EUROPEAN COMMISSION
DG Competition

Case M.9963 - ILIAD / PLAY COMMUNICATIONS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 26/10/2020

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EUROPEAN COMMISSION

Brussels, 26.10.2020
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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Subject: **Case M.9963 – Iliad S.A./Play Communications S.A**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 21 September 2020, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Iliad S.A. ("Iliad", France; the "Notifying Party") acquires within the meaning of Article 3(1)(b) sole control of Play Communications S.A. ("Play Communications", Luxembourg) (the "Transaction"). Iliad and Play Communications are designated hereinafter as the "Parties".

1. THE PARTIES

(2) **Iliad** is active in the provision of fixed and mobile telecommunications services, fixed internet and TV services in France[3] and mobile telecommunications services

1 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 OJ L 1, 3.1.1994, p. 3 (the "EEA Agreement").

3 Via the brand "Free".

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in Italy[4]. Iliad is ultimately controlled by Mr. Xavier Niel. Other companies controlled by Mr. Xavier Niel (together with Iliad; the "Xavier Niel Group" ("XNG")) are active in particular in the following sectors: telecoms, media, IT services, start-up businesses and real estate. In the sector of telecommunications, XNG is mainly active in Ireland[5], Malta[6] and Cyprus[7], in addition to the activities of Iliad.

(3) **Play Communications** (headquartered in Luxembourg) is a public limited company listed on the Warsaw Stock Exchange and the holding company of P4 Sp. z o. o., a Polish company that provides mainly retail mobile, fixed telephony and fixed internet access services in Poland (the "P4 Group").

2. THE OPERATION

(4) The Transaction consists of a public tender offer by Iliad on 100% of the shares in Play Communications, announced on 21 September 2020.[8]

(5) Therefore, the Transaction consists of the acquisition of sole control by Iliad over Play Communications within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

(6) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million[9] (Iliad: [confidential], Play Communications: EUR 1 660 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Iliad: [confidential]; Play Communications: EUR 1 660 million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

(7) The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the EUMR.

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4 Via the brand "Iliad Italia".

5 Via the brand "Eir". Eir provides mobile and fixed telecommunications services as well as fixed internet and TV services. Eir also provides connectivity services to Irish companies with subsidiaries or branches in the UK.

6 Via the brand "Vodafone Malta". Vodafone Malta provides mobile and fixed telecommunications services.

7 Via the brand "Epic". Epic provides mobile and fixed telecommunications services as well as fixed internet and TV services.

8 On 10 August 2020, Iliad entered into a share purchase agreement ("SPA") with the two reference shareholders of Play Communications (Kenbourne Invest II S.à r.l and Tollerton Investments Limited, or "the Sellers"). Based on this agreement, the Sellers committed to irrevocably subscribe for the sale of their block of shares in the tender offer. The sellers together represent approximately 40.2% of the share capital and voting rights of Play Communications.

9 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).

4. RELEVANT MARKETS

(8) The Transaction does not result in any horizontal overlaps because XNG is not active in Poland, whereas the P4 Group is exclusively active in Poland. Therefore, considering the national dimension of the retail telecommunication markets, there are no horizontal overlaps.

(9) The Transaction gives rise to vertical relationships in the EEA countries in which the Parties are present (i.e., Cyprus, France, Ireland, Italy and Malta for XNG, and Poland for the P4 Group) in connection with:

(a) at the upstream level:

– The wholesale markets for international roaming services in (i) Cyprus, France, Ireland, Italy, and Malta (XNG), and (ii) Poland (the P4 Group);

– The wholesale market for mobile call termination services on (i) the P4 Group's mobile network in Poland and on (ii) the XNG's mobile networks in Cyprus, France, Ireland, Italy and Malta; and

– The wholesale market for fixed call termination services on the XNG's networks in Cyprus, France, Ireland, and Malta.

(b) at the downstream level:

– The retail market for mobile telecommunication services in (i) Cyprus, France, Ireland, Italy, and Malta (XNG) and (ii) Poland (the P4 Group); and

– The retail markets for fixed telephony services in (i) Cyprus, France, Ireland, and Malta (XNG) and (ii) Poland (the P4 Group).

4.1. Retail mobile communications services

(10) Mobile communications services to end customers or "retail mobile communication services" include services for national and international voice calls, SMS (including MMS and other messages), mobile internet with data services, access to content via the mobile network and retail international roaming services.

4.1.1. Product market definition

(11) In its previous practice, the Commission has not further segmented the overall retail mobile market based on the type of service (voice calls, SMS, MMS, mobile Internet data services), or the type of network technology. The Commission has considered possible segments of the overall retail market for mobile telecommunication services between pre-paid or post-paid services and private customers or business customers, concluding that these did not constitute separate

product markets but represent rather market segments within an overall retail market and leaving the questions of these possible further segmentations open.[10]

(12) The Notifying Party does not object to the existence of an overall retail mobile market.[11]

(13) Nothing in the Commission's file indicated that the market for retail supply of mobile telecommunications services should be further segmented according to the type of services, the type of customers or the network technology used.

(14) In light of the foregoing, the Commission considers that, for the purpose of this decision, the relevant product market definition is the overall retail market for mobile telecommunications services.

4.1.2. Geographic market definition

(15) In previous decisions, the Commission has consistently concluded that the market for the provision of retail mobile communication services is national in scope.[12]

(16) The Notifying Party does not object to this market definition.[13]

(17) The Commission observes that nothing in the present case indicates that it would be justified to depart from its previous practice – in particular considering that licences to mobile operators are granted on a national basis. Consequently, for the purpose of the present decision and in line with its previous decisional practice, the Commission considers the market for retail mobile services to be national in scope.

4.2. Retail supply of fixed telephony services

(18) Fixed telephony services comprise the provision of connection services at a fixed location or access to the public telephone network, for the purpose of making and/or receiving calls and related services.

4.2.1. Product market definition

(19) In previous decisions, the Commission considered whether a distinction between local/national and international calls as well as between residential and non-residential customers should be drawn, based on the distinctions in the Commission

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[10] Commission decisions of 15 July 2019 in case M.9370, *Telenor/DNA*, para. 41; of 27 July 2018 in case M.8883, *PPF/Telenor Target Companies*; of 27 November 2018 in case M.8792, *T-Mobile NL/Tele2 NL*; of 4 April 2007 in Case M.4591, *Weather Investments/Hellas Telecommunications*, para. 10.

[11] Form CO, para. 65.

[12] Commission decision of 15 July 2019 in case M.9370, *Telenor/DNA*; Commission decision of 27 July 2018 in case M.8883, *PPF/Telenor Target Companies*; Commission decision of 27 November 2018 in case M.8792, *T-Mobile NL/Tele2 NL*.

[13] Form CO, para. 66.

Recommendation 2003/311/EC,[14] but ultimately left the exact product market definition open.[15]

(20) More recently, the Commission also considered that managed Voice over Internet Protocol ("VoIP") services[16] and traditional telephony are interchangeable and therefore belong to the same market. In recent decisions, the Commission considered that an overall retail market for fixed telephony services exists, which includes VoIP services.[17] In *Liberty Global/Ziggo*[18] the Commission left the exact market definition open (and in particular whether there is a separate market for residential and non-residential customers, as well as whether VoIP and traditional fixed telephony belong to the same market) while in *Liberty Global/BASE*[19] and in *Vodafone/Liberty Global/Dutch JV*[20] the Commission considered that an overall retail market for fixed telephony services exists.

(21) The Notifying Party does not object to the existence of an overall retail market for fixed telephony services.[21]

(22) With regard to a possible segmentation of the market for the retail provision of fixed telephony services, nothing in the Commission's file provided reason to depart from its approach in previous cases.

