

EN

***Case No COMP/M.7259 - CARPHONE WAREHOUSE/  
DIXONS***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 25/06/2014

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Brussels, 25/06/2014  
C(2014) 4428

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

**To the notifying parties:**

Dear Sir/Madam,

**Subject: Case M.7259 – Carphone Warehouse/ Dixons  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

(1) On 16 May 2014, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings Carphone Warehouse plc ("Carphone", the United Kingdom) and Dixons Retail plc ("Dixons", the United Kingdom) enter into a full merger within the meaning of Article 3(1)(a) of the Merger Regulation. Carphone and Dixons are designated hereinafter as the "Notifying Parties".

**1. THE PARTIES**

(2) Carphone is a specialist mobile telecommunications retailer, selling a range of mobile connectivity, devices and related services. Carphone is active in the UK, France, Spain, the Netherlands, Germany, Portugal, Sweden and Ireland.

(3) Dixons is a specialist electrical multi-channel retailing and services company specialising in the retail sale of high technology consumer electronics, personal computers, domestic appliances, photographic equipment and related services. Dixons is active in the UK, Ireland, Greece, the Czech Republic, Denmark, Finland, Norway, Slovakia and Sweden. Dixons also operates Dixons Travel for Belgium and Italy out of the UK and Ireland business.

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

## **2. THE OPERATION**

- (4) The proposed transaction concerns the full merger of Dixons and Carphone.
- (5) The merger will be implemented by way of a scheme of arrangement (pursuant to Part 26 of the 2006 UK Companies Act) whereby Carphone will issue ordinary shares to existing Dixons shareholders in consideration for the cancellation of the existing issued ordinary shares of Dixons and the issue of new ordinary shares of Dixons to Carphone. Following implementation of the scheme of arrangement, the shareholders of Dixons and Carphone will each hold 50% of the shares in the merged entity.
- (6) Therefore, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(a) of the Merger Regulation.

## **3. EU DIMENSION**

- (7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Carphone: EUR 4 520 million; Dixons: EUR 8 758 million). Each of the two undertakings has an EU-wide turnover in excess of EUR 250 million (Carphone: EUR 4 498 million; Dixons: EUR 7 459 million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The proposed transaction therefore has an EU dimension.

## **4. INTRODUCTION TO THE COMPETITIVE ASSESSMENT**

- (8) The Parties' activities overlap horizontally in the retail sale of mobile phones, tablets and accessories for mobile phones and tablets, in the provision of mobile services and of services related to the provision of the above products (technical support and insurance), as well as in the procurement of mobile phones and tablets. However, the proposed transaction only gives rise to potentially horizontally affected markets in relation to the (i) retail sale of mobile phones and tablets; and (ii) procurement of mobile phones and tablets.<sup>2</sup>
- (9) The proposed transaction also gives rise to vertical relationships between Carphone's upstream activities in the (i) wholesale supply of mobile devices to third-party independent mobile phone resellers and (ii) provision of managed services in relation to mobile retail, mobile phone insurance and technology, and Dixons' (and Carphone's) downstream activities in the retail sale of mobile phones and tablets and mobile services. While the proposed transaction may technically result in affected markets (depending on the geographic market definition that is retained in the downstream retail markets), these vertical relationships will not give rise to competition concerns.
- (10) First, as regards Carphone's wholesale supply of mobile devices to third-party independent mobile phone resellers, the Parties estimate Carphone's market share at the upstream level to be [5-10]% or less, both at the EEA level and at the national level. Therefore, regardless of the geographic dimension of this market, Carphone's limited market share would not create any risk of input foreclosure. As for the downstream level

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<sup>2</sup> The Notifying Parties' activities also overlap with respect to (i) the retail sale of accessories for mobile phones and tablets, (ii) the provision of insurance services and (iii) the provision of technical support services. However, the combined market shares of the Notifying Parties in each of Ireland, Sweden and the UK are well below 20% under any possible market definition. Therefore, these markets will not be analysed further.

(retail of mobile phones and tablets), although the Parties' combined market shares may exceed 30% (when measured in terms of number of shops) in certain possible local markets within the UK and Sweden (as will be explained further below), no risk of customer foreclosure would arise, since wholesalers do not operate at local level, but rather sell their products to retailers at a national level or beyond. Moreover, alternative retailers such as Argos, John Lewis and the major MNOs will remain active at the downstream level.

