retail activities⁵.
12. Indeed, as stated in the 2002 Decision, the legal separation remedy in combination with the structural commitments was designed to address the serious doubts raised as regards the strengthening of Sonera's position in the Finnish markets for (i) mobile communications services and for (ii) corporate communications services, due to Telia's monopoly and the identified likelihood of foreclosure regarding call termination and the provision of wholesale international roaming services in Telia's own fixed communications networks in Sweden, and similarly, due to Sonera's dominant position and the likelihood of foreclosure regarding call termination and the provision of wholesale international roaming services in Sonera's mobile communications network⁶. The legal separation commitment was considered necessary in addition to the divestiture commitments, in the short to medium term, in order to maintain transparency in the merged entity's setting of termination costs in these countries (third parties feared rising termination costs or price squeezes for competitors)⁷.

⁴ Commission decision COMP/M.2803 – Telia/Sonera, paragraph 108.

⁵ Commission decision COMP/M.2803 – Telia/Sonera, paragraph 21 of the Commitments.

⁶ Commission decision COMP/M.2803 – Telia/Sonera, paragraph 132.

⁷ Commission decision COMP/M.2803 – Telia/Sonera, paragraphs 135 et seq.

II. TELIASONERA'S REQUEST FOR A WAIVER OF THE LEGAL SEPARATION COMMITMENT

13. TeliaSonera now wishes to restructure its business and combine its Swedish 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.
14. In particular, TeliaSonera requests a waiver of the legal separation commitment that the fixed and mobile network activities of TeliaSonera should be held in separate legal entities distinct from the related retail activities in Sweden⁸.

III. POSSIBILITY FOR REVIEW UNDER THE COMMITMENTS

15. Paragraph 51 of the Commitments provides that: "*[t]he Commission may, upon request from Telia showing good cause and attaching a report of the Monitoring Trustee, and where relevant allow to: (...) (iii) waive or modify, in exceptional circumstances, one or more of the conditions and obligations in these Commitments.*"
16. In addition, as regards specifically the legal separation commitment, paragraph 52 of the Commitments provides that the Commission may waive or modify it upon TeliaSonera's request, in the event that:
 - a. the competition concerns identified in the decision are no longer present, and
 - b. the commitment is hampering the company'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 environment⁹.

IV. ASSESSMENT

17. TeliaSonera argues that a waiver of the legal separation commitment in Sweden would be justified for a number of reasons. Its main arguments are that:
 - a. competition in Sweden has increased significantly since 2002 in the markets for fixed and mobile communications;
 - b. the Swedish telecommunication regulator, PTS, has imposed transparency and non-discrimination obligations on TeliaSonera in relation to several product markets where TeliaSonera has significant market power ("SMP"); and
 - c. prices for termination in TeliaSonera's fixed and mobile networks and access to TeliaSonera's metallic access network (ULL) are regulated according to the PTS' cost-oriented "LRIC" calculation model.

⁸ Commission decision COMP/M.2803 – Telia/Sonera, paragraph 119 and Section F (a) of the Commitments.

⁹ Paragraph 52 of the Commitments provides that such requests for waiver or modification could not be submitted until 5 years following the implementation of the legal separation. The said 5 year period expired in 2007.

18. The Commission has verified these claims, in particular by seeking information and data from PTS and the Swedish Competition Authority.
19. Both PTS and the Swedish Competition Authority have largely confirmed TeliaSonera's statements.

a. Increased competition

20. With regard to TeliaSonera's first argument, the incumbents' positions on the relevant upstream markets in Sweden and downstream markets in Finland appear to have eroded significantly since 2002.
21. The Commission has found that between 2002 and 2008 a number of new operators have entered the market for fixed telephony in Sweden. As a result of such entry, TeliaSonera's market share in terms of fixed telephony subscriptions has decreased significantly and is still decreasing (from [90-100]% of subscribers at the time of the 2002 Decision to [70-80]% in 2007, [60-70]% in 2008 and [60-70]% in 2009, compared to 12.3% for Tele2, 7.5% for Telenor and 6.7% for ComHem). PTS has confirmed that even though TeliaSonera is still the largest operator, market developments have resulted in a less dominant position for the incumbent¹⁰. In addition, incumbent operators are strongly constrained by the rise of technologies such as Voice over IP or the development of Local Loop Unbundling ("LLU").
22. In the market for mobile communications in Finland Telia and Sonera's combined market share was [50-60]% (post remedy) in 2002, TeliaSonera's market share in terms of subscribers has declined to [30-40]% in 2008 and [30-40]% in 2009¹¹.
23. In the market for mobile communications in Sweden, PTS has confirmed that TeliaSonera's behaviour is more constrained in today's competitive environment than it was in 2002. The Commission has found that the number of mobile operators (MNOs and MVNOs), as well as service providers, has increased to some extent during the period 2002 to 2007. Furthermore, TeliaSonera's percentage share regarding the total number of contract subscriptions has continuously decreased (from [40-50]% in 2002 to [40-50]% in 2007, [40-50]% in 2008 and [40-50]% in 2009 in terms of subscribers¹², compared to 32.3% for Tele2, 16.9% for Telenor and 8.4% for Hi3G. The share of TeliaSonera in postpaid has however increased in the latest years).