(23) In light of the foregoing, the Commission concludes that it is appropriate to not depart from its previous practice, and considers that, for the purpose of this decision, the relevant product market is the overall retail market for fixed telephony services without any further segmentations.

4.2.2. Geographic market definition

(24) In previous decisions, the Commission has consistently considered that the market for the supply of fixed telephony services is national in scope, as this reflects the continuing importance of the role of national regulation in the telecommunications sector, the supply of upstream wholesale services on a national basis, as well as the

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14 Commission Recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services (Text with EEA relevance) (notified under document number C(2003) 497), OJ L 114, 8.5.2003, p. 45–49.

15 Commission decisions of 18 July 2019 in case M.8864, *Vodafone/Certain Liberty Global Assets*, recital 40; of 15 July 2019 in case M.9370, *Telenor/DNA*, para. 52; of 29 January 2010 in case M.5730, *Telefónica/Hansenet Telekommunikation*, paras. 16-17; of 29 June 2009 in case M.5532, *Carphone Warehouse/Tiscali UK*, paras. 35 and 39; of 7 September 2005 in case M.3914, *Tele2/Versatel*, para. 10.

16 VoIP is a technology that allows users to make voice calls using a broadband internet connection instead of a regular (or analogue) phone line.

17 Commission decision of 20 September 2013 in case M.6990, *Vodafone/Kabel Deutschland*, paras. 130-131.

18 Commission decision of 30 May 2018 in case M.7000, *Liberty Global/Ziggo*, para. 147.

19 Commission decision of 4 February 2016 in case M.7637, *Liberty Global/BASE Belgium*, para. 69.

20 Commission decision of 3 August 2016 in case M.7978, *Vodafone/Liberty Global/Dutch JV*, para. 26.

21 Form CO, para. 68.

fact that the pricing policies of telecommunications providers are predominantly national.[22]

(25) The Notifying Party does not object to this geographic market definition.[23]

(26) The Commission observes that nothing in the present case indicates that it would be justified to depart from its previous practice –in particular taking into account the importance of national regulation in the telecommunications sector and the fact that the upstream wholesale services are provided on a national basis. Consequently, for the purpose of the present decision and in line with its previous decisional practice, the Commission considers that the market for the supply of fixed telephony services is national in scope.

4.3. Wholesale market for international roaming

(27) International roaming services allow mobile telecommunication subscribers to make and receive calls and use other services such as text messages and data services, when abroad. To offer such services to their end-users, Mobile Network Operators (MNOs) conclude wholesale agreements with one another providing access and capacity on mobile networks in the foreign country. MNOs select their partner operators based on network coverage, price, network quality and reciprocity. Demand for wholesale international roaming services comes (i) from foreign mobile operators who wish to provide their own customers with mobile services outside their own network and downstream (ii) from subscribers wishing to use their mobile telephones outside their own countries.

(28) In the EEA, wholesale international roaming services are regulated.[24] Mobile network operators must meet all reasonable requests for wholesale roaming access under a reference offer and wholesale charges for the making of regulated roaming services (voice calls to non-Value-Added Services, SMS and data roaming) are capped.

4.3.1. Product market definition

(29) In previous decisions, the Commission considered a separate product market for wholesale international roaming services comprising both terminating calls and originating calls.[25]

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22 Commission decision of 27 November 2018 in case M.8792, *T-Mobile NL/Tele2 NL*, para. 271; of 15 July 2019 in case M.9370, *Telenor/DNA*; of 27 July 2018 in case M.8883, *PPF/Telenor Target Companies*; of 3 August 2016 in case M.7978, *Vodafone/Liberty Global/Dutch JV*, para. 40; of 4 February 2016 in case M.7637, *Liberty Global/BASE Belgium*, para. 64.

23 Form CO, para. 69.

24 Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ 2012 L 172/10), last amended by Regulation (EU) 2017/920 of the European Parliament and of the Council of 17 May 2017 (OJ 2017 L 147/1) (the "Roaming Regulation").

25 Commission decision of 27 November 2018 in case M.8792, T-Mobile NL/Tele2 NL, para. 250; Commission decision of 15 July 2019 in case M.9370, *Telenor/DNA*; Commission decision of 27 July 2018 in case M.8883, *PPF/Telenor Target Companies*; Commission decision of 1 March 2010 in case

(30) The Notifying Party does not object to this market definition.[26]

(31) The Commission concludes, in line with previous decisions, that the market for international roaming comprising both terminating calls and originating calls constitutes a separate product market.[27] For originating calls while roaming, the foreign or visited mobile network is used to make phone calls when abroad and a wholesale roaming charge is paid by the home network to the visited network. For terminating calls, the call is routed by the home network to the visited mobile network and the home network pays for the international carriage of the call and the normal termination charge to the visited network. Demand for wholesale international roaming services comes first from foreign mobile operators who wish to provide their own customers with mobile services outside their own network and also downstream from subscribers wishing to use their mobile telephones outside their own countries.

4.3.2. Geographic market definition

(32) In previous decisions, the Commission found that the wholesale market for international roaming is national in scope, given that wholesale international agreements can be concluded only with companies that have an operating licence in the relevant country and the licences to provide mobile services are restricted to a national territory.[28]

(33) The Notifying Party does not object to this geographic market definition.[29]

(34) The Commission observes that nothing in the present case indicates that it would be justified to depart from its previous practice, in particular due to the existence of regulatory barriers to offering mobile services.[30] Consequently, for the purpose of the present decision and in line with its previous decisional practice, the Commission considers that the markets for international roaming are national.

M.5650, *T-Mobile/Orange*; Commission decision of 12 December 2012 in case M.6497, *Hutchison 3G Austria/Orange Austria*.

[26] Form CO, para. 71.

[27] Commission decision of 1 September 2016 in case M.7758, *Hutchison 3G Italy / Wind / JV*, recitals 182-184; Commission decision of 12 December 2012 in Case COMP/M.6497, *Hutchison 3G Austria/Orange Austria*, recital 64.

[28] Commission decision of 28 May 2014 in case M. 6992, *H3G/Telefónica Ireland*, recital 151; Commission decision of 12 December 2012 in case M.6497, *Hutchison 3G Austria/Orange Austria*, recital 78; Commission decision of 1 March 2010 in case M.5650, *T-Mobile/Orange*, recital 35; Commission decision of 20 August 2007 in case M.4748, *T-Mobile/Orange Netherlands*, recital 27; Commission decision of 26 April 2006 in case M.3916, *T-Mobile Austria/Tele.ring*, recital 28; Commission decision of 20 September 2013 in case M. 6990, *Vodafone/Kabel Deutschland*, recital 252.

[29] Form CO, para. 72.

[30] Commission decision of 27 November 2018 in case M.8792, *T-Mobile NL/Tele2 NL*, para. 251; Commission decision of 15 July 2019 in case M.9370, *Telenor/DNA*; Commission decision of 27 July 2018 in case M.8883, *PPF/Telenor Target Companies*; Commission decision of 3 August 2016 in case M.7978, *Vodafone/Liberty Global/Dutch JV*, paras 202.

4.4. Wholesale market for mobile and fixed call termination services

(35) Call termination is the service provided by a network operator on the supply side to other network operators on the demand side, whereby a call originating in a demand side operator's network is delivered to a user in the supply side operator's network. This service is required by every originating operator, as it is necessary for its customers to be able to communicate with the customers of other networks. Call termination is therefore a wholesale service that is resold or used as an input for the provision of downstream retail telephony and mobile services. In previous decisions, the Commission has identified relevant markets for the provision of wholesale call termination on mobile and fixed networks.[31]

4.4.1. Wholesale market for mobile call termination services

4.4.1.1. Product market definition

(36) In previous decisions, the Commission has found that there is no substitute for call termination on each individual network, as the operator transmitting the call can reach the intended recipient only through the operator of the network to which the recipient is connected.[32] Therefore, each individual network, either fixed or mobile, constitutes a separate market.[33]

(37) The Notifying Party does not object to this market definition.[34]

(38) The Commission observes that nothing in the present case indicates that it would be justified to depart from its previous practice –in particular considering that a network operator transmitting a call can reach the intended recipient only through the operator of the network to which the recipient is connected. Consequently, for the purpose of the present decision, and in line with its previous decisional practice, the Commission considers that, as regards wholesale call termination services, termination on each individual mobile network constitutes a separate product market.

