



EUROPEAN COMMISSION  
DG Competition

***Case M.8180 - VERIZON / YAHOO***

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: 21/12/2016

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## EUROPEAN COMMISSION

Brussels, 21.12.2016  
C(2016) 8978 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**To the notifying party:**

**Subject: Case M.8180 - VERIZON / YAHOO**  
**Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004<sup>1</sup> and Article 57 of the Agreement on the European Economic Area<sup>2</sup>**

Dear Sir,

- (1) On 17 November 2016, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Verizon Communications Inc. ("Verizon" or the "Notifying Party") acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Yahoo Inc.'s operating business ("Yahoo") by way of purchase of shares (the "Transaction"). Verizon will not acquire Yahoo's cash and marketable securities, its shares in Alibaba

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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.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

Group Holdings Limited, its shares in Yahoo Japan Corporation, certain minority investments, or Excalibur IP, LLC, a wholly owned subsidiary of Yahoo that owns certain intellectual property not core to Yahoo's operating business. Verizon and Yahoo are collectively referred to as "Parties".<sup>3</sup>

## **1. THE PARTIES**

- (2) Verizon is a provider of communications, information and entertainment products and services to consumers, businesses and governmental agencies. It provides wireless and wireline services, with a number of related products and services, and operates network infrastructure. AOL, one of its subsidiaries, is a media technology company that connects publishers, advertisers and consumers over its platforms.
- (3) Yahoo is a technology company that offers personalized experiences to consumers and connects advertisers with target audiences. It provides various internet services such as search, communications, and digital content. Yahoo's assets include content brands in finance, news, sports, as well as email services. Yahoo owns various technology assets in the advertising space.

## **2. THE CONCENTRATION**

- (4) Pursuant to the Stock Purchase Agreement of 23 July 2016, Verizon will acquire all the outstanding shares of Yahoo Inc.'s operating business through the purchase of all of the outstanding shares of Yahoo Holdings, Inc., a newly formed wholly owned subsidiary of Yahoo. Yahoo and Yahoo Holdings, Inc. have entered into a Reorganization Agreement pursuant to which, prior to the consummation of the Sale, Yahoo will transfer all of its assets and liabilities relating to Yahoo's operating business to Yahoo Holdings, Inc., other than specified excluded assets and retained liabilities, as described in paragraph 1. Yahoo will be integrated with AOL. After the sale closes, Verizon will have sole control of Yahoo Holdings, Inc., the entity into which the assets and liabilities relating to Yahoo's operating business will have been transferred, prior to consummation of the Sale, pursuant to the Reorganization Agreement.
- (5) The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **3. EU DIMENSION**

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2 500 million<sup>4</sup> (Verizon: EUR 118 630 million; Yahoo: EUR 4 478 million); a combined aggregate turnover in excess of EUR 100 million in three Member States and each of them has a turnover in excess of EUR 25 million in these three Member States (France: Verizon: EUR [...] million; Yahoo: EUR [...] million;

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<sup>3</sup> Publication in the Official Journal of the European Union No C 434, 24.11.2016, p. 7.

<sup>4</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

Germany: Verizon: EUR [...] million; Yahoo: EUR [...] million; and the United Kingdom: Verizon: EUR [...] million; Yahoo: EUR [...] million). Each of them has an EU-wide turnover in excess of EUR 100 million (Verizon: EUR [...] million; Yahoo: EUR [...] million). Each of the undertakings concerned does not achieve more than two-thirds of its aggregate Union-wide turnover within one and the same Member State.

- (7) The notified operation therefore has a Union dimension within the meaning of Article 1(3) of the EC Merger Regulation.

#### **4. RELEVANT MARKETS**

- (8) The Transaction gives rise to overlaps between the Parties in relation to: (i) the provision of general search services, (ii) the provision of digital content, (iii) the provision of online advertising services, (iv) the provision of data analytics services; (v) consumer communication services, (vi) consumer email services and (vii) hosting and collocation services. Furthermore, the Transaction creates a vertical relationship between the provision of digital content and the provision of cloud computing services.

##### **4.1. General search services**

###### *4.1.1. Relevant product markets*

###### 4.1.1.1. Introduction

- (9) Both Verizon and Yahoo offer general search services. However, in Europe, both Yahoo and AOL show results produced by Bing's general search engine. Yahoo has displayed results produced by Bing since [...] <sup>5</sup> while AOL has displayed results produced by Bing since 1 January 2016.

###### 4.1.1.2. Notifying Party's view

- (10) The Notifying Party submits that because in Europe both Yahoo and AOL show results produced by Bing's search engine, the Transaction has no impact on market shares of providers of search engine technology, but only on market shares at the consumer-facing level. Moreover, the Notifying Party submits that the product market definition can in any case be left open as the Transaction would not raise serious doubts in general search services, irrespective of how the product market is defined.

###### 4.1.1.3. Commission's assessment

- (11) In *Microsoft/Yahoo!*, <sup>6</sup> the Commission made a distinction between general search engines – which crawl the Internet to index content – and specialized search services – which focus on specific online segments (such as legal, medical or travel search) and display results taken from pages that are relevant to a pre-defined topic.

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<sup>5</sup> Yahoo started to display results produced by Bing at different dates on different search country pages in the EEA. [...]. In other countries in the EEA, Yahoo does not have a specific Yahoo search country page. [...].

<sup>6</sup> Commission Decision of 18 February 2010 in Case M.5727 – *Microsoft/Yahoo!*, paragraphs 30-31.

- (12) For the purposes of this Decision, the exact product market definition can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.