(11) Second, as regards Carphone's provision of managed services in relation to mobile retail, mobile phone insurance and technology, these services are aimed at B2B ("business to business") customers wishing to enter the mobile retail market. The services offered range from the provision of specific managed services to a comprehensive partnership including the provision of the store, trained staff, IT systems and stock. This market could be considered EEA-wide or at least national in scope, since, even though managed services' contracts relate to a single country, the choice of provider would not be constrained by geographic considerations. In all instances, the proposed transaction would not create any risk of input foreclosure, since the Notifying Parties estimate Carphone's market share at the upstream level (based on the narrowest possible product market definition) to be significantly less than 30%.<sup>3</sup> As for the downstream level (retail of mobile devices and mobile services), where the Parties' combined market shares may exceed 30% (when measured in terms of number of shops) in certain possible local markets within the UK and Sweden, for the same reasons outlined above, no risk of customer foreclosure would arise.

(12) In light of the above, the market definition and competitive analysis in the following sections will focus on the horizontally affected markets in relation to the: (i) retail sale of mobile phones and tablets; and (ii) procurement of mobile phones and tablets in each of Ireland, Sweden and the UK.

## **5. MARKET DEFINITION**

### **5.1. Product market**

#### *5.1.1. Retail sale of mobile phones and tablets*

##### View of the Notifying Parties

(13) The Notifying Parties submit that the relevant product markets are the market for the retail of mobile phones and the separate market for the retail of tablets. In their view, such segmentation on the basis of the product type is justified in light of: (i) differences between mobile phones and tablets in terms of technical characteristics and functionalities; and (ii) differences in the manner in which these devices are offered to consumers<sup>4</sup> and in the distribution channels used.<sup>5</sup> According to the Notifying Parties, no further sub-segmentations should be made, e.g., based on the distribution channel (between online and 'brick-and-mortar' retailers), or according to the category of end-customers (between corporate and private customers).

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<sup>3</sup> Carphone's offering of managed services represents a new activity [...].

<sup>4</sup> Mobile phones are often offered in a bundle together with a retail mobile services contract, while tablets are usually offered on a stand-alone basis.

<sup>5</sup> Mobile phones are mainly sold by mobile network operators ("MNOs") and other specialist retailers, while tablets are sold by a much wider group of retailers.

- (14) In particular, the Notifying Parties submit that online retailers exercise a significant competitive constraint on retailers with a network of physical stores. The Notifying Parties conclude that online and offline retailers should be considered to form part of the same relevant market in light of the following factors: (i) the convergence of prices across online and offline channels, (ii) general customer familiarity with online shopping and the fact that customers typically conduct their pre-purchase research online regardless of where the purchase is then finalised, (iii) the interaction between online and offline channels in the Notifying Parties' and their competitors' offerings<sup>6</sup> and [...].
- (15) Finally, in the Notifying Parties' view, drawing a distinction between different categories of retailers of mobile devices, such as those specialised in mobile phones and tablets or those offering a wider choice of products encompassing other electrical products and appliances, and/or online retailers would be artificial and, therefore, in their view, all categories of retailers should be considered part of the same relevant product market.

#### Commission's assessment

- (16) In its past decisional practice<sup>7</sup>, the Commission did not examine the retail sale of mobile phones and tablets in particular, but, more in general, the retail sale of electronic products and appliances. Within the retail sale of electronic products and appliances, the Commission considered possible sub-segmentations according to the type of product and to the distribution channel.
- (17) As regards the type of product, the following sub-segments were examined: (i) retail of brown goods (including audio and visual appliances); (ii) retail of large domestic appliances (including washing machines, freezers, etc.); (iii) retail of small domestic appliances (including toasters, irons, etc.); and (iv) retail of computers and communication devices (including PC hardware, PC software, communications, accessories/peripherals, etc.).<sup>8</sup> The Commission also considered possible further sub-segmentations according to the type of product<sup>9</sup>, although it ultimately left the exact product market definition open.
- (18) As regards the distribution channel, in previous cases the Commission considered a distinction between brick-and-mortar shops (also known as 'offline retailing') and home shopping (which includes online shopping and shopping by catalogue).<sup>10</sup> However, previous decisions left the exact product market definition open.
- (19) In the present case, as the overlap between the Notifying Parties' activities is limited to two types of products (mobile phones and tablets) within the category of computers and

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<sup>6</sup> Examples include 'pay and collect' services (whereby customers pay online and pick up the goods in-store) and 'reserve and collect' services (whereby customers reserve a product online and collect and pay in store), and joint advertising of stores and online opportunities.