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31 Accordingly, the 2003 Commission's Recommendation on the relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with the Framework Directive (Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services) has distinguished call termination on individual networks, mobile or fixed as separate markets. A distinction between termination on these networks is further justified by the characteristics of the terminals themselves such as the different functionalities and the mobility guaranteed by the mobile service.

32 Commission decisions: of 27 November 2018 in case M.8792, *T-Mobile NL/Tele2 NL*, para. 259; of 15 July 2019 in case M.9370, *Telenor/DNA*, para. 70; of 27 July 2018 in case M.8883, *PPF/Telenor Target Companies*, para. 26; of 12 December 2012 in case M.6497, *Hutchison 3G Austria/Orange Austria*, para. 68.

33 Commission decision of 27 November 2018 in case M.8792, *T-Mobile NL/Tele2 NL*, para. 259; Commission decision of 15 July 2019 in case M.9370, *Telenor/DNA*; Commission decision of 27 July 2018 in case M.8883, *PPF/Telenor Target Companies*; Commission decision of 12 December 2012 in case M.6497, *Hutchison 3G Austria/Orange Austria*, para. 68.

34 Form CO, para. 74.

4.4.1.2. Geographic market definition

(39) In previous decisions, the Commission considered that the market for wholesale mobile call termination services is national in scope, as each wholesale market for call termination corresponds to the dimensions of the operator's network and is limited to the national territory of the operator's network.[35] This is primarily due to regulatory barriers as the geographic scope of a network licence is, in principle, limited to areas that do not extend beyond the borders of a Member State.

(40) The Notifying Party does not object to this geographic market definition.[36]

(41) The Commission observes that nothing in the present case indicates that it would be justified to depart from its previous practice – in particular, considering that the geographic scope of each wholesale market for mobile call termination corresponds to the geographic dimension of each mobile operator's network which, due to regulatory barriers, is limited to the national territory within which it operates. Consequently, for the purpose of the present decision, and in line with its previous decisional practice the Commission considers that the market for wholesale mobile call termination services is national in scope.

4.4.2. *Wholesale market for fixed call termination services*

4.4.2.1. Product market definition

(42) As in the case of wholesale mobile call termination services, in previous decisions the Commission has established that there are no potential substitutes for call termination on each fixed network since the operator transmitting the call can reach the intended recipient only through the operator of the network to which the recipient is connected.[37]

(43) The Notifying Party, in accordance with the Commission's decisional practice, does not object to this product market definition.[38]

(44) The Commission observes that nothing in the present case indicates that it would be justified to depart from its previous practice –in particular considering that a fixed network operator transmitting a call can reach the intended recipient only through the operator of the network to which the recipient is connected. Consequently, for the purpose of the present decision, and in line with its previous decisional practice the Commission considers that, as regards wholesale call termination services, termination on each individual fixed network constitutes a separate product market.

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35 Commission decisions: of 27 November 2018 in case M.8792, *T-Mobile NL/Tele2 NL*, para. 263; of 15 July 2019 in case M.9370, *Telenor/DNA*, para. 73; of 27 July 2018 in case M.8883, *PPF/Telenor Target Companies*, para. 28; of 3 August 2016 in case M.7978, *Vodafone/Liberty Global/Dutch JV*, para 196.

36 Form CO, para. 75.

37 Commission decisions: of 27 November 2018 in case M.8792, *T-Mobile NL/Tele2 NL*, para. 259, of 15 July 2019 in case M.9370, *Telenor/DNA*, para. 78, of 27 July 2018 in case M.8883, *PPF/Telenor Target Companies*, para. 32; of 12 December 2012 in case M.6497, *Hutchison 3G Austria/Orange Austria*, para. 68.

38 Form CO, para. 77.

4.4.2.2. Geographic market definition

(45) In previous decisions, the Commission has found that the market for wholesale fixed call termination services is national in scope, considering that the geographic scope of each wholesale market for call termination should correspond to the dimensions of the operator's network, which is limited to national borders due to regulatory barriers.[39]

(46) The Notifying Party agrees, in line with previous Commission decisions, that the market for wholesale fixed call termination services is national.[40]

(47) The Commission observes that nothing in the present case indicates that it would be justified to depart from its previous practice – in particular, considering that the geographic scope of each wholesale market for fixed call termination corresponds to the dimension of each operator's network which, due to regulatory barriers, is limited to the national territory within it operates. Consequently, for the purpose of the present decision, and in line with its previous decisional practice the Commission considers that the market for wholesale fixed call termination services is national in scope.

5. COMPETITIVE ASSESSMENT

5.1. Analytical framework

(48) Article 2 of the Merger Regulation requires the Commission to examine whether notified concentrations are compatible with the internal market, by assessing whether they would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.

(49) In this respect, a merger may entail horizontal and/or non-horizontal (i.e. vertical or conglomerate) effects. Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. Vertical effects are those deriving from a concentration where the undertakings concerned are active on different or multiple levels of the supply chain. Conglomerate effects are those deriving from a concentration where the undertakings concerned are in a relationship which is neither horizontal nor vertical.

(50) With respect to concentrations entailing vertical effects, the Commission Guidelines on the assessment of non-horizontal mergers under the Merger Regulation (the "Non-Horizontal Merger Guidelines")[41] distinguish between two

[39] Commission decisions: of 27 November 2018 in case M.8792, *T-Mobile NL/Tele2 NL*, para. 263; of 15 July 2019 in case M.9370, *Telenor/DNA*, para. 81; of 27 July 2018 in case M.8883, *PPF/Telenor Target Companies*, para. 35; of 3 August 2016 in case M.7978, *Vodafone/Liberty Global/Dutch JV*, para. 210.

[40] Form CO, para. 78.

[41] Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-Horizontal Merger Guidelines"), OJ C 265, 18.10.2008.

main ways in which vertical mergers may significantly impede effective competition, namely input foreclosure and customer foreclosure.

(51) For a transaction to raise input foreclosure competition concerns, the merged entity must have a significant degree of market power upstream.[42] In assessing the likelihood of an anticompetitive input foreclosure strategy, the Commission has to examine whether (i) the merged entity would have the ability to substantially foreclose access to inputs; (ii) whether it would have the incentive to do so; and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition downstream.[43]

(52) For a transaction to raise customer foreclosure competition concerns, the merged entity must be an important customer with a significant degree of market power in the downstream market. In assessing the likelihood of an anticompetitive customer foreclosure strategy, the Commission has to examine whether (i) the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from upstream rivals; (ii) whether it would have the incentive to do so and (iii) whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[44]

5.2. Identification of affected markets

(53) In the present case and in line with the information submitted by the Notifying Party, the Transaction does not give rise to any horizontally affected markets.[45]

(54) As set out in paragraphs (27) and (35), international roaming and call termination services are wholesale services provided by network operators that allow users of different networks to communicate with each other. Therefore, the foreign markets for international roaming services and wholesale termination of calls on mobile / fixed networks are vertically related to the national retail markets for fixed and mobile telephony services.

(55) In this regard, the Transaction gives rise to the following vertical relationships:

(a) The upstream markets for the wholesale provision of international roaming services in the countries where XNG is active (Cyprus, France, Ireland, Italy and Malta) and where P4 Group is active (Poland), in connection with the downstream markets for the retail provision of mobile communication services in the countries where P4 Group is active (Poland) and where XNG is active (Cyprus, France, Ireland, Italy and Malta) respectively;

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42 Non-Horizontal Merger Guidelines, para. 35.

