II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 26 April 2006

declaring a concentration compatible with the common market and the functioning of the EEA Agreement

(Case COMP/M.3916 — T-Mobile Austria/tele.ring)

(notified under document number C(2006) 1695)

(Only the German version is authentic)

(2007/193/EC)

On 26 April 2006 the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings [1]*, and in particular Article 8(2) of that Regulation. A non-confidential version of the full Decision can be found in the authentic language of the case and in the working languages of the Commission on the website of the Directorate-General for Competition, at the following address: http://ec.europa.eu/comm/competition/index_en.html*

SUMMARY OF THE DECISION

(1) This case concerns a proposed operation pursuant to Article 4 of Regulation (EC) No 139/2004 (the Merger Regulation), whereby the undertaking T-Mobile Austria GmbH (T-Mobile, Austria), part of the German group Deutsche Telekom AG (Deutsche Telekom), acquires, within the meaning of Article 3(1)(b) of the Council Regulation, control of the whole of the undertaking tele.ring Unternehmensgruppe (tele.ring, Austria).

(2) T-Mobile and tele.ring operate mobile networks in Austria and are also active on related end-customer and wholesale markets.

(3) The proposed transaction involves T-Mobile acquiring all the shares in tele.ring.

(4) The market investigation has revealed that in the Austrian market for the provision of mobile telecommunication services to end customers the concentration would raise serious impediment to effective competition mainly through unilateral effects. The undertakings proposed by the parties, however, are suitable to remove the competition concerns.

1. **The relevant product markets**

(5) The market investigation to define the relevant product markets confirmed that as to the market for the provision of mobile telecommunication services to end customers that there is a single market for the provision of such services to end customers and that no further distinction needs to be made, for instance by customer type, voice telephony and data services, 2G and 3G networks.

(6) As to the wholesale of termination services, the network of each operator represents its own single market, as viewed by the Commission in previous decisions and reflected in the Commission's Recommendation 2003/311/EC [2] on relevant product and service markets within the electronic communications sector.

[1] OJ L 24, 29.1.2004, p. 1.

[2] OJ L 114, 8.5.2003, p. 45.

(7) With respect to wholesale international roaming services, both companies offer their customers international roaming services and hence they have concluded international roaming agreements with foreign mobile telephony operators. The different Austrian mobile telephony networks are in competition with each other for both inbound and outbound traffic.

2. **The relevant geographic markets**

(8) The market investigation to define the relevant geographic markets confirmed that the geographic scope with respect to the provision of mobile telecommunication services to end customers, likewise the wholesale of termination services and the wholesale of international roaming services is national, i.e. limited to Austria.

3. **Affected markets and competition analysis**

(9) The notified concentration affects the market for the provision of mobile telecommunication services to end customers, on which four companies currently operate mobile telephony networks based on 2G/GSM and 3G/UMTS technology and one company, Hutchison (H3G), only on 3G/UMTS technology. The five network operators offer their customers a wide range of services. Post-transaction, the new entity T-Mobile/tele.ring would increase their market share to a level (about [30–40] (*) % ([1] depending on turnover or customers) similar to the incumbent Mobilkom, leaving the other two companies number three and four (with a market share of around [10–20] * % for ONE and [0–10] * % for H3G respectively). Independent service providers play a negligible role in the Austrian market. Also YESSS!, the discount brand of ONE, has only a very limited market share and cannot be considered as competing on the same level as the other operators since it offers only a limited range of services.

(10) The proposed transaction would give rise to non-coordinated effects, even though T-Mobile would not become the largest player after the merger. From the analysis of the market shares it can be concluded that, for the last three years, tele.ring has played by far the most active role on the market in practising successfully a price aggressive strategy. It has thereby increased its market share substantially while the market shares of the other operators have been largely flat or even slightly decreasing. Calculation of the HHI revealed that the level of concentration is already high and it would significantly increase post-transaction. While T-Mobile argues for cost efficiencies, the Parties were unable to demonstrate that these would be for the benefit of consumers.

(11) Analysing the switching rates, it was found that half of all switching customers switched to tele.ring and furthermore much more than half of the customers who left T-Mobile and Mobilkom switched to tele.ring. This analysis confirms that tele.ring has exerted significant competitive pressure on both large operators.

(12) An analysis of the average per-minute price on the basis of all the tariffs applied by the various network operators, using data from the Austrian regulator and the consumer association AK Wien, has shown that tele.ring has been the most active player in the market. Its prices were among the lowest thereby exercising competitive pressure on T-Mobile and Mobilkom in particular […] *. H3G closely followed the pricing of tele.ring, whereas ONE as third player in the market was rather matching with the larger players T-Mobile and Mobilkom.

