Press release

Brussels, 10 October 2014

Mergers: Commission clears acquisition of Dutch cable TV operator Ziggo by Liberty Global, subject to conditions

Following an in-depth investigation, the European Commission has approved under the EU Merger Regulation the proposed acquisition of Dutch cable TV operator Ziggo by Liberty Global. The approval is conditional upon the implementation of a commitments package. The Commission had concerns that the merger, as initially notified, would have hindered competition by removing two close competitors and important competitive forces in the Dutch market for the wholesale of premium Pay TV film channels, and by increasing Liberty Global's buyer power vis-à-vis TV channel broadcasters, allowing it to hinder innovation in the delivery of audio visual content over the Internet (so-called over-the-top or "OTT" services). To address these concerns, Liberty Global offered to sell Film1, its premium Pay TV film channel. Liberty Global also committed to terminate clauses in channel carriage agreements that limit broadcasters' ability to offer their channels and content over the Internet, and not to include such clauses in future channel carriage agreements for eight years. These commitments remove the Commission's concerns.

Commission Vice President in charge of competition policy Joaquín Almunia commented: "The commitments offered by Liberty Global ensure that the acquisition of Ziggo will not be detrimental to Dutch consumers, who will continue to enjoy the benefits of innovative services and choice for watching audio visual content."

The merger brings together the first and the second largest cable TV networks in The Netherlands. Both companies operate in different geographic areas within The Netherlands and, as such, do not compete for the same customers. The merger will not change this.

However, in its original form, the merger would have combined the only two linear Premium Pay TV film channels in The Netherlands, namely Film1 and HBO Nederland. This would have allowed Liberty Global to increase the wholesale price of these channels for competing retail Pay TV operators such as KPN. Furthermore, Liberty Global would have been in a position to refuse to supply, in particular, Film1 to its retail rivals, thus limiting the breadth of the content that those rivals could offer to consumers.

The Commission also considered that combining the two cable footprints of Ziggo and Liberty Global, which together cover around 90% of The Netherlands and currently command between 60% and 70% of Dutch Pay TV subscriptions, would have given Liberty Global increased buyer power vis-à-vis TV broadcasters, in particular Dutch TV broadcasters. The Commission was concerned that this would have allowed Liberty Global to hinder the development of innovative audio-visual OTT services that TV broadcasters wish to launch or to provide content to. OTT services are a significant threat to the traditional Pay TV model. The Dutch market is already characterised by the existence of agreements with TV broadcasters, in particular agreements that Liberty Global concludes, that reduce TV broadcasters' ability to offer such OTT services. The merger would have
strengthened Liberty Global's ability to impose such restrictions on TV broadcasters, in particular by conditioning the terms of carriage of TV channels on its cable Pay TV network upon a TV broadcaster’s commitment to limit its OTT activities.

For all these reasons, the Commission was concerned that the merger, in its original form, would have led to higher prices for premium Pay TV film channels and reduced OTT innovation to the detriment of Dutch consumers.

The commitments
To remove these concerns, Liberty Global submitted commitments based on two components:

First, in order to maintain effective competition for the wholesale of premium Pay TV film channels in The Netherlands, Liberty Global committed to divest its Film1 channel to a third party purchaser. Liberty Global also committed to carry Film1 on its Pay TV network for a period of three years. This will ensure an adequate level of competition on the market for the wholesale of premium Pay TV film channels, since Film1 will remain a viable competitor on the market.

Second, in relation to audio-visual OTT services, Liberty Global committed to terminate clauses currently contained in carriage agreements with TV broadcasters that restrict, by direct or indirect means, the ability of broadcasters to offer their channels and their content via OTT services (whether their own or audio-visual OTT services of third parties). Liberty Global also committed not to conclude carriage agreements containing such clauses for a period of eight years. Furthermore, in order to ensure that this commitment cannot be undermined by congesting Internet interconnection points through which Internet traffic generated by audio-visual OTT services would flow to Liberty Global's Internet network and ultimately to consumers taking Internet subscriptions from Liberty Global, Liberty Global committed to maintain adequate interconnection capacity through at least three uncongested routes into its Internet network in The Netherlands, at least one of which with a large transit provider.

These commitments address the Commission's competition concerns, taking in particular into account the evolution that OTT services have brought to the delivery of TV content to consumers. The Commission therefore concluded that the transaction, as modified by the commitments, would not raise competition concerns. This decision is conditional upon full implementation of the commitments.

Background
The transaction was notified to the Commission on 14 March 2014. The Commission opened an in-depth investigation on 8 May 2014 (see IP/14/540). On 25 June 2014, the Commission decided not to refer the transaction to the Dutch competition authority (see IP/14/726). Liberty Global submitted a first set of commitments in July and an improved offer in August, to take account of comments received during the market test. Throughout the proceedings the Commission cooperated closely with the Dutch competition authority.

Companies
UPC and Ziggo are both cable TV operators and provide fixed and mobile telecommunications services to end consumers in the Netherlands. UPC is a subsidiary of Liberty Global plc., an international cable TV operator, head-quartered in the UK.

Merger rules and procedures
The Commission has the duty to assess mergers and acquisitions involving companies with a turnover above certain thresholds (see Article 1 of the Merger Regulation) and to
prevent concentrations that would significantly impede effective competition in the EEA or any substantial part of it.

There are currently two other on-going phase II merger investigations. The first one concerns the proposed acquisition of a controlling stake in De Vijver Media by Liberty Global (see IP/14/1029). The deadline for a decision in this case is 5 February 2015. In the second one, the Commission is assessing the proposed acquisition of Biomet by Zimmer in the sector of orthopaedic implants and related surgical products (see IP/14/1091) with a deadline for the final decision on 11 March 2015.

More information on this case is available on the Commission’s competition website, in the public case register under the case number M.7000.

Contacts:
Antoine Colombani (+32 2 297 45 13, Twitter: @ECspokesAntoine)
Marisa Gonzalez Iglesias (+32 2 295 19 25)
For the public: Europe Direct by phone 00 800 6 7 8 9 10 11 or by e-mail