43 Non-Horizontal Merger Guidelines, paras. 32 to 57.

44 Non-Horizontal Merger Guidelines, paras. 58 to 77.

45 As set out in para. (8), XNG is not present on the retail mobile telecommunications, fixed telephony, wholesale international roaming and mobile call termination markets in Poland, whereas the P4 Group is exclusively active in Poland.

(b) The upstream markets for the wholesale provision of mobile call termination services on XNG's networks in Cyprus, France, Ireland, Italy and Malta and on P4 Group's network in Poland; in connection with

– the downstream markets for the retail provision of mobile communication services in the countries where P4 Group and XNG are active, respectively, (see above (a)); and

– the downstream markets for the retail provision of fixed telephony services in the countries where P4 Group (Poland) and XNG (Cyprus, France, Ireland and Malta) are active, respectively;

(c) The upstream markets for the wholesale provision of fixed call termination services on XNG's networks in Cyprus, France, Ireland and Malta; in connection with

– the downstream markets for the retail provision of mobile communication services in Poland where P4 Group is active; and

– the downstream markets for the retail provision of fixed telephony services in Poland where P4 Group is active.

Table 1: Non-horizontally affected markets in Cyprus, France, Ireland, Italy, Malta and Poland[46]

Upstream markets	Downstream markets
Wholesale international roaming services:	**Retail mobile telecommunications services:**
XNG [40-50]% in Cyprus, [0-5]% in France, [30-40]% in Ireland, [0-5]% in Italy, and [30-40]% in Malta)	P4 Group ([20-30]% in Poland)
P4 Group ([20-30]% in Poland)	XNG ([40-50]% in Cyprus, [10-20]% in France, 21.1% in Ireland, [5-10]% in Italy, and 39.3% in Malta)
Wholesale mobile call termination services:	**Retail mobile telecommunications services:**
XNG (100% in Cyprus, France, Ireland, Italy, and Malta)	P4 Group (see above)
P4 Group (100% in Poland)	XNG (see above)
Wholesale mobile call termination services:	**Retail fixed telecommunications services:**

46 All market shares have been expressed in volume (number of subscribers) with the exception of the market shares for the wholesale international roaming services, which were provided in value (sales EUR million). See Form CO, paras. 83, 93, 96, and 97.

Upstream markets	Downstream markets
XNG (see above)	P4 Group ([0-5]% in Poland)
P4 Group (see above)	XNG (7.7% in Cyprus, [20-30]% in France, 38.8% in Ireland and [0-5]% in Malta)
Wholesale fixed call termination services:	**Retail mobile telecommunications services:**
XNG (100% in Cyprus, France, Ireland, Malta)	P4 Group (see above)
Wholesale fixed call termination services:	**Retail fixed telecommunications services:**
XNG (see above)	P4 Group (see above)

Source: Form CO

5.2.1. *Wholesale markets for international roaming services – Retail market for mobile telecommunications services*

(56) XNG is active on the market for wholesale international roaming services on its own mobile networks in Cyprus, France, Ireland and Malta. The P4 Group is active on this market on their own network in Poland. The wholesale market for international roaming services is upstream of the markets for the retail supply of mobile telecommunication services, where the Parties have the market shares indicated in **Table 1** above.

5.2.1.1. The Notifying Party's view

(57) The Notifying Party submits that the Transaction will not result in any anticompetitive input or customer foreclosure concerns for the reasons set out below.

(58) In relation to any input foreclosure concern:

(a) First, following the Transaction, the merged entity's competitors in the retail markets for mobile telecommunication services will continue to have at least two alternative operators in each of the Cypriot, French, Irish, Italian, Maltese and Polish markets from which to purchase international roaming services, such as Orange, SFR, Bouygues Telecom, TIM, Vodafone, and Wind Tre.[47]

(b) Second, the Notifying Party submits that the merged entity will be bound by the EU Roaming Regulation, which imposes a price cap on wholesale prices MNOs can charge. The Notifying Party further submits that they have entered into Discount Agreements for international roaming with a large number of MNOs in the EEA, including Member States where each of the

[47] Form CO, para. 89.

Parties operate its mobile network and offers wholesale international roaming services.[48]

(c) Third, the Notifying Party considers that neither of the Parties has significant market power to influence competition in the respective countries. In addition, the Notifying Party notes that the markets shares in terms of provision of domestic mobile services or wholesale international roaming in Poland are very limited. Hence, they are not in a position to influence the conditions of competition in vertically related markets where each of the Parties offers its roaming services.[49]

(d) Finally, the Notifying Party concludes that the roaming charges in each interested Member State represent a very small percentage of the costs incurred by mobile operators. Therefore, any changes in the roaming costs will have no significant impact on the relevant competitors' price structure.

(59) In relation to any customer foreclosure concern:

(a) The Notifying Party submits that, post-Transaction, the Parties' market shares will remain limited and below 30% on most markets. The Parties' market shares will only exceed 30% on the retail market for mobile telecommunications services in Malta and Cyprus.

(b) However, according to the Notifying Party, these market shares correspond to XNG's position in terms of provision of domestic mobile services and they do not accurately reflect the very limited XNG's share of demand for wholesale international roaming in Poland. Moreover, the Notifying Party asserts that roaming in Poland does not account for a significant portion of XNG's outbound roaming.

(c) Therefore, the Parties will not be able to foreclose their competitors on the upstream market for international roaming services in Poland by internalizing the need of their Maltese and Cypriot subscribers when roaming in Poland.[50]

5.2.1.2. The Commission's assessment

(60) In the first place, the Commission considers that the Transaction does not raise any input foreclosure concerns in the downstream markets for (i) the retail supply of mobile communication services in Cyprus, France, Ireland, Italy and Malta (where XNG is active), and (ii) the retail supply of mobile communication services in Poland (where the P4 Group is active); in connection with the upstream markets for wholesale international roaming services in (i) Poland (where the P4 Group is active), and (ii) Cyprus, France, Ireland, Italy and Malta (where XNG is active), for the following reasons.

48 Form CO, para. 89.

49 Form CO, para. 89.

50 Form CO, para. 89.

(61) First, the Commission notes that the market for wholesale international roaming activities is subject to sector-specific Union regulation, which prevents mobile operators from refusing access to their network and from charging excessive termination fees.[51] Under the Roaming Regulation, MNOs (i) must meet all reasonable requests for wholesale roaming access, and (ii) are bound by price caps on the wholesale prices that MNOs can charge to their roaming customers. Key obligations under the regulation include an obligation to meet all reasonable requests, an obligation to publish a reference offer, caps on wholesale and retail charges (for calls, SMS messages and data services), and transparency and information requirements.

(62) The price caps, introduced by the Roaming Regulation, have been based on a cost model, commissioned by the Commission, of an efficiently operating mobile network in each Member State, plus Norway.[52] On the one hand, at wholesale level, the price caps have been conceived to ensure that market players can benefit from wholesale rates that allow for the provision of roaming services to their customers without levying any charge on top of the domestic price. In addition, they are programmed to further decline every year.[53] At the same time, the wholesale roaming price caps also ensure that wholesale costs are fully recovered by the operator providing the wholesale roaming service. Consequently, wholesale caps laid down in the Regulation have in practice acted as low ceilings on prices, triggering competitive market dynamics between operators offering wholesale roaming access below those ceilings. Accordingly, in view of the way the cap is established, any potential foreclosure is unlikely to have a significant detrimental effect on the concerned downstream markets.[54]

(63) Second, following the proposed Transaction, the merged entity's competitors will continue to have at least two alternative operators from which to purchase international roaming services in each of Cyprus, France, Ireland, Italy, Malta and Poland.

