



OPINION

of the ADVISORY COMMITTEE on MERGERS

given at its meeting of 18 June 2014

regarding a draft decision relating to

CASE No COMP/M.7018 – TELEFONICA GERMANY/ E-PLUS

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 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:
 - German market for mobile telecommunication services to end customers (retail mobile telecommunications services market);
 - German market for wholesale access and call origination on public mobile telephone networks;
 - German wholesale market for international roaming;
 - German 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 German market for mobile telecommunication services to end customers (retail mobile telecommunications services market) mainly due to the:

- a) combination of two close competitors;
 - b) removal of two important competitive forces (Telefonica and E-Plus).
6. As regards 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 Germany, 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 plurality of Member States agrees, a minority of Member States disagrees and a smaller minority of Member States abstains.

Vertical Effects

7. 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:
- German wholesale market for international roaming;
 - German wholesale market for mobile call termination.

Remedy

8. As regards the Commission's findings that the final commitments offered by the Notifying Party on 29 May 2014 address the competition concerns identified by the Commission on the German market for mobile telecommunication services to end customers, a plurality of Member States disagrees, an equal plurality of Member States abstains and a minority of Member States agrees.
9. As regards 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 plurality of Member States disagrees, an equal plurality of Member States abstains and a minority of Member States agrees.
10. As regards the Commission's conclusion 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 plurality of Member States disagrees, an equal plurality of Member States abstains and a minority of Members agrees.