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European Commission

(1) Text with EEA relevance

EN

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Euro exchange rates [1]

12 August 2014

(2014/C 264/01)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,3346	CAD	Canadian dollar	1,4614
JPY	Japanese yen	136,49	HKD	Hong Kong dollar	10,3450
DKK	Danish krone	7,4555	NZD	New Zealand dollar	1,5835
GBP	Pound sterling	0,79550	SGD	Singapore dollar	1,6693
SEK	Swedish krona	9,1817	KRW	South Korean won	1 372,34
CHF	Swiss franc	1,2138	ZAR	South African rand	14,2288
ISK	Iceland króna		CNY	Chinese yuan renminbi	8,2170
NOK	Norwegian krone	8,2425	HRK	Croatian kuna	7,6328
BGN	Bulgarian lev	1,9558	IDR	Indonesian rupiah	15 596,35
CZK	Czech koruna	27,845	MYR	Malaysian ringgit	4,2671
HUF	Hungarian forint	314,44	PHP	Philippine peso	58,620
LTL	Lithuanian litas	3,4528	RUB	Russian rouble	48,2382
PLN	Polish zloty	4,2060	THB	Thai baht	42,842
RON	Romanian leu	4,4378	BRL	Brazilian real	3,0458
TRY	Turkish lira	2,8893	MXN	Mexican peso	17,6134
AUD	Australian dollar	1,4406	INR	Indian rupee	81,8110

[1] *Source*: reference exchange rate published by the ECB.

Opinion of the Advisory Committee on mergers given at its meeting of 21 May 2014 regarding a draft decision relating to Case M.6992 — Hutchison 3G UK/Telefónica Ireland

Rapporteur: FINLAND

(2014/C 264/02)

Concentration

1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

2. The Advisory Committee agrees with the Commission that the notified transaction has a Union 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:

   — Irish market for mobile telecommunication services to end-customers (retail mobile telecommunications services market),

   — Irish market for wholesale access and call origination on public mobile telephone networks,

   — Irish wholesale market for international roaming,

   — Irish wholesale market for mobile call termination.

Horizontal effects

5. The Advisory Committee agrees with the Commission's assessment that the proposed operation is likely to give rise to non-coordinated horizontal effects that would significantly impede effective competition on the Irish market for mobile telecommunication services to end-customers (retail mobile telecommunications services market) due to:

   (a) the removal of an important competitive force;

   (b) the reduction of competition from Eircom due to the likely frustration or termination of the existing network-sharing agreement between Eircom and O_2.

6. The Advisory Committee agrees with the Commission's assessment that there is no need to come to a final decision on whether the proposed operation is likely to lead to a significant impediment of effective competition in the wholesale market for mobile network access and call origination in Ireland, since the commitments proposed by the Notifying Party in relation to the retail market will also address any potential concerns on the wholesale market.

   A minority disagrees.

7. The Advisory Committee agrees with the Commission's assessment that there is no need to come to a final decision on whether the proposed operation is likely to give rise to coordinated horizontal effects on the Irish retail mobile telecommunications services market, since the commitments proposed by the Notifying Party to address the non-coordinated effects on this market also exclude the possibility of coordinated effects on the Irish retail mobile telecommunications services market.

   A minority disagrees.

Vertical effects

8. The Advisory Committee agrees with the Commission's assessment that the proposed operation is not likely to give rise to vertical effects that would significantly impede effective competition on:

   — the Irish wholesale market for international roaming,

   — the Irish wholesale market for mobile call termination.

Remedy

9. The Advisory Committee agrees with the Commission that the final commitments offered by the Notifying Party on 6 May 2014 address the competition concerns identified by the Commission on the Irish market for mobile telecommunication services to end-customers.

   A minority disagrees and a minority abstains.

10. The Advisory Committee agrees with the Commission's conclusion that, subject to the full compliance with the final commitments, the notified transaction is not likely to significantly impede effective competition in the internal market or in a substantial part of it.

    A minority disagrees and a minority abstains.

