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***Case No COMP/M.4709
– APAX PARTNERS /
TELENOR SATELLITE
SERVICES***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 22 (3)
Date: 20/06/2007



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20/06/2007

SG-Greffe(2007)D/203668

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 22(3) DECISION

To the Office of Fair Trading - Mergers , United Kingdom

Subject: Case No COMP/M.4709 – APAX PARTNERS / TELENOR SATELLITE SERVICES

Request for referral by the Office of Fair Trading to the Commission pursuant to Article 22(1) of Council Regulation (EC) No. 139/2004

Ref.: Letter of the Office of Fair Trading of 4 May 2007

I. INTRODUCTION

1. With the above-mentioned letter the United Kingdom formally requests the Commission to examine, in application of Article 22(3) of Council Regulation (EC) No 139/2004 (“the EC Merger Regulation”), the concentration whereby the French undertaking Apax Partners SA (“Apax”) acquires sole control of the Norwegian company Telenor Satellite Services (“TSS”).
2. Pursuant to Article 22(1) of the EC Merger Regulation, one or more Member States may request the Commission to examine any concentration as defined in Article 3 of the EC Merger Regulation that does not have a Community dimension within the meaning of Article 1 of the Regulation but affects trade between Member States and threatens to significantly affect competition within the territory of the Member State or States making the request. Such a request must be made within 15 working days of the date of the notification of the concentration, or if notification is not required, otherwise made known to the Member State. Pursuant to Article 22(2) of the EC Merger Regulation, any other Member State may join the initial request within a period of 15 working days of being informed by the Commission of the initial

request. Pursuant to Article 6(3) of Protocol 24 to the EEA Agreement, any EFTA State may join the request within a period of 15 working days from the day on which the Commission informed the EFTA Surveillance Authority of the initial request.

3. In the present case, the parties did not notify the transaction in the United Kingdom which has a voluntary notification system. Following a first complaint received by the Office of Fair Trading (“OFT”), the authority sent to the parties an initial information request on 7 December 2006. The OFT deemed the parties' response to be a "satisfactory submission" on 13 April 2007.
4. The Commission received the referral request made by the United Kingdom pursuant to Article 22(1) of the EC Merger Regulation on 4 May 2007.
5. The Commission informed, in accordance with Article 22(2) of the EC Merger Regulation, the competent authorities of the other Member States and the EFTA Surveillance Authority on 11 May 2007. None of the Member States and EFTA States joined the request within 15 working days as foreseen by the EC Merger Regulation.

II. THE PARTIES AND THE OPERATION

6. Apax is a management company for various capital investment companies/funds which holds investments in various sectors, including activities in telecommunications and media. Apax controls France Telecommunications Mobile Satellite Services, a company active in the provision of end-to-end communication services via satellite.
7. TSS is engaged in the provision of two-way voice, data and IP telecommunication and related services. The company achieved turnover in the EU of approximately EUR [...] million in 2005.
8. With the operation, Apax acquired sole control over TSS by way of acquisition of shares. The transaction is therefore a concentration within the meaning of Article 3 of the EC Merger Regulation. However, it does not have a Community dimension within the meaning of Article 1 of the EC Merger Regulation.

III. ASSESSMENT OF THE REFERRAL REQUEST

9. In order for a referral to be made by a Member State, one procedural and two substantive conditions must be fulfilled pursuant to Article 22(1) of the EC Merger Regulation. As to the procedural precondition *the referral shall be made at most within 15 working days of the date on which the concentration was notified, or if no notification is required, otherwise made known to the Member State concerned*. As to the substantial conditions the concentration must: i) *affect trade between Member States*; and (ii) *threaten to significantly affect competition* within the territory of the Member State(s) making the request¹. If these requirements are met, the Commission may decide to examine the concentration.

Procedural criteria

¹ See also Commission Notice on Case Referral in respect of Concentrations, paragraphs 42-44.

10. As to the procedural condition, the request was submitted by the United Kingdom, where the parties did not notify on a voluntary basis. The notion of “made known”, derived from the wording of Article 22, should in this context be interpreted as implying sufficient information to make a preliminary assessment as to the existence of the criteria for the making of a referral request pursuant to Article 22. It appears in this case that that such an assessment could only be made on the basis of the information contained in the “satisfactory submission of the parties” of 13 April 2007, made in response to the initial information request of the OFT.
11. Therefore, the referral request, which DG Competition received 15 working days following the “satisfactory submission of the parties” to the OFT, was made within the deadline of Article 22(1) second indent of the EC Merger Regulation.

