On 15th January, 1999, Vodafone, and AirTouch, leading UK and US mobile telecommunications companies, announced that they planned to merge, despite competing interest in AirTouch from Bell Atlantic and MCI WorldCom. The merger came into effect on 30th June, 1999, creating the world’s largest mobile telecommunications company with a combined market capital of approximately £77 billion (US$122 billion) and that operates, either itself or through associates or investments, in 23 countries.

The merger was structured to overcome a number of tax and practical issues that arise in a large UK/US merger.

**Structure**

Vodafone (renamed Vodafone AirTouch) is the parent company of the new group. AirTouch shareholders were offered ordinary shares in the UK parent in the form of Vodafone AirTouch American Depositary Receipts (ADRs) plus $9 in cash for each of their shares. As a consequence, Vodafone shareholders owned just over 50%, and AirTouch shareholders just under 50%, of the enlarged equity share capital of Vodafone AirTouch immediately following the merger. As indicated below, it was important for US tax purposes that former AirTouch shareholders (which were US persons) did not hold more than 50% of the merged company immediately following the merger.

**US tax**

In the US, target shareholders incur a taxable gain when accepting an offer for their shares unless certain exceptions apply (see inset box “US tax and mergers”). These exceptions generally relate to certain types of reorganisation (as defined in section 368, US Internal Revenue Code 1986) and require:
In the US, a sale of shares in or assets of a company is generally a chargeable transfer that will result in a tax charge on any capital gain realised. But if the acquisition is structured as a tax-free reorganisation then:

- Target shareholders do not recognise a gain or loss on receiving shares in the buyer in exchange for their shares (section 354 and section 355, US Internal Revenue Code 1986) but generally have the same tax base in the new shares as in their surrendered shares. This effectively defers tax on the share portion of the offer until they sell the buyer’s shares. The target shareholder will be taxed (either as a capital gain or as dividend income in some cases) on any gain on the shares to the extent that it receives cash or other property under the offer.

- The corporations involved will generally not recognise a gain or loss on any assets or shares transferred under the arrangement (sections 361 and 362, US Internal Revenue Code 1986). The buyer will generally take any assets or stock at the target’s historic base cost.

The tax-free reorganisations (defined in sections 368, 361 and section 362, US Internal Revenue Code 1986) generally require there to be a continuity of interest between the old and new companies:

- The target shareholders must retain equity stock in the acquiring or surviving company – usually representing 40-50% of the price (US Treasury Regulations: Regs. Sec. 1.368-1(b); Prop. Reg. Sec. 1.368-2(c)(1996)).

- The business of the company must continue or its assets continue to be used (US Treasury Regulations: Regs. Sec. 1.368-1(d)(1996)).

In some cases one company must also control the other (defined as a 80% ownership (section 368(c), US Internal Revenue Code 1986).

The most typical forms of reorganisation used to gain this beneficial tax treatment are as follows:

**Share for share exchanges**

(Reorganisation under section 368(a)(1)(B), US Internal Revenue Code 1986)

Target shareholders exchange their shares for voting shares in the buyer (or the buyer’s 80% parent). No cash or non-voting shares may be offered. This requirement is strict and the exchange can lose the exemption if there are pre-arranged dividends occurring at the time of the merger, if there are previous cash acquisitions or if fractional entitlements are not handled properly.

But it can be used by foreign buyers, or where the buyer holds over 20% of the target already so would not qualify for the reverse triangular structure. Buyers with over 80% of the company can also use it to make creeping acquisitions (there is no requirement to surrender control as with the reverse triangular merger).

**Statutory merger**

(Reorganisation under section 368(a)(1)(A), US Internal Revenue Code 1986)

The target merges into the buyer using the procedures in applicable state law (in Delaware this would be section 251, Delaware General Corporation Law). Thus foreign mergers do not qualify. Buyer stock must be a significant proportion of the offer price (generally 40-50% of the offer to satisfy the continuity of interest requirement) but it can be non-voting or preferred stock so long as it is not redeemable.