<sup>7</sup> Commission decision of 23 June 2011 in case M.6226 - Media-Saturn/Redcoon, paragraph 9 and Commission decision of 29 June 2006 in case M.4226 – DGSI / Fotovista, paragraph 9.

<sup>8</sup> Commission decision of 29 June 2006 in case M.4226 – DGSI / Fotovista, paragraphs 9-14.

<sup>9</sup> E.g., a sub-segmentation within the market for the retail of domestic appliances between tumble dryers, fridges, dishwashers, etc.: Commission decision of 4 March 2002 in case M.2703 – MERLONI / GE / GDA JV, paragraph 12.

<sup>10</sup> Commission decision of 29 June 2006 in case M.4226 – DGSI / Fotovista, paragraph 14.

communication devices, the Commission focused its analysis on possible separate sub-markets for (i) the retail sale of mobile phones and (ii) the retail sale of tablets.

- (20) Concerning a possible segmentation between offline and online retailing, the majority of the respondents to the Commission's market investigation considered that customers view brick-and-mortar shops and online channels as substitutable for the purpose of purchasing mobile phones and tablets.<sup>11</sup> Moreover, the large majority of respondents confirmed that customers compare prices between internet distribution channels and brick-and-mortar shops before engaging in any purchasing decision.<sup>12</sup> However, some respondents highlighted the importance of physical stores, since customers often seek expert advice from an in-store salesperson and/or wish to handle the product before engaging in their purchase.<sup>13</sup>
- (21) In addition, in this case the Commission also considered a further segmentation of the offline retail market between the following categories of retailers according to the focus of their business: (i) tied specialist retailers (retail outlets owned by MNOs or MVNOs), (ii) independent specialist retailers (retail outlet specialized in the sale of mobile telecommunications devices and services), (iii) generalist retailers (retail outlets selling different kinds of goods, including mobile phones and tablets, such as Tesco) and (iv) specialist electrical retailers (retail outlets specialized in the sale of electrical devices, such as large and small domestic appliances, audio, video products, computers and communication devices).
- (22) Based on their respective product offerings, their business focus<sup>14</sup> and the location and type of their stores<sup>15</sup>, the Notifying Parties would appear to belong to two different categories of offline retailers. Dixons can be described as a specialist electrical retailer, whereas Carphone can be described as an independent specialist retailer. However, the Commission's market investigation did not support a possible sub-segmentation of the offline retail market based on the type of retailer in relation to the retail distribution of mobile phones and tablets.
- (23) Indeed, the majority of the respondents to the market investigation confirmed that customers view all types of retailers as substitutes for the purchase of mobile phones and

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<sup>11</sup> See replies to Commission questionnaire Q1 Competitors – Retailers in the United Kingdom of 19 May 2014, question 7, Commission questionnaire Q2 Competitors – Retailers in Ireland of 19 May 2014, question 7 and Commission questionnaire Q3 Competitors – Retailers in Sweden of 19 May 2014, question 7.

<sup>12</sup> See replies to Commission questionnaire Q1 Competitors – Retailers in the United Kingdom of 19 May 2014, question 8, Commission questionnaire Q2 Competitors – Retailers in Ireland of 19 May 2014, question 8, and Commission questionnaire Q3 Competitors – Retailers in Sweden of 19 May 2014, question 8.

<sup>13</sup> See replies to Commission questionnaire Q1 Competitors – Retailers in the United Kingdom of 19 May 2014, question 7, Commission questionnaire Q2 Competitors – Retailers in Ireland of 19 May 2014, question 7 and Commission questionnaire Q3 Competitors – Retailers in Sweden of 19 May 2014, question 7.

<sup>14</sup> Dixons' offer is not limited to mobile phones and tablets, which account for a minor part of its sales, but includes a wide range of other electrical goods and accessories, including computers, cameras, televisions, and domestic appliances. Carphone's main focus of activity is the resale of mobile phones, tablets, accessories and retail mobile services.

