COMMISSION DECISION

of 30 April 2003

declaring a concentration to be compatible with the common market and the EEA Agreement

(Case COMP/M.2903 — DaimlerChrysler/Deutsche Telekom/JV)

(notified under document number C(2003) 1409)

(Only the German version is authentic)

(Text with EEA relevance)

(2003/792/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57(2)(a) thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings [1], as last amended by Regulation (EC) No 1310/97 [2], and in particular Article 8(2) thereof,

Having regard to the Commission's decision of 20 December 2002 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations [3],

Having regard to the final report of the Hearing Officer in this case [4],

Whereas:

(1) On 11 November 2002 the Commission received notification of a proposed concentration in accordance with Article 4 of Regulation (EEC) No 4064/89 (the Merger Regulation). The transaction involves the following: the German enterprises, DaimlerChrysler Services AG (DaimlerChrysler Services), a member of the DaimlerChrysler group (DaimlerChrysler), and Deutsche Telekom AG (Telekom) intend to acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of a newly established joint venture, Toll Collect GmbH (Toll Collect), through the purchase of shares. Besides the notifying Parties, the French enterprise, Compagnie Financière et Industrielle des Autoroutes SA (Cofiroute), is also a party to the joint venture, with a 10 % holding.

(2) Having examined the notification, the Commission initially found that the notified transaction fell within the scope of the Merger Regulation and raised serious doubts as to its compatibility with the common market and the EEA Agreement. On 20 December 2002 the Commission accordingly initiated proceedings pursuant to Article 6(1)(c) of the Merger Regulation and Article 57 of the EEA Agreement. Following an in-depth investigation of the case, the Commission has now come to the conclusion that, although the notified proposal has led to the creation of a dominant position as a result of which effective competition is significantly impeded in a substantial part of the common market, the commitments given by the Parties allow the doubts as to the compatibility of the concentration to be removed.

I. THE PARTIES AND THE TRANSACTION

A. The Parties

(3) DaimlerChrysler Services is a subsidiary of DaimlerChrysler, which operates in the financial services and mobility management sectors. Its activities range from financial planning for all DaimlerChrysler vehicle makes to the management of fleets of varied composition. DaimlerChrysler develops, manufactures and markets cars, trucks, buses and diesel engines. In addition, it has holdings in aerospace and armaments companies.

(4) Telekom is a telecommunications undertaking that does business principally in Europe and the USA. It operates, directly or through associated undertakings, in areas such as fixed-line networks and mobile telephony and in the Internet and systems solutions fields.

[1] OJ L 395, 30.12.1989, p. 1 (corrigendum in OJ L 257, 21.9.1990, p. 13).
[2] OJ L 180, 9.7.1997, p. 1.
[3] OJ C 277, 18.11.2003.
[4] OJ C 277, 18.11.2003.

(5) Cofiroute operates various French motorways. In addition, together with its sister company, Société de Construction des Autoroutes du Sud et de l'Ouest, it develops and constructs roads on behalf of the State. Moreover, it provides consultancy services in the development and operation of motorways for enterprises in various countries other than France.

B. **The proposed transaction**

(6) On 12 April 2002 the German law introducing mileage-based charges for the use of motorways by heavy goods vehicles ([5]) entered into force. After that date, a distance-based charge, the truck toll, becomes payable on most federal German motorways by trucks over 12 tonnes.

(7) The truck toll scheme, i.e. the establishment and operation of a system for collecting the toll on German motorways on behalf of the Federal Government, was the subject of a public invitation to tender held by the Federal Ministry of Transport, Construction and Housing on behalf of the Federal Republic of Germany. The contract was awarded to a consortium formed by DaimlerChrysler Services, Telekom and Cofiroute.

(8) DaimlerChrysler Services, Telekom and Cofiroute intend to form a joint venture, Toll Collect. Toll Collect is to establish and operate the system for collecting the truck toll on behalf of the Federal Republic of Germany.

II. **CONCENTRATION**

(9) DaimlerChrysler Services and Telekom are each to have a 45 % holding in Toll Collect, while Cofiroute will have 10 %. […] (*)

(10) […]* The notifying parties consider that this arrangement precludes the view that Cofiroute enjoys joint control. The Commission agrees, given the special economic circumstances surrounding the contractual arrangements governing the present concentration.

(11) Toll Collect will perform on a lasting basis all the functions of an autonomous economic entity. It has adequate financial resources, its own staff, its own technical equipment and its own management and as such will operate independently on the market and separately from its parents.

(12) The fact that the agreement concluded on 25 June 2002 with the Federal Republic of Germany on the collection of the toll for the use of motorways by heavy goods vehicles and the establishment and operation of a system for the collection of the motorway toll from heavy goods vehicles (the Operator Agreement) stipulates that the agreement is to terminate after 12 years and can be extended only for three one-year periods is not a bar to the joint venture being established on a lasting basis. First, under Article 3 of the Joint Venture Agreement, Toll Collect's existence is not subject to any time limit. Secondly, a period of 12 years is sufficient to introduce changes on a lasting basis to the structure of the notifying undertakings.