11. The Advisory Committee agrees with the Commission that the notified transaction must therefore be declared compatible with the internal market and the functioning of the EEA Agreement in accordance with Articles 2(2) and 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.

    A minority disagrees and a minority abstains.

Final Report of the Hearing Officer ([1])

Hutchison 3G UK/Telefónica Ireland

(M.6992)

(2014/C 264/03)

Introduction

1. On 1 October 2013, the Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation ([2]) by which the undertaking Hutchison 3G UK Holdings Limited, controlled by Hutchison Whampoa Limited (together the 'Notifying Party'), will acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Telefónica Ireland Limited ('O_2') by way of purchase of shares (the 'Proposed Transaction'). The Notifying Party and O_2 are together referred to as the 'Parties'.

2. On 6 November 2013, the Commission initiated proceedings pursuant to Article 6(1)(c) of the Merger Regulation. The Notifying Party submitted written comments on 20 November 2013 and complemented them with a submission on efficiencies on 29 November 2013.

Statement of Objections

3. On 30 January 2014, 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.

4. The Parties as well as O_2's ultimate parent, Telefónica SA, were given until 13 February 2014 to reply to the SO. DG Competition extended the deadline to reply to the SO and the Notifying Party replied on 18 February 2014. In its reply, the Notifying Party requested the opportunity to develop its arguments at a formal oral hearing.

Access to the file

5. The Notifying Party received access to the file via CD-ROM on 31 January 2014 and subsequently, on 6 and 21 February 2014, on 28 and 31 March 2014, and on 16 May 2014.

6. On 4 February 2014, the Notifying Party submitted a request to DG Competition for further access to the file, which it extended to additional documents on 6 February 2014. DG Competition effectively dealt with this request, granting the Notifying Party further access to most of the requested documents.

7. I have not received any complaint from the Parties regarding access to the file. Therefore, I consider that their procedural rights in this respect have been observed.

Interested third persons

8. Upon their request, I allowed Eircom, Vodafone, Liberty Global, BT and Tesco Ireland to be heard as interested third persons in the current proceedings. I allowed upon its request also the Department of Communications, Energy & Natural Resources of Ireland ('DCENR') to be heard as an interested third person.

9. All interested third persons requested the opportunity to participate in the formal oral hearing. I invited Eircom, Vodafone, Liberty Global, BT and Tesco Ireland to express their views at the formal oral hearing. I also invited DCENR and the Irish Commission for Communications Regulation to attend the formal oral hearing as competent authorities of Ireland pursuant to Article 15(3) of the Merger Implementing Regulation ([3]).

([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 ('Decision 2011/695/EU') (OJ L 275, 20.10.2011, p. 29).

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

([3]) Commission Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the 'Merger Implementing Regulation') (OJ L 133, 30.4.2004, p. 1).

Oral hearing

10. The formal oral hearing was held on 25 February 2014. The Notifying Party and O_2 each requested and were granted a closed session for parts of their respective presentations. Both the Notifying Party and O_2 agreed to the presence of the external advisors of the other party during their respective closed sessions.

Letter of Facts

11. On 19 March 2014, the Commission informed the Notifying Party in a Letter of Facts 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 responded to the Letter of Facts on 30 March and 1 April 2014.

Remedies

12. In order to address the competition concerns raised by the Commission in the SO, the Notifying Party submitted on 3 March 2014 a first set of commitments, and on 17 and 19 March 2014 revised sets of commitments, which the Commission market-tested on 19 March 2014. On 8 April 2014, the Notifying Party submitted a revised commitment, which the Commission market-tested on the same date. The Notifying Party submitted a final set of commitments on 6 May 2014.

Conclusion

13. 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.

14. Overall, I conclude that all parties have been able to effectively exercise their procedural rights in this case.

Brussels, 23 May 2014.