<sup>15</sup> Dixons predominantly operates big box, out of town stores, whilst Carphone focuses on high street stores and shopping centres.

tablets.<sup>16</sup> Indeed, even if differences may exist in relation to the range of mobile connectivity services offered (only pre-paid or only post-paid contracts, in bundle with a device or on a stand-alone basis, etc.) and customer accessibility (high street presence as opposed to more outskirt locations), customers consider all retail channels to be substitutable given that they all offer the most popular devices.

- (24) In light of the above, the Commission considers that there is no need to conclude as to a possible sub-segmentation of the market for the retail of computers and communication devices according to the type of product (mobile phones and tablets), as the proposed transaction will not raise competitive concerns even on the narrowest product market segment. Concerning the distinction between online and offline retail channels, the exact product market definition can be left open in this regard since the transaction will not give rise to any competitive concerns under any possible market definition. Finally, as regards a further distinction between different categories of offline retailers of mobile phones and tablets according to their business focus, the Commission concludes that, given the results of the market investigation in this case, the relevant product market likely includes all categories of offline retailers (with the possible exception of Sweden, where a majority of the respondents to the market investigation indicated that customers do not regard generalist retailers as a substitute channel for the purchase of mobile phones and tablets).<sup>17</sup>

#### 5.1.2. *Procurement of electrical goods*

##### View of the Notifying Parties

- (25) The Notifying Parties' activities overlap in the procurement of tablets and mobile phones, whereby retailers purchase these products directly from the OEMs (Original Equipment Manufacturers). However, the Notifying Parties submit that there is no separate market for the procurement of mobile phones and tablets.

##### Commission's assessment

- (26) In its past decision-making practice, the Commission considered a possible market for the procurement of electrical goods, encompassing all types of such goods.<sup>18</sup> In case *DSGI / FR-Invest / F-Group JV*, the Commission considered as well a possible distinction between different categories of products rather than one overall single market but ultimately left the exact product market definition open.<sup>19</sup>

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<sup>16</sup> However, with respect to the Swedish market, most of the respondents did not regard generalist retailers as substitutable with other types of retailers. See replies to Commission questionnaire Q1 Competitors – Retailers in the United Kingdom of 19 May 2014, question 5, Commission questionnaire Q2 Competitors – Retailers in Ireland of 19 May 2014, question 5 and Commission questionnaire Q3 Competitors – Retailers in Sweden of 19 May 2014, question 5.

<sup>17</sup> As for Sweden, as stated above, the market investigation suggested that customers do not regard generalist retailers as a substitute channel for the purchase of mobile phones and tablets. However, the Commission considers that the distinction between categories of offline retailers with respect to Sweden can be left open, as this will not impact the assessment of this case. Indeed, according to data provided by the Notifying Parties, in Sweden generalist retailers account for a negligible proportion of the total retail sales of mobile phones and tablets (less than [0-5]%).

<sup>18</sup> Commission decision of 29 June 2006 in case M.4226 – DSGI / Fotovista, paragraph 21 and Case M.4392 – DSGI / FR-Invest / F-Group JV, paragraph 14.

<sup>19</sup> Commission decision of 30 November 2006 in case M.4392 – DSGI / FR-Invest / F-Group JV, paragraph 15.

- (27) The market investigation did not give any indication as to the need to depart from previous market definitions.
- (28) In any event, the exact product market definition can be left open since the transaction will not give rise to any competitive concerns under any possible market definition. Consequently, the narrowest possible market definition considered in this case is the procurement of (i) mobile phones and (ii) tablets.

## **5.2. Geographic market**

### *5.2.1. Retail sale of mobile phones and tablets*

#### View of the Notifying Parties

- (29) The Parties submit that the relevant geographic markets are national (as opposed to local) in scope. [...].