Substantive criteria

12. Regarding the first substantive criterion, the United Kingdom argues that the market for two-way telecommunication services (and any possible sub-markets) is likely to be at least EEA-wide.
13. Regarding the second criterion, paragraph 44 of the Commission’s Notice on Case Referral in respect of concentrations (“the Referral Notice”)² provides that a referring Member State should demonstrate that, based on a preliminary analysis, there is a real risk that the transaction may have a significant adverse effect on competition and thus deserves close scrutiny, without prejudice to the outcome of a full investigation. The request of the United Kingdom demonstrates that there are sufficient *prima facie* elements to indicate that the concentration may significantly lessen competition in the area of two-way telecommunication services, namely at the wholesale level of such services, and in some segments thereof when delineated by customer type, in particular in the maritime segment.
14. According to the OFT, competition for the provision of satellite airtime/bandwidth takes place at both the wholesale and the retail level. Since a sufficient degree of choice appears to exist for end users to select suppliers among several retailers for satellite communication services, the OFT excludes competition concerns arising from the proposed operation in the retail market.
15. Generally, the OFT sets out that the market share of the combined entity in the global market for satellite communications services would amount to approximately [20-30]%, whereas in some of the narrower segments it would amount in the range between [20-30]% and [40-50]% depending on customer type.
16. More specifically, the OFT focuses on the segments of the market for which services provided by the satellite operator Inmarsat are not substitutable for the final customers. Inmarsat is the only operator offering maritime communication services in compliance with the Global Maritime Distress and Safety System (“GMDSS”) requirements laid down by the International Maritime Organisation.³ The OFT

² OJ C 56, 05.03.2005, p. 2.

³ Many vessel owners and operators are tied into using Inmarsat services since they have to comply with the provisions of the “Safety of Life At Sea” (“SOLAS”) regulation establishing the Global Maritime Distress and Safety System (“GMDSS”).

concludes that these services are likely to constitute a separate market as the merging parties would be able to price-discriminate between those customers which have to be supplied by Inmarsat due to the regulatory requirements ("Inmarsat-captive customers") and those which could also choose other providers. The relevant market, therefore, to be considered in the present case appears to be the wholesale market for two-way maritime communication services provided under GMDSS.

17. As both parties to the concentration are active as Inmarsat distributors at the wholesale level, the proposed operation would lead to a reduction of the number of major and globally active distributors of Inmarsat airtime capacity from 3 to 2. Despite the fact that Inmarsat in any event has a monopoly for the provision of satellite capacity for these services upstream, the OFT is nevertheless of the opinion that the proposed operation could lead to competition concerns, in particular if the value added by the distributors on the wholesale level provides them with added market power. On this basis, it cannot entirely be ruled out that post-merger price competition would be lessened in view of the significant market power that the merged entity would enjoy as one of the two remaining global wholesalers for Inmarsat services.
18. On the basis of the *prima facie* analysis submitted by the United Kingdom, the Commission considers, without prejudice to the outcome of its investigation, that the concentration threatens to significantly affect competition within the territory of the United Kingdom.

Appropriateness of the referral

19. Pursuant to paragraph 45 of the Referral Notice, referrals of concentrations already notified should normally be limited to those cases which appear to present a real risk of negative effects on competition and trade between Member States and where it appears that these would be best addressed at the Community level. The same applies *a fortiori* when a concentration is not subject to compulsory notification and was not notified on a voluntary basis.
20. One of the categories of cases normally most appropriate for referral under Article 22 of the EC Merger Regulation are cases giving rise to serious competition concerns in one or more market wider than national, or where some of the potentially affected markets to which the main economic impact of the concentration is connected are wider than national. In the present case, the markets concerned by the concentration appear to be at least EEA-wide. Depending on the definition of the affected markets, the concentration may give rise to serious competition concerns for the supply of satellite communication services and specifically in the wholesale market for two-way maritime communication services provided under GMDSS. Therefore the present concentration falls under one of the categories of cases referred to in paragraph 45 of the Referral Notice.
21. Therefore, the present concentration is an appropriate one for referral to the Commission pursuant to Article 22 of the EC Merger Regulation.

IV. CONCLUSION

22. For the above mentioned reasons, the Commission has decided to examine the concentration by which Apax acquires sole control over TSS. This decision is based on Article 22(3) of the EC Merger Regulation.

For the Commission
signed
Neelie KROES
Member of the Commission