



Final Report of the Hearing Officer¹
HUTCHISON 3G ITALY / WIND / JV
(Case M.7758)

1. On 5 February 2016 the European Commission (the "Commission") received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation² by which CK Hutchison Holdings Limited ("Hutchison") through its indirect subsidiary Hutchison Europe Telecommunications S.à.r.l ("HET", Luxembourg) and VimpelCom Ltd ("VimpelCom") through its indirect subsidiary VimpelCom Luxembourg Holdings S.à.r.l ("VIP", Luxembourg) acquire, within the meaning of Article 3(1)(b) and Article 3(4) of the Merger Regulation, joint control of a newly-created joint venture ("JV" or the "Transaction").
2. In Italy, Hutchison operates through its wholly owned subsidiary, H3G S.p.A. ("H3G") whereas VimpelCom operates through its wholly-owned subsidiary WIND Telecomunicazioni S.p.A. ("WIND"). The JV will combine the activities already carried out by H3G and WIND, namely the provision of mobile and fixed telecommunications services in Italy. HET, H3G, VIP and WIND will be referred to collectively as the "Parties".
3. The Commission's first phase investigation raised serious doubts as to the compatibility of the Transaction with the internal market and the EEA Agreement. On 30 March 2016, the Commission adopted a decision initiating proceedings pursuant to Article 6(1)(c) of the Merger Regulation to which the Parties submitted written comments on 21 April 2016.
4. On 20 April 2016, at the Parties' request and pursuant to Article 10(3), second subparagraph, first sentence, of the Merger Regulation, the second phase period for reviewing the Transaction was extended by 5 working days.
5. On 8 June 2016, following a first submission of commitments by the Parties, the Commission further extended that review period by 15 working days pursuant to the third sentence of the second subparagraph of Article 10(3) of the Merger Regulation.
6. Upon their requests, I have recognised PosteMobile S.p.A ("PosteMobile"), Sky Italia S.r.l ("Sky Italia"), Iliad S.A. ("Iliad") and Telecom Italia S.p.A ("Telecom Italia") as interested third persons in the current proceedings on 14 April 2016, 19 May 2016, 1 June 2016 and 13 June 2016, respectively.

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 (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

7. The Parties submitted a first set of commitments on 6 June 2016. On the basis of feedback from the Commission's targeted market testing of this package, launched on 8 June 2016, the Parties submitted revised commitments on 5 July 2016. In parallel, the Parties informed the Commission that they had entered into binding long form agreements with Iliad on 1 July 2016, a potential remedy taker, comprising (1) a framework and transfer Agreement; (2) a national roaming services agreement; (3) a RAN sharing agreement; and (4) a co-location agreement (together the "New MNO Agreements"). The Parties informed the Commission that the MNO Agreements were subsequently amended and re-executed on 18 July 2016.
8. On 18 July 2016 the Parties submitted a final set of commitments (the "Final MNO Commitment").
9. The Commission did not issue a statement of objections pursuant to Article 13(2) of Commission Regulation (EC) No 802/2004.³ There was no formal oral hearing in accordance with Article 14 of that regulation.
10. The draft decision declares the Transaction, as modified by the Final MNO Commitment, compatible with the internal market, subject to conditions and obligations intended to ensure that the parties comply with these commitments, in particular the introduction of a new mobile network operator (Iliad) in the Italian market.
11. I have reviewed the draft decision pursuant to Article 16(1) of Decision 2011/695/EU and I conclude that it deals only with objections in respect of which the Parties have been afforded the opportunity of making known their views.
12. Overall, I consider that the effective exercise of procedural rights has been respected in this case.

Brussels, 18 August 2016

Joos STRAGIER

³ Commission Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ L 133, 30.4.2004, p.1; corrigendum OJ L 172, 6.5.2004, p. 9)