(64) Third, in any event, the wholesale international roaming charges in each Member State concerned represent a very small percentage of the costs incurred by mobile operators. Therefore, any changes in the roaming costs would have only limited impact on the relevant competitors' price structure. For instance, the Table below shows what the costs incurred for the purchase of international wholesale roaming services in Poland account for in the total costs for the provision of mobile services

[51] According to Article 12 of the Roaming Regulation, the average wholesale charge that the visited network operator may levy on the roaming provider for the provision of regulated data roaming services by means of that visited network shall not exceed a safeguard limit of EUR 3,50 per gigabyte of data transmitted since 1 January 2020. That maximum wholesale charge shall decrease to […] to EUR 3,00 per gigabyte on 1 January 2021 and to EUR 2,50 per gigabyte on 1 January 2022. It shall, without prejudice to Article 19, remain at EUR 2,50 per gigabyte of data transmitted until 30 June 2022.

[52] Study SMART 2017/0091, 'Assessment of the cost of providing mobile telecom services in the EU/EEA' by AXON, July 2019.

[53] See Article 12 of the Roaming Regulation.

[54] See for instance, Report from the Commission to the European Parliament and the Council on the review of the roaming market, SWD (2019) 416 final, at https://ec.europa.eu/transparency/regdoc/rep/1/2019/EN/COM-2019-616-F1-EN-MAIN-PART-1.PDF.

for XNG. It stems from the below Table that the costs incurred for the purchase by XNG of international wholesale roaming services in Poland account for less than [confidential] of the total costs incurred for the provision of national retail mobile telecommunication services concerned.[55]

[55] Form CO, para. 89.

Table 2: % of costs incurred for purchase of international wholesale roaming services in Poland in total costs for provision of retail mobile telecommunication services for XNG

Country	Operator	Costs incurred for the purchase of international wholesale roaming services in Poland in 2019 (million EUR) (A)	Total costs incurred for the provision of retail telecommunication services in 2019 (million EUR) (B)	(A)/(B)
France	XNG	[confidential]	[confidential]	[confidential]
Italy	XNG	[confidential]	[confidential]	[confidential]
Ireland	XNG	[confidential]	-	[confidential]
Malta	XNG	[confidential]	-	[confidential]
Cyprus	XNG	[confidential]	-	[confidential]

(65) Therefore, the Commission concludes that the merged entity is unlikely to have the ability or the incentive to engage in an input foreclosure strategy, and even if they did, there would be no significant detrimental effect on competition on the markets concerned.

(66) In the second place, the Commission considers that the Transaction does not lead to any customer foreclosure concerns in the wholesale market for the provision of international roaming services in Cyprus, France, Ireland, Italy, Malta and in Poland for the following reasons.

(67) First, the Parties' market shares in the downstream retail mobile markets involved remain limited and below 30% on most markets. The Parties' market shares will only exceed 30% on the retail market for mobile telecommunications services in Malta and Cyprus.

(68) Second, in this respect, the costs incurred for the purchase of international wholesale roaming services in Poland in 2019 by the XNG's was just [confidential] from Malta and [confidential] from Cyprus.[56] The total value of the Polish market for international roaming services is estimated at more than 30 EUR million.[57] Therefore, Maltese and Cypriot XNG's subscribers' roaming activity in Poland is

56 Form CO, para. 89.
57 Form CO, para. 85.

limited and any possible internalization cannot have any significant impact on the competitive situation of the roaming market in Poland.

(69) Therefore, the Commission concludes that the merged entity is unlikely to have the ability or the incentive to engage in a customer foreclosure strategy, and even if they did, there would be no significant detrimental effect on competition on the markets concerned.

(70) In the third place, the above conclusions (recitals (60) and (66)) are confirmed by the result of the market investigation. The majority of respondents considered that competition would likely increase or stay the same on the wholesale market for international roaming services and the retail market for mobile telecommunications services.[58] The majority of respondents to the market investigation did not raise any issues related to vertical competition concerns arising from the Transaction on the market for wholesale international roaming services on the one hand, and the market for retail supply of mobile telecommunications services on the other hand.[59]

(71) In light of the analysis above, the Commission concludes that the proposed Transaction would not raise serious doubts as to its compatibility with the internal market relative to (1) any hypothetical input foreclosure strategy of the Notifying Parties in relation to the downstream markets for the retail supply of mobile telecommunication services, and (2) any hypothetical customer foreclosure strategy of the Notifying Parties in relation to the upstream markets for wholesale international roaming services.

5.2.2. Markets for wholesale call termination services on mobile and fixed networks

(72) With regard to the wholesale markets for mobile and fixed call termination services, to the extent that each operator's network constitutes a separate market, each of the Parties holds a 100% market share in the market for call termination services on their own mobile and fixed networks ("one net – one market" principle). Therefore, P4 Group has a 100% market share on mobile call termination on its own network in Poland, XNG holds a 100% market share in mobile and fixed call termination on its networks in Cyprus, France, Ireland and Malta and a 100% market share on its mobile network in Italy.

(73) The market is upstream to the markets for the retail supply of mobile communication services and the retail supply of fixed telephony services, where the Parties' market shares are as follows:

58 Questionnaire Q1 – reply to questions 6.1 and 6.3.

59 Questionnaire Q1 – reply to questions 6.1 and 6.3. In relation to the retail mobile market, some respondents submitted that Iliad is a particularly aggressive competitor, e.g., that uses an aggressive strategy to eliminate competition in the mobile market due to drastic reductions in retail prices and loss of revenues. The Commission considers that "aggressive" competition could be beneficial to consumers and that in any case P4 Group has a market share in Poland inferior to 30% and this position will not be reinforced by the present Transaction. In relation to the wholesale market for international roaming services, some respondents submitted that the Transaction could make it increasingly difficult for small and medium-sized independent operators to enter into roaming agreements with foreign operators within the EU. The Commission has addressed these concerns in recitals (60) to (69).

Table 3: Retail Mobile Communications Services (in volume, 2019)[60]

Operator	Cyprus	France	Ireland	Italy	Malta	Poland
Iliad	[40-50]%	[10-20]%	21.1%	[5-10]%	39.3%	-
Play Communications	-	-	-	-	-	[20-30]%

Source: Form CO

Table 4: Retail Fixed Telecommunication Services (in volume, 2019)[61]

Operator	Cyprus	France	Ireland	Italy	Malta	Poland
Iliad	7.7%	[20-30]%	38.8%	-	[0-5]%	-
Play Communications	-	-	-	-	-	[0-5]%

Source: Form CO

5.2.2.1. Wholesale markets for mobile call termination services – Retail market for mobile telecommunications services

(74) P4 Group is active on the market for wholesale mobile call termination services on its own network in Poland. XNG is also active on the market for wholesale mobile call termination services on its own networks in Cyprus, France, Ireland, Italy and Malta. The wholesale markets where the Parties hold 100% market share on their own networks are upstream of the markets for the retail supply of mobile telecommunication services. The Parties' market shares in those downstream markets are presented in **Table 3** above.

(a) The Notifying Party's view

(75) The Notifying Party submits that the Transaction will not result in any anticompetitive foreclosure concerns for the reasons set out below.

