



Final Report of the Hearing Officer¹
Hutchison 3G UK / Telefónica Ireland
(M.6992)

Introduction

1. On 1 October 2013, the Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation² 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 ("O2") by way of purchase of shares (the "Proposed Transaction"). The Notifying Party and O2 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 O2's ultimate parent, Telefónica S.A., 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.

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.

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

Oral hearing

10. The formal oral hearing was held on 25 February 2014. The Notifying Party and O2 each requested and were granted a closed session for parts of their respective presentations. Both the Notifying Party and O2 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

(signed)
Wouter WILS

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.