Wouter WILS

SUMMARY OF COMMISSION DECISION

of 28 May 2014

declaring a concentration compatible with the internal market and the EEA Agreement

(Case M.6992 — Hutchison 3G UK/Telefónica Ireland)

(notified under document C(2014) 3561 final)

(Only the English version is authentic)

(Text with EEA relevance)

(2014/C 264/04)

On 28 May 2014 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 on the website of the Directorate-General for Competition, at the following address: http://ec.europa.eu/comm/competition/index_en.html*

I. THE PARTIES

(1) Hutchison 3G UK Holdings Limited (United Kingdom) is a wholly-owned indirect subsidiary of Hutchison Whampoa Limited (Hong Kong), a conglomerate company headquartered in Hong Kong. Hutchison Whampoa Limited is active on the Irish mobile telecommunications market through its indirect subsidiary Hutchison 3G Ireland Limited ('Three'). Three is the most recent mobile network operator ('MNO') to have entered the market and the fastest growing of the four Irish MNOs. It sells its services under the brand name '3'. Apart from Three, Hutchison Whampoa Limited also owns MNOs in five other Member States, namely Austria, Denmark, Italy, Sweden and the UK.

(2) Telefónica Ireland Limited ('O_2') is a wholly-owned indirect subsidiary of Telefónica S.A., the parent company of the Telefónica group. The Telefónica group is one of the world's largest mobile network providers. O_2 is Ireland's second largest MNO and sells its services under the brand name 'O_2' and the sub-brand '48'. It also owns 50 % of Tesco Mobile Ireland, the other 50 % being owned by Tesco Ireland.

II. THE OPERATION

(3) On 1 October 2013, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Hutchison 3G UK Holdings Limited, controlled by Hutchison Whampoa Limited, will acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking O_2 by way of purchase of shares.

(4) The concentration will be implemented according to the terms of a sale and purchase agreement of 22 June 2013 between O_2's parent companies and Hutchison 3G UK Holdings Limited. Pursuant to this agreement, Hutchison 3G UK Holdings Limited will purchase all shares in O_2 (the 'merger'). If the merger is completed, H3G will acquire sole control over O_2, resulting in a change of control on a lasting basis. The merger therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation. The merger was notified by Hutchison 3G UK Holdings Limited which, after notification, nominated Hutchison 3G Ireland Finance Limited to acquire the shares of O_2. Hutchison 3G Ireland Finance Limited is a wholly-owned indirect subsidiary of Hutchison Whampoa Limited. This change in the entity acquiring O_2 therefore has no effect on the control of the relevant undertakings or the Commission's jurisdiction to examine the merger.

III. SUMMARY

A. THE RELEVANT MARKETS

(5) In line with previous Commission decisions concerning markets for mobile telecommunications services and the notifying party's views, the relevant product markets were defined as follows:

(a) the market for mobile telecommunications services to end customers (the 'retail mobile telecommunications services market');

(b) the wholesale market for access and call origination on public mobile telephone networks (the 'wholesale market for access and call origination');

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

(c) the wholesale market for international roaming; and

(d) the wholesale market for mobile call termination.

(6) The reasons underlying the definition of the first two markets, which are primarily affected in this case, are set out below.

1. **The retail mobile telecommunications services market**

(7) The Commission concluded that the retail mobile telecommunications services market is a relevant product market in this case. In previous decisions, the Commission found that there is one overall market for retail mobile telecommunications services. This is the market on which MNOs and mobile virtual network operators ('MVNOs') sell voice and data services to end customers via a mobile network. In previous decisions, the Commission did not further divide this market by type of customer (business or private customers), by type of service (post-paid or pre-paid), or by type of network technology (2G/GSM or 3G/UMTS). The Commission has not previously found that there is a separate market for data-only services.

(8) In this case, the Commission considered whether different segments of the retail mobile telecommunications services market constitute separate markets. The Commission reviewed the post-paid and pre-paid segments, the voice (including voice/data), mobile broadband (data only) and machine to machine ('M2M') services segments and the private and business customer segments. Following the results of its investigation in this case and in line with its previous decisions, the Commission concluded that the overall market consists of various segments but that these segments do not constitute separate product markets.