(76) First, the Notifying Party submits that the markets for provision of wholesale mobile call termination services are subject to ex *ante* regulation in the Member States through both non-tariff and price control obligations for the call termination on their respective networks. Such national regulations ensure that access to call termination is granted on reasonable conditions and rates remain reasonable and non-discriminatory. In addition, the Notifying Party submits that, by 31 December 2020, mobile and fixed termination rates will no longer be established by the national regulators, but by the Commission through a delegated act.[62] Therefore, in the Notifying Party's view, in line with previous Commission decisions,[63] the merged entity would not have the ability to discriminate against the Parties'

60 In terms of subscribers.

61 In terms of subscribers.

62 Form CO, para. 95.

63 Commission decisions: of 27 July 2018 in case M.8883, PPF Group/Telenor Target Companies, paras. 50 and 53; of 20 April 2015 in case M.7499, Altice/PT Portugal, paras. 183-188.

competitors for access to mobile call termination services in Cyprus, France, Ireland, Italy and Poland.[64]

(77) Second, the Notifying Party asserts, in essence, that any attempt by the Parties to foreclose their competitors in Cyprus, France, Ireland, Italy and Poland, by means of wholesale mobile call termination services is unlikely to be effective, since neither XNG or the P4 Group can influence the cost structure of their competitors in a significant manner.[65] By way of example, the costs of termination services in Poland paid by XNG account for less than [confidential] of the total costs incurred for the provision of retail mobile telecommunications services in France and Italy.[66] Furthermore, according to the Notifying Party, traffic flows originating from or terminating in Poland are limited. Any attempt, therefore, by the Parties to increase their termination charges would only have little or no impact on the cost structure of their competitors. Therefore, the Parties cannot influence the cost structure of their competitors in Cyprus, France, Ireland, Italy and Poland.[67]

(b) The Commission's assessment

(78) In the first place, the Commission considers that the Transaction does not raise any input foreclosure concerns in the market for the retail supply of mobile communication services in (i) Cyprus, France, Ireland, Italy and Malta; and (ii) Poland; by means of discrimination against the Parties' competitors for access to call termination services in these countries or by degrading terms and conditions for access to these services, for the following reasons.

(79) First, the Commission notes the existence of a regulatory framework for the electronic communications networks and services comprising of five Directives. This legislative package aims at establishing a harmonised regulatory framework for networks and services across the EU. Pursuant to Article 15 of the Framework Directive,[68] the Commission is required to adopt a recommendation on relevant product and services markets with the aim to identify those product and services markets within the electronic communications sector whose characteristics justify the imposition of regulatory obligations. The market for wholesale call termination services on mobile networks has been identified as one of these markets and as such has been listed in the Annex to the Recommendation on the relevant product and service markets within the electronic communication sector of 9 October 2014,[69], which the Commission has adopted pursuant to the Framework Directive.

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64 Form CO, para. 95.

65 Form CO, para. 95.

66 Form CO, para. 95.

67 Form CO, para. 95.

68 Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services. OL L 108, 24 04 2002, p. 0033-0050.

69 Commission Recommendation of 9 October 2014, on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services. OJ L 295, 11.10.2014, p. 79–84 (revising the Recommendation 2007/879/EC of 17 December 2007.

By this inclusion, this market is subject to *ex ante* regulation.[70] Pursuant to this *ex ante* regulation, which is laid out in the specific Directives, the National Regulatory Authorities ("NRAs") have designated operators with significant market power, including operators of wholesale call termination services on mobile networks, and imposed on them a number of regulatory obligations.[71]

(80) Those regulatory obligations include access to and use of specific network facilities.[72] In this regard, operators are required, *inter alia*, to give third parties access to specified network elements, to negotiate in good faith with undertakings requesting access and not withdraw access to facilities already granted. Additional obligations include transparency (in relation to the publication of draft interconnection agreements on the network operator's website),[73] non-discrimination, to ensure that operators apply equivalent conditions in equivalent circumstances to undertakings providing equivalent services,[74] including a ban on favouring their own services, and price control.[75]

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70 Ibid..

71 For mobile call termination services, see Décision n°2017-1453 de l'Autorité de régulation des communications électroniques et des postes en date du 12 décembre 2017 portant sur la détermination des marchés pertinents relatifs à la terminaison d'appel vocal sur les réseaux fixes en France et à la terminaison d'appel vocal sur les réseaux mobiles en France, la désignation d'opérateurs exerçant une influence significative sur ces marchés et les obligations imposées à ce titre pour la période 2017-2020 (**France**), AGCOM, delibera n°599/18/CONS, Identificazione e analisi dei mercati dei servizi della terminazione delle chiamate vocali su singola rete mobile (mercato n°2/2014) (**Italy**), Commission for Communications Regulation, Decision D11/19 of 23 May 2019, Price Control Obligations for Fixed and Mobile Call Termination Rates (**Ireland**), Malta Communications Authority, decision MCA/D/18-3409, 19 December 2018, Wholesale voice call termination on individual mobile networks in Malta - Definition, assessment of SMP & regulation of relevant markets (**Malta**). ΓΕΡΗΕΤ, Α.Δ.Π. 598/2015, ΕΕ. 4684, 25 Σεπτεμβρίου 2015, Απόφαση αναφορικά με την εξέταση της Αγοράς (Απόληξης) Τερματισμός φωνητικών κλήσεων σε μεμονωμένα δίκτυα κινητής τηλεφωνίας σε επίπεδο χονδρικής, και την επιβολή Ρυθμιστικών Υποχρεώσεων στον οργανισμό με ΣΙΑ (MTN), Α.Δ.Π. 598/2015, ΓΕΡΗΕΤ, Α.Δ.Π. 597/2015, Ε.Ε. 4684, 25 Σεπτεμβρίου 2015, Παράρτημα Τρίτο Μέρος Απόφαση αναφορικά με την εξέταση της Αγοράς (Απόληξης) Τερματισμός φωνητικών κλήσεων σε μεμονωμένα δίκτυα κινητής τηλεφωνίας σε επίπεδο χονδρικής, και την επιβολή Ρυθμιστικών Υποχρεώσεων στον οργανισμό με ΣΙΑ (ATHK), Α.Δ.Π. 597/2015, ΓΕΡΗΕΤ, Α.Δ.Π. 596/2015, Ε.Ε. 4684, 25 Σεπτεμβρίου 2015, Παράρτημα Τρίτο Μέρος II Απόφαση αναφορικά με την εξέταση της Αγοράς (Απόληξης) Τερματισμός φωνητικών κλήσεων σε μεμονωμένα δίκτυα κινητής τηλεφωνίας σε επίπεδο χονδρικής, και την επιβολή Ρυθμιστικών Υποχρεώσεων στον οργανισμό με ΣΙΑ (CABLENET), Α.Δ.Π. 596/2015 and ΓΕΡΗΕΤ, Α.Δ.Π 595/2015, ΕΕ 4684, 25 Σεπτεμβρίου 2015, ΠΑΡΑΡΤΗΜΑ ΤΡΙΤΟ ΜΕΡΟΣ II Απόφαση αναφορικά με την εξέταση της Αγοράς (Απόληξης) Τερματισμός φωνητικών κλήσεων σε μεμονωμένα δίκτυα κινητής τηλεφωνίας σε επίπεδο χονδρικής, και την επιβολή Ρυθμιστικών Υποχρεώσεων στον οργανισμό με ΣΙΑ (PRIMETEL), Α.Δ.Π. 595/2015 (**Cyprus**). UKE, 14 grudnia 2012, No. DART–SMP-6040-4/12(34) (Aero2 sp. z o.o.), Decision No. DART-SMP-6040-10/11(49) (P4 sp. z o.o.), Decision No. DART-SMP-6040-8/11(65) (Polkomtel sp. z o.o.), Decision No. DART–SMP–6040-7/11(82) (T-Mobile Polska S.A.), Decision No. DART-SMP-6040-9/11(58) (Orange Polska S.A.) (**Poland**).