The merger is effectively treated like an asset sale from the target – the advantage is that the transfer of assets takes place in bulk under statute rather than requiring individual transfers. The target’s tax group ceases, which may create some difficulties.

**Forward triangular merger**

(Reorganisation under section 368(a)(1)(A) and section 368(a)(2)(D), US Internal Revenue Code 1986)

The target merges into a new US subsidiary using the statutory merger procedures and ceases to exist following the merger. Shares in the target are cancelled, with shareholders receiving a right to shares in the buyer in return. In exchange for issuing these shares, the buyer is issued more shares in the new target.

- Vodafone established a wholly owned US subsidiary (Merger Sub).
- Merger Sub merged with AirTouch under the provisions of Delaware law.
- Merger Sub ceased to exist on the merger becoming effective; AirTouch remained as the surviving corporation.
- The existing shares of common stock in AirTouch were cancelled and converted into the right to receive ordinary shares in Vodafone plus $9 in cash.
- AirTouch (as the surviving corporation) issued an equivalent number of shares to Vodafone as were cancelled.

- Vodafone (now Vodafone AirTouch) issued Vodafone AirTouch shares (through the ADR facility) to the holders of the cancelled AirTouch shares.

(See inset box “Structure of the merger”)

This effectively allowed the US shareholder to defer taxable gains arising on the share element of the offer until they sell the offer shares (sections 354, 356, 368(a)(1)(A) and 368(a)(2)(E), US Internal Revenue Code 1986). They still had to pay any taxable gains to the extent that they received cash.

Whilst the reverse triangular structure is relatively common in the US, there were additional complications that had
The merger must qualify for tax-free status as a straightforward statutory merger, and the same considerations apply as to such a merger. The buyer also has to:

- Own 80% or more of the new subsidiary and shareholders cannot get shares in that subsidiary, which means that preference shares will have to be redeemed or reissued by the buyer.
- Acquire substantially all of the assets of the business, which can cause problems if a disposal is planned immediately following the acquisition.
- There can also be technical difficulties where the buyer owns shares in the target before the reorganisation.

The advantage with this type of reorganisation is that 50–60% of the consideration can be in cash, as in the case with the statutory merger, but a parent’s shares can be offered as consideration, which includes a foreign buyer if it satisfies the foreign company requirements (see below).

### Reverse triangular merger

(Reorganisation under section 368(a)(1)(A) and section 238(a)(2)(E), US Internal Revenue Code 1986)

Here the new subsidiary is dissolved as part of the merger – this means that the target continues to exist.

Once again, the statutory merger requirements have to be satisfied and the target has to retain substantially all of its assets. But each class of target shareholders also has to give up control (80%) in exchange only for the buyer’s voting shares. Thus:

- The buyer has to acquire 80% or more of the company if it offers only shares.
- A maximum of 20% of the consideration can be in cash or generally in anything other than voting shares.
- Non-voting preferred shares have to be redeemed or exchanged for voting shares.

The advantage with this structure is that the target continues to exist. By using a US subsidiary a foreign party can also take advantage of these type of reorganisation if it meets the foreign company requirements.

### Other

Other techniques are available to achieve tax-free mergers:

- A new holding company for both buyer and target can be created (using the reorganisation provisions in section 351, US Internal Revenue Code 1986).
- Dual listed company structures can be used by foreign buyers in cross-border businesses by retaining the former parent company in each jurisdiction but effectively merging them together at subsidiary level (see “US/UK mergers: Structures and tax”, PLC, 1998, IX(2), 17, and “When two heads are better than one”, EC, 1999, IV(5), 25).

### Foreign companies

As pointed out in the main article (see “US tax”), the general rule is that a transaction involving a foreign corporation cannot benefit from the tax-free reorganisation provisions (section 367a, US Internal Revenue Code 1986). But a transaction involving a foreign corporation, which would otherwise qualify as a reorganisation can still do so in certain circumstances, as outlined in the article (US Treasury Regulations: Regs. Sec. 1.367-2 (1996 and confirmed in 1998)).

This effectively adds an extra set of conditions that need to be satisfied where there is a non-US buyer.