(9) In line with previous Commission decisions and the notifying party's views, the Commission concluded that the relevant geographic market corresponds to the territory of Ireland.

2. **The wholesale market for access and call origination on public mobile telephone networks**

(10) On this market, MNOs sell access to their network and the ability to make calls ('call origination') to MVNOs. MNOs own the mobile network and constitute the supply side of the market, whereas MVNOs who seek access constitute the demand side of the market. In line with previous Commission decisions, the Commission Recommendation on relevant markets of 11 February 2003 and the notifying party's views, the Commission concluded that the wholesale market for access and call origination on public mobile telephone networks is a relevant product market in this case.

(11) The mobile networks to which MNOs grant access to MVNOs have a national dimension because spectrum licenses are granted for the territory of Ireland. The Commission therefore concluded that the relevant geographic market for the wholesale market for access and call origination on public mobile telephone networks corresponds to the territory of Ireland.

B. COMPETITIVE ASSESSMENT

(12) Three and O_2 are two of the four MNOs present on the retail mobile telecommunications services market and the wholesale market for access and call origination in Ireland. These markets are oligopolistic markets characterised by a high degree of concentration and high barriers to entry.

(13) The proposed merger would reduce the number of MNOs in Ireland from four to three. It would lead to a market structure with two MNOs with a similar strong position, Vodafone and the merged entity, both with a market share of roughly 40 %, followed by a third more distant player, Eircom, with a market share close to 20 %. While the proposed merger would not lead to the creation or strengthening of a (single) dominant position of the merged entity, the Commission concludes that it would result in a significant impediment to effective competition on the retail mobile telecommunications market and, potentially, on the wholesale market for network access and call origination in Ireland.

1. **Legal test**

(14) The Merger Regulation recognises that in oligopolistic markets, it is all the more necessary to maintain effective competition. This is in view of the more significant consequences that mergers may have on such markets. For this reason, the Merger Regulation provides that under certain circumstances, concentrations involving, first, the elimination of important constraints that the merging parties had exerted on each other, and, second, a reduction of competitive pressure on the remaining competitors may result in a significant impediment to effective competition, even in the absence of a likelihood of coordination between the members of an oligopoly ([1]).

([1]) Recital 25 of the Merger Regulation.

(15) The Commission guidelines on the assessment of horizontal mergers ('Horizontal Merger Guidelines') [1] distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects. Non-coordinated effects may significantly impede effective competition by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour. In that regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger [2].

(16) Applying the legal test set out in the Merger Regulation to the proposed merger, the Commission has assessed whether or not the merger may significantly impede effective competition by eliminating an important constraint between Three and O_2, and by reducing competitive pressure on the remaining competitors on the relevant markets.

2. Market shares

(17) Ireland has approximately 5,6 million mobile subscribers, which rely on the services of one of Ireland's four MNOs: Vodafone, O_2, Eircom and Three. In 2013, Vodafone was the market leader with a market share of 38 % by subscribers and 44 % by revenues. O_2, including Tesco Mobile, was the second-largest operator with a market share of 31 % by subscribers and 28 % by revenues. Eircom had a market share of 19 % by subscribers and 18 % by revenues. Finally, Three had a market share of 10 % by subscribers and 10 % by revenues.

(18) The merger would reduce the number of MNOs in Ireland from four to three and combine the second player with the fourth player. The result would be a market featuring two large MNOs of roughly similar size. Vodafone and the merged entity would have a market share of, respectively, 44 % and 38 % by revenues, and 38 % and 41 % by subscribers. Eircom would be a distant third player, with a market share of 18 % by revenues and 19 % by subscribers.

(19) In terms of market share growth, between 2005 and 2008, Vodafone and O_2 lost subscribers while Eircom and Three gained subscribers. Vodafone stabilised its subscriber share in 2009 (that is, it stopped losing subscribers) and so did Eircom (that is, Eircom stopped gaining subscribers). O_2 (following a couple of years of stability between 2008 and 2010) started to lose subscribers again. Three has been constantly gaining subscribers since its entry in the market in 2005.