#### 4.1.2. *Relevant geographic market*

##### 4.1.2.1. Notifying Party's view

- (13) The Notifying Party submits that the geographic market definition can be left open as the Transaction would not raise serious doubts, irrespective of how the geographic market is defined.

##### 4.1.2.2. Commission's assessment

- (14) In *Microsoft/Yahoo!*,<sup>7</sup> while ultimately leaving the exact geographic market definition open, the Commission considered that the potential market for general search services could possibly be wider than national or linguistic markets because from the supply-side, the largest general search engines operate on a global basis. However, from the demand-side, many users require access to a search engine and to search results in their own language.
- (15) In any event, for the purpose of this Decision, the exact geographic market definition can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition.

## 4.2. **Online advertising services**

### 4.2.1. *Relevant product market*

#### 4.2.1.1. Introduction

- (16) Both Verizon and Yahoo offer online advertising services, enabling advertisers to advertise on the webpages that they publish and on third party pages.
- (17) Yahoo owns a number of advertising technology assets, including:
- BrightRoll DSP, a programmatic demand-side platform ("DSP") that enables advertisers to plan their ad campaigns and to connect to various ad exchanges/supply-side platforms ("SSPs") to source appropriate inventory. It is connected to approximately [...] sources of inventory, in addition to the sites that Yahoo operates and facilitates campaigns on either display (or banner) or video advertising.
  - BrightRoll Exchange, a marketplace that matches advertisers to publisher inventory. It comprises the BrightRoll Exchange for video (BRX(v)) and the BrightRoll Exchange for display (BRX(d)). BRX(d) and BRX(v) enable advertisers to display ads on Yahoo and third party inventory. The BRX exchanges enable programmatic advertising.

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<sup>7</sup> Commission Decision of 18 February 2010 in Case M.5727 – *Microsoft/Yahoo!*, paragraphs 96-97.

- Audience Ads, is Yahoo’s managed end-to-end network that enables delivery of advertising campaigns on both Yahoo- and third party-published sites.
  - Yahoo Premium, is a premium managed service, to allow advertisers to purchase significant Yahoo inventory (e.g. all impressions on the Yahoo homepage).
  - Yahoo Gemini, an advertising network for native ads, enabling display, video and mobile advertising. Publishers provide their inventory to Gemini. Gemini is both a managed service, with advertisers working with Gemini’s sales teams and a self-serve offering where advertisers, typically those with smaller budgets, can create their own accounts, traffic and manage their own campaigns.
  - Yahoo also provides a number of analytical tools to help developers improve their apps with various tools such as Flurry, an independent mobile apps analytics service, and other Yahoo tools (Yahoo App Publishing, Yahoo App Marketing, Tumblr In-App Sharing).
- (18) Through its AOL subsidiary, the Verizon Group provides advertising services for advertisers and publishers. AOL's advertising technology portfolio includes:
- AOL ONE platform: this is a user interface enabling advertisers to purchase video, display, TV and mobile inventory. The single user interface enables purchasing on the following demand-side platforms without having to separately purchase inventory on each platform: One by AOL (video advertising); One Display (display inventory); One TV (TV inventory); and One by AOL (mobile). In addition to purchasing across all four platforms via AOL ONE, each platform can be used separately.
  - One Video Market Place, One Display and One Mobile (which is also open to mobile video inventory) operate as ad-exchange platforms for publishers, offering exchanges on which publishers can sell their inventory, as well as demand forecasting and yield management tools for those publishers.
  - Advertising.com, AOL’s end to end managed advertising network. Advertisers issue inventory orders to advertising.com, which advertising.com fills from both AOL’s publisher inventory and other third party publisher inventory.
  - AOL also owns advertising management and analytics products One Ad Server, One Attribution, One Creative and AlephD that help advertisers and publishers to better measure and increase the efficiency of the advertising.

#### 4.2.1.2. Notifying Party's views

- (19) The Notifying Party submits that online advertising constitutes a relevant product market distinct from offline advertising, as there are a number of key differences between the two. These include: (i) they serve different purposes; (ii) online and offline advertising require different degrees of engagement from users to be effective; (iii) online ads can be targeted materially more precisely than offline ads; and (iv) online advertising also generates much more precise and immediate behavioural information about consumers that can be reused in the same and future ad campaigns.

- (20) In terms of segmentation by platform, the Notifying Party submits that the recent developments in advertising technology tools make clear that online ads campaigns are increasingly being designed and run cross-platform.
- (21) In terms of segmentation between online search and online non-search advertising, the Notifying Party submits that for the purpose of the present case, it is not necessary to determine whether search and non-search advertising fall into the same relevant market since the Transaction would not raise serious doubts, irrespective of how the product market is defined.

#### 4.2.1.3. Commission's assessment

- (22) In previous decisions, the Commission distinguished between the provision of online and offline advertising services.<sup>8</sup>
- (23) The Commission also considered whether the market for online advertising could be sub-segmented into search and non-search advertising, but ultimately left this question open.<sup>9</sup> In *Facebook/WhatsApp*, the Commission noted that respondents to a large extent considered that online search and non-search ads are not substitutable since they serve different purposes and, as a result, most advertisers would not be likely to switch from one type to another.<sup>10</sup>
- (24) The Commission also examined, but ultimately left open, whether it would be appropriate to distinguish online advertising on the basis of the platform (PC versus mobile).<sup>11</sup>
- (25) In line with its decisions in the cases *Google/DoubleClick*, *Microsoft/Yahoo! Search Business*, and *Facebook/WhatsApp*, the Commission concludes that online advertising constitutes a relevant market separate from offline advertising. The question whether that market should be further segmented can be left open for the purposes of this Decision, because the Transaction does not raise serious doubts as to its compatibility with the internal market, irrespective of the product market definition.