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**Foreign corporations.** As a general rule, if there is a foreign buyer the transaction cannot benefit from the reorganisation exemptions – the transaction remains a taxable exchange (section 367a, US Internal Revenue Code 1986). These provisions are designed to prevent US assets being moved outside of the US tax jurisdiction. However, cross-border transactions which would otherwise qualify can benefit from the exemptions (section 367(a)(2), US Inland Revenue Code and Treasury Regulations issued in 1996 and clarified in 1998) if certain further conditions are satisfied. These include the target satisfying certain information reporting requirements, and the merger not resulting in more than 50% of the shares in the new foreign parent being held by former target shareholders who are US persons. All of the target’s shareholders are presumed to be US persons unless they swear an affidavit to the contrary. In addition, target shareholders that own 5% or more of the stock will only qualify for non-recognition if they enter into a gain recognition agreement (by which the shareholder effectively agrees to pay tax on any gain if it sells the buyer’s shares before the end of the fifth tax year of the transfer).

In particular, the “active trade or business test” must be satisfied so that, amongst other things, the fair market value of the bidder must be at least equal to the fair market value of the target at the time the merger became effective. The enfranchisement of non-voting AirTouch preferred stock, the foreign corporation rules and UK legal and tax issues.

**AirTouch’s preferred stock.** Prior to the merger becoming effective, AirTouch undertook an internal reorganisation which amended its certificate of incorporation to satisfy requirements to permit the merger to be tax free to US holders of AirTouch shares, except with respect to cash received in the merger. The effect of the internal reorganisation was to give voting rights to certain classes of preferred shares and to increase the dividends payable on certain other classes.

There is an asset for voting shares tax-free reorganisation, either by the buyer acquiring the assets directly or in a triangular structure by using a subsidiary (section 368(a)(1)(C), US Internal Revenue Code 1986).

Unlike the usual statutory merger reorganisation, a foreign company can acquire the assets in exchange for its shares. But the cash element is limited (usually less than 20% because liabilities are regarded as other property) and there needs to be an asset purchase which is more difficult practically.

Various elections are possible where there are private acquisitions which affect the tax position of the parties (see “Cross border acquisitions: structuring the deal to reduce your US tax bill”, EC, 1998, III(10), 35).
UK legal and tax issues. The reverse triangular structure potentially raised a number of UK legal and tax issues:

- **Merger relief.** If shares are issued at a premium a sum equal to the premium must be transferred to share premium account (section 130, Companies Act 1985). However, there is an exemption for mergers (section 131) where the company issuing shares (in this case Vodafone) has acquired 90% of each class of equity shares in the other company (AirTouch) in pursuance of an arrangement where the consideration for the issue of the shares by Vodafone is the issue or transfer by AirTouch of equity shares or the cancellation of such shares.

In this case merger relief was not available because AirTouch had an outstanding class of convertible preference shares which were not being acquired by Vodafone. These shares are considered to be equity shares for the purposes of the Companies Act so Vodafone could not acquire 90% of each class of equity share capital.

- **Valuations of non-cash consideration.** Where non-cash consideration is paid for the issue of shares, the company’s auditors must prepare a valuation report unless an exemption applies (section 103, Companies Act 1985). A report is not required where there is an arrangement for an allotment of shares by the company on terms that the whole or part of the consideration for the shares allotted is to be provided by the transfer to the company (or the cancellation) of all or some of the shares in another company (section 103(3)). This was satisfied, as part of the consideration for the allotment of Vodafone shares was the cancellation by the AirTouch shareholders of the AirTouch shares.

- **Treasury consent.** It is unlawful for a UK company to cause or permit a non-UK resident company which it controls to create or issue shares or transfer or cause or permit the transfer of shares or debentures in a non-UK resident company without the consent of the Treasury (section 765, Income and corporation Taxes Act 1998). This provision is designed to stop assets being removed from the UK tax jurisdiction to avoid tax but can catch other transactions such as this one, so obtaining Treasury consent to the merger was made a condition of the transaction (see “UK/US mergers”, PLC, 1998, IX(2), 17 for a more detailed discussion).