¹⁰ Submission of PTS dated 31 March 2009 and the PTS report on The Swedish Telecommunications market 2009 issued on 3 June 2010.

¹¹ Figures submitted by TeliaSonera.

¹² Submission of PTS dated 31 March 2009 and the PTS report on The Swedish Telecommunications market 2009 issued on 3 June 2010.

24. At the upstream level, TeliaSonera's position in Sweden has also eroded significantly, especially in the market for wholesale call termination to mobile communication networks (from [70-80]% in 2002 to [40-50]% in 2008). The decline has been more limited in the markets for wholesale call termination on fixed communication networks (from [50-60]% to [50-60]%) and in the market for the provision of wholesale international roaming (from [50-60]% to [40-50]%).

b. Regulation of access conditions

25. EU regulations (and notably the EU regulatory framework for electronic communications services¹³ which entered into force in July 2003) have been implemented in Sweden and they impose strong access conditions on network operators with significant market power. Notably, conditions for interconnection are regulated and controlled by national telecommunications regulators¹⁴.

26. The Commission has found that current regulation in force in Sweden, in particular the combination of SMP-obligations imposed on TeliaSonera such as price regulation (termination costs)¹⁵, accounting separation and non-discrimination, sufficiently addresses the competition concerns identified in the 2002 decision. Indeed, PTS has confirmed that the waiver of the legal separation commitment would not raise any competition issues.

c. Regulation of termination prices

27. According to TeliaSonera, mobile and fixed termination rates are regulated in Sweden. PTS has confirmed that prices are now cost-oriented and have constantly decreased over the past 7 years. This is for instance highlighted by the decrease in the average price per minute sold by TeliaSonera at the wholesale level¹⁶: from 0.95 SEK (approx. 10 eurocents) in 2002 to 0.55 SEK (approx. 5 eurocents) in 2007 for mobile calls; from 0.06 SEK (approx. 0.6 eurocents) in 2002 to 0.05 SEK (approx. 0.5 eurocents) in 2007 for fixed calls.

28. With regard to wholesale roaming services, the Commission has found that as a result of the Regulation on international roaming services of 2007¹⁷, which imposes caps on the prices of roaming calls, TeliaSonera's behaviour is more constrained today than it was in 2002.

¹³ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services ("Framework Directive").

¹⁴ More information can be found at http://ec.europa.eu/information_society/policy/ecomm/doc/implementation_enforcement/annualreports/15threport/sw.pdf

¹⁵ See paragraphs 27 and 28 below.

¹⁶ Calculations of the Commission on the basis of the figures submitted by TeliaSonera.

¹⁷ Regulation (EC) No 717/2007.

d. Other submissions

29. According to TeliaSonera, the separation commitment also limits its ability to implement internal restructuring as a part of an overall savings plan that would be necessary to meet the market developments and the competition on the Swedish fixed and mobile markets.
30. Moreover, the PTS confirmed that the industry is characterized by fast evolutions and transformations¹⁸. This tends to suggest that the burden imposed on TeliaSonera by the separation commitment in terms of necessary internal restructuring is significant. The condition that *"the commitment is hampering the company'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"* appears therefore fulfilled.
31. Moreover, according to TeliaSonera, the current burden on TeliaSonera as a result of the legal separation obligation is disproportionate to the modest increase in transparency offered by legal separation, particularly in the light of the transparency obligations decided by the regulatory authority.
32. Pursuant to a PTS regulation from 2004 (independently from the legal separation commitment), TeliaSonera is indeed obliged to apply accounting separation for its interconnection services. Although the accounting separation has no structural impact on the company, it has a similar effect in terms of increasing transparency in costs. The PTS actually confirmed that the legal separation would bring limited added value compared to the accounting separation.

V. CONCLUSION

33. The Commission's findings reveal that the market conditions and regulatory framework have indeed evolved to a significant extent since the 2002 Decision. Notably, TeliaSonera's position on the Swedish market has been eroded and national regulations imposed on TeliaSonera will continue to ensure transparency through accounting separation between the businesses concerned.
34. The concerns raised in the initial decision in relation to wholesale termination and international roaming have consequently receded, and it therefore does not appear any more proportionate to impose a legal separation commitment.

¹⁸ See for instance the latest PTS report on the Swedish Telecommunications Market: <http://www.pts.se/pts/Templates/Page.aspx?id=26857&epslanguage=EN-GB>

35. For the above reasons, the European Commission has decided to accede to TeliaSonera's request for a waiver of the legal separation commitment in respect of Sweden. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation, amending the original decision.

For the European Commission,

(Signed)

Janusz LEWANDOSWSKI

Member of the Commission