(13) The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. **COMMUNITY DIMENSION**

(14) The participating undertakings generate an aggregate worldwide turnover of more than EUR 5 billion. DaimlerChrysler and Telekom each have an aggregate Community-wide turnover of more than EUR 250 million. Only Telekom generates more than two thirds of its Community-wide turnover in a single Member State, i.e. Germany. The notified transaction therefore has a Community dimension but does not constitute a cooperation case under the EEA Agreement.

IV. **ASSESSMENT UNDER ARTICLE 2 OF THE MERGER REGULATION**

A. **The Toll Collect system**

(15) From summer 2003 a distance-based road usage charge, the truck toll, will be payable for the use of federal German motorways by trucks with a maximum permissible weight of 12 tonnes or more. The toll is to be collected without interruption of the traffic flow, i.e. collection will be primarily automatic.

(16) Under the system to be established by Toll Collect, onboard units operating with a GPS (global positioning system) receiver and a GSM mobile radio transmitter are to be installed in trucks. The GPS receiver determines a truck's current position and feeds it into the onboard unit. These data are then exchanged between the onboard unit and an application services centre via the GSM mobile radio transmitter, […]*. The centre processes the data, i.e., on the basis of the position as determined and the section of the motorway used, the toll due is calculated and charged to the owner or keeper of the truck.

(*) Parts of the text have been omitted to ensure that no confidential information is published; they are indicated by square brackets and an asterisk.

([5]) Bundesgesetzblatt I, No 23, p. 1234.

(17) The tender documents indicate that, prior to the introduction of the charging system, […]* onboard units will initially be made available. During the first year of operation of the charging system, that figure will be increased to […]* and during the last year of operation it will be increased to […]*. The onboard units will be provided gratis to transport undertakings against a security in the form of a toll credit. The toll credit will be charged on the basis of kilometres travelled. The owner or keeper of the truck will bear the cost of installing the onboard unit.

(18) A manual charging system will also be available in addition to automatic toll collection. This entails the purchase of payment vouchers over the Internet or from machines at filling stations or motorway entrances. The driver is required to fix his intended route in advance and must keep to it during his journey. In such cases an onboard unit need not be installed.

B. **The relevant product market**

(19) The notifying parties contend that the joint venture is to collect the toll on behalf of the Government and consequently will not be in competition with other private service providers, so that no competition can be envisaged and no market affected.

(20) The onboard unit developed within the Toll Collect consortium is equipped with a GPS and a GSM module and is thus in principle capable of collecting and making available data for telematics services. This means that the onboard unit installed for collecting the toll can be used to offer value-added telematics services for the transport industry. According to a press release issued jointly by DaimlerChrysler Services, Telekom and Cofiroute [6], the Toll Collect onboard unit offers the following telematics services:

> 'For example, the following telematics services are available in modules, enabling customers to tailor the system to their needs:
>
> — precise positioning of specific trucks on a screen located back at the truck haulage company,
>
> — the communication of orders or order changes,
>
> — driver status reports to the haulage operator,
>
> — localisation of a broken-down or stolen truck,
>
> — navigation and driver services'.

(21) The notifying parties have already announced publicly that they intend to provide telematics services through this system [7]:

> '"Telematics services we can provide for you in conjunction with Toll Collect cut bottlenecks and enhance capacity utilisation of the transport network", states Dr Klaus Mangold [8]. "This can help to bring about clear improvements in efficiency and savings in costs for the transport business. In addition, the system can make a significant contribution to the protection of the environment."'

(22) On the basis of the notifying parties' public announcements, the Commission understands that the system set up and operated by Toll Collect will have an impact on the development, production and operation of traffic telematics systems.

(23) Traffic telematics is intended to exploit data exchange between a service provider and vehicles in order to enhance traffic information and communications and improve traffic management processes. The transmission routes used are mobile telephone networks and satellite communications systems.

(24) The Commission's investigations have shown that, within traffic telematics systems, a further subdivision is possible between traffic telematics for transport and logistics undertakings and traffic telematics for private customers. This follows *inter alia* from the different nature of the requirements of those groups. On the one hand, transport and logistics undertakings focus mainly on the monitoring and improvement of delivery processes (such as vehicle localisation), cost optimisation (particularly as regards fuel consumption) and the transmission of news, while, on the other, car drivers' requirements are limited by and large to traffic- and safety-related services (route-planning, emergency calls, congestion information, etc.) and entertainment.

(25) This subdivision corresponds, moreover, to the different tasks confronting providers of traffic telematics systems. In the case of car drivers, both hardware and software are designed to provide the information mentioned in the preceding paragraph directly through a centre, while in the case of truck users the services sought not only require different hardware and software but they also require fleet operators to be actively integrated in the information exchange. The operator is the contractual partner of the system supplier, the actual user of the system and the receiver of the information generated in individual trucks. On the other hand, in the case of cars, the contractual partner is the owner or keeper of the vehicle, who at the same time avails himself of the information services provided by the system supplier.

[6] We are the partners of the transport industry, press release dated 20 September 2002, p. 3.

[7] See footnote 6.

[8] Author's note: Chairman of the Management Board of DaimlerChrysler Services AG.

(26) The range of products and services in traffic telematics for transport and logistics undertakings covers hardware, software and services.

(27) The hardware consists of in-vehicle terminal equipment (mobile telematics terminal equipment). The main function of the equipment is to generate positioning and status data on the vehicle via the GPS receiver and to transmit those data over the mobile telephone network or by satellite to a control centre. The centre compiles, evaluates and prepares the data for the user (the fleet operator).