#### 4.2.2. Relevant geographic market

##### 4.2.2.1. Notifying Party's view

- (26) The Notifying Party does not take a firm view as to the geographic dimension of the market for online advertising or its possible sub-segments.

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<sup>8</sup> Commission decision of 18 February 2010 in Case M.5727 – *Microsoft/Yahoo! Search Business*, paragraph 61; Commission decision of 11 March 2008 in Case M. 4731 – *Google/DoubleClick*, paragraphs 45-46; 56; Commission decision of 3 October 2014 in Case M.7217 – *Facebook/WhatsApp*, paragraph 75.

<sup>9</sup> Commission decision of 18 February 2010 in Case M.5727 – *Microsoft/Yahoo! Search Business*, paragraphs 71-75; Commission decision of 11 March 2008 in Case M. 4731 – *Google/DoubleClick*, paragraphs 49-56; Commission decision of 3 October 2014 in Case M.7217 – *Facebook/WhatsApp*, paragraph 76.

<sup>10</sup> Commission decision of 3 October 2014 in Case M.7217 – *Facebook/WhatsApp*, paragraph 76.

<sup>11</sup> Commission decision of 3 October 2014 in Case M.7217 – *Facebook/WhatsApp*, paragraphs 77-78.

#### 4.2.2.2. Commission's assessment

- (27) In previous decisions,<sup>12</sup> the Commission concluded that the market for online advertising can be divided along national or linguistic borders within the EEA, although it ultimately left the geographic market definition open in one case.<sup>13</sup> Factors pointing to a national or linguistic geographic market definition included customers' purchasing preferences and languages, and the presence of support and sales networks located at national level.
- (28) In any event, for the purpose of this Decision, the exact geographic market definition can be left open, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible geographic market definition.

### 4.3. Data analytics services

#### 4.3.1. Relevant product market

##### 4.3.1.1. Introduction

- (29) Both Verizon and Yahoo offer indirectly, through their online advertising activities, media measurement services, in that their advertiser and publisher customers (including app developers) are provided with information about advertising displayed using the Parties' services and they monitor user activity on their owned and operated sites. However, the Parties do not provide media measurement services independently from their owned and operated sites and online advertising services.
- (30) Moreover, neither of them provides marketing information or market research services to third parties.

##### 4.3.1.2. Notifying Party's view

- (31) The Notifying Party submits that, given the minimal overlaps between the Parties' data analytics services, the precise scope of the relevant product market may be left open for the purposes of the current case.

##### 4.3.1.3. Commission's assessment

- (32) In previous cases,<sup>14</sup> the Commission found that data analytics services could be segmented into three categories: (i) marketing information services (*i.e.*, the supply of data on individual consumers for direct marketing purposes), (ii) market research

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<sup>12</sup> See Commission decision of 4 September 2012 in Case M.6314 – *Telefónica UK / Vodafone UK / Everything Everywhere / JV*, paragraphs 226-229; Commission decision of 18 February 2010 in Case M.5727 – *Microsoft / Yahoo! Search Business*, paragraphs 91-93; Commission decision of 11 March 2008 in Case M.4731 – *Google / DoubleClick*, paragraphs 83-84; Commission decision of 3 October 2014 in Case M.7217 – *Facebook/WhatsApp*, paragraphs 81-83.

<sup>13</sup> Case M.6314 – *Telefónica UK / Vodafone UK / Everything Everywhere / JV*, paragraphs 226-229

<sup>14</sup> Commission Decision in case M. 6967 *BNP Paribas Fortis/Belgacom/Belgian Mobile Wallet*, of 11 October 2013, para 76 and Commission Decision in case M. 6314 *Telefónica UK/Vodafone UK/Everything Everywhere/JV*, para 198.



services (*i.e.*, measuring and understanding consumer attitudes and actual purchasing behaviour and patterns), and (iii) media measurement services (*i.e.*, measuring the audience of specific media, such as television and internet). In these cases the Commission left open the question as to whether each of these types of data analytics constituted a distinct market.

- (33) In the present case, the exact definition of the product market can be left open, as the Parties do not provide stand-alone marketing or media measurement services and the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

#### 4.3.2. *Relevant geographic market*

##### 4.3.2.1. Notifying Party's view

- (34) The Notifying Party takes the view that the scope of the geographic market should reflect that for the advertising services in which it is used, as the data and analytics services in issue are used in connection with online advertising.
- (35) However, the Notifying Party considers that for the purpose of the present case, it is not necessary to define the precise scope of the relevant geographic market as the Transaction does not give rise to concerns under any plausible geographic market definition.

##### 4.3.2.2. Commission's assessment

- (36) In previous cases,<sup>15</sup> the Commission left open the relevant geographic market definitions. On one hand, the Commission took into account the relevance of local presence, knowledge of the local markets and language as factors that could justify a national geographic definition. On the other hand, the Commission stated that most data analytics suppliers are multinational companies which offer cross-border services.
- (37) For the purpose of this Decision, the exact definition of the geographic market can be left open, as the Transaction does not give rise to serious doubts as to its compatibility under any plausible market definition.

