



OPINION

of the ADVISORY COMMITTEE on MERGERS

given at its meeting of 28th November 2018

**CONCERNING A PRELIMINARY DRAFT DECISION RELATING TO
CASE M.8797 – THALES / GEMALTO**

Rapporteur: Luxembourg

Concentration

1. The Advisory Committee (10 Member States) agrees with the Commission that the notified transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Council Regulation (EC) No 139/2004 of 20.1.2004 on the control of concentrations between undertakings¹.
2. The Advisory Committee (10 Member States) agrees with the Commission that the notified transaction has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

Market definition

3. The Advisory Committee (10 Member States) agrees with the Commission's definitions of the relevant product and geographic markets in the draft Decision.
4. In particular, the Advisory Committee (10 Member States) agrees that the following product markets should be distinguished:
 - a) General Purpose Hardware Security Modules ("HSMs");
 - b) Payment HSMs;
 - c) Network encryptors and the narrowest possible sub-segment for data in motion at Layer 2;
 - d) The manufacture and supply of SIM cards (upstream) and GSM-R integration (downstream);
 - e) OTA SIM card administration platforms and GSM-R integration;

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation")
Commission européenne, DG COMP MERGER REGISTRY, 1049 Bruxelles, BELGIQUE
Europese Commissie, DG COMP MERGER REGISTRY, 1049 Brussel, BELGIË

- f) Access control smart cards for use in remote HSM administration (upstream) and the downstream markets for GP HSMs and Payment HSMs (downstream).
5. The Advisory Committee (10 Member States) agrees with the Commission's definitions of the relevant geographic markets in relation to:
- a. The EEA-wide or worldwide market for GP HSMs;
 - b. The EEA-wide or worldwide market for Payment HSMs;
 - c. The potential EEA-wide market for network encryptors and the narrowest possible sub-segment for data in motion at Layer 2;
 - d. The upstream EEA-wide market for the manufacture and supply of SIM cards and the downstream national or EEA-wide market for GSM-R integration;
 - e. The upstream EEA-wide market for OTA SIM card administration platforms and the downstream national or EEA-wide market for GSM-R integration;
 - f. The upstream EEA-wide market for access control smart cards for use in remote HSM administration and the downstream markets for GP HSMs and Payment HSMs.

Competitive assessment

6. The Advisory Committee (10 Member States) agrees with the Commission's assessment that the notified transaction would to give rise to horizontal non-coordinated effects that would significantly impede effective competition on the market for General Purpose HSMs in the EEA or worldwide mainly due to the removal of the important competitive constraints that Thales and Gemalto exerted upon each other, together with the very limited number of credible alternative competitors.
7. The Advisory Committee (10 Member States) agrees with the Commission's assessment that the notified transaction would not significantly impede effective competition in view of its effects on the following affected markets:
- a. The EEA-wide or worldwide market for Payment HSMs;
 - b. The EEA-wide or worldwide market for market for network encryptors and the narrowest possible sub-segment for data in motion at Layer 2;
 - c. The upstream EEA-wide market for the manufacture and supply of SIM cards and the downstream national or EEA-wide market for GSM-R integration;
 - d. The upstream EEA-wide market for OTA SIM card administration platforms and the downstream national or EEA-wide market for GSM-R integration;
 - e. The upstream EEA-wide market for access control smart cards for use in remote HSM administration and the downstream markets for GP HSMs and Payment HSMs.

Remedy

8. The Advisory Committee (10 Member States) agrees with the Commission that the commitments offered by the Notifying Parties on 9 November 2018 pursuant to

Article 8(2) of the Merger Regulation address the competition concerns identified by the Commission on the EEA-wide or worldwide market for General Purpose HSMs.

9. The Advisory Committee (10 Member States) agrees with the Commission's conclusion that the notified transaction, subject to the full compliance with the commitments offered by the Notifying Parties on 9 November 2018 , is not likely to significantly impede effective competition in the internal market or in a substantial part of it.

10. The Advisory Committee (10 Member States) agrees with the Commission that the notified transaction must therefore be declared compatible with the internal market in accordance with Articles 2(2) and 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.
