



EUROPEAN COMMISSION
DG Competition

*Case M.7678 -
EQUINIX / TELECITY*

Only the English text is available and authentic.

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

Purchaser approval - Art. 6(1)(b) in conjunction with 6(2)
Date: 15.06.2016



EUROPEAN COMMISSION

Brussels, 15.06.2016
C(2016) 3810 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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
IMPLEMENTATION OF
COMMITMENTS

To the notifying party:

Dear Sir/Madam,

Subject: Case M.7678 – Equinix / Telecity
Approval of Digital Realty as purchaser of the Divestment Businesses following your letter of 24.05.2016 and the Trustee's opinion of 31.05.2016

I. FACTS AND PROCEDURE

1. By decision of 13.11.2015 ("the Decision") based on Article 6(1)(b) in connection with Article 6(2) of the Merger Regulation, the Commission declared the operation by which Equinix Inc. ("Equinix", United States) acquired sole control within the meaning of Article 3(1)(b) of the Merger Regulation over Telecity Group plc. ("Telecity", United Kingdom) by way of purchase of shares (the "Transaction") compatible with the internal market, subject to full compliance with the commitments submitted by Equinix and annexed to the Decision (the "Commitments").
2. The Commitments submitted by Equinix consist mainly of the divestiture of a number of data centres in Amsterdam (two data centres), London (five data centres) and Frankfurt (one data centre), jointly referred to as the "Divestment Businesses":
 - a. Amsterdam: Telecity's AMS01 ("Science Park"), including its ongoing expansion project (AMS01E), and AMS04 ("Amstel Park").
 - b. London: Telecity's LON1 ("Bonnington House"), LON3 ("Sovereign House"), LON4 ("Meridian Gate"), LON7 ("Oliver's Yard") and Equinix's LD2 ("West Drayton").
 - c. Frankfurt: Telecity's FRA2 ("Lyoner Str.").

3. The Notifying Party committed to divest each metro package to a purchaser in full. Each metro package could be sold to different purchasers or more than one metro package can be sold to the same purchaser.
4. The purchaser of the assets in each metro shall be an industrial purchaser with significant experience in the provision of colocation services. In addition, the purchaser of the Frankfurt divestment shall be a competing provider of data centre colocation services, already active in the Frankfurt metro.
5. The Divestment Businesses include the assets and personnel that contribute to the current operation and are necessary to ensure the viability and the competitiveness of the Divestment Businesses. The benefit of the relevant portions of fibre optic leases to connect the relevant network equipment will also be transferred to the purchaser (as specified in Table 11 of the Decision).
6. By letter of 24.05.2016, the Notifying Party proposed Digital Realty Trust, Inc. ("Digital Realty", United States) for approval by the Commission as purchaser of the Divestment Businesses and submitted the proposed Sale and Purchase Agreement (the "Proposed Agreement") and its related attachments, and a reasoned proposal (the "Reasoned Proposal") in respect of an acquisition of the Divestment Businesses by Digital Realty. On 31.05.2015, Advolis (the "Trustee") submitted an assessment of Digital Realty's suitability as a purchaser and, in particular, indicated that it fulfils the criteria of the purchaser requirements in section D of the Commitments attached to the Decision. In this assessment, the Trustee also indicated that, on the basis of the Proposed Agreement, the Divestment Businesses would be sold in a manner consistent with the Commitments.

II. ASSESSMENT OF THE PROPOSAL

7. Under paragraph 17 of the Commitments, in order to be approved by the Commission, the Purchaser(s) must fulfil the following criteria:
 - a. The Purchaser(s) shall be independent of and unconnected to the Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
 - b. The Purchaser(s) shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business(es) as a viable and active competitive force in competition with the Parties and other competitors.
 - c. In respect of the Frankfurt Divestment only, the Purchaser shall be a competing provider of data centre colocation services in the Frankfurt metro. Such Purchaser may include an existing wholesaler or a carrier-owned data centre colocation provider.
 - d. In respect of the London Divestments only, the Purchaser shall be an industrial purchaser with significant experience in the provision of data centre colocation services, in the London metro or elsewhere. Such Purchaser may include an existing wholesaler or a carrier-owned data centre colocation provider.

- e. In respect of the Amsterdam Divestments only, the Purchaser shall be an industrial purchaser with significant experience in the provision of data centre colocation services, in the Amsterdam metro or elsewhere. Such Purchaser may include an existing wholesaler or a carrier-owned data centre colocation provider.
- f. The acquisition of the Divestment Business(es) by the Purchaser(s) must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser(s) must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business(es).