## 4.4. **Consumer communications services**

### 4.4.1. *Relevant product market*

#### 4.4.1.1. Introduction

- (38) Online communications services are multimedia communications solutions that allow people to communicate by means of an application or software in real time. It can be distinguished between consumer and enterprise communications services. Consumer communications services enable people to reach out to their friends, family members and other contacts in real time and in various forms, including voice, text, video (calls

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<sup>15</sup> See Commission decision of 4 September 2012 in Case M.6314 – *Telefónica UK/Vodafone UK/Everything Everywhere/JV*, paragraphs 236 to 240 and Commission decision in case M.6967, *BNP Paribas Fortis/Belgacom/Belgian Mobile Wallet*, of 11 November 2013, paragraphs 80-83.

and messaging), and location sharing. Enterprise communications services are used by companies for business and professional purposes.

- (39) Both Verizon's AOL and Yahoo provide consumer communications services, developed originally for desktop but now also offered as stand-alone mobile apps. Both AOL's and Yahoo's apps are offered for download on multiple operating systems ("OSs").

#### 4.4.1.2. Notifying Party's view

- (40) The Notifying Party submits that there is a distinct market for consumer communications apps that does not include either email, SMS, MMS or PSTN-based voice calls.

#### 4.4.1.3. Commission's assessment

- (41) In previous cases,<sup>16</sup> the Commission identified separate markets for consumer communications services and enterprise communications services. In addition, while ultimately leaving the market definition open, the Commission considered whether the consumer communications market should be further segmented by functionality, by platform or by operating system.
- (42) In *Facebook/WhatsApp*,<sup>17</sup> the Commission also considered whether it was appropriate to segment the consumer communications market by functionality, platform or operating system and concluded that the relevant product market should encompass consumer communications apps offered for all operating systems and including all communications functionalities.
- (43) Furthermore, in *Facebook/WhatsApp*,<sup>18</sup> the Commission examined, but ultimately left open, whether the product market definition should be broadened to include traditional electronic communications services, such as voice calls, SMS, MMS, or e-mails. The Commission found, at the time, that there were elements suggesting an imperfect substitutability between the two types of services, including: (i) the richer overall experience of the user in terms of functionalities in consumer communications apps; (ii) the difference in the pricing conditions, since consumer communications apps are mainly offered free of charge and not priced per messages; and (iii) the one-way competitive interaction between the two services, i.e. consumer communications apps constrain traditional electronic communications services but not the other way around. The Commission ultimately left the product market definition open.
- (44) For the purpose of this Decision, the exact product market definition can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.

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<sup>16</sup> Commission decision of 7 October 2011 in Case M.6281 – *Microsoft/Skype*; Commission decision of 4 December 2013 in Case M.7047 – *Microsoft/Nokia*.

<sup>17</sup> Commission Decision of 3 October 2014 in Case M.7217 – *Facebook/WhatsApp*, paragraphs 21-27.

<sup>18</sup> Commission Decision of 3 October 2014 in Case M.7217 – *Facebook/WhatsApp*, paragraphs 28-33.

#### 4.4.2. *Relevant geographic market*

##### 4.4.2.1. Notifying Party's view

- (45) The Notifying Party submits that the geographic market definition can be left open since the Transaction will not raise serious doubts, irrespective of whether the market is global or EEA-wide in scope.

##### 4.4.2.2. Commission's assessment

- (46) In *Facebook/WhatsApp*,<sup>19</sup> the Commission considered that the relevant geographic market was EEA-wide. On the one hand, respondents to the market investigation indicated that no major differences exist in the offering of consumer communications apps across the world. On the other hand, in view of the differing penetration levels of different apps in different regions, the Commission noted that there might be different competition dynamics in different regions, reflecting consumer preferences, regulatory differences and marketing focus.
- (47) For the purposes of the present case, it can be left open whether the market is worldwide or EEA-wide, since the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any alternative market definition.

#### 4.5. **Consumer email services**

##### 4.5.1. *Relevant product market*

##### 4.5.1.1. Introduction

- (48) Both AOL and Yahoo offer email services that are free to consumers and email apps for Android and iOS.

##### 4.5.1.2. Notifying Party's view

- (49) The Notifying Party notes that in *Microsoft/Nokia*, the respondents to the market investigation indicated that mobile productivity apps (including consumer email) do not fall into the same relevant market as productivity services for desktops and laptops, predominantly because the mobile apps had fewer features, provided less functionality and were less user-friendly. There are some significant supply-side factors that drive the functionality features. However, these differences appear to be less important in relation to email and calendaring functionality, such that email apps may continue to compete functionally with webmail.
- (50) In any event, the Notifying Party submits that for the purpose of the present case, it is not necessary to define the precise scope of the relevant product market since the Transaction will not raise serious doubts, irrespective of whether there are distinct markets for consumer productivity services and/or consumer productivity apps.

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<sup>19</sup> Commission Decision of 3 October 2014 in Case M.7217 – *Facebook/WhatsApp*, paragraphs 36-40.

#### 4.5.1.3. Commission's assessment

- (51) In *Microsoft/Nokia*,<sup>20</sup> the Commission took the view that consumer mail server software and services constitute a separate product market from enterprise mail server software and services. This was because consumer-focused products generally have less functionality and cost less. In the particular case of mail server software and services, enterprise mail server solutions provide notably enhanced security protection, risk management compliance measures, and customisation/ integration with other corporate services and infrastructure.
- (52) In the present case, the exact definition of the product market can be left open, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

#### 4.5.2. Relevant geographic market

##### 4.5.2.1. Notifying Party's view

- (53) The Notifying Party does not take a firm view as to the geographic dimension of the market for consumer email services.