(28) Mobile telematics terminal equipment operates with software capable of positioning and communication, allowing the fleet operator to monitor his fleet. In addition, data can be exchanged with the driver.

(29) A series of services can be provided through mobile telematics terminal equipment. These include fleet management (analysis of vehicle operations, management of vehicle fleets), traffic management (up-to-date traffic information and dynamic route guidance), safety (emergency and breakdown help) and 'infotainment' (travel and route-planning, weather, news).

(30) The operators currently on the market for traffic telematics for transport and logistics undertakings are mostly 'one-stop shops', i.e. suppliers of hardware and software and at the same time providers of traffic telematics services. These are, firstly, truck manufacturers who in some cases themselves act as a one-stop shop and in others cooperate with other, specialist suppliers (e.g. supply of hardware and software by the truck manufacturer, while services are provided by a specialised firm so as to have a convincing, multi-brand presence). Besides DaimlerChrysler Services with its Fleetboard product, systems are offered by, for example, MAN (in cooperation with gedas) with the MAN Telematics system, Volvo with the Dynafleet system, and Scania with the FAS system. Secondly, there are a large number of smaller undertakings which produce hardware and software and provide services, such as Socratec, Minor Planet, protime and datafactory. According to the Commission's market investigation, these undertakings currently achieve some 80 % of their turnover with the sale of hardware and software, the remaining 20 % or so being generated by services. In addition to such one-stop shops, there are now already some pure service providers, such as ADAC, which provides breakdown and roadside assistance services, and pure hardware suppliers who manufacture terminal equipment (inclusive of standard software). The hardware suppliers include not only smaller manufacturers such as EPSa, but also Bosch and Siemens VDO, both of which also provide services.

(31) In the case of most telematics services the necessary data transfer is effected via a GSM network, with the result that such services necessarily involve recourse to the services of mobile operators such as T-Mobile or Vodafone. Some telematics systems provide a one-stop shop on the basis of satellite communications and do not need a mobile network. An example of this is the Qualcomm system.

(32) In defining the market, it must be borne in mind that traffic telematics for transport and logistics undertakings is a developing market which will change radically in the next few years. According to a study that has been carried out, turnover in this segment will increase from EUR 160 million in 2001 to around EUR 4,7 billion in 2009 (the figures relate to Europe) ([9]). This growth of the market may result in undertakings that operate on the market specialising in the manufacture of hardware or the supply of services. However, as 'one-stop shops' currently account for most of the market, it must be assumed that there is a separate relevant market for traffic telematics systems for transport and logistics undertakings comprising hardware, software and services. From the standpoint of the customer (fleet operator), this extends equally to one-stop shops, suppliers of terminal equipment and undertakings providing services.

C. **The relevant geographic market**

(33) In defining the relevant geographic market, it must first be borne in mind that there is no uniform European telematics standard. Telematics equipment fitted in individual vehicles consists mostly of proprietary systems, where the user can make use only of the services provided by the specific telematics system operator or by undertakings allowed to operate by the operators, mostly as 'partners'. The Commission's market investigation showed that telematics terminals open to a number of service providers currently account for only a small part of the market. It also showed that, as a consequence, the telematics market for transport and logistics undertakings must be considered highly fragmented, and many undertakings operating on this market in Germany are purely national operators. This is confirmed by a recent study, which points out that 'the number of suppliers in the retrofit market is diverse both across countries and within them, in other words it is highly fragmented' ([10]). This study also states that retrofitted telematics systems account for over 90 % of all systems sold in Europe in 2001 ([11]).

([9]) Frost & Sullivan, *European Commercial Vehicle Telematics Markets*, 2002, pp. 2-27 to 2-29.

([10]) See footnote 9, op. cit., pp. 3–17.

([11]) See footnote 9, op. cit., pp. 3–9, 3–12, citing a total of 105 000 retrofitted systems as against approximately 8 000 systems sold by truck manufacturers.

(34) The situation of the mostly small and medium-sized undertakings that offer to retrofit telematics systems is somewhat different from that of truck manufacturers acting as original telematics equipment manufacturers or companies like Qualcomm, which offers a satellite-based telematics system worldwide. While these undertakings in principle offer standard telematics platforms for the whole of Europe, there are major differences in the products they offer in the various Member States. Qualcomm has entered into partnerships with hardware and software manufacturers in the various States to enable it to adapt its fleet management product to national circumstances. For the same reason, the undertakings importing Scania vehicles into Germany and the Netherlands have entered into partnerships with the service provider gedas, a Volkswagen subsidiary, which are confined, however, to the abovementioned two countries. DaimlerChrysler's offer in the United Kingdom is based above all on VeMIS, a company acquired in 2000, whereas in Germany Fleetboard is the key company. According to the Commission's market investigation, a fundamental difference in national requirements is that the telematics systems must be adapted to the shipment programmes that manage freight handling, freight invoicing and transport planning. As these programmes are offered by a large number of different software houses and differ greatly from country to country, including Germany, in their capacity as users of telematics systems, fleet operators expect such systems to be adapted to the characteristics of whichever shipment programme they are using.