The reverse triangular merger is a form of US tax free reorganisation that allowed AirTouch shareholders to defer tax on gains in their shares to the extent they received shares in the merged company. It involved Vodafone setting up a new US subsidiary which was merged with AirTouch under US statutory procedures. In return for cancelling their shares, AirTouch shareholders received shares (in the form of ADRs) in Vodafone (renamed Vodafone AirTouch). Vodafone then issued new shares in AirTouch making it a wholly-owned subsidiary.
Other tax structures

As mentioned there are other tax-efficient structures (see inset box "US tax and mergers"). However, the reverse triangular structure was preferable because:

• A simple statutory merger was not possible cross border.

• The forward triangular merger would have been possible but would have involved AirTouch dissolving and its assets being transferred to Merger Sub. This is less satisfactory from a legal point of view. Given that the cash element was relatively small (less than 20% of the total consideration), the parties did not need to use the forward triangular merger structure.

• The share for share exemption with no cash element was not possible because, amongst other things, former AirTouch shareholders which were US persons had to hold less than 50% of the shares following the merger to satisfy the foreign company tax issues discussed above.

Appraisal rights

Under Delaware law shareholders involved in certain mergers have the right to apply to the court to have the offer price reviewed and to be paid the fair value of their shares (section 262, Delaware General Corporation Law). This can delay the offer and, in complicated offers like this one, affect the percentages upon the offer and, in complicated offers like General Corporation Law.

A simple statutory merger was not possible because, amongst other things, former AirTouch shareholders which were US persons had to hold less than 50% of the shares following the merger to satisfy the foreign company tax issues discussed above.

1.5% charge to SDRT payable by the new shares to an ADR depository is a case, the tax and accounting treatment of which the tax and accounting treatment of this one, affect the percentages upon the offer and, in complicated offers like General Corporation Law.

The SDRT charge

SDRT was introduced to ensure that transfers of securities are liable to duty even where there is no instrument of transfer that would attract a stamp duty charge. SDRT at the rate of 0.5% is payable in relation to agreements to transfer chargeable securities where there is no instrument of transfer which is stampable. Special rules apply where securities are transferred into or issued to a depository receipt scheme. In these circumstances SDRT is charged at 1.5% (section 93, Finance Act 1986).

The exceptions

Until January 1999, the issue or transfer of certain bearer instruments (including bearer shares issued by a UK company) into a depository scheme did not bear duty unless the instrument was a short term renounceable letter of allotment. Instead, the issue of a bearer instrument was liable to a separate duty of 1.5%.

But the bearer instrument duty does not apply where such shares are denominated in a non-UK currency (section 30, Finance Act 1967). Thus a company transferring shares to a depository could avoid both the SDRT and bearer instrument charge by re-denominating its share capital into a foreign currency and by issuing the consideration shares to the ADR depository in bearer form (see also "Foreign currency share capital", PLC, 1993, IV(10), 23).

In January 1999, the Inland Revenue announced that this exemption was no longer to be available in connection with a takeover or a merger except where the issue of the bearer shares gave effect to an agreement for a company merger or takeover entered into in writing before 30th January, 1999 (PLC, 1999, X(2), 12 and PLC, 1999, X(2), 85). As Vodafone entered into its merger agreement on 15th January, it was still able to take advantage of this provision by re-denominating its shares into dollars and issuing them to the depository in bearer form.

ADRs and SDRT

The share consideration payable to AirTouch shareholders was agreed to be paid in ADRs. The placing of underlying shares in an ADR depository was structured so as to fall outside the charge to stamp duty reserve tax (SDRT).

ADRs

In UK/US mergers the acquiring UK company typically issues equity consideration in the form of ADRs. For US investors, ADRs have the advantages of being transferable without a charge to UK stamp duty or stamp duty reserve tax (SDRT) and of being in large denominations similar to US equity securities (for example, one Vodafone AirTouch ADR represents 10 Vodafone AirTouch ordinary shares). (For further information on ADRs and GDRs see also “Buying into the American dream”, EC, 1997, II(7), 43 and “GDRs: Reaching international investors”, PLC, 1995, VI(2), 31.)