##### 4.5.2.2. Commission's assessment

- (54) In previous decisions, the Commission has considered, but ultimately left open, whether the geographic scope of the markets for consumer productivity services and for mobile productivity apps may be at least EEA-wide, if not worldwide, although demand may vary depending on divergent cultural interests or language.<sup>21</sup>
- (55) For the purposes of the present case, it can be left open whether the market is worldwide or EEA-wide, since the Transaction does not give rise to serious doubts as to its compatibility with the internal market under these alternative market definitions.

### 4.6. Digital content

#### 4.6.1. Relevant product market

##### 4.6.1.1. Introduction

- (56) Both Verizon (through AOL) and Yahoo offer free (advertising-funded) digital content which falls into a number of genres: news, finance, sport, weather, entertainment, technology, games, user-generated and lifestyle.

##### 4.6.1.2. The Notifying Party's view

- (57) The Notifying Party submits that, given the Parties' minimal overlaps in digital content, the precise scope of the relevant product market may be left open for the purposes of the current case.

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<sup>20</sup> Commission Decision of 4 December 2013 in Case M.7047 – *Microsoft/Nokia*, paragraphs 67 and 64.

<sup>21</sup> Commission Decision of 4 December 2013 in Case M.7047 – *Microsoft/Nokia*, paragraphs 78 to 81.

#### 4.6.1.3. Commission's assessment

- (58) In previous cases<sup>22</sup>, the Commission considered the provision of paid-for content on the Internet (e.g., games and news services) as a separate market, distinct from the market for free, advertising-funded, content. In *Vodafone/Vivendi/Canal Plus*<sup>23</sup>, the Commission considered, but ultimately left open, that a number of distinct content markets exist, reflecting distinct user demand for particular types of content services.
- (59) In the present case, the exact definition of the product market can be left open, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

#### 4.6.2. Relevant geographic market

##### 4.6.2.1. The Notifying Party's view

- (60) The Notifying Party considers that for the purpose of the present case, it is not necessary to define the precise scope of the relevant geographic market, as the Transaction does not give rise to concerns under any plausible geographic market definition.

##### 4.6.2.2. Commission's assessment

- (61) In previous cases the Commission considered, but ultimately left open, that (i) the scope of the market will vary depending on the particular content and (ii) because of cultural, linguistic and regulatory reasons the market tends to be national, although it may be wider.<sup>24</sup>
- (62) In the present case, the exact definition of the geographic market can be left open, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

### 4.7. Hosting and colocation services

#### 4.7.1. Relevant product market

##### 4.7.1.1. Introduction

- (63) Verizon provides cloud-enabled managed hosting services, and provides data centre colocation services, traditional managed hosting and managed services for Linux, Windows and Solaris OSs. In addition, through EdgeCast, it operates a content delivery network and provides related services. Yahoo offers hosting services in the EEA, but no colocation services.

##### 4.7.1.2. The Notifying Party's view

- (64) The Notifying Party submits that, given the minimal overlaps between the Parties in hosting services, the precise scope of the relevant product market may be left open for the purposes of the current case.

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<sup>22</sup> Commission Decision in case M.973 *Bertelsmann/Burda/HOS Lifeline*, para 8.

<sup>23</sup> Commission Decision in case COMP/JV.48 *Vodafone/Vivendi/Canal Plus*, of 20 July 2000, paras. 40 and 45.

<sup>24</sup> Commission Decision in case COMP/JV.48 *Vodafone/Vivendi/Canal Plus*, 20 July 2000, paras. 40 and 45.

#### 4.7.1.3. Commission's assessment

- (65) In *BNP Paribas Fortis/Belgacom/Belgian Mobile Wallet*,<sup>25</sup> the Commission considered four segments within the general web-hosting sector, based on the range of different services and products offered: (a) supply of basic co-location services such as connectivity, power, and the facilities; (b) supply of shared and dedicated hosting consisting of hosting a customer's web-site on the web host's servers and providing the necessary support applications; (c) supply of managed services to outsource complex enterprise applications and support infrastructure, including “front-end” and “back-office” applications hosted on the providers’ platforms, and (d) supply of content delivery services (“CDS”) such as streaming content delivery services and static content delivery products. However, the Commission ultimately left the product market definition open.
- (66) In the present case, the exact definition of the product market can be left open, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

#### 4.7.2. Relevant geographic market

##### 4.7.2.1. The Notifying Party's view

- (67) The Notifying Party considers that for the purpose of the present case, it is not necessary to define the precise scope of the relevant geographic market, as the Transaction does not give rise to concerns under any plausible geographic market definition.

##### 4.7.2.2. Commission's assessment

- (68) The Commission noted in *BNP Paribas Fortis/Belgacom/Belgian Mobile Wallet* that the market for web hosting services was likely national, while ultimately leaving open whether the geographic scope would be national or EEA-wide.<sup>26</sup>
- (69) In the present case, the exact definition of the geographic market can be left open, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible geographic market definition.

### 4.8. Cloud computing services

#### 4.8.1. Relevant product market

##### 4.8.1.1. The Notifying Party's view

- (70) The Notifying Party submits that only Verizon is active in the market for cloud computing services. While Yahoo does not provide cloud computing services, the market is vertically related to the digital content markets in which both Parties are active.

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<sup>25</sup> Commission decision in case M.6967, *BNP Paribas Fortis/Belgacom/Belgian Mobile Wallet*, of 11 November 2013, paragraphs 114-121.

<sup>26</sup> Commission decision in case M.6967, *BNP Paribas Fortis/Belgacom/Belgian Mobile Wallet*, of 11 November 2013, paragraphs 122-127.