(a) Description of the proposed purchaser

8. Digital Realty Trust L.P. is a company active in the ownership, acquisition, development and management of technology-related real estate, owned by Digital Realty Trust, Inc. a real estate investment trust (REIT) headquartered in San Francisco, United States.
9. Digital Realty Trust, Inc. completed its initial public offering in November 2004 and has since then extended its geographic footprint, traditionally focusing on wholesale data centre colocation services and, more recently, on smaller deployments and retail colocation services. In line with this strategy, in October 2015 Digital Realty completed the acquisition of TelX, a retail-focused colocation and interconnection provider in the United States for USD 1.9 billion. As of end 2015, Digital Realty provides data centre colocation and interconnection services in 139 properties in 10 countries, including 6 EU Member States, employing 1 295 employees and serving about 1 600 customers across a wide range of industries such as cloud and information technology, financial services, manufacturing, healthcare, energy and consumer products. Digital Realty's revenues were of USD 1.763 billion in 2015 (USD 1.616 billion in 2014).

(b) Independence from the Parties

10. Equinix confirms that neither it nor Telecity owns any shares or has any direct or indirect interest either in Digital Realty or its corporate group and, similarly, Digital Realty has confirmed that it has no direct or indirect interest in Equinix, Telecity or their affiliates.
11. Equinix reports that Digital Realty leases certain data centres to Equinix.¹ This represents 4% of Digital Realty's annual turnover, substantially lower than Digital Realty's largest customer (7.8%). Equinix further submits that these leases are long term typical commercial leases, which give Digital Realty no influence on the operation of the sites and do not affect Digital Realty's independence from the merged entity.²

¹ [...] in Paris to Equinix.

² For example, [...].

12. Moreover, Equinix submits that its strategy is to increasingly own data centre properties, [...] and, on 14 May 2016, Digital Realty and Equinix agreed an option for Equinix to acquire Digital Realty's Saint Denis data centre facility in Paris, which would further reduce these links.
13. Equinix also reports that Equinix and Telecity have a small number of customer contracts with members of the Digital Realty group, which only account for less than [$<0.1\%$] of Equinix's worldwide revenues. Finally, Equinix and Digital Realty own a joint venture based in the United States ([...] $\%$ and [...] $\%$ interest, respectively), [...], which leases two buildings in Virginia to a provider of cloud and hosting services. Equinix submits that this is [...] which does not affect its independence from Digital Realty.
14. In conclusion, Equinix is of the view that Digital Realty is independent of and unconnected to the merged entity and its affiliates.
15. The report of the Trustee concludes that Digital Realty is independent from and unconnected to Equinix/Telecity because Equinix has no direct or indirect interest in Digital Realty and vice versa, and the commercial relationship existing between them is very limited. For the case of the landlord/tenant relationship, the leases are typical long term leases, they represent only 4% of Digital Realty's annual revenues [...]. With respect to the jointly owned joint venture ([...]) the Trustee considers that the scope and location of this relationship has no effect on Digital Realty's independence.
16. The Commission considers that the existing relationship between the merged entity and Digital Realty, in relation to customer contracts and the joint venture, is of limited scope and has no effect on Digital Realty's independence. In relation to its existing leases, the Commission considers that the nature of the relationship (long term standard lease) and the likely future reduction of the number of leases and associated monthly rents do not raise doubts as to Digital Realty's independence from the merged entity.
17. The Commission therefore concludes that Digital Realty meets the requirement set out in paragraph 17(i) of the Commitments (*The Purchaser(s) shall be independent of and unconnected to the Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture)*).

(c) Financial resources and incentive to maintain and develop the Divestment Businesses as a viable and active competitor

II.3.1. Financial resources

18. According to Equinix, Digital Realty has adequate financial resources in terms of the acquisition costs and ongoing running and development of the Divestment Businesses. Digital Realty's turnover for the year ending 31 December 2015 was USD 1.76 billion and its adjusted EBITDA was USD 1.03 billion, with a pre-tax operating profit of USD 220 million. EBITDA and EBIT margins remain high (61% and 29% in 2015 respectively) which means that growth has been achieved while maintaining high profitability levels.