(35) The different languages in the Member States are a further impediment to transnational marketing of telematics systems, as the systems must be adapted to them. Such linguistic customisation becomes even more crucial when telematics systems are combined with a particular shipment programme. One study sees the language differences in Europe as a substantial barrier to the transnational marketing of telematics systems, particularly in connection with the application of voice recognition technologies and the provision of localisation services ([12]).

(36) Moreover, where telematics services use GSM as a communications channel, heavy roaming charges are a major obstacle to the provision of standard telematics services in the various Member States.

(37) In the light of these factors, it can be considered that the market for traffic telematics systems for transport and logistics undertakings affected by the proposed concentration comprises the territory of Germany.

([12]) See footnote 9, op. cit., pp. 2-32.

D. **Competition assessment**

(38) The proposed concentration raises significant competition law concerns with regard to the commercial exploitation, apart from toll collection, of the infrastructure to be established and operated by Toll Collect. It is to be expected that the concentration will place DaimlerChrysler in a dominant position on the market for traffic telematics systems for transport and logistics undertakings in Germany.

1. *The establishment of the Toll Collect platform for traffic telematics for transport and logistics undertakings*

1.1. The concentration links the leading German truck manufacturer, which is also a leading supplier of traffic telematics systems, with one of the leading German mobile communications companies, two operators enjoying a prominent initial position in the delivery of traffic telematics services

(39) DaimlerChrysler is by far the largest truck manufacturer in Germany. Of the 960 000 trucks registered in Germany, half are Mercedes-Benzes ([13]). It also offers a traffic telematics system for trucks under the Fleetboard brand and claims to be a leading provider of mobility and telematics services ([14]).

(40) Telekom is a leading German telecommunications provider. A press release describes Telekom's contribution to the Toll Collect consortium as follows:

> 'Collaboration between our group divisions, T-Mobile, T-Online, T-Com and T-Systems, provides us with an integrated product portfolio that brings together experience in the fields of telecommunications and information technology and will enable us to roll out the truck toll system successfully' ([15]).

(41) The Parties mentioned above set up a consortium together with Cofiroute in order to participate in the call for tenders at European level for a collection system for the German truck toll.

([13]) See footnote 6, op. cit., p. 4.
([14]) Press release on CeBIT 2002.
([15]) See footnote 6, op. cit., p. 1.

(42) The consortium has developed a system which, through an onboard unit with integrated GPS and GSM technologies, enables the statutory tax to be collected and in addition has a number of commercial applications ([16]). However, the consortium's telematics approach was not prescribed in the Federal Republic's call for tenders; the award was made on the basis of the specification of facilities that are functional and open as to technology. The functional description of the toll collection system required that, in addition to manual collection, there should be an automatic, in-vehicle collection facility available. This left tenderers the choice of the technology to be adopted. Thus the unsuccessful AGES consortium, formed by Vodafone and a number of petrol companies including Shell, offered a 'telematics-neutral' approach to the manual and automatic collection of the toll. The system developed and offered by the consortium formed by the notifying parties and Cofiroute is much more advanced than required by the call for tenders for the system for collection of the statutory toll.

1.2. Specific plans have already been prepared to apply the onboard unit provided free for toll collection to traffic telematics for transport and logistics undertakings

(43) All trucks over 12 tonnes maximum permissible weight are liable to the toll. However, with the dual system for toll collection there is no obligation to install an onboard unit in every truck. Nevertheless, for practical reasons, this will be done in most trucks that use federal German motorways regularly, especially as the unit is available free.

(44) The system to be set up by Toll Collect will create a platform that DaimlerChrysler Services intends to use for commercial telematics systems for transport and logistics. It was indicated in a press release for the IAA Commercial Vehicles Show that ([17]):

> 'Under the project name "Truckmatix", DaimlerChrysler Services Mobility Management GmbH is developing a broad range of telematics services for shipping companies, fleet managers and dispatchers. These services can be offered on the basis of the hardware used for Toll Collect once the German Government has created the requisite framework. They serve to optimise shipping operations on toll roads as well as enhance the efficiency of business processes and boost capacity utilisation. Moreover, fleet managers have easy access to Truckmatix via computer and the Internet. […]*
>
> The company intends to offer Truckmatix services in either a "Compact" or a "Comfort" module, which customers will be able to tailor according to their own requirements. Given the simple system infrastructure, which necessitates no additional capital expenditure on hardware, all companies will be able to finance the broad selection of services offered. These include a positioning function for specific trucks, the communication of orders or changes to orders, status reporting by drivers to the shipping company, localisation of a broken-down or stolen truck as well as other navigational and driver-related services.'

(45) In a publicity brochure produced by DaimlerChrysler Services Mobility Management GmbH (*Telematics for all: Truckmatix*), it is indicated that the electronic toll collection system of Toll Collect, which is applicable worldwide, can now provide cheap access to telematics for small and medium-sized enterprises. The brochure states:

> 'A simple, uniform telematics platform exists, based on the in-vehicle equipment for the electronic collection of the truck toll. … Truckmatix forms the ideal supplement for the toll collect system; the "basic" dispatch service packages can be used direct from the in-vehicle equipment for collecting the truck charge. This provides undertakings with a uniform system for all vehicles in their fleet that is compatible with other characteristic haulage applications. This sets a new standard with direct advantages for transport undertakings and their customers' ([18]).