- (71) However, the Notifying Party submits that, given the modest position of Verizon in both the digital content and cloud computing markets, the precise scope of the relevant product market may be left open for the purposes of the present case.

#### 4.8.1.2. Commission's assessment

- (72) In *IBM Italia/UBIS* and in *IBM/INF Business Of Deutsche Lufthansa*<sup>27</sup>, the Commission considered a segment of the IT services market that encompasses IT outsourcing (formerly referred to as “IT management”), which could then be segmented between (a) public cloud computing services, (b) infrastructure as a service (“IaaS”), (c) infrastructure outsourcing services (including potential further sub-segments for data centre services, network outsourcing, end-user device outsourcing, and help desk outsourcing), and (d) application outsourcing services. However, the Commission ultimately left the product market definition open.

- (73) In the present case, the exact definition of the product market can be left open, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

#### 4.8.2. Relevant geographic market

##### 4.8.2.1. The Notifying Party's view

- (74) The Notifying Party notes that in previous cases the Commission took the view that the market for cloud computing services was at least EEA-wide. However, the Notifying Party considers that for the purpose of the present case, it is not necessary to define the precise scope of the relevant geographic market, as the Transaction does not give rise to concerns under any plausible geographic market definition.

##### 4.8.2.2. Commission's assessment

- (75) In some previous cases,<sup>28</sup> the Commission took the view that the market for cloud computing services is at least EEA-wide. However, in some cases, such as *Cap Gemini/BAS*,<sup>29</sup> the Commission considered that the market was national due to some IT providers operating only at national level.

- (76) In the present case, the exact definition of the geographic market can be left open, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible geographic market definition.

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<sup>27</sup> Commission Decisions in Case M.6921 *IBM Italia/UBIS*, and Case M.7458 *IBM/INF BUSINESS OF DEUTSCHE LUFTHANSA*, of 15 December 2014, para 32.

<sup>28</sup> Commission decision in Case M.6237 *Computer Sciences Corporation/iSoft Group*, paragraphs 17 to 18 and Commission decision in Case COMP/M.7458 *IBM/INF BUSINESS OF DEUTSCHE LUFTHANSA*, paragraph 32.

<sup>29</sup> Commission Decision in Case M. 5301 *Capgemini/BAS*, of 13 October 2008, paragraph 19.

## 5. COMPETITIVE ASSESSMENT

- (77) While the Transaction gives rise to horizontal or vertical relationships between the Parties' activities in the markets described above, these relationships only amount to an horizontally affected market on the following possible markets for the provision of digital content, which will be discussed in section 5.2:
- (a) the provision of mobile digital finance content in the EEA;<sup>30</sup>
  - (b) the provision of mobile digital news content in France;
  - (c) the provision of mobile digital news content in Germany;
  - (d) the provision of mobile digital finance content in Germany;
  - (e) the provision of mobile digital finance content in the UK;
  - (f) the provision of (total) mobile and desktop digital finance content in the UK.
- (78) The Transaction also gives rise to vertically affected markets as there is a vertical relationship between the possible market for cloud computing and the potential markets for digital content listed above, which will be discussed in Section 5.3.
- (79) The Commission has also assessed whether the possible post-merger combination of the data held by each of the Parties could give raise to serious doubts in relation to online advertising (section 5.1).

### I. Horizontal assessment

#### 5.1. Online advertising services

- (80) Both Verizon and Yahoo use certain data generated by user activity on their websites and apps and other services such as their ad networks to improve their services (e.g. sold to advertisers and publishers) and better target advertising on websites and apps.<sup>31</sup>

##### *5.1.1. Legal framework*

- (81) Assuming data combination is allowed under the applicable data protection legislation, there are two main ways in which a merger may raise horizontal issues as a result of the combination, under the ownership of the merged entity, of two datasets previously held by two independent firms.<sup>32</sup>
- (82) First, the combination of two datasets post-merger may increase the merged entity's market power in a hypothetical market for the supply of this data or increase barriers

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<sup>30</sup> The Notifying Party has estimated the Parties' market shares on the basis of comScore data, which does not provide market share data at EEA-level. Instead, the Notifying Party has used the "EU5", including France, Germany, Italy, Spain and the United Kingdom as an approximation to the EEA.

<sup>31</sup> [...].

<sup>32</sup> Commission decision of 3 October 2014 in Case M.7217 – *Facebook/WhatsApp*, paragraph 70.



to entry/expansion in the market for actual or potential competitors, which may need this data to operate on this market. Competitors may be required to collect a larger dataset in order to compete effectively with the merged entity than absent the merger.

- (83) Second, even if there is no intention or technical possibility to combine the two datasets, it may be that pre-merger the two companies were competing with each other on the basis of the data they controlled and this competition would be eliminated by the merger.

*5.1.2. The Notifying Party's view*

- (84) According to the Notifying Party, no possible market for online advertising, however defined, would be affected by the Transaction, as the Parties' combined market shares always remain far below 20%.
- (85) The Notifying Party further submits that the data generated by user activity on the web sites and apps of the Parties, which is used to better target online advertising on their web sites and apps, is not uniquely available to the Parties.