72 Article 12 of the Access Directive

73 Article 9 of the Access Directive

74 Article 10 of the Access Directive

75 Commission decisions CY/2019/2219 and CY/2019/2220: Wholesale call termination on individual public telephone networks provided at a fixed location and wholesale voice call termination on individual mobile networks in **Cyprus**; Commission decision FR/2018/2077: Wholesale voice call termination on individual mobile networks in **France**; Commission decision IE/2019/2151: Wholesale voice call termination on individual mobile networks in **Ireland**; Commission decision IT/2018/2119: Wholesale

(81) Second, as established by Article 75 of the European Electronic Communications Code,[76] by 31 December 2020 the Commission shall adopt a delegated act setting the Eurorates (a single Union-wide mobile and a single Union-wide fixed termination rate). More precisely, the European Electronic Communications Code, with the aim to "*reduce the regulatory burden in addressing the competition problems relating to wholesale voice call termination consistently across the Union*", empowers the Commission to establish by means of a delegated act a single maximum voice termination rate for mobile services, that apply Union-wide. That means that termination rates, currently established by the Cypriot, French, Irish, Italian, Maltese and Polish regulators, will be determined by the European Commission through a delegated act, to be adopted pursuant to the said Directive. The Commission observes that while the said act is not yet in force, the fact that its introduction is imminent implies that even if the merged entity could discriminate– which does not appear likely in light of the reasons set out in this section – any such effects would not be long-term.

(82) Third, the Commission observes that the provision of wholesale mobile call termination services originating from Poland and terminating in Cyprus, France, Ireland, Italy or Malta, and vice versa, i.e., to the P4 Group or XNG and their competitors are limited.[77] In this regard, the Commission considers that any increase by the merged entity of its termination charges upstream would have only a limited impact on the cost structure of the merged entities' competitors in the relevant countries. Therefore, a possible input foreclosure strategy is unlikely to be profitable for the merged entity.

(83) Fourth, in view of the small traffic volume of mobile calls originating from Poland and terminating in Cyprus, France, Ireland, Italy or Malta, and vice versa, the Transaction is not expected to have a detrimental effect on competition in the downstream market for the retail supply of mobile telephony services in Cyprus, France, Ireland, Italy, Malta and Poland.

(84) Therefore, the Commission concludes that the merged entity is unlikely to have the ability or the incentive to engage in an input foreclosure strategy, and even if they did, there would be no significant detrimental effect on competition on the markets concerned.

(85) In the second place, the Commission considers that the Transaction does not lead to any customer foreclosure concerns, in (i) XNG's network in Cyprus, France,

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voice call termination on individual mobile networks in **Italy**; Commission decision MT/2018/2120: Voice call termination on individual mobile networks in **Malta**; and Commission decision PL/2009/0904 - Voice call termination on individual mobile networks in **Poland**.

[76] Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code.

[77] In line with the Notifying Party's submission, the traffic flow originating from Poland (all operators, in minutes), in 2019, and terminating in France, Ireland, Italy and Malta represented respectively: [confidential], [confidential], [confidential] and [confidential] of total international traffic which terminates in XNG's network. The traffic flow originating from Cyprus, France, Ireland, Italy and Malta (all operators, in minutes), in 2019, and terminating in Poland represented respectively: [confidential], [confidential], [confidential], [confidential] and [confidential] of total international traffic, which terminates in P4 Group's network (Information generated from para. 95 to the Form CO).

Ireland, Italy, and Malta, and (ii) P4 Group's network in Poland for the following reasons.

(86) First, the Commission observes that XNG's and P4 Group's presence in the downstream market for the retail supply of mobile telecommunication services is limited (estimated below 30% in Poland for P4 Group; and below 30% in France, Ireland and Italy for XNG). XNG's shares appears to hold a more important market share in Malta with 39.3% and in Cyprus with [40-50]%.[78]

(87) Second, the Commission considers that in view of the regulatory obligations applicable to the upstream market for wholesale mobile call termination services, set out in recitals (79) - (81), foreclosure of XNG's and P4 Group's rivals in the upstream market, cannot be effective. Such obligations include an obligation on operators to meet a reasonable request for access to and use of their network facilities, in, *inter alia*, situations "*where denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level*".[79] In that respect, the Commission recalls that such regulatory obligations aim at addressing market failures identified at retail level.[80] Additional obligations such as non-discrimination or price control are likely to reduce the merged entity's incentive to reduce purchases from P4 Group's rivals in the upstream Polish market and from XNG's rivals in the upstream Cypriot, French, Irish, Italian and Maltese market, since the merged entity will not have the possibility to benefit from higher prices in the upstream market.

(88) Third, on the basis of the data provided by the Notifying Party, in this market there are alternative operators active, with higher or similar market shares in the overall market of retail mobile telecommunication services (in 2019 in volume, in **France**, Orange: [30-40]%, SFR: [20-30]%, Bouygues Tel.: [10-20]%; in **Italy**, TIM: [20-30]%, Vodafone: [20-30]%, Wind Tre: [20-30]%; in **Ireland**[81], Vodafone: 38.3%, Three Ireland: 35.3%; in **Malta**, GO: 37%; in **Cyprus**, Cytamobile-Vodafone: [40-50]%, in **Poland**, Orange: [20-30]%, Polkomtel (Plus): [20-30]%).[82] In view of this, the Transaction is not expected to have detrimental effects on the upstream market for the provision of wholesale mobile call termination services in Cyprus, France, Ireland, Italy, Malta and Poland.

(89) Therefore, the Commission concludes that the merged entity is unlikely to have the ability or the incentive to engage in a customer foreclosure strategy, and even if they did, there would be no significant detrimental effect on competition on the markets concerned.

(90) In the third place, and confirming the Commission's conclusions in recitals (78) and (85), the Commission notes that the majority of respondents to the market

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78 Form CO, para. 86.

79 Article 12 of the Access Directive

80 See Commission's Recommendation of 9 October 2014, recital (7), providing that "*For both the Commission and national regulatory authorities the starting point for the identification of wholesale markets susceptible to ex ante regulation is the analysis of corresponding retail markets*".

81 Data as of Q4 in 2019.

82 Form CO, para. 86.

investigation did not raise any concerns related to vertical issues arising from the Transaction in the market for wholesale mobile call termination services on the one hand, and the retail supply of mobile telecommunications services on the other hand.[83] In that respect, a Cypriot telecommunications operator noted that, "*we do not expect any changes due to the transaction*".[84] According to one UK telecommunications operator, active in the relevant countries, "*no impact is anticipated*".[85]

(91) On the basis of the foregoing, the Commission concludes that the proposed Transaction does not give rise to serious doubts as to its compatibility with the internal market relative to (1) any hypothetical input foreclosure strategy of the Notifying Parties in relation to the downstream market for retail supply of mobile telecommunications services, and (2) any hypothetical customer foreclosure strategy of the Notifying Parties in relation to the upstream markets for wholesale mobile call termination services.

5.2.2.2. Wholesale markets for mobile call termination services – Retail market for fixed telephony services

(92) P4 Group is active on the market for wholesale mobile call termination services on its own network in Poland. XNG is also active on the market for wholesale mobile call termination services on its own networks in Cyprus, France, Ireland, Italy and Malta. The wholesale markets where the Parties hold 100% market share on their own networks are upstream of the markets for the retail supply of fixed telephony services. The Parties' market shares in those downstream markets are presented in the **Table 4** above.

(a) The Notifying Party's view

(93) The Notifying Party submits that the Transaction will not result in any anticompetitive foreclosure concerns for the reasons set out below.

(94) In addition to the arguments put forth in recitals (76) and (77) above[86], the Notifying Party asserts that any attempt by the Parties to foreclose their competitors is unlikely to be effective, since they cannot influence the cost structure of their competitors. By way of example, the cost of termination services in Poland paid by XNG account for less than [confidential] in the total costs incurred for the provision of retail fixed telecommunication services in France.[87] International fixed to mobile voice calls originating or terminating in Poland, according to the Notifying Party, represent

83 Questionnaire Q1 – reply to questions 6.1 and 6.4. In relation to the wholesale market for mobile termination call services, some respondents submitted that the vertical relationship could provide the merged entity with a competitive advantage vis-à-vis local operators. Moreover, it was submitted that Iliad could send all the traffic from Poland to one of the countries where XNG is active to the relevant subsidiary of the Group, thus decreasing the transited traffic other operators receive from international sources. The Commission has considered these foreclosure concerns in recitals (78) and (89) above. In relation to the retail market for mobile telecommunication services, please see footnote 59 above.