(13) In general terms, the incentive for an operator to attract new customers to an existing network by making aggressive price offers is determined by the size of its customer base. In its decision whether or not to price aggressively any operator has to balance the expected gains by additional revenues from new customers attracted by lower tariffs against the risk of a decreasing profitability of its existing customers to whom the price reduction cannot be refused, at least in the medium and long term. Generally speaking, that risk of a loss of profitability is all the higher the larger the existing customer base of an operator is. Consequently, tele.ring has started with a small customer base that it had to increase through an aggressive pricing policy to gain the necessary numbers. By contrast, neither Mobilkom nor T-Mobile has made any such move in the past by making particularly aggressive offers.

(14) A further factor affecting prices is network structure and network capacity. While no major differences in the nationwide network coverage exist for Mobilkom, T-Mobile, ONE and tele.ring, however, difference emerges in relation to H3G, whose network currently only covers around 50 % of the Austrian population. To cover the remainder, H3G depends on a national roaming agreement with Mobilkom. Hence, H3G cannot achieve economies of scale outside its own network, and this has consequently implications on its current pricing.

(15) Post-transaction, T-Mobile intends to make […] * of tele.ring's sites and […] *. The transaction therefore would not only […] *, but a benchmark analysis has shown that […] *. Nevertheless, […] * in available capacity might have a negative impact on competition.

(*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

([1]) Belonging to Telekom Austria.

(16) However, none of the remaining competitors appeared to be in a position to take over tele.ring's role after the merger. H3G could until now not be regarded as a fully-fledged network operator since it has only limited network coverage and it depends on the national roaming agreement with Mobilkom. Furthermore, the company is restricted by the limited 3G/UMTS frequency spectrum currently available to it. ONE has with its main brand so far no track record for aggressive pricing. Recently it has launched its discount brand YESSS! which offers lower tariffs but only a limited range of mobile telephony services and can therefore not be considered as competing on the same level as the other operators.

(17) While the parties claim that tele.ring's strategy of aggressive pricing would come to an end soon, relevant internal documents from tele.ring indicate […] *. In their replies to the SO the parties further argue that […] *. However, […] * have had no effect on tele.ring's price aggressive offers.

(18) In the wholesale market for call termination, the proposed transaction would not lead to competition concerns, neither at horizontal nor at vertical level. There is no overlap since each network constitutes a separate market and there is no risk of input foreclosure, in particular as the pricing of these services is regulated by the Austrian regulator and their price glides on a downward path reaching a bottom line in 2009 applicable to all operators.

(19) With respect to the wholesale of international roaming, no competition concern would arise from the proposed transaction since the parties but also their competitors have concluded multiple international roaming agreements that serve their customers in the provision of outbound and inbound traffic. Although pre-selection of roaming partners appears to happen, none of the Austrian network operators have reached a substantial position in international roaming in Austria.

Conclusion

(20) It therefore can be concluded that the proposed concentration in its notified form is likely to lead to a significant impediment of effective competition in the Austrian market for the provision of mobile telecommunication services to end customers.

4. **Commitments offered by the Parties**

(21) In order to address the aforementioned competition concerns in the market for the provision of mobile telecommunication services to end customers, the Parties have submitted the undertakings described below.

(22) In summary, the commitments provide that T-Mobile sells two 5 MHz 3G/UMTS frequency blocks, which are currently licensed to tele.ring, to competitors with smaller market shares, subject to approval by the Austrian Regulator and the Commission. At least one frequency package will go to H3G [1]. Furthermore, T-Mobile will dispose of a large number of tele.ring's mobile communication sites, while only approximately [10–20] * % of tele.ring's sites will remain within T-Mobile for the integration of the tele.ring customers. About […] * of tele.ring's sites will go to H3G and […] * sites will go to ONE if ONE is interested. Furthermore, H3G will receive from T-Mobile […] *.

(23) T-Mobile and H3G have concluded a legally binding 'Term Sheet' on 28 February 2006 and have agreed on the essential terms for the transfer of the frequency package and the mobile sites […] *.

5. **Assessment of the commitments submitted**

(24) As confirmed by the results of the market test conducted by the Commission, these undertakings can be considered sufficient to properly remedy the competition concerns in the market for the provision of mobile telecommunication services to end customers.

(25) It can therefore be concluded that, on the basis of the commitments submitted by the Parties, the notified concentration will not lead to a significant impediment of effective competition in the common market or in a substantial part of it as to the market for the provision of mobile telecommunication services to end customers. Hence, the proposed concentration shall be declared compatible with the common market pursuant to Article 8(2) of the Merger Regulation and to Article 57 of the EEA Agreement.

[1] See recital 24.