Using ADRs raised two issues:

SDRT. The consequence of issuing new shares to an ADR depository is a 1.5% charge to SDRT payable by the issuer (section 93, Finance Act 1986) unless the offer can be structured in such a way as to fall within certain exceptions. The Vodafone AirTouch merger was structured in such a way as to avoid SDRT (see inset box “ADRs and SDRT”). Amongst other things this structure required Vodafone AirTouch’s shares to be re-denominated in dollars.

Enfranchisement of ADR holders.

The consequence of ADRs is that the ADR holder cannot vote directly – the ADR holder has to act through the depository or the depository’s proxy. Prior to the merger, the rights of proxies to speak and vote at general meetings were restricted (as is usually the case with UK public companies) to demanding and voting only on a poll, which would have affected the ADR holders.

As a result of the merger, Vodafone altered the voting and other rights of proxies in general and more particularly, as they relate to ADR holders. The Articles of Association of Vodafone AirTouch were amended to provide as follows:

- Proxies would have the right to attend, vote and speak at general meetings of the company. The depository could therefore appoint the ADR holder as its proxy so that the holder could attend the meeting.

- Proxies appointed by approved depositaries would have the right to appoint others as their proxies (whether the depository or third parties), in effect putting ADR holders in the same place on the appointment of proxies as ordinary shareholders.

- Special and extraordinary resolutions would only be approved on a poll. This was required as multiple proxies are not regarded as separate members. Thus proxies voting on a show of hands would not be effective for the purpose of section 378(1) of the Companies Act 1985 which provides that three quarters of members have to approve an extraordinary resolution. Section 378(2) provides that the same restrictions also apply to special resolutions. If multiple proxies were allowed to vote on a show of hands, it would not be possible to determine
whether three quarters of members had approved the resolution.

Redenomination

It was agreed to redenominate Vodafone AirTouch’s ordinary share capital into US dollars. This was proposed because a significant proportion of Vodafone AirTouch ordinary shareholders will be resident in the US, a substantial part of the company’s assets will be US dollar assets and a significant proportion of its revenues will be in US dollars. In addition, as a consequence of this redenomination, the merger could be structured in a manner likely to eliminate the potential SDRT charge on the issue of shares to AirTouch shareholders, resulting in a saving of over £450 million.

The steps involved in the redenomination were as follows:

- A reduction of capital (section 135, Companies Act 1985) whereupon all the issued ordinary shares of 5p each in Vodafone were cancelled. This reduction required approval by the shareholders and the High Court.
- The sum arising as a result of the cancellation was credited to a special reserve and converted into US dollars at a prescribed exchange rate.
- The reserve was then applied in paying up newly created dollar shares of US$0.10.
- To the extent the reserve was insufficient to pay up the dollar shares, the share premium account was to be capitalised to pay up the necessary amount.

There is a potential issue for UK companies redenominating their share capital into a currency other than sterling. UK public limited companies must have a minimum share capital of at least £50,000 (section 117, Companies Act 1985). Vodafone therefore needed to create a new class of shares with an aggregate nominal value of £50,000 to fulfil this requirement. These shares were issued to one of the company’s bankers.

(Merger agreement and deal)

Termination rights. This agreement provided that either company could terminate the merger agreement in certain circumstances including if:

- The merger had not been completed by 1st March, 2000.
- A government order had permanently prevented the merger.
- The approval of the shareholders of either company was not received.
- The other party entered into negotiations with another person in relation to an acquisition offer by that person or that party’s board recommended such a proposal.
- The board or the other party withdrew or adversely modified its recommendation of the merger.
- There was a material breach of covenant or warranty by the other party.

Termination payments. In addition to the right to terminate the transaction, Vodafone and AirTouch agreed that termination payments would be payable by the parties in certain circumstances. The purpose of this was to secure the transaction and discourage either party from entering into negotiations with a third party.