(46) DaimlerChrysler Services has included the use of the Toll Collect system. […]*

1.3. It can be assumed that, as required under the Operator Agreement, the Parties will receive authorisation from the Federal Republic of Germany for the provision of traffic telematics in the form of value-added services

(47) Value-added services did not form part of the call for tenders for the toll collection system. However, the Operator Agreement provides that additional services

([16]) In this connection a press release issued jointly by DaimlerChrysler Services and Cofiroute states that: 'The main reason, though, why we took part in the tender was because our system is the only one to offer operators in the freight-haulage industry the potential to work far more effectively, … DaimlerChrysler is thereby further boosting its standing as a partner of the transport industry'. See footnote 6, op. cit., p. 1.

([17]) *DaimlerChrysler Services showcase innovative mobility and telematics services*, 10 September 2002, pp. 2 and 3.

([18]) DaimlerChrysler Services Mobility Management (*Telematics for all: Truckmatix*).

may be delivered if authorised by the Federal Government. In its information brochure of 17 December 1999 on participating in the competition for the truck toll system, Germany already suggested that there might be interest in using the toll collection system for value-added services, stating that: 'The contracting authority is considering allowing telematics services and other services for third parties (value-added services) to be incorporated in the toll system. Whether such services will be allowed will be for the contracting authority to decide at a later date.'

(48) On the basis of the official announcements by DaimlerChrysler Services referred to in recitals 44 and 45, it can be assumed that the Parties are counting on being able to use the Toll Collect platform to provide value-added services over and above road toll collection. In an interview, Michael Rummel, head of DaimlerChrysler Services Mobility Management, said in answer to the question whether value-added services might be offered and, if so, under what conditions, that: 'In the call for tenders for the toll collection system, value-added services were not mentioned. This does not mean, however, that it is forbidden to develop services based on the onboard unit. We are working flat out to reach a settlement with the State in good time before the introduction of the toll …' ([19]).

(49) It is generally acknowledged that telematics services help to reduce bottlenecks in the transport network and hence optimise utilisation of the infrastructure. Not only does this benefit the transport industry, but it also contributes to a cleaner environment. The creation of a broad platform for the provision of additional traffic telematics services must therefore be deemed to be in the general interest from the point of view of both the traffic infrastructure and the environment and hence to be desirable. It can thus be assumed that, provided toll collection works smoothly in practice, the Federal Government will raise no objections of principle to what is a generally desirable authorisation of value-added services using the Toll Collect infrastructure.

(50) It is therefore to be expected that the Parties will receive the authorisation needed under the Operator Agreement to provide traffic telematics in the form of value-added services.

1.4. The provision of the onboard unit free of charge by Toll Collect will result in a dominant platform being created for traffic telematics for transport and logistics undertakings in Germany

(51) The provision of telematics onboard units free of charge to those liable to pay tolls will result in the vast majority of trucks equipped with one of Toll Collect's onboard units using these also for traffic telematics services. The installation, for a consideration, of a second onboard unit for the use of traffic telematics capacity provided by competing suppliers is, however, from the standpoint of the transport industry, not a viable economic proposition.

(52) According to DaimlerChrysler estimates, the number of trucks liable to pay tolls is between […]* million, of which between […]* and […]* are foreign vehicles. The number of toll-paying vehicle-kilometres is put at […]* billion a year, […]* % of which is accounted for by foreign vehicles ([20]).

(53) Even if, as indicated in recital 43, there is no obligation to install the onboard unit, it is to be expected that, for practical reasons, both German and foreign fleet operators will to a large extent install the free onboard unit. The notifying parties themselves assume that onboard units for recording toll data will be installed in 70 to 80 % of trucks in Germany ([21]). It is also to be expected that foreign trucks travelling frequently through Germany will use the onboard unit. According to the tender documents, as indicated in recital 17, […]* onboard units are to be fitted in the first year of operation of the charging system and the number of installed onboard units is set to rise to […]* by the last year of operation.

(54) At the same time, it is unlikely that the vast majority of the trucks already fitted with a telematics-compatible onboard unit will fit another telematics terminal in the vehicle. The Commission's market investigation showed that the simple announcement by DaimlerChrysler that it would be possible to make use of telematics services in future through the Toll Collect system without any further hardware costs caused demand for telematics solutions on the market to slump. The reluctance of fleet operators to bear the cost of further hardware is due in particular to the tight margins within which transport undertakings operate. One study concludes that, given the small margins, the costs of telematics systems are currently prohibitive for many fleet operators, particularly small regional operators ([22]). If fleet operators can use telematics services through Toll Collect without having to pay for any further hardware, it is likely that they will be even less willing to pay for telematics terminals.

([19]) VerkehrsRundschau 46/2002, p. 17.

([20]) DaimlerChrysler, *Erfassungssysteme für die Lkw-Maut*, 2 December 2002, p. 6.

([21]) See footnote 6, op. cit., p. 1.

([22]) See footnote 9, op. cit., p. 2-25.

(55) The number of telematics terminals already fitted in trucks is relatively small when compared with the Toll Collect onboard units that will have to be fitted. According to market estimates, there are currently about 23 000 to 25 000 telematics terminals fitted in German trucks equipped for telematics services by means of a two-way communication system between the truck and a services centre like that used by the Toll Collect system.

