



EUROPEAN COMMISSION

Hearing Officer for competition proceedings

FINAL REPORT OF THE HEARING OFFICER¹
T-MOBILE NL/ TELE2 NL
(CASE M.8792)

Introduction

1. On 2 May 2018, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Deutsche Telekom AG ("DT"), through its indirect wholly owned subsidiary T-Mobile Netherlands Holding B.V. (TMNL), would acquire within the meaning of Article 3(1)(b) of the Merger Regulation,² sole control over Tele2 Netherlands Holding N.V. ("Tele2 NL") (the "Proposed Transaction"). For the purpose of this report, DT, TMNL and Tele2 NL are jointly referred to as the "Parties".
2. The Commission's first phase investigation raised serious doubts as to the compatibility of the Proposed Transaction with the internal market as regards the market for retail mobile telecommunications services and the market for wholesale access and call origination services in the Netherlands. On 12 June 2018, the Commission adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation. DT submitted its written comments to that decision on 27 June 2018.

Statement of objections

3. On 12 September 2018, the Commission adopted a Statement of Objections (the "SO"), which was notified to DT on the same day. Tele2 NL received a (redacted) copy of the SO. According to the SO, the Commission came to 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(3) of the Merger Regulation as a result of horizontal non-coordinated effects in the overall market for the supply of retail mobile telecommunications services in the

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 (the "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").

Netherlands as well as in the market segment for the supply of retail mobile telecommunications services to private customers in the Netherlands.

4. The time-limit for replying to the SO set by Directorate-General for Competition ("DO Competition") was 26 September 2018, extended to 28 September 2018 by DO Competition. The Parties responded to the SO on 28 September 2018. In their response to the SO, the Parties requested to be heard orally.

Access to file

5. The Parties were first granted access-to-file on 13 September 2018. Subsequently, DT raised several queries regarding further access to the Commission's file. DT also complained that certain documents did not allow it to verify the existence and extent of redactions vis-a-vis the corresponding confidential documents, for which reason it was not able to determine whether there could be grounds for it to request further access to the underlying information.
6. Both at my behest and at its own initiative, DO Competition provided further access to file, on a rolling basis, as regards certain better or less redacted versions of relevant documents as well as through restricted disclosure of certain information to DT's external advisers only in a dataroom.
7. By decision of 12 October 2018, I found that DT had received access to all the materials (either directly or by means of its external advisers) to which I considered DT was entitled under Article 7 of Decision 2011/695/EU.

Interested third persons

8. I admitted four competitors of the Parties as interested third persons in these proceedings. Each of them was provided with a non-confidential version of the SO and given a time-limit within which to submit their observations. They submitted written comments and requested the opportunity to express their views orally during the oral hearing, to which requests I acceded.

Formal oral hearing

9. The formal oral hearing was held on 8 October 2018. It was attended by the Parties, with their external legal and economic advisers, the interested third persons, relevant Commission services and the competition authorities of seven Member States (Belgium, Germany, France, Italy, the Netherlands, Finland and the United Kingdom). The Parties requested and were granted closed sessions for parts of their presentations. There were no procedural problems or complaints raised in relation to the hearing.

Decision

10. Following its investigation, the Commission concludes in the decision that the Proposed Transaction would not significantly impede effective competition in the internal market or in a substantial part of it. The decision therefore declares the

Proposed Transaction compatible with the internal market and the functioning of the EEA Agreement.

Conclusion

11. Overall, I consider that the effective exercise of procedural rights has been respected throughout the proceedings.

Brussels, 16 November 2018

Joos STRAGIER