In essence, AirTouch agreed to make a payment to Vodafone of up to US$1 billion if the merger agreement was terminated in the following circumstances:
AirTouch failed to obtain shareholder approval of the merger at a time when a third party had made an alternative proposal.

The directors of AirTouch withdrew or adversely amended their approval of the merger or failed to confirm such recommendation when so requested.

AirTouch recommended to its shareholders an alternative proposal by a third party.

In the event of a termination based on the failure to obtain shareholder approval in other circumstances, the termination payment would have been limited to US$825 million, with an additional US$775 million payable to Vodafone only if AirTouch entered into an agreement for an alternative transaction within one year of the termination.

Similarly, Vodafone agreed to make a payment to AirTouch of up to US$825 million if the transaction had been terminated for identical reasons relating to Vodafone and in the same circumstances. However, Vodafone would also have had to make this payment if its shareholders had failed to approve the merger at its EGM.

Termination fees are fairly common in mergers between US corporations but are less usual in transactions relating to UK companies. They raise a number of issues under English company law, including whether the directors are acting in breach of their fiduciary duties or fettering their powers by agreeing to the payment, and whether the agreement to pay such fees constitutes financial assistance. (For detailed article see “Break fees: keeping the parties at the table” PLC, 1998, IX(11), 9). In addition, the Takeover Panel has recently issued a statement (1999/10) requiring such fees to be de minimis (normally less than 1% of the offer value) in bids subject to the Takeover Code (see Bulletin, Mergers and Acquisitions, this issue, page 82).

Care must also be taken to ensure the size of the break fee does not result in the agreement to pay it constituting a Class I transaction, thereby requiring shareholder consent to entering into the agreement.

Other key features

Management. The parties agreed that the new Vodafone AirTouch would have a board of 14 directors, seven from Vodafone and seven from AirTouch. There were to be six executive directors, four from Vodafone and two from AirTouch, with the chief executive being Chris Gent. In addition, a number of key officers were agreed at the time of announcement of the transaction.

Accounting for the merger. Vodafone will account for the merger using the acquisition method of accounting under UK accounting rules. This will result in a goodwill amortisation charge of approximately £2 billion per annum for a number of years after the merger, thereby reducing the reported consolidated profit of Vodafone AirTouch.

Vodafone has to account for the merger in this way because it did not satisfy the merger accounting requirements under UK rules. In particular, the fact that AirTouch shareholders would receive some cash meant that Vodafone could not comply with the requirement that the fair value of any consideration other than equity shares given pursuant to the arrangement by the parent company and its subsidiary undertakings should not exceed 10% of the nominal value of the equity shares issued (paragraph 10(1)(c), Schedule 4A, Companies Act, 1985). Vodafone’s existing ordinary shares had a nominal value of only 5p and the cash amount payable to AirTouch shareholders greatly exceeded 10% of the nominal value of all the ordinary shares issued to AirTouch shareholders. (For further information see “Accounting for acquisitions”, PLC, 1999, X(2), 7.)

Dividends. It was agreed that Vodafone AirTouch would continue to announce dividends on Vodafone AirTouch ordinary shares in sterling. Vodafone AirTouch ordinary shareholders will continue to be paid their dividends in sterling whereas Vodafone AirTouch ADS holders will receive their dividends in dollars. Vodafone has historically paid an interim and final dividend while AirTouch had never paid a dividend.

Financing. In order to finance the cash portion of the consideration, Vodafone entered into a $10.5 billion term loan and revolving credit facility.

Implementing the merger

Shareholder approvals. The merger was a class 1 transaction for Vodafone under London Stock Exchange (LSE) Listing Rules and consequently required shareholder approval by an ordinary resolution. In addition, special resolutions were required to approve the readenomination, the change of name of Vodafone

Web site links

at www.plcinfo.com

AirTouch proxy statement
Securities and Exchange Commission
• Link to site - www.sec.gov
• Link to document
FreeEdgar database
• Link to site - www.freeedgar.com
• Link to document

Internal Revenue Code
Office of the Law Revision counsel (US House of Representatives Site)
• Link to site - http://uscodex.house.gov
• Link to document (In a raw text format which is difficult to use)
Legal Information Institute of the University of Cornell
• Link to site http://www.law.cornell.edu/
• Link to Code

Treasury regulations
Inland Revenue Service
• Link to site - http://www.irs.ustreas.gov/
• Link to Treasury Regulations download service
You need to use an ftp link to download these Regulations.