(56) It can accordingly be assumed that the Toll Collect system will cover almost all heavy goods vehicles in Germany. As transport undertakings are likely to be extremely reluctant to install another telematics terminal in their vehicles in addition to Toll Collect, Toll Collect is likely to become the dominant platform for traffic telematics for transport and logistics undertakings in Germany.

2. *Foreclosure of the future market for traffic telematics systems for transport and logistics undertakings*

(57) The creation of a dominant platform for traffic telematics for transport and logistics undertakings has various effects depending on whether services or equipment are involved.

2.1. Outside providers of traffic telematics services will be dependent on access to the Toll Collect platform

(58) As a result of the creation of a dominant platform for traffic telematics services, providers of traffic telematics services for transport and logistics undertakings in Germany will in future be heavily dependent on use of the Toll Collect onboard unit. The Toll Collect system is a closed, proprietary system which makes no provision for use by third parties, while the intellectual property rights in it are held by the joint venture and the notifying parties. For the function of toll collection, this can be deemed reasonable as third parties do not need to have access to the system and the function must be protected against tampering.

(59) The position is different when it comes to the provision of traffic telematics services. As already stated, it must be assumed that Toll Collect will become the dominant platform for traffic telematics systems for transport and logistics undertakings in Germany. Providers of traffic telematics services for transport and logistics undertakings in Germany will therefore be heavily dependent in future on use of the Toll Collect platform. With Toll Collect designed as a closed, proprietary system, the joint venture gives DaimlerChrysler control over access to the future market for traffic telematics systems for transport and logistics undertakings. DaimlerChrysler can thus offer its own traffic telematics services via the platform and at the same time determine which direct competitors will be active on the market for traffic telematics systems for transport and logistics undertakings, and under what conditions. Such a strategy seems all the more likely as the market for traffic telematics systems for transport and logistics undertakings can be expected to enjoy huge growth over the next few years ([23]). The joint venture [could]* give DaimlerChrysler control over the traffic information generated by the Toll Collect system, and this information could be used by DaimlerChrysler as a basis for its own traffic telematics services.

2.2. The Toll Collect platform will lead to the disappearance of suppliers of telematics systems currently on the market

(60) Traffic telematics systems for transport and logistics undertakings is a very young market which is only at its early developmental stage. Accordingly, as indicated in recitals 30 and 31, a large number of different suppliers are currently active in this area, offering a wide variety of traffic telematics systems, hardware, software and services. None of these suppliers has so far succeeded in achieving with its telematics terminal equipment a degree of market penetration such that its equipment is likely to become the standard hardware solution.

(61) Toll Collect's onboard unit, on the other hand, will, as DaimlerChrysler Services announces (see recital 44), be capable of integrating from both a software and a hardware point of view all prerequisites for the telematics activity even without the need for further technical measures. With the help of the Toll Collect onboard unit, the following value-added services are, according to the Parties, technically feasible: (1) localisation services, which can be tailored to fleet monitoring, route planning or area monitoring; and (2) text services, whereby written, pre-defined information can be exchanged between the value-added service provider and the onboard unit.

(62) The traffic telematics services that are possible via the Toll Collect onboard unit do not cover all the services currently offered using the telematics terminal equipment already on the market. However, they do constitute core functions which are also part of the systems currently available on the market. The prices of the

([23]) See the study submitted by the Parties entitled *European Telematics Industry*, Commerzbank, 8 May 2001, p. 3, in which the market potential in Europe up to 2005 is estimated at EUR 2 billion; the Frost & Sullivan study referred to in footnote 9, pp. 2-27 to 2-29, puts the market potential in Europe at around EUR 4,7 billion in 2009.

systems on the market vary. According to the Commission's enquiries, traffic telematics systems — hardware and software — cost, per vehicle, between EUR 1 000 and EUR 2 500 depending on their degree of sophistication. To this must be added the monthly cost of the services availed of as well as communication charges.

(63) As already stated in recital 51, the Toll Collect onboard unit will be made available free of charge. It is therefore to be expected that fleet operators whose trucks have already been equipped by Toll Collect with an onboard unit will not acquire any further telematics terminal equipment for the use of additional traffic telematics offerings of competing system suppliers over and above the Toll Collect onboard unit.

(64) Enquiries carried out by the Commission in this connection have established that fleet operators considering the procurement of traffic telematics systems and the related capital expenditure are now awaiting the free Toll Collect system. Consequently, in the run-up to the introduction of the Toll Collect onboard unit, traffic telematics system suppliers on the market are having considerable difficulty winning new customers for their products and are therefore in danger of economic annihilation. It must be assumed that this trend will grow even stronger once traffic telematics services are actually available via the Toll Collect onboard unit.

(65) The ousting of other service and system suppliers will further intensify if the functions of the Toll Collect onboard unit are extended in a second-generation unit. In an article in VerkehrsRundschau, it is stated in connection with a planned second-generation unit that 'Rummel [Author's note: Michael Rummel, head of DaimlerChrysler Services Mobility Management] has already announced for 2004 the next generation of onboard unit. Onboard Unit II integrates numerous value-added services into a single device, toll payment being only one function among many. A slogan has already been invented: "Maut und Mehr" [The toll and more ...]*' ([24]). After such an extension of the functions of the Toll Collect onboard unit, it will be even harder for alternative suppliers of traffic telematics systems to induce customers to buy an alternative system.