#### Commission's assessment

- (30) In previous decisions, while ultimately leaving the exact geographic market definition open, the Commission considered the geographic market for electrical retailing to be national in scope, although the possibility of a narrower scope was also taken into account with regard to offline shopping (20-30 minute driving time catchment areas around each shop).<sup>20</sup>
- (31) From a supply-side point of view, the results of the market investigation gave clear indications that retailers consider a nation-wide market when setting a price strategy for the retail of mobile phones and tablets.<sup>21</sup> This is further confirmed by the fact that the large majority of retailers set a national price for their devices.<sup>22</sup>
- (32) On the other hand, from a demand-side point of view, the results of the market investigation were mixed as to the national or local scope (catchment area around each outlet) of offline retailing. Furthermore, respondents that indicated a local scope of the market generally could not estimate a precise radius, since this would be dependent on a number of factors (population density, characteristics of the neighbourhood, availability of transport, etc.).<sup>23</sup>

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<sup>20</sup> Commission decision of 30 November 2006 in case M.4392 – DSGI / FR-Invest / F-Group JV, paragraph 16 and Commission decision of 16 February 2010 in case M.5721 – Otto / Primondo assets, paragraph 33.

<sup>21</sup> See replies to Commission questionnaire Q1 Competitors – Retailers in the United Kingdom of 19 May 2014, question 9, Commission questionnaire Q2 Competitors – Retailers in Ireland of 19 May 2014, question 9 and Commission questionnaire Q3 Competitors – Retailers in Sweden of 19 May 2014, question 9.

<sup>22</sup> See replies to Commission questionnaire Q1 Competitors – Retailers in the United Kingdom of 19 May 2014, question 10, Commission questionnaire Q2 Competitors – Retailers in Ireland of 19 May 2014, question 10 and Commission questionnaire Q3 Competitors – Retailers in Sweden of 19 May 2014, question 10.

<sup>23</sup> See replies to Commission questionnaire Q1 Competitors – Retailers in the United Kingdom of 19 May 2014, question 11, Commission questionnaire Q2 Competitors – Retailers in Ireland of 19 May 2014, question 11 and Commission questionnaire Q3 Competitors – Retailers in Sweden of 19 May 2014, question 11.

- (33) In any event, the Commission considers that the exact geographic market definition can be left open since the proposed transaction will not give rise to any competitive concerns under any possible market definition.

#### 5.2.2. *Procurement of electrical goods*

##### View of the Notifying Parties

- (34) The Notifying Parties do not express any view as to the geographic scope of the market for the procurement of electrical goods.

##### Commission's assessment

- (35) In previous decisions, although acknowledging that some larger retailers procure at EEA-level, the Commission has taken the view that the market for the procurement of electrical goods is at least national in scope.<sup>24</sup>
- (36) The market investigation did not give any indication as to the need to depart from previous market definitions.
- (37) In the present case, the Commission considers that the exact geographic market definition can be left open since the transaction will not give rise to any competitive concerns under any possible market definition.

## **6. COMPETITIVE ASSESSMENT**

### **6.1. Retail sale of mobile phones and tablets**

#### View of the Notifying Parties

- (38) The Notifying Parties submit that the proposed transaction will not give rise to any competition concerns. First, as noted above, the increment in market shares brought about by the proposed transaction is limited. Second, they submit that the relevant market should encompass the whole range of retailers since it would not be credible to exclude other types of retailers on the basis that their product portfolio is broader than the Notifying Parties'. Therefore, post-transaction, many key retail alternatives will be available to customers wishing to purchase mobile phones and tablets. Finally, the Notifying Parties' activities would be largely complementary, since Dixons is a specialist electrical retailer while Carphone is a specialist mobile telecommunications retailer.

#### Commission's assessment

##### 6.1.1. *National level*

- (39) Assuming the relevant markets are national in scope, and depending on the relevant product market definition, the proposed transaction would give rise to several possible affected markets.

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<sup>24</sup> Commission decision of 29 June 2006 in case M.4226 – DGSI / Fotovista, paragraph 21 and Commission decision of 30 November 2006 in case M.4392 – DSGI / FR-Invest / F-Group JV, paragraph 21.

