

Final Report of the Hearing Officer ⁽¹⁾**Orange/Jazztel****(M.7421)**

(2015/C 407/09)

Introduction

1. On 16 October 2014, the European Commission (the 'Commission') received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation ⁽²⁾ by which Orange SA ('Orange' or the 'Notifying Party') will acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control over Jazztel plc ('Jazztel') by way of a public bid (the 'Proposed Transaction'). Orange and Jazztel are together referred to as the 'Parties'. The Proposed Transaction has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.
2. Based on the first phase investigation, the Commission raised serious doubts as to the compatibility of the Proposed Transaction with the internal market and on 4 December 2014, it adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation. The Notifying Party submitted written comments on 15 December 2014 complemented by economic reports in January and February 2015.
3. On 5 November 2014, the Kingdom of Spain, through its competition authority, submitted a full referral request of jurisdiction over the Proposed Transaction under Article 9(2)(a) of the Merger Regulation. Following the initiation of proceedings and the reminder sent by the Kingdom of Spain on 19 December 2014, after having heard the Notifying Party, on 26 January 2015, the Commission adopted a decision rejecting the referral request pursuant to Article 9(3) of the Merger Regulation.

Statement of Objections

4. On 25 February 2015, the Commission adopted a Statement of Objections ('SO') in which it reached the preliminary view that the Proposed Transaction would significantly impede effective competition in a substantial part of the internal market within the meaning of Article 2 of the Merger Regulation.
5. The Notifying Party replied to the SO on 11 March 2015 and Jazztel submitted comments to the SO on 11 March 2015.

Access to the file

6. Orange received access to the file via CD-ROMs on 26 February 2015, 3 March 2015, 27 March 2015 and 30 April 2015. Orange's economic advisors received access to confidential data underlying the Commission's economic analysis in the SO via a data room.

Letter of facts

7. On 10 March 2015, the Commission sent a letter of facts to Orange informing it about additional evidence identified after the adoption of the SO that supported the preliminary conclusions reached in the SO and that could be relied upon in the final decision. The Notifying Party submitted written comments on 13 March 2015.

Suspension of the time limit

8. Following Orange's failure to respond to a request for information dated 7 January 2015 on 14 January 2015 the Commission adopted a decision under Article 11(3) of the Merger Regulation suspending the time limit to review the Proposed Transaction as of the same day. The Notifying Party replied to the request for information on 19 January 2015 and the procedure resumed on 20 January 2015.
9. Following Orange's failure to respond to a request for information dated 11 December 2014 on 18 March 2015 the Commission adopted a decision under Article 11(3) of the Merger Regulation suspending the time limit to review the Proposed Transaction as of 4 March 2015. The Notifying Party replied to the request for information on 27 March 2015 and the procedure resumed on 28 March 2015.

⁽¹⁾ Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, OJ L 275, 20.10.2011, p. 29 ('Decision 2011/695/EU').

⁽²⁾ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').

Interested third persons

10. Upon their reasoned requests, I admitted Másmovil Ibercom SA ('Másmovil'), Vodafone Group plc ('Vodafone') and Xfera Móviles SA ('Yoigo') to be heard as interested third persons. The interested third persons submitted written comments. I also acceded to requests from each of these persons to participate in the formal oral hearing.
11. Following the oral hearing, upon request, I admitted R Cable y Telecomunicaciones Galicia, SA ('R Cable') to be heard as an interested third person in the proceedings. R Cable provided written comments.

Oral hearing

12. The formal oral hearing was held on 16 March 2015 and it was attended by the Parties; the interested third persons, Másmovil, Vodafone and Yoigo; the relevant Commission services; representatives from the competition authorities of eleven Member States (Belgium, Finland, France, Ireland, Italy, Poland, Portugal, Romania, Spain, Sweden and United Kingdom); and a representative from the EFTA Surveillance Authority. The Parties requested and were granted a closed session for parts of their respective presentations.

Commitments

13. In order to address the competition concerns raised by the Commission in the SO, the Notifying Party submitted on 6 March 2015 commitments to the Commission. The Commission carried out a market test of those commitments on 13 March 2015.
14. The Notifying Party submitted revised commitments on 29 March 2015 and on 6 April 2015. The latter commitments were market tested on 8 April 2015. The Notifying Party submitted a final set of commitments on 20 April 2015.
15. On the basis of the final set of commitments, the Commission concluded that the Proposed Transaction is compatible with the internal market and the EEA Agreement.

Conclusion

16. Pursuant to Article 16 of Decision 2011/695/EU, I have examined whether the draft decision deals only with objections in respect of which the Parties have been afforded the opportunity of making known their views and I have come to a positive conclusion.
17. Overall, I conclude that all parties have been able to effectively exercise their procedural rights in this case.

Brussels, 11 May 2015

Joos STRAGIER