Links to these sites and to the documents themselves are available at PLC’s web site (www.plcinfo.com) from the August issue.
to Vodafone AirTouch and to amend the Articles of Association. A class 1 circular and listing particulars were prepared and sent to all Vodafone shareholders.

The merger also required approval by AirTouch shareholders by a simple majority. A proxy statement (under section 14A, Securities and Exchange Act 1934) was sent to all AirTouch shareholders. The proxy statement is a detailed statement of the terms of the merger (much like a prospectus) with a proxy card asking the shareholder to vote to approve the merger. This proxy statement was included in the Form F-4 Registration Statement. This document was confidentially pre-filed with the SEC. The SEC has recently implemented a plain English campaign and now requires such registration statements to be written in plain English.

Summary listing particulars for Vodafone AirTouch were also included in the Form F-4 and sent to AirTouch shareholders as required by the LSE Listing Rules (Rule 8.15). Separate meetings of some of the preferred stockholders also had to be held to approve the internal reorganisation, requiring their own proxy statement.

Timetable. As mentioned above, the merger was completed over five months after signing. The sequence of events to be satisfied prior to closing was particularly complicated. As well as ensuring that documents to shareholders were distributed at the same time after regulatory approval processes of differing lengths with the Securities and Exchange Commission (SEC) and LSE, shareholder meetings had to be arranged, dates booked with the High Court for the reduction of capital and antitrust approvals sought.

Consents. A number of consents were required and were made conditions to the merger proceeding, including:

• Antitrust. The approval of the Federal Communications Commission of the US (FCC) under the Communications Act and the European Commission under the EC Merger Regulation were required before the merger went ahead. The Commission approved the merger after a Phase 1 Investigation. Undertakings were given to divest certain operations in Germany, the only country where Vodafone’s and AirTouch’s operations overlapped. The FCC process took longer, with the merger receiving approval on 22nd June, 1999.

• Shareholders approvals. The approvals mentioned above being successfully obtained.

• Treasury consent. Treasury approval was required as part of the reverse triangular merger (see above).

• Listing. Listing of the new Vodafone AirTouch ordinary shares on the LSE and the effectiveness of filings with the SEC.

• US State approvals. Various US state regulations approvals or notifications were required from state public commissions.

• US tax opinions. Opinions having been received that the merger satisfied the conditions required to obtain tax-free status.

• David Cheyne and Clodagh Hayes, Linklaters & Alliance.

Vodafone’s in house legal team on the transaction, led by Stephen Scott, Company Secretary, included Nick Godwin, Legal Director - Europe and Helen Drake, Senior Solicitor. Vodafone were advised as to English and German law by Linklaters & Alliance, with David Cheyne, Sarah Wiggins and Clodagh Hayes in corporate, Conor Hurley in Tax, Clare Moulder in banking, Robyn Durie in telecoms, Tony Morris and Sonya McNulty in competition, Graham Rowlands-Hempel in share schemes and Uli Wolff from Oppenhoff & Rädler. Vodafone were advised as to US law by Sullivan & Cromwell, with Ben Stapleton, George Sampas and Kathryn Campbell in corporate and Willard Taylor and Ron Creamer in Tax.

AirTouch’s in house legal team on the transaction, led by Margaret Gill, Senior Vice President, Legal and External Affairs and Secretary, included Sharon Le Duy, Senior Counsel and Megan Pierson. AirTouch were advised as to US law by Fried Frank, Harris Shriver & Jacobson, with Charles Nathan and Steve Steinman in corporate and Alan Kaden in tax. AirTouch were advised as to English law by Freshfields, with Will Lawes, Jamie Barr and Hugh Corroon in corporate.