3. Limited likelihood of sufficient entry by MNOs and/or MVNOs

(20) The Commission concluded that it is unlikely that a new player will enter the market as an MNO in the next two to three years.

(21) The Commission considered that entry by an MVNO seems easier, as it does not need to build its own network but relies on other MNOs for access. Nevertheless, the Commission had concerns that MVNOs will find it more difficult to enter the market after the merger, given the reduction in the number of MVNO hosts and the merged entity's decreased incentives to grant wholesale access. Moreover, previous entry by MVNOs demonstrated that it is difficult for MVNOs to obtain a sufficiently high market share and affect the behaviour of other MNOs. On this basis, the Commission concluded that further MVNO entry, even if it were to occur, would not in itself be sufficient to negate the adverse effects of eliminating one of the four MNOs from the market.

4. The merger will remove an important competitive force from the retail mobile telecommunications services market

Overall market

(22) The Commission assessed whether Three is currently an important competitive force on the Irish retail mobile telecommunications market. In particular, the Commission examined the competitive pressure exerted by Three on the market, including its market strength, growth strategy and the reaction from competitors in the overall retail mobile telecommunications services market. The Commission established that since its entry on the market, Three

[1] Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 5.2.2004, p. 5).

[2] Horizontal Merger Guidelines, paragraph 24.

has competed vigorously in order to grow its customer base. Three's competitive strategy appears to be mainly focused on a three-prong strategy, namely (i) unique data offers including All You Can Eat ('AYCE') data, (ii) attractive or unlimited minutes and text bundle allowances, and (iii) market-leading/free device pricing and competitive tariff plans.

(23) Three's role as an important competitive force on the Irish retail mobile telecommunications services market is based on a number of indicators, including:

(a) Internal Three and O_2 documents, as well as competitor documents and submissions;

(b) Independent surveys commissioned by the parties to the merger; and

(c) Three's attractive and competitive tariffs as shown by the Commission's own tariff comparisons, data comparisons from the Irish telecommunications regulator, and Three's own internal documents.

(24) The Commission conducted a comparison of pre-paid and post-paid tariffs in order to assess the notifying party's claim that tariffs in Ireland do not support the conclusion that Three is an important competitive force. It found that Three's tariffs were competitive and consistent with the conclusion that Three exerts an important competitive constraint on O_2 and the other MNOs.

(25) The Commission explored Three's brand reputation and assessed the notifying party's claims that, based on brand reputation and awareness, Three could not be considered an important competitive force. The Commission found that Three's brand reputation does not negatively impact Three's competitiveness to such a degree that it cannot be considered an important competitive force on the retail mobile telecommunications services market.

(26) On the basis of its investigation and assessment, the Commission considered that Three is currently an important competitive force, constraining O_2 and the remaining players on the retail mobile telecommunications services market.

Segments of activity

(27) Following the analysis on the overall retail market, the Commission examined Three's role in specific segments, in particular the mobile broadband segment, the post-paid segment, the pre-paid segment and the business segment.

(28) The Commission found that Three is an important competitive force in the mobile broadband segment, where it is market leader with a [35-40 %] market share, and in the post-paid and pre-paid segments. On the other hand, the Commission concluded that in the business segment Three is not yet an important competitive force.

Conditions absent the merger

(29) The Commission assessed Three's and O_2's likely behaviour absent the merger and concluded that Three and O_2 will most likely continue to compete vigorously.

Merged entity's incentives to compete after the merger

(30) The Commission concluded that the merged entity's incentives to compete would be weaker than those of Three and O_2 pre-merger. First, the merger would eliminate competition between two separate MNOs. Prior to the merger Three and O_2 are constrained, inter alia, by each other as some subscribers would switch to the other in case of a price increase. This competitive constraint that Three and O_2 impose on one another would be lost as a result of the merger. Second, the merger will increase Three's customer base. This will give the merged entity lower incentives to offer attractive tariffs to obtain new customers, since it has to offer these attractive tariffs to its entire customer base. In other words, the merged entity would focus more on customer retention than on growth.

