

Opinion of the Advisory Committee on mergers given at its meeting of 17 August 2016 regarding a draft decision relating to Case M.7758 — Hutchison 3G Italy/WIND/JV

Rapporteur: Ireland

(2016/C 391/03)

Concentration

1. The Advisory Committee agrees with the Commission that the notified transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ⁽¹⁾.
2. The Advisory Committee agrees with the Commission that the notified transaction has a EU dimension pursuant to Article 1(2) of the Merger Regulation.

Market definition

3. The Advisory Committee agrees with the Commission's definitions of the relevant product and geographic markets in the draft Decision.
4. In particular, the Advisory Committee agrees that the following markets should be distinguished:
 - (a) retail market for mobile telecommunications services in Italy;
 - (b) wholesale market for access and call origination services on mobile telephone networks in Italy.

Competitive assessment

5. The Advisory Committee agrees with the Commission's assessment that the notified transaction is likely to give rise to horizontal non-coordinated effects that would significantly impede effective competition on the retail market for mobile telecommunications services in Italy mainly due to the removal of the important competitive constraints that H3G SpA ('H3G') and WIND Telecomunicazioni SpA ('WIND') exerted upon each other, together with a reduction of the competitive pressure on the remaining competitors.
6. The Advisory Committee agrees with the Commission's assessment that the notified transaction is likely to give rise to horizontal coordinated effects that would significantly impede effective competition on the retail market for mobile telecommunications services in Italy.
7. The Advisory Committee agrees with the Commission's assessment that the notified transaction is likely to give rise to horizontal non-coordinated effects that would significantly impede effective competition in the wholesale market for mobile network access and call origination services on mobile networks in Italy mainly due to the removal of the important competitive constraints that H3G and WIND exerted upon each other, together with a reduction of the competitive pressure on the remaining competitors.
8. The Advisory Committee agrees with the Commission's assessment that the notified transaction is not likely to significantly impede effective competition in view of its effects on the following affected markets:
 - (a) wholesale market for international roaming services in Italy;
 - (b) wholesale services for mobile call termination on each of H3G's and WIND's networks;
 - (c) wholesale markets for call termination on WIND's fixed networks;
 - (d) wholesale services for fixed backhaul in Italy.

Remedy

9. The Advisory Committee agrees with the Commission that the commitments offered by the Notifying Parties on 18 July 2016 pursuant to Article 8(2) of the Merger Regulation address the competition concerns identified by the Commission on the retail market for mobile telecommunications services Italy. A minority of Member States abstains.
10. The Advisory Committee agrees with the Commission that the commitments offered by the Notifying Parties on 18 July 2016 pursuant to Article 8(2) of the Merger Regulation address the competition concerns identified by the Commission on the wholesale market for access and call origination services on mobile networks in Italy. A minority of Member States abstains.

⁽¹⁾ OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation')

11. The Advisory Committee agrees with the Commission's conclusion that the notified transaction, subject to the full compliance with the commitments offered by the Notifying Parties on 18 July 2016, is not likely to significantly impede effective competition in the internal market or in a substantial part of it. A minority of Member States abstains.
 12. The Advisory Committee agrees with the Commission that the notified transaction must therefore be declared compatible with the internal market in accordance with Articles 2(2) and 8(2) of the Merger Regulation. A minority of Member States abstains.
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