E. **Conclusion of the competition assessment**

(66) The Commission accordingly concludes that the concentration will lead to the creation of a dominant position on the part of DaimlerChrysler through the Toll Collect joint venture on the market for traffic telematics systems for transport and logistics undertakings in Germany, as a result of which effective competition will be significantly impeded in a substantial part of the common market.

V. **COMMITMENTS FROM DAIMLER CHRYSLER, DEUTSCHE TELEKOM AND COFIROUTE**

(67) In order to remove the Commission's doubts concerning the market for telematics systems and services for transport and logistics undertakings in Germany, DaimlerChrysler Services, Deutsche Telekom and Cofiroute have offered the following commitments of 3 April 2003, the full wording of which can be found in the Annex to this Decision.

(68) DaimlerChrysler Services, Deutsche Telekom and Cofiroute undertake as follows:

— they will set up a central telematics gateway through which providers of value-added services will be granted access to the basic functionalities and data of the Toll Collect onboard units; the telematics gateway will be operated by an independent company which will not itself provide value-added services unless DaimlerChrysler Services, Deutsche Telekom and Cofiroute together hold less than 50 % of the voting rights in the shareholders' meeting of the telematics gateway company or it is otherwise ensured that these three companies acting together are not able to exert any dominant influence over the telematics gateway company,

— they will develop a GPS interface for onboard units through which third-party providers of value-added services are able to make use of the GPS functionalities of the onboard units (including first-generation equipment),

— they will develop a module containing parts for the hardware and software necessary for toll operation so that third-party equipment can be developed and produced by which tolls can be collected via a link to a toll-collection module, to provide back-up for adjustments to third-party equipment and to issue the necessary approvals for the use of third-party equipment,

— they will not allow the use of the onboard unit of the Toll Collect system save with the Commission's approval, which will only be granted if the Parties have established a functioning interface for the GPS functionality of the onboard unit and have enabled interested third parties to develop their own equipment with which tolls can be collected via a link to the toll module developed by the Parties.

([24]) See footnote 19, op. cit., p. 18.

VI. COMPETITION ASSESSMENT OF THE NOTIFIED CONCENTRATION TAKING ACCOUNT OF THE COMMITMENTS OFFERED

(69) The commitments described above are sufficient in the Commission's view to remove the said competition doubts in an appropriate fashion.

(70) The Parties' undertaking to develop a toll module for third-party equipment, to provide back-up for the adjustment and development of third-party equipment in line with the toll module and to grant the necessary approvals for the use of equipment will make it possible for third parties to manufacture their own telematics equipment with a toll function. Such development may begin once the Parties have made an interface available. For the purposes of the defined interface, a toll module will be developed by the Parties or the joint venture in parallel with the development of third-party equipment. The development of equipment by third parties and its adjustment to the Parties' toll module developed in parallel is secured by the listing of the various development stages to be performed by all sides and by the back-up provided by an independent body of experts. On the matter of costs, the German Federal Ministry of Transport, Construction and Housing has undertaken vis-à-vis the Commission to ensure that the costs-related position of third-party providers of telematics equipment with a toll module is no different from that of the operators of the truck toll system.

(71) It is likely that the development and manufacture of third-party equipment with which tolls can be collected in connection with a toll module will be taken up by truck manufacturers and their equipment suppliers. On this basis, and in accordance with the findings of the Commission's market test, it should be assumed that granting third parties the possibility of integrating a toll module into their own equipment largely limits the chances of Toll Collect becoming the dominant platform and acquiring the gatekeeper function on the market for telematics systems for transport and logistics undertakings in Germany.

(72) Moreover, the Parties have undertaken to open up the toll collect onboard unit so as to enable third-party providers of value-added services to make use of the GPS functionality of the onboard units. The ability to use this GPS functionality enables third parties to provide their own telematics equipment without such a function and to avoid the costs they would otherwise have had to incur. According to the Commission's market investigation, the cost-saving in question amounts to some EUR 150 to 200 per unit. Despite the need to integrate further terminal equipment in the vehicle, this puts third parties in a position to compete on telematics services offered on the basis of the Toll Collect system. An interface of this nature thus further limits the anticipated dominance of Toll Collect as a telematics platform.

(73) In addition, telematics services may themselves be offered on the Toll Collect onboard unit. The Parties undertake to grant providers of value-added services access to the basic functionalities and raw data of the onboard units via a central telematics gateway. This gateway is to be operated by a telematics gateway company which is open to other shareholders and will only be operational if DaimlerChrysler, Deutsche Telekom and Cofiroute (together) do not have any control over it. When accessing the gateway, providers of telematics services will not be technically, commercially or otherwise discriminated against. At the same time, the Parties undertake to use the Toll Collect system to provide value-added services solely via the telematics gateway. In addition to a shareholders' meeting and a management, the telematics gateway company will have an advisory board designed to serve as a pluralistic body with representatives of associations of firms active in the telematics industry. In addition to deciding on complaints from providers of value-added services, the advisory board will be responsible for monitoring the management with regard to decisions concerning conditions of access, technical standards and the company's general terms and conditions.