19. Since Digital Realty's initial public offering (IPO) in 2004, Digital Realty has successfully raised over USD 16 billion and has had BBB/Baa2/BBB (stable) ratings from credit rating agencies. Moreover, Equinix submits, Digital Realty will finance the acquisition of the Divestment Businesses through its revolving credit facility and existing cash resources. The facility is provided by a consortium [...] and Digital Realty confirms that it will be able to draw down the entire remaining amount available under the facility (as confirmed by Annex 4 of the Reasoned Proposal).
20. According to the report of the Trustee, Digital Realty is a healthy and successful company with sound financials. It has easy access to the capital and debt markets to finance its development.
21. In view of the information submitted by Equinix about Digital Realty's financial resources and the Trustee's report, the Commission concludes that Digital Realty is a credible investor and has access to the necessary financial resources required to maintain and develop the Divestment Businesses.

II.3.2. Incentive to maintain and develop the Divestment Businesses as a viable and active competitor

22. In its Reasoned Proposal, Equinix states that Digital Realty considers that the acquisition of the Divestment Businesses will significantly enhance its presence in the provision of data centre colocation services in Europe. In addition, as shown by Digital Realty's acquisition of TelX, Digital Realty plans a continued focus on expansion in retail colocation, with a focus on connectivity-rich environments. In that regard, the acquisition of the Divestment Businesses would, according to Equinix, accelerate Digital Realty's growth in the retail segment in Europe through an immediate platform to launch retail colocation services with growth potential and an established customer base with over 650 customers. This would represent a continuation of Digital Realty's expansion strategy and a substantial investment by Digital Realty in the long term development of its retail colocation offering in Europe.
23. In the Trustee's view, the acquisition of the Divestment Business fits with Digital Realty's strategic goals to expand in Europe and in the retail segment. Digital Realty is already present or in the process of developing its activities in the three metros covered by the Commitments and is also working on large projects in several European metros. The Trustee's report concludes that the acquisition represents an opportunity for Digital Realty to acquire an established customer base on which it can leverage to develop its activities in other European cities and, therefore, there is no reason to believe that Digital Realty will not maintain and develop the Divestment Businesses.
24. The Commission notes Equinix's submission and the Trustee's report and takes the view that Digital Realty will have an incentive to maintain and develop the Divestment Businesses as a viable and active competitor, in particular in view of its recent interest in further developing its global retail colocation business and Digital Realty's existing data centres in Europe.

II.3.3. Conclusion

25. The Commission therefore concludes that Digital Realty meets the requirement of having the financial resources and incentive to maintain and develop the Divestment Businesses as a viable and active competitive force in competition with the Parties and other competitors, as set out in paragraph 17(ii) of the Commitments.

(d) Proven expertise and industrial purchaser with significant experience in the provision of data centre colocation services in the London metro, the Amsterdam metro, or elsewhere.

26. In its Reasoned Proposal, Equinix submits that Digital Realty is the world's largest wholesale provider of data centre colocation services, owning 139 data centres across 32 markets, including 7 cities in Europe. Even though Digital Realty has historically been a wholesale provider, it has been active in the retail segment since 2012 and offers retail colocation services to over [...] customers. Therefore, in Equinix's view, Digital Realty should be clearly regarded as an industrial purchaser with considerable depth of experience and expertise in providing data centre colocation services and having the proven expertise to maintain and develop the Divestment Businesses as a competitive force.

27. The Trustee is of the view that Digital Realty has a long and proven experience in owning, acquiring, developing and managing data centres worldwide, including a significant development of its operations in Europe since 2006. The Trustee's report further notes that, while Digital Realty's business has been traditionally focused on the wholesale segment, it is now diversifying its portfolio, as confirmed by the recent acquisition of TelX. Moreover, the key personnel, which Digital Realty intends to retain, will contribute its own expertise. Therefore, the Trustee's report concludes that Digital Realty's expertise to maintain and develop the Divestment Business cannot be questioned.

28. In view of the information provided by Equinix and the report of the Trustee, the Commission concludes that Digital Realty has extensive experience and expertise in the provision of data centre colocation services, including in retail services since 2012. Therefore, Digital Realty can be considered an industrial purchaser with proven expertise and significant experience in the provision of data centre colocation services and meets the requirements set out in paragraph 17(ii), 17(iv) and 17(v) of having proven expertise and being "*an industrial purchaser with significant experience of the provision of data centre colocation services, in the London metro or elsewhere*" and "*an industrial purchaser with significant experience of the provision of data centre colocation services, in the Amsterdam metro or elsewhere*".