*5.1.3. Commission's assessment*

- (86) For the reasons set out below, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to online advertising.
- (87) First, in each of France, Germany, Italy, Spain and the UK, the Parties' market shares in online advertising services, irrespective of the market definition considered, were below [5-10%] in 2015.<sup>33</sup>
- (88) Second, respondents to the market investigation generally indicated that the Transaction would not raise concerns with respect to online advertising.<sup>34</sup>
- (89) Third, the possible post-merger combination of the data held by the Parties also does not raise serious doubts as to its compatibility with the internal market .
- (90) In the first place, any such data combination could only be implemented by the merged entity to the extent it is allowed by applicable data protection rules. Verizon and Yahoo are currently subject to relevant national data protection rules with respect to the collection, processing, storage and usage of personal data, which, subject to certain exceptions, limit their ability to process the dataset they maintain.<sup>35</sup> Moreover,

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<sup>33</sup> Source: eMarketer. The Notifying Party was unable to calculate market shares for the other Member States. However, given that the Parties generate the majority of their advertising revenues in these five EEA countries, the Notifying Party estimates that the Parties' market shares for the overall online advertising, as well as for search and non-search advertising in the other Member States are *de minimis* and do not give rise to any affected markets.

<sup>34</sup> Responses to questionnaire to online advertising customers and competitors of 18 November 2016, questions 4 and 6.

<sup>35</sup> Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data ("Data Protection Directive"), OJ L 281, 23.11.1995, pp.31-39. Article 7(b)-(f) of the Data Protection Directive lays out the situations where the personal data of a data subject may be processed without the consent of the data subject.

the newly adopted General Data Protection Regulation,<sup>36</sup> which establishes one single set of rules for companies processing personal data in the EU and which was adopted on 27 April 2016 and will apply from 25 May 2018, may further limit the Parties' ability to have access and to process the users' personal data in the future since the new rules will strengthen the existing rights and empowering individuals with more control over their personal data (i.e. easier access to personal data; right to data portability; etc.).

- (91) In the second place, the combination of the Parties' respective datasets will not raise the barriers to entry/expansion for other players in this space,<sup>37</sup> as there will continue to be a large amount of internet user data that are valuable for advertising purposes and that are not within the Parties' exclusive control.
- (92) In the third place, the Parties are small market players in online advertising.
- (93) In the fourth place, the vast majority of respondents to the market investigation indicated that the data collected by Yahoo and Verizon cannot be characterised as unique. Similar to other providers of online advertising services, Verizon and Yahoo are able to capture and utilise data to better target online advertising.<sup>38</sup> One customer noted that it expects the merged entity to be able to improve its data capability which in turn would improve its competitiveness against existing stronger competitors.<sup>39</sup>

## 5.2. Digital content

### 5.2.1. Notifying Party's view

- (94) The Notifying Party submits that the Transaction will not give rise serious doubts in relation to the digital content, irrespective of whether digital content is provided on desktop or mobile, and of the type of content (finance, weather, news, user generated etc) provided. Furthermore, the Notifying Party submits only the possible markets for mobile digital finance content in the EEA, mobile digital news content in France and Germany, mobile digital finance content in Germany, total (desktop and mobile) digital finance content in the UK, and mobile finance content in the UK could be potentially horizontally affected markets. However, even for these possible markets, the Notifying Party submits that the Transaction will not give rise to serious doubts, as the increment brought by the Transaction is *de minimis* and there are many strong

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<sup>36</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ("General Data Protection Regulation" or "GDPR"), repealing the Data Protection Directive, OJ L 119, 4.5.2016, pp. 1-88. The GDPR provides for a harmonised and high level of protection of personal data and fully regulates the processing of personal data in the EU, including inter alia the collection, use of, access to and portability of personal data as well as the possibilities to transmit or to transfer personal data.

<sup>37</sup> Confirmed by the market investigation. See responses to questionnaire to online advertising customers of 18 November 2016, question 5.

<sup>38</sup> Responses to Questionnaire to online advertising customers and competitors of 18 November 2016, question 5.

<sup>39</sup> Responses to Questionnaire to online advertising customers of 18 November 2016, question 5.

providers of digital content which will continue to exercise competitive pressure on the merged entity.

### 5.2.2. *Commission's assessment*

- (95) For the reasons set out below, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to digital content, regardless of any possible segmentation.

#### **a) Possible overall market for digital content in the EEA**

- (96) First, the combined market shares of the Parties in a possible overall market for the provision of digital content in the EEA level would be only [0-5%] (Verizon [0-5%], Yahoo [0-5%]) in 2015.
- (97) Second, even if this possible market were to be segmented by platform (desktop/mobile) and type of content, the Parties' combined market shares would still remain well under 20% for each type of content (news, finance, sport, weather, entertainment, technology, games user generated, and lifestyle) and irrespective whether the content was viewed on mobile or desktop.
- (98) Third, respondents to the market investigation indicated that the possible market for digital content is very competitive, with a large number of providers.<sup>40</sup> Respondents to the market investigation also indicated that the barriers to entry in this market are relatively low.<sup>41</sup>
- (99) Fourth, respondents to the market investigation did not raise concerns in relation to the impact of the Transaction on the provision of digital content in the EEA.<sup>42</sup>

#### **b) Possible market for digital mobile finance content in the EEA<sup>43</sup>**

- (100) First, while the combined market shares of the Parties amounted to [50-60%] in 2015 (Verizon [0-5%], Yahoo [50-60%]<sup>44</sup>), the increment brought by the Transaction is close to [0-5%].
- (101) Second, the Parties will continue to face many competitors in mobile digital finance content, including Business Insider, The Financial Times, Bloomberg, The New York Times, The Economist, Reuters, and MSN Money.<sup>45</sup>

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<sup>40</sup> Responses to Questionnaire to providers of online digital content, of 18 November 2016, question 5.

<sup>41</sup> Responses to Questionnaire to providers of online digital content, of 18 November 2016, question 5.

<sup>42</sup> Responses to Questionnaire to providers of online digital content, of 18 November 2016, question 6.