### Mobile phones (volume)<sup>25</sup>

Country	Offline			Online			Offline + online		
	CPW	DXS	Combined	CPW	DXS	Combined	CPW	DXS	Combined
<b>Ireland</b>	[20-30]%	[0-5]%	[20-30]%	[0-5] %	[0-5] %	[0-5]%	[20-30]%	[0-5] %	[20-30]%
<b>Sweden</b>	[5-10]%	[10-20] %	[10-20] %	[0-5] %	[10-20] %	[10-20] %	[5-10] %	[10-20] %	[10-20] %
<b>UK</b>	[10-20] %	[0-5] %	[10-20] %	[20-30] %	[0-5] %	[20-30] %	[10-20] %	[0-5] %	[10-20] %

### Tablets (volume)<sup>26</sup>

Country	Offline			Online			Offline + online		
	CPW	DXS	Combined	CPW	DXS	Combined	CPW	DXS	Combined
<b>Ireland</b>	[0-5] %	[10-20] %	[20-30] %	[0-5] %	[10-20] %	[10-20] %	[0-5] %	[10-20] %	[10-20] %
<b>Sweden</b>	[0-5] %	[20-30] %	[20-30] %	[0-5] %	[10-20] %	[10-20] %	[0-5] %	[20-30] %	[20-30] %
<b>UK</b>	[5-10] %	[10-20] %	[20-30] %	[5-10] %	[5-10] %	[10-20] %	[5-10] %	[10-20] %	[20-30] %

<sup>25</sup> The Notifying Parties have not been able to identify reliable sales information by value, mainly due to the difficulties encountered in separating bundled products (notably tablets and mobile phones with connections) and in separating the revenues attributable to devices where these are subsidised under post-pay contracts. In any event, most of the retailers of mobile phones and tablets offer a wide variety of devices ranging from high-end to low-end products. Therefore, market shares in volume or in value will not differ substantially.

<sup>26</sup> Numbers may not sum due to rounding.

- (40) If the relevant product market was the overall market for both offline and online retail of tablets/mobile phones sold, the proposed transaction would give rise to the following affected markets:
- a. the overall market for offline and online retail of mobile phones in Ireland, where the combined market shares would be [20-30]%, with an increment brought by Dixons of less than [0-5]%; and
  - b. the overall market for offline and online retail of tablets in each of the UK and Sweden, where the combined market shares would never exceed [20-30]%, with an increment brought by either Carphone or Dixons not greater than [5-10]%.
- (41) If two separate product markets were identified for online and offline retail, the proposed transaction would give rise to the following affected markets, in terms of volume of tablets/mobile phones sold:
- a. the market for online retail of mobile phones in the UK, where the combined market shares would be [20-30]%, with an increment brought by Dixons of less than [0-5]%;
  - b. the market for offline retail of mobile phones in Ireland, where the combined market shares would be [20-30]%, with an increment brought by Dixons of less than [0-5]%; and
  - c. the market for offline retail of tablets in each of the UK, Ireland and Sweden. Whilst in the UK and Ireland the combined market shares would be [20-30]%, with an increment brought by Carphone not greater than [5-10]%, in Sweden the combined market shares would be [20-30]%, with an increment brought by Carphone of [0-5]%.
- (42) Therefore, regardless of the exact product market definition, at the national level the proposed transaction will result in relatively low combined market shares for the Notifying Parties' activities (never exceeding [20-30]%), with a limited market share increment (not above [5-10]%).
- (43) Moreover, a number of strong competitors will continue to compete with the merged entity in each of Ireland, Sweden and the UK. In particular, competitors will include, among others, Vodafone, O2 and Meteor (respectively, [20-30]%, [10-20]% and [10-20]% market shares in the overall market for offline and online retail of mobile phones in Ireland); Mediamarkt, Apple, and Siba (respectively, [20-30]%, [20-30]% and [10-20]% market shares in the overall market for offline and online retail of tablets in Sweden); and Argos, Apple and Tesco (respectively, [10-20]%, [5-10]% and [5-10]% market shares in the overall market for offline and online retail of tablets in the UK).
- (44) With specific respect to the UK, it is worth noting that Dixons' outlets host some of Phones4U's stores on the basis of a "store-in-store" arrangement. Under such arrangement, Phones4U uses space within a Dixons store to sell mobile phone products and services under the Phones4U brand. [...].
- (45) The Commission has considered whether, as a result of the proposed transaction, a risk of foreclosure of Phones4U could arise. However, the Commission has concluded that this risk is unlikely since the proposed transaction would not negatively impact Phones4U's ability to effectively retail its products in the UK.