(31) The Commission also assessed the notifying party's arguments that the merger would result in a higher quality network. It concluded that both Three and O_2 had sufficient ability and incentive to compete without the merger and that, in any event, the quality effects alleged by the notifying party are unlikely to materialise.

Likely reaction of competitors following the merger

(32) In addition, the Commission assessed the reaction of competitors post-merger. The Commission considered that Vodafone would not have the incentive to engage in an aggressive price competition with the merged entity. On the contrary, Vodafone would likely have the incentive, following a price increase by the merged entity, to also increase its prices. The situation of Eircom is considered in section 5 below.

Quantitative assessment of horizontal non-coordinated effects

(33) The Commission also carried out a quantitative assessment of the likely price effects resulting from the elimination of competition between the merging parties. The Commission's simulation predicted that MNOs in Ireland would, on average, raise prices for mobile voice and combined voice-data offers by 6 % in the post-paid private segment and by 4 % market wide. This estimate was based on a baseline case using contribution margins as a measure for margins. In a sensitivity scenario based on incremental margins, the corresponding predicted average price increases were 4 % in the post-paid private segment and 3 % market wide.

Conclusion on the removal of an important competitive force

(34) The Commission concluded that the merger is most likely to remove an important competitive force from the retail mobile telecommunications services market in two ways:

(a) The merger will reduce the number of MNOs in Ireland from four to three and will eliminate the competition currently existing between Three and O_2, providing the merged entity with an incentive to increase price.

(b) Moreover, Three is currently an important competitor in Ireland on price and unlimited data services. Its commercial strategy is to grow both its subscriber and revenue share given its (i) limited scale and subscriber base and (ii) low costs of acquiring additional customers due to available spare capacity which provide strong incentives to grow by competing vigorously. The increase in subscriber base resulting from the transaction will entail a further incentive to increase prices.

(35) These incentives to increase price by the merged entity are unlikely to be offset by competitors, who in turn are likely to raise their prices as well.

5. The merger is likely to reduce competition from Eircom in the retail and wholesale markets

(36) The Commission concluded that the merger will give the merged entity the ability and incentive to frustrate or terminate the existing Mosaic network sharing agreement between Eircom and O_2. That network sharing agreement has important implications for Eircom's network costs and coverage and is important for Eircom's ability to compete effectively in the years to come. Eircom's reduced ability to compete as the result of the likely termination of the Mosaic agreement is likely to lead to less competition on the Irish retail and wholesale mobile markets.

(37) The merger will also lead to changes in the spectrum holdings, with the merged entity combining the spectrum previously held by Three and O_2. The Commission considered that this change is unlikely to have anticompetitive effects.

6. Likely effects on the wholesale market for network access and call origination

(38) In addition to the retail market, O_2 and Three are active on the wholesale market for network access and call origination. The Irish wholesale market is in its developing stage with four MVNOs present today. There is, however, a clear interest from potential entrants to launch new MVNOs in the future.

(39) Based on the results of the market investigation, the Commission considers that both O_2 and Three are currently important providers of wholesale network access in Ireland. Together, they host three of the four MVNOs present in Ireland and they are engaged in negotiations with potential MVNOs. Furthermore, the Commission considers that the reduction in the number of network access suppliers post-merger is likely to reduce the bargaining power of MVNOs in the negotiating process. Also, the merged entity is likely to have lower incentives to host MVNOs on commercially attractive terms than Three and O_2 would have absent the merger. Finally, the reduction in competition on the wholesale market is unlikely to be offset by potential changes in behaviour of the remaining competitors, Eircom and Vodafone.