<sup>43</sup> Market share figures are provided for EU5.

<sup>44</sup> The Commission notes that that comScore data has certain limitations. comScore does not track all participants in continental European countries, including important market participants such as Google and Facebook. As a result, comScore is not able to dependably track mobile shares for content genres in these jurisdictions, because its data is incomplete. Therefore the Commission notes that it is likely that both AOL and Yahoo's shares are overstated in these countries.

<sup>45</sup> Responses to Questionnaire to providers of online digital content, of 18 November 2016, question 4.

- (102) Third, respondents to the market investigation did not raise concerns in relation to the impact of the Transaction on the provision of digital finance news content in the EEA.<sup>46</sup>

**c) Possible market for digital mobile news content in France**

- (103) First, the combined market shares of the Parties amounted only to [20-30%] in 2015 (Verizon [10-20%], Yahoo [5-10%]).
- (104) Second, the Parties will continue to face strong competitors in mobile news content, including LeParisien ([20-30%]), L'internaute.com ([10-20%]), Newsworks online newspaper sites ([5-10%]) and the Guardian.com ([0-5%]).
- (105) Third, respondents to the market investigation did not raise concerns in relation to the impact of the Transaction on the provision of digital mobile news content in France.<sup>47</sup>

**d) Possible market for digital mobile news content in Germany**

- (106) First, the combined market shares of the Parties amounted only to [30-40%] in 2015 (Verizon [20-30%], Yahoo [0-5%]).
- (107) Second, the Parties will continue to face many competitors in mobile digital news content, including Newsworks online newspaper sites ([10-20%]) Hurriyet.com.Tr ([5-10%]), BuzzFeed.com ([5-10%]) Milliyet.com.Tr, ([5-10%]) the Guardian.com ([5-10%]) and Huffingtonpost.com ([5-10%]).
- (108) Third, respondents to the market investigation did not raise concerns in relation to the impact of the Transaction on mobile digital news content in Germany.<sup>48</sup>

**e) Possible market for digital mobile finance content in Germany**

- (109) First, the combined market shares of the Parties amounted only to approximately [20-30%] in 2015 (Verizon [0-5%], Yahoo [10-20%])
- (110) Second, the Parties will continue to face many competitors in mobile news content, including Business Insider ([10-20%]) Bloomberg ([10-20%]), Postmedia Business Network ([10-20%]) and Forbes ([5-10%]).
- (111) Third, respondents to the market investigation did not raise any concerns in relation to the impact of the Transaction on the provision of digital mobile finance content in Germany.<sup>49</sup>

**f) Possible market for digital (mobile and desktop) finance content in the UK**

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<sup>46</sup> Responses to Questionnaire to providers of online digital content, of 18 November 2016, question 6.

<sup>47</sup> Responses to Questionnaire to providers of online digital content, of 18 November 2016, question 6.

<sup>48</sup> Responses to Questionnaire to providers of online digital content, of 18 November 2016, question 6.

<sup>49</sup> Responses to Questionnaire to providers of online digital content, of 18 November 2016, question 6.

- (112) First, while the combined market shares of the Parties amounted to [30-40%] in 2015 (Verizon [0-5%], Yahoo [30-40%]) the increment brought by the Transaction is close to [0-5%].
- (113) Second, the Parties will continue to face many competitors in digital finance content, including Paypal ([5-10%]), eBay ([10-20%]), Microsoft sites ([5-10%]) and Bloomberg sites ([5-10%]).
- (114) Third, respondents to the market investigation did not raise any concerns in relation to the impact of the Transaction on this possible market in the UK.<sup>50</sup>

**g) Possible market for digital mobile finance content in the UK**

- (115) First, while the combined market shares of the Parties amounted to [50-60%] in 2015 (Verizon [0-5%], Yahoo [50-60%]) the increment brought by the Transaction is close to [0-5%].
- (116) Second, the Parties will continue to face many competitors in digital finance content, including Paypal ([5-10%]), eBay ([10-20%]), Microsoft sites ([5-10%]) and Bloomberg sites ([5-10%]).
- (117) Third, the large majority of respondents to the market investigation did not raise any concerns in relation to the impact of the Transaction on this possible market in the UK.<sup>51</sup>

**II. Vertical assessment**

**5.3. Cloud computing**

- (118) While only Verizon provides cloud computing services, the market is vertically related to the possible digital content markets discussed in Section 5.2.

*5.3.1. Notifying Party's view*

- (119) The Notifying Party submits that it holds a *de minimis* market share in a possible cloud services market both at worldwide level, and at EEA-level. The major players in this market are Amazon, Microsoft, Google and IBM.

*5.3.2. Commission's assessment*

- (120) For the reasons set out below, the Transaction does not give rise to serious doubts as regards its compatibility with the internal market with respect to any vertical relationships between the possible cloud services market and any of the possible digital content markets discussed in Section 5.2.
- (121) First, Verizon's share of the possible cloud services market, both at worldwide level and at EEA-level, was below [0-5%] in 2015.

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<sup>50</sup> Responses to Questionnaire to providers of online digital content, of 18 November 2016, question 6.

<sup>51</sup> Responses to Questionnaire to providers of online digital content, of 18 November 2016, question 6.

(122) Second, the Parties will continue to face many competitors in cloud computing services, including Amazon, Microsoft, Google and IBM.

**6. CONCLUSION**

(123) 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 and Article 57 of the EEA Agreement.

*For the Commission*

*(Signed)*

*Margrethe VESTAGER*

*Member of the Commission*