(e) Absence of prima facie competition problems

29. Equinix has indicated that no prima facie competition concerns can be seen to arise as a result of this transaction and submits the current Digital Realty's market shares in the Amsterdam, Frankfurt and London metros and its resulting market share after acquiring the Divestment Businesses (see Table 1).

Table 1: Indicative market shares for the market for colocation services by revenue and available capacity in London, Amsterdam and Frankfurt

		End 2015 Share space	End 2015 Share power	Share 2014 revenue	Share 2015 revenue
London	Digital Realty	[0-5]%	[0-5]%	[10-20]%	[10-20]%
	London Divestments	[5-10]%	[0-5]%	[5-10]%	[5-10]%
	Combined	[10-20]%	[5-10]%	[20-30]%	[10-20]%
Amsterdam	Digital Realty	[5-10]%	[5-10]%	[0-5]%	[0-5]%
	Amsterdam Divestments	[0-5]%	[0-5]%	[5-10]%	[5-10]%
	Combined	[5-10]%	[5-10]%	[10-20]%	[10-20]%
Frankfurt	Digital Realty	[0-5]%	[0-5]%	[0-5]%	[0-5]%
	Frankfurt Divestment	[0-5]%	[0-5]%	[0-5]%	[0-5]%
	Combined	[0-5]%	[0-5]%	[0-5]%	[0-5]%

30. Equinix submits that the acquisition of the Divestment Businesses by Digital Realty would result in market shares in data centre colocation markets in all three metros below [20-30]% under any possible market definition and significantly lower in Amsterdam (below [10-20]%) and Frankfurt (below [0-5]%, where Digital Realty currently has no operations). In addition, Digital Realty still is mainly an operator of wholesale data centres which has only recently started competing for retail business. In Equinix's view, the Amsterdam, Frankfurt and London market are characterised by a number of strong, well-established competitors which will effectively exert competitive pressure on Digital Realty and the Divestment Businesses.
31. Moreover, Equinix submits that Digital Realty is not a close competitor to the London Divestments because its data centres are not geographically close. In addition, Equinix states that, in London, Digital Realty is still mainly a provider of wholesale data centre colocation services which has only recently started competing for retail business which adds to Equinix's view that Digital Realty and the London Divestments are not close competitors.
32. In relation to the Amsterdam metro, Equinix submits that Digital Realty is not a close competitor to the Amsterdam Divestments and the Commission did not consider Digital Realty as a key player in the Amsterdam market in the Decision.

33. Equinix further submits that the acquisition of the Divestment Businesses by Digital Realty does not fall for review under either the EU Merger Regulation or the national competition of any jurisdiction.
34. The Trustee is of the view that, for the same reasons stated by Equinix, the combination of Digital Realty and the Divestment Businesses does not create any prima facie competition concerns in any of the metros, namely given: (i) the combined entity's limited market shares, (ii) the complementary nature of the activities of Digital Realty and the Divestment Businesses in the London metro, (iii) the absence of market share of Digital Realty in Frankfurt.
35. The Commission concludes that, based on the information provided by Equinix and the Trustee and due to the low resulting market shares, the proposed purchaser does not create prima facie competition concerns in any of the Amsterdam, Frankfurt and London metros, as set out in paragraph 17(vi) of the Commitments.
36. This prima facie assessment is based on the information available for the purpose of this buyer approval and does not prejudice the competition assessment of the acquisition of the Divestment Business by Digital Realty by a competent competition authority under applicable merger control rules.

(f) Competing provider of data centre colocation services in the Frankfurt metro

37. The Notifying Party submits that Digital Realty currently has no operations and hence no current market presence in the Frankfurt metro. Nevertheless, it should be considered a competing provider of data centre colocations services in the Frankfurt metro for the following reasons:
 - a. Digital Realty has acquired property in Frankfurt (December 2015), is in the process of obtaining the necessary consents and approvals for construction and expects to begin construction of Frankfurt's Sossenheim data centre in [...]. Digital Realty expects the shell construction to be completed in [...] and occupation of the first [...] kW suite by [...]. Digital Realty anticipates its Sossenheim Data Centre to begin generating revenue from colocation services by [...].
 - b. Digital Realty is already actively competing for Frankfurt customers through a commercial strategy of pre-selling the majority of any new capacity in advance of that capacity coming on-line. [...]. In this respect, Digital Realty has provided evidence of ongoing negotiations for pre-selling data centre colocation services with a number of important potential customers, [...]. Annex 7 of the Reasoned Proposal and the attachments thereto set out a detailed summary of Digital Realty's active pre-selling activities in Frankfurt.
 - c. Customers that require large deployments, such as cloud providers, typically start negotiations at least 12 to 18 months in advance of the proposed deployment (Equinix provides various examples of this behaviour). Moreover, the purpose of the condition of "being a competing providers of data centre colocation services in the Frankfurt metro" (paragraph 17(iii) of the Commitments) is, according to Equinix, that the Frankfurt Divestment [...]. This would be solved by the spare capacity in Digital Realty's Sossenheim data centre. Moreover, Equinix considers,

