



Final Report of the Hearing Officer¹
Hutchinson 3G Austria/Orange Austria
(COMP/M.6497)

- (1) On 7 May 2012, the Commission received the notification of a proposed concentration pursuant to Article 4 of the Merger Regulation² by which the undertaking Hutchison 3G Austria Holdings (“Notifying Party”) would acquire within the meaning of Article 3(1)(b) of the Merger Regulation, control of the whole of the undertaking Orange Austria Telecommunication GmbH (“Orange”), by way of purchase of shares.
- (2) On 28 June 2012, the Commission initiated proceedings pursuant to Article 6(1)(c) of the Merger Regulation. The commitments to address the competition concerns identified in the Article 6(1)(c)-decision submitted by the Notifying Party in August were rejected by the Commission as not suitable after having conducted a market test. Subsequently the Notifying Party submitted its written comments on the decision in September 2012.

I. Statement of objections and oral hearing

- (3) A Statement of Objections (“SO”) was sent to the Notifying Party on 20 September 2012. In the SO, the Commission indicated that the notified concentration would significantly impede effective competition in the market for mobile telecommunication services to end customers in Austria. Access to the file was granted on the day of the notification of the SO and additionally on 14 and 23 November 2012.
- (4) The Notifying Party and Orange submitted their reply to the SO on 4 October 2012 and requested an oral hearing. The day before the oral hearing on 10 October 2012 the Notifying Party offered a revised set of remedies.

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.

II. Third persons

- (5) Three companies applied and were granted the status of third persons after having shown sufficient interest within the meaning of Article 18(4) of the Merger Regulation, i.e. Liberty Global BV, T-Mobile Austria GmbH and Tele2 Telecommunication GmbH. Upon their request, all three third persons were given the opportunity to express their views at the oral hearing.

III. Remedies

- (6) After the hearing, the Notifying Party continued to discuss remedies with the Commission with a view to improving them. The final remedy package includes commitments by the Notifying Party: to enter into an upfront agreement with a mobile virtual network operator ("MVNO") to be approved by the Commission; to grant MVNOs access to its network; and, to make available spectrum to a new entrant. Such remedy proposal is also linked to the acquisition by the new entrant of additional spectrum which will be auctioned in Austria. After the market test, the Commission concluded that the final remedy package addressed the competition concerns identified in the SO.

IV. Draft decision

- (7) In my opinion the draft Decision relates only to objections in respect of which the parties have been afforded the opportunity to make known their views.

V. Concluding remark

- (8) Overall, I conclude that all participants in the proceedings have been able to effectively exercise their procedural rights in this case.

Brussels, 29 November 2012

(signed)

Michael ALBERS