- (46) Indeed, the number of retail points hosted in Dixons' stores represents only a small part of Phones4U's total business (around 20% of Phones4U's outlet portfolio). Moreover, for each Phones4U store-in-store location, there is at least one Phones4U stand-alone store that is closer than 9.9km.
- (47) Finally, no respondent to the market investigation raised any concern related to the impact of the proposed transaction with respect to the markets for the retail sale of mobile phones and tablets at the national level.
- (48) Therefore, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards the retail sale of mobile phones and tablets in Ireland, Sweden and the United Kingdom.

#### 6.1.2. *Local level*

- (49) If the relevant markets were to be considered to be local in scope, only offline retailers were to be taken into account and market shares were to be measured in terms of number of shops owned or controlled by the various players (no market share data in volume at the local level are indeed available to the Notifying Parties), the proposed transaction would give rise to higher market shares in some local markets.<sup>27</sup>
- (50) In more detail, in Ireland the Notifying Parties' combined market shares exceed 20% in three local markets or cities but never exceed 25%. In Sweden the Notifying Parties' combined market shares exceed 20% in 22 local markets or cities. Among these cities, the combined market shares exceed 25% in 12 cities, and exceed 40% in only three cities ([...], [...] and [...], with [50-60]%). Finally, in the UK, the Notifying Parties' combined market shares exceed 20% in 250 local markets or cities. Among these cities, the combined market shares exceed 25% in 122 cities. The maximum combined market shares are around [30-40]% in one city ([...]).
- (51) The Commission, however, considers that, even under this scenario, the proposed transaction would not give rise to serious doubts as to its compatibility with the internal market for the following reasons.
- (52) First, the Commission notes that the number of physical outlets is only a possible metric to measure relative market positions in retail markets (the number of devices sold being a more relevant proxy for possible market power). The number of shops held by the different players depends on their business model. For example, Carphone's business model is based on the operation of a high number of small shops, while Dixons' business model is based on a smaller number of bigger stores. Moreover, different shops sell different products. For example, with regard to the retail sale of mobile phones in the UK, Ireland and Sweden, tied specialist retailers account for around 60% of the market by number of devices sold and are the strongest retail channel; on the contrary, as regards tablets, tied specialist retailers hold an aggregated market share between 10 and 20% depending on the country concerned, while other retail channels are more important. Market shares based on the mere number of shops do not reflect this complexity of the relevant markets.

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<sup>27</sup> When discussing local markets, the overlap of catchment areas around each outlet operated by the Notifying Parties leads to markets comprising the whole city area. Therefore, for the purpose of this decision, the analysis will be conducted on a city by city basis (whereby "city" refers to any city with a population of 25,000 or more, including neighbouring areas within a 25km radius – 20-30 minute driving time).

- (53) Second, a number of strong competitors will continue to compete with the merged entity in each of the cities at issue in each of Ireland, Sweden and the UK.
- (54) Indeed, in Ireland, in all three cities where the Notifying Parties' activities overlap, at least seven other competitors will be active through their physical retail stores. These competitors include MNOs such as Vodafone, Three, Meteor, Telefonica, specialist electrical retailers such as Expert, Harvey Norman and D.I.D. Electrical, and generalist retailers such as Tesco.
- (55) In Sweden, in all the cities where the Notifying Parties' activities overlap, at least two other competitors will be active through their physical retail stores. Such competitors are the main MNOs such as TeliaSonera, Tele2, Tre and Telenor, and specialist electrical retailers such as Media Markt, Euronics and Teknikmagasinet.
- (56) In the UK, in all the cities where the Notifying Parties' activities overlap, at least six other competitors will be active through their physical retail stores. Competitors of the Notifying Parties are the main MNOs such as Vodafone, Telefonica, EE and Three, independent specialist retailers such as Phones4U and generalist retailers such as Tesco, Argos and John Lewis.
- (57) Third, the Notifying Parties do not appear to be close competitors. Indeed, their business focus seems to be different. Carphone has only limited activities in the sale of tablets and instead focuses primarily on the sale of mobile phones and connectivity. Other independent specialist retailer and tied specialist retailers would therefore appear to be Carphone's closest competitors. On the contrary, Dixons focuses on the full range of electrical devices and domestic appliances. Other specialist electrical retailers and generalist retailers would therefore appear to be Dixon's closest competitors.
- (58) These findings were confirmed by the results of the market investigation. Respondents to the market investigation indeed indicated that Carphone's closest competitors are the main MNO's outlets. When asked to identify the closest competitors of Dixons, respondents rather pointed towards other specialised electrical retailers or generalist retailers.<sup>28</sup>
- (59) The Parties' internal documents also support this conclusion. [...]. Furthermore, Carphone's internal documents stress the highly complementary character of Dixons' and Carphone's businesses rather than their similarity.
- (60) Fourth, even if online sales of the relevant products were to be excluded from the relevant market, they would still exercise a significant competitive constraint on offline retailers. This constraint would have a disciplining effect on the merged entity's prices for mobile phones and tablets irrespective of the number of physical stores existing in a given geographic market.
- (61) The results of the market investigation largely confirmed this finding. Indeed, competing retailers of mobile phones and tablets that responded to the market investigation indicated that they generally take into account online retailers for the purpose of defining their selling strategy and setting prices for mobile phones and

