



OPINION

of the ADVISORY COMMITTEE on MERGERS

given at its meeting of 27 November 2012

regarding a draft decision relating to

Case COMP/ M.6497 HUTCHISON 3G AUSTRIA/ORANGE AUSTRIA

Rapporteur : PORTUGAL

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 majority of the Advisory Committee agrees with the Commission's definitions of the relevant product and geographic markets in the draft Decision. A minority disagrees and a minority abstain.
- 4 In particular, the majority of the Advisory Committee agrees that the following markets should be distinguished:
 - Austrian market for mobile telecommunication services to end customers (retail mobile telecommunications services market);
 - Austrian market for wholesale access and call origination on public mobile telephone networks;
 - Austrian wholesale market for international roaming;
 - Austrian wholesale market for mobile call termination.

A minority disagrees and a minority abstain.

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 Austrian market for mobile telecommunication services to end customers (retail mobile telecommunications services market).

Vertical Effects

- 6 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:
- Austrian wholesale market for international roaming;
 - Austrian wholesale market for mobile call termination.

Remedy

- 7 The majority of the members of the Advisory Committee agrees with the Commission that the final commitments offered by the Notifying Party on 12 November 2012 address the competition concerns identified by the Commission on the Austrian-wide market for mobile telecommunication services to end customers. A minority disagrees and a minority abstains.
- 8 The majority of the members of 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.
- 9 The majority of the members of 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.
- 10 The members of the Advisory Committee ask the Commission to take into account all the other points raised during the discussion.