quoting the Decision, that once all capacity in a data centre is sold, it no longer exerts a competitive constraint on the market.

38. The report of the Trustee considers that Digital Realty is not currently providing colocation services in Frankfurt but is actively marketing space in its data centre in Sossenheim. Digital Realty's plans to acquire and build a data centre in Sossenheim are proceeding accordingly with a view to starting operations in [...]. The Trustee concurs with Equinix's view that Digital Realty is already extensively engaged in the pre-sale of the capacity in its Sossenheim data centre. Therefore, the Trustee's report concludes that Digital Realty should be considered a competing provider of data centre colocation services in the Frankfurt metro.
39. The Commission notes that the structure of the data centre colocation industry, which requires spare power and capacity and technical negotiations in advance to the actual deployment of customers' equipment in a data centre facility, suggests that marketing and sales efforts take place many months in advance of the actual deployment. On examination of the documents provided by Equinix, Digital Realty's plans to acquire and build the Sossenheim data centre and come online in [...] appear on target, as are its commercial efforts to pre-sell this capacity, which supports the Commission's view that Digital Realty is already today actively competing for acquiring customers in the Frankfurt metro.
40. In conclusion, the Commission takes the view that Digital Realty is already actively competing for customers in the Frankfurt metro and exerts competitive pressure on the market. More importantly, Digital Realty's Sossenheim data centre in the Frankfurt metro would address the rationale behind the requirement that the Purchaser is a competing provider in the Frankfurt metro, namely that the Frankfurt Divestment could bolster the activities of a competitor with presence in Frankfurt, such as Digital Realty's Sossenheim facility.
41. Therefore, the Commission concludes that Digital Realty meets the requirement of being a competing provider of data centre colocation services in the Frankfurt metro, as set out in paragraph 17(iii) of the Commitments.

III.ASSESSMENT OF THE PROPOSED AGREEMENTS

42. The Proposed Agreements provide for all elements foreseen in Section B and C of the Commitments as further specified in the Schedule of the Commitments, which provides a list of the assets included in the Divestment Businesses, as well as related provisions, such as inter-site connectivity arrangements, shared customer contracts, IP rights, transitional services, and so forth.
43. According to the report of the Trustee, the proposed post-completion Transitional Service Agreements are the norm for this type of transactions and will ensure business continuity until the Divestment Businesses are fully integrated into Digital Realty's existing operations. In particular, the Trustee points out that: (i) [...], (ii) transfer or procurement of the relevant inter-site connections will be implemented, (iii) arrangements have been put in place to allow the Divestment Businesses to retain customers who receive managed services, and (iv) contracts with customers have been assigned and arrangements have been put in place for shared contracts.
44. Therefore, the Trustee takes the view that the terms of the transaction are consistent with the Commitments.

45. Having assessed the Proposed Agreements and having discussed their content with the Trustee, the Commission did not identify any other clause that would not comply with the Commitments or any other indication in the Proposed Agreements that the Divestment Businesses are sold in a manner that is not consistent with the Commitments.

IV. CONCLUSION

46. On the basis of the above assessment, the Commission approves Digital Realty as a suitable purchaser for the above-mentioned reasons.
47. On the basis of the Proposed Agreement, the Commission further concludes that the Divestment Businesses are being sold in a manner consistent with the Commitments.
48. This decision only constitutes approval of the proposed purchaser identified herein and of the Proposed Agreement. This decision does not constitute a confirmation that Equinix has complied with its Commitments.
49. This decision is based on paragraph 18 of Section D of the Commitments attached to the Commission Decision of 13.11.2015.

For the Commission
(signed)
Johannes LAITENBERGER
Director-General