

Final Report of the Hearing Officer ⁽¹⁾
Case AT.40305 – Network Sharing - Czech Republic

(Text with EEA relevance)

(2022/C 452/04)

1. The present report relates to a draft commitments decision pursuant to Article 9(1) of Council Regulation (EC) No 1/2003 ⁽²⁾ (the ‘Draft Decision’) addressed to O2 Czech Republic a.s. (‘O2’), CETIN a.s. (‘CETIN’) and their parent company PPF Group NV (‘PPF’); as well as to T-Mobile Czech Republic a.s. (‘TMCZ’) and its parent company Deutsche Telekom AG (‘DT’) ⁽³⁾.
2. On 25 October 2016, following the receipt of a complaint under Article 7 of Regulation 1/2003, the Commission opened proceedings in the present case against the Sharing Parties.
3. On 7 August 2019, the Commission also initiated proceedings against DT and PPF.
4. The Commission adopted a statement of objections (‘SO’) addressed to the Sharing Parties on 7 August 2019, which was notified to them on 9 August 2019. The SO set out the Commission’s preliminary concerns, regarding a possible single and continuous infringement of Article 101 TFEU and Article 53 of the EEA Agreement through a cooperation enshrined in certain network sharing agreements ⁽⁴⁾ (‘NSAs’) for mobile telecommunication networks in the territory of Czechia (with the exception of the areas of Prague and Brno), concluded between the Sharing Parties ⁽⁵⁾.
5. On 14 February 2020, the Commission adopted a statement of objections addressed to DT and PPF, that was notified to them on 18 February 2020.
6. The Parties received access to the file. Following the written replies to the (respective) statements of objections from the Parties, an oral hearing was held over three days, from 15 to 17 September 2020, to which all the Parties participated ⁽⁶⁾.
7. On 27 August 2021, after analysis of the evidence on the file and of the arguments and evidence submitted by the Parties in their replies and at the oral hearing, the Commission adopted a preliminary assessment within the meaning of Article 9(1) of Regulation 1/2003, which set out the Commission’s revised competition concerns. This preliminary assessment was notified to the Parties on 30 August 2021.
8. On 15, 16 and 17 September 2021, the Parties proposed commitments (the ‘Proposed Commitments’) in order to meet the concerns expressed by the Commission in the preliminary assessment.
9. On 1 October 2021, the Commission published a notice in accordance with Article 27(4) of Regulation 1/2003, inviting comments from interested third parties on the Proposed Commitments.

⁽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 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1) (‘Regulation 1/2003’).

⁽³⁾ O2, CETIN and TMCZ will be collectively referred hereafter as the ‘Sharing Parties’. Together with their parent companies (PPF and DT), they will be collectively referred as the ‘Parties’.

⁽⁴⁾ The relevant agreements are the NSAs signed on 29 October 2013, regarding the 2G and 3G technologies; and on 2 May 2014, regarding the LTE/4G technology.

⁽⁵⁾ O2’s predecessor, Telefónica Czech Republic, was in fact the signatory. As from 1 June 2015, CETIN (the legal successor of O2 as regards the infrastructure and related wholesale business) succeeded O2 as a party to the NSAs.

⁽⁶⁾ Due to the ongoing coronavirus pandemic, a number of representatives were physically present at the oral hearing venue in Brussels, while others attended remotely by means of videoconferencing or web-streaming connection.

10. On 15 December 2021, the Commission informed the Parties of the observations received.
11. On 29 March and 7 April 2022, the Parties submitted an amended proposal for commitments. On 3 and 8 June 2022, the Parties submitted a final set of revised commitments (the 'Final Commitments').
12. The Draft Decision makes the Final Commitments binding upon the Parties and finds that there are no longer grounds for action by the Commission in this case as regards the concerns as set out in the preliminary assessment.
13. I have not received any request or complaint with respect to the commitment procedure pursuant to Article 15(1) of Decision 2011/695/EU. Overall, I consider that the effective exercise of procedural rights has been respected in this case.

Brussels, 5 July 2022.

Dorothe DALHEIMER