(40) The above findings suggest that the merger might lead to a significant impediment to effective competition in the wholesale market for mobile network access and call origination in Ireland. However, there is no need to come to a final decision in this respect, as the commitments proposed by the notifying party to address the concerns identified on the retail market will strengthen Eircom's ability to host MVNOs, enable entry of two new MVNOs, and thus address any negative effects on the wholesale market.

7. **Coordinated effects in the retail market for mobile telecommunications services**

(41) The Commission considered that some elements suggest the merger will make coordination more likely and sustainable, but that there are also indications that coordination will still be difficult to sustain.

(42) Among the elements that will make coordination more likely and sustainable is the fact that the merger would remove Three in its maverick role from the market and result in a market with two large players with similar market shares. In addition, coordination on retail prices may be possible because prices are sufficiently transparent. Deviation from the terms of coordination could be immediately detected, as most retail prices are publicly available. A deterrent mechanism could consist in a return to competition.

(43) On the other hand, after the merger Eircom will still have an incentive not to follow any coordination, as it is much smaller and likely to have a different cost structure than its two larger competitors.

(44) The Commission did not need to conclude whether, on balance, coordination is more likely than not, because the commitments proposed by the notifying party to remedy the non-coordinated effects of the merger on the Irish retail market also exclude the possibility that the transaction will lead to coordinated effects on the Irish retail market. First, the commitments will strengthen Eircom's ability to compete, making it more likely that Eircom disrupts any post-merger coordination. Second, the commitments will allow two MVNOs to enter the Irish market. These MVNOs will have purchased a fixed amount of network capacity and will not pay their host MNO on a 'pay-as-you-go' basis. As a result, the MVNOs will have a strong incentive to fill the purchased network capacity. To do so, they are likely to compete on price, undermining any coordination.

8. **Absence of countervailing buyer power**

(45) The Commission finds that there is unlikely to be a sufficient countervailing buyer power to offset the likely negative effects on the retail market and the potential negative effects on the wholesale market.

9. **Efficiencies**

(46) According to the notifying party, the merger would generate three types of efficiencies: (1) scale efficiencies, (2) 4G (also known as LTE) deployment efficiencies and (3) efficiencies relating to the coverage of sparsely populated areas. The Commission assessed whether these claimed efficiencies satisfied the three cumulative criteria of verifiability, merger specificity and benefit to consumers.

(47) The Commission's overall conclusion on the notifying party's arguments on scale efficiencies was the following:

(a) The amount of verifiable scale efficiencies is lower than submitted by the notifying party.

(b) Scale efficiencies related to the network are not likely to be merger-specific since O_2 and Eircom on the one hand and Vodafone and Three on the other were about to implement network sharing agreements and realise similar cost savings.

(c) The scale efficiencies are related to fixed costs and are not likely to be passed on to consumers.

(48) The Commission also did not accept the notifying party's claimed efficiencies relating to the deployment of 4G (LTE). These claimed efficiencies could not be considered verifiable and/or merger specific, since, in the absence of the merger, O_2 would have deployed a competitive 4G network comparable to that which the merged entity plans to deploy.

(49) In relation to the coverage of the area targeted by the Irish Government's National Broadband Scheme with mobile broadband services, the Commission considered that the additional customer welfare due to the merger would not be material and insufficient to outweigh the anticompetitive effects of the merger.

IV. COMMITMENTS

(50) In order to address the competition concerns, the notifying party submitted several sets of commitments on 3 March, 19 March and 8 April 2014. The Commission conducted two market tests, launched on 19 March and 8 April 2014. Based on the results of these market tests and feedback from the Commission, the notifying party submitted a final set of commitments on 6 May 2014 ([1]).

A. DESCRIPTION OF THE PROPOSED COMMITMENTS

(51) The final set of commitments comprised two elements: (i) an MVNO entry commitment consisting of an offer to grant network access to two MVNOs under a capacity-based model, with an option for either of the two MVNO entrants to acquire spectrum from Three; and (ii) an Eircom commitment consisting of an offer to conclude a revised network sharing agreement with Eircom.