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<sup>28</sup> See replies to Commission questionnaire Q1 Competitors – Retailers in the United Kingdom of 19 May 2014, questions 12 and 13, Commission questionnaire Q2 Competitors – Retailers in Ireland of 19 May 2014, questions 12 and 13 and Commission questionnaire Q3 Competitors – Retailers in Sweden of 19 May 2014, questions 12 and 13.

tablets.<sup>29</sup> Furthermore, as stated in paragraph (19) above, the large majority of respondents confirmed that customers compare prices between internet distribution channels and brick-and-mortar shops before engaging in any purchasing decision.

- (62) Finally, no respondent to the market investigation raised any concern related to the impact of the proposed transaction with respect to the markets for the retail sale of mobile phones and tablets at the local level.

## **6.2. Procurement of electrical goods**

### View of the Notifying Parties

- (63) The Notifying Parties argue that they are unable to provide market share data due to the lack of public information regarding the total size of the market for the procurement of electrical goods. However, based on their market knowledge, the Notifying Parties consider that their share of the retail distribution market is indicative of their share of demand on a hypothetical procurement market, given their limited wholesaling activities.

- (64) The Notifying Parties submit that the proposed transaction is unlikely to lead to significant buyer power for the combined entity, in particular since their combined share of the procurement market at national level in Ireland, Sweden and the UK is relatively low and the companies from which the Notifying Parties procure mobile phones and tablets are not dependent on purchases from any specific retailers.

### Commission's assessment

- (65) Assuming that the Notifying Parties' market shares in the retail of mobile phones and tablets could be a relevant proxy for their market power in the procurement market for the corresponding products, the combined market share of the Notifying Parties would only exceed 20% in the procurement of mobile phones in Ireland ([20-30]% in volume) and in the procurement of tablets in Sweden ([20-30]% in volume) and in the UK ([20-30]% in volume).

- (66) However, the Commission considers that the proposed transaction will not give rise to any competitive concern as regards the procurement of mobile phones and tablets.

- (67) First, the combined market share of the Notifying Parties in Ireland, Sweden and the UK is limited and not exceeding [20-30]%. Moreover, the increment brought about by the proposed transaction is limited (below [5-10]% in all three countries).

- (68) Second, the companies from which the Notifying Parties procure mobile phones and tablets are, in general, very large multi-national manufacturers that are active on a global scale and that are not dependent on purchases from any specific retailers. In addition, these companies are present at the retail level with their own outlets. Furthermore, none of the OEMs interrogated during the market investigation raised any concern related to the impact of the proposed transaction with respect to the market for the procurement of mobile phones and tablets.

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<sup>29</sup> See replies to Commission questionnaire Q1 Competitors – Retailers in the United Kingdom of 19 May 2014, question 4, Commission questionnaire Q2 Competitors – Retailers in Ireland of 19 May 2014, question 4 and Commission questionnaire Q3 Competitors – Retailers in Sweden of 19 May 2014, question 4.

(69) Third, other retailers will remain active, post-transaction, in each of Ireland (Harvey Norman, Tesco, etc.), Sweden (Mediamarkt, Expert, etc.) and the United Kingdom (Phones4U, Vodafone, etc.) and will continue to exert competitive pressure on the merged entity.

(70) Therefore, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards the procurement of mobile phones and tablets in Ireland, Sweden and the United Kingdom.

## **7. CONCLUSION**

(71) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission*  
*(Signed)*  
*Joaquín ALMUNIA*  
*Vice-President*