(74) Consequently, if telematics services are offered via Toll Collect onboard units, the central service hub via which these services are provided will be neutralised with regard to the Parties. On the one hand, providers of value-added services will obtain non-discriminatory access to the telematics gateway irrespective of whether they are shareholders of the gateway company or not. On the other hand, the gateway company will not be controlled by the Parties. The company's neutral structure will be enhanced by the establishment of a pluralistic advisory board to deal with essential issues relating to the supply and future development of telematics services.

(75) The activity of the telematics gateway is restricted by the fact that the toll-collection function takes precedence within the Toll Collect system and that the Parties have established arrangements to guarantee the security of toll collection. Since this is true for all those involved, i.e. for the Parties, third-party shareholders and providers of telematics services and, to a certain extent, follows from the sharing of Toll Collect onboard units for the provision of value-added services, these restrictions are acceptable to the Commission.

(76) An essential element of the Parties' commitments is that it will not be possible to provide telematics services via the onboard unit unless this has been approved by the Commission. The Commission will not approve the provision of telematics services via the telematics gateway unless a functioning interface to the GPS functionality of the onboard unit is available and the Parties have made it possible for interested third parties to

develop their own equipment capable of collecting tolls by means of a link to a toll module. The form taken by the commitments means that the same conditions of competition will apply to all firms active on the market right up to the realisation of the equipment interfaces and the toll module and that the telematics gateway cannot become established as the dominant platform.

(77) Overall, the commitments ensure that the market for telematics systems for transport and logistics undertakings in Germany will remain open and that the Parties and third parties will continue to enjoy equal conditions of competition. The Commission has therefore come to the conclusion that, having regard to the commitments offered by the Parties, the notified concentration will not lead to the creation of a dominant position on the part of DaimlerChrysler through the joint venture on the market for telematics systems for transport and logistics undertakings in Germany.

VII. **CONDITIONS AND OBLIGATIONS**

(78) Under the first sentence of the second paragraph of Article 8(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.

(79) Measures that give rise to a structural change in the market must be made subject to conditions, while the implementing steps which are necessary to achieve this result constitute obligations on the Parties. Where a condition is not fulfilled, the Commission decision declaring the merger to be compatible with the common market is void. Where the Parties commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(5)(b) of the Merger Regulation; the Parties may also be subject to fines and periodic penalty payments under Articles 14(2)(a) and 15(2)(a) of the Merger Regulation ([25]).

(80) In accordance with this basic distinction, the Commission decision should be made subject to the condition of full compliance with those commitments given by DaimlerChrysler and Deutsche Telekom, relating to their undertakings not to supply value-added services via the Toll Collect system without the Commission's consent and to use the Toll Collect system for purposes of providing value-added services only via the telematics gateway company. The Commission's consent to the providing of value-added services via the Toll Collect system will be given only if a GPS interface for the onboard unit and a toll module for incorporation in third-party equipment are developed. These commitments serve to prevent the emergence of a dominant position on the part of DaimlerChrysler on the German market for traffic telematics systems for transport and logistics undertakings and the emergence of a dominant platform. By contrast, all other aspects of the commitments, in particular the details concerning the establishment of the telematics gateway company, should be made the subject of obligations since they are merely intended to ensure the implementation of the above-mentioned conditions.

VIII. **CONCLUSION**

(81) For these reasons, it can be assumed, provided that the commitments entered into by DaimlerChrysler Services and Deutsche Telekom are complied with in full, that the concentration will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it. Provided the commitments set out in the Annex are complied with in full, the concentration should thus be declared compatible with the common market and the EEA Agreement pursuant to Articles 2(2) and 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.

(82) This Decision is without prejudice to the decision which the Commission is required to take in connection with the compatibility with Community law of the German rules on the imposition of a road charge on German motorways,

HAS ADOPTED THIS DECISION:

Article 1

The notified concentration by which DaimlerChrysler Services AG and Deutsche Telekom AG are to acquire joint control of Toll Collect GmbH within the meaning of Article 3(1)(b) of Regulation (EEC) No 4064/89 is hereby declared compatible with the common market and with the EEA Agreement.

([25]) See paragraph 12 of the Commission Notice on remedies acceptable pursuant to Regulation (EEC) No 4064/89 and Commission Regulation (EC) No 447/98 (OJ C 68, 2.3.2001, p. 3).

Article 2

Article 1 shall apply on condition that the commitments offered by DaimlerChrysler Services AG and Deutsche Telekom AG as set out in paragraphs B I and B II 15 of the Annex are complied with in full.

Article 3

This Decision is issued subject to the obligation on Daimler-Chrysler Services AG and Deutsche Telekom AG to comply in full with the other commitments entered into, as set out in the Annex.

Article 4

This Decision is addressed to:

DaimlerChrysler AG
Epplestraße 225
D-70546 Stuttgart

Deutsche Telekom AG
Friedrich-Ebert-Allee 140
D-53113 Bonn

Done at Brussels, 30 April 2003.

For the Commission
Mario MONTI
Member of the Commission

ANNEX

The full original text of the conditions and obligations referred to in Articles 2 and 3 may be consulted on the following Commission website:

http://europa.eu.int/comm/competition/index_en.html