1. **MVNO entry commitment**

(52) The final MVNO entry commitment consists of the following:

- The notifying party commits to offer wholesale network access under a capacity-based MVNO model. This means that an MVNO will pay a fixed fee for a fixed capacity, measured in terms of bandwidth, whereby the MVNO entrants will obtain a dedicated 'pipe' from the merged entity's network for each of voice and data traffic.
- The notifying party commits to conclude two such capacity agreements:
  - the first agreement with an MVNO that is approved by the Commission before the notifying party can implement the merger with O_2 (the 'Upfront MVNO'). This capacity agreement would be concluded for a minimum capacity of […] % of the merged entity's network capacity,
  - the second agreement with a second MVNO (the 'Second MVNO') for a minimum capacity of […] % of the merged entity's network capacity. The conclusion of the capacity agreement with the Second MVNO is a condition for the notifying party's merger with O_2. If Three does not conclude an agreement with the Second MVNO within a specified time period, a divestiture trustee will sell the minimum capacity of […] % on Three's behalf.
- In order to attract entry by two MVNOs, the capacity and the price that these MVNO entrants pay can be set in accordance with a reasonable glide path for the first five years of the capacity agreement.
- The duration of the two capacity agreements is five years, with an option to extend the term of the agreement for another five years under a capacity-based MVNO model.
- The Upfront MVNO and the Second MVNO may each increase their initial capacity allocation up to a maximum cap of 15 % of the merged entity's network capacity during the initial or the subsequent five year term. The fixed annual fee to be paid by the MVNO will then be increased proportionately.
- The capacity that is available for both the Upfront MVNO and the Second MVNO is calculated as a proportion of the merged entity's total network capacity and may be increased if the latter grows.

(53) The notifying party also commits to offer to divest spectrum to either the Upfront MVNO or the Second MVNO (but not to both), in order to enable either one of these MVNOs to develop into an MNO. The notifying party commits to divest two blocks of 1 800 MHz spectrum and two blocks of 2 100 MHz spectrum. In addition, the notifying party commits to divest one block of 900 MHz spectrum. The option for the MVNOs to acquire this spectrum is valid for 10 years from 1 January 2016.

2. **Eircom commitment**

(54) The Eircom commitment consists of a unilateral offer by the notifying party to Eircom to amend and strengthen Eircom's existing network sharing agreement with O_2. Three would join the agreement and its terms would be revised, among others to increase the pace of site consolidation.

([1]) The commitments submitted on 6 May 2014 were signed by the notifying party, Hutchison 3G UK Holdings Limited. On 22 May 2014, the notifying party submitted revised commitments that were substantially the same as the commitments of 6 May 2014 but were also signed by Hutchison 3G Ireland Holdings Limited, the parent company of Three after a restructuring that took place after notification.

B. ASSESSMENT OF THE FINAL COMMITMENTS

(55) Based on its assessment, and taking into account the results of the two market tests, the Commission concluded that the final set of commitments fully address the competition concerns.

(56) With respect to the MVNO entry commitment, the Commission considered that the proposed capacity-based MVNO model creates a strong incentive for the MVNO entrant to fill its purchased network capacity by aggressively acquiring customers. This MVNO model closely replicates the cost structure of an MNO. The proposal also ensures that the two MVNO entrants obtain a significant percentage of the merged entity's capacity (at least […] % and potentially up to 30 % in total).

(57) In addition, the MNO option lowers one of the main barriers for MNO entry, namely the availability of suitable spectrum. Thus, it provides an opportunity for one of the two MVNO entrants to become an MNO.

(58) Finally, the Eircom commitment ensures that Eircom's ability to compete will not be reduced by the termination or frustration of the Mosaic network sharing agreement post-merger. This will allow Eircom to compete effectively.

V. **CONCLUSION**

(59) For the reasons mentioned above, the decision concluded that the proposed concentration will not significantly impede effective competition in the internal market or in a substantial part of it.

(60) Consequently the concentration was declared compatible with the internal market and the EEA Agreement, in accordance with Article 2(2) and Article 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.

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