84 Questionnaire Q1 – reply to questions 6.1.1.

85 Questionnaire Q1 – reply to questions 6.1.1.

86 Form CO, para. 96.

87 Form CO, para. 96.

extremely limited traffic flows. The Notifying Party considers that the Parties represent [0-5]% of the overall demand on each of the upstream markets for mobile call termination services in Cyprus, France, Ireland, Italy and Poland. Therefore, the Notifying Party considers that any risk of foreclosure can be ruled out.[88]

(b) The Commission's assessment

(95) In the first place, the Commission considers that the Transaction does not raise any input foreclosure concerns on the market for (i) retail fixed telephony services in Cyprus, France, Ireland, and Malta; and (ii) retail fixed telephony services in Poland; by means of discrimination against P4 Group's and XNG's competitors for access to call termination services in the countries where XNG (Cyprus, France, Ireland, and Malta) and P4 Group (Poland) operate or by degrading terms and conditions for access to these services, for the following reasons.

(96) First, in line with what has been discussed in recitals (79) - (81), the merged entity will not have the ability to discriminate against (i) XNG's competitors in Cyprus, France, Ireland and Malta, for access to mobile call termination services in Poland, and (ii) P4 Group's competitors in Poland, for access to mobile call termination services in Cyprus, France, Ireland, Italy and Malta. Accordingly, the Commission also considers that the merged entity will not have the ability to otherwise degrade terms and conditions for the provision of wholesale fixed call termination services.

(97) Second, the Commission observes that the provision of wholesale mobile call termination services (i) originating from Poland and terminating in Cyprus, France, Ireland, Italy and Malta; and (ii) originating from Cyprus, France, Ireland and Malta and terminating in Poland, i.e., to XNG, P4 Group and their competitors are limited.[89] In this regard, the Commission considers that any increase by the merged entity of its termination charges upstream would have only a limited impact on the cost structure of the merged entities' competitors in (i) Cyprus, France, Ireland and Malta, and in (ii) Poland. Therefore, a possible input foreclosure strategy is unlikely to be profitable for the merged entity.

(98) Third, in view of the small traffic volume of fixed calls (i) originating from Cyprus, France, Ireland and Malta and terminating in Poland, and (ii) originating from Poland, and terminating in Cyprus, France, Ireland, Italy and Malta; the Transaction is not expected to have a detrimental effect on competition in the downstream market for the retail supply of fixed telephony services in (i) Cyprus, France, Ireland and Malta, and (ii) Poland.

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88 Form CO, para. 96.

89 In line with the Notifying Party's submission, the traffic flow originating from Poland (all operators, in minutes), in 2019, and terminating in France, Ireland, Italy and Malta, each represented less than [confidential], of total international traffic which terminates in XNG's network. The traffic flow originating from Cyprus, France, Ireland and Malta (all operators, in minute), in 2019, and terminating in Poland, represented [confidential], [confidential], [confidential] and [confidential] respectively of total international traffic which terminates in P4 Group's network (Information generated from Form CO, para. 100). Note that the figures for calls originating from Cyprus, Ireland and Malta (XNG's network) overestimate the ratio since they do not only include fixed-to-mobile telecommunications between these countries and Poland, but any telecommunications between each of these countries and Poland.

(99) Therefore, the Commission concludes that the merged entity is unlikely to have the ability or the incentive to engage in an input foreclosure strategy, and even if they did, there would be no significant detrimental effect on competition on the markets concerned.

(100) In the second place, the Commission considers that the Transaction does not lead to any customer foreclosure concerns, in XNG's network in Cyprus, France, Ireland and Malta; and in P4 Group's network in Poland.

(101) First, in that respect, the Commission observes that P4 Group's presence in the downstream market for the retail supply of fixed telephony services in Poland is limited (estimated [0-5]% in volume). The Commission observes the same for XNG's presence in the downstream market for the retail supply of fixed telecommunications services in Cyprus (estimated 7.7% in volume) and Malta (estimated [0-5]% in volume). The Commission notes that XNG's presence in Ireland and France appears to be more significant (estimated 38.8% and [20-30]% respectively in volume).

(102) Second, the Commission considers that in view of the regulatory obligations applicable to the upstream market for wholesale mobile call termination services, set out in recitals (79) - (81), foreclosure of XNG's and P4 Group's rivals in the upstream market, cannot be effective. Such obligations include an obligation on operators to meet a reasonable request for access to and use of their network facilities, in, *inter alia*, situations "*where denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level*".[90] In that respect, the Commission recalls that such regulatory obligations aim at addressing market failures identified at retail level.[91] Additional obligations such as non-discrimination or price control are likely to reduce the merged entity's incentive to reduce purchases from XNG's and P4 Group's rivals in the upstream market, since XNG and P4 Group will not have the possibility to benefit from higher prices in the upstream market.

(103) Third, on the basis of the data provided by the Notifying Party, in this market there are alternative operators active, with higher and similar market shares in the overall market of retail fixed telephony services (in 2019, in **Cyprus**, Cytamobile-Vodafone with 63.4%, PrimeTel with 14.5% and Cablenet with 14.4%; in **France**, Orange with [30-40]%, SFR with [20-30]%; in **Ireland**, Virgin Media with 23.9%; in **Malta**, GO with [50-60]%, Melita with [40-50]%; and in **Poland**, Orange with [40-50]%, UPC with [10-20]%, Netia with [5-10]%, Multimedia with [0-5]%).[92] In view of this, the Transaction is not expected to have detrimental effects on the upstream market for the provision of wholesale mobile call termination services in Cyprus, France, Ireland, Italy, Malta and Poland.

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90 Article 12 of the Access Directive

91 See Commission's Recommendation of 9 October 2014, recital (7), providing that "For both the Commission and national regulatory authorities the starting point for the identification of wholesale markets susceptible to ex ante regulation is the analysis of corresponding retail markets".

92 Form CO, para. 97.

(104) Therefore, the Commission concludes that the merged entity is unlikely to have the ability or the incentive to engage in a customer foreclosure strategy, and even if they did, there would be no significant detrimental effect on competition on the markets concerned.

(105) In the third place, confirming the Commission's conclusions in recitals (95) and (100), the Commission notes that the vast majority of the respondents to the market investigation did not raise any concerns related to vertical issues arising from the Transaction in the market for wholesale mobile call termination services on the one hand, and the retail supply of fixed telephony services on the other hand.[93] In that respect, according to two French telecommunications operators, "*the retail market for fixed telephony services in France will not be affected by the Transaction*".[94]

(106) On the basis of the foregoing, the Commission concludes that the proposed Transaction does not give rise to serious doubts as to its compatibility with the internal market relative to (1) any hypothetical input foreclosure strategy of the Notifying Parties in relation to the downstream market for retail supply of fixed telephony services, and (2) any hypothetical customer foreclosure strategy of the Notifying Parties in relation to the upstream markets for wholesale mobile call termination services.

5.2.2.3. Wholesale markets for fixed call termination services – Retail market for fixed telephony services.

(107) XNG is active on the market for wholesale fixed call termination services on its own network in Cyprus, France, Ireland and Malta. P4 Group is not active on the market for wholesale fixed call termination services. The wholesale markets where XNG hold 100% market share on their own networks are upstream of the markets for the retail supply of fixed telephony services. P4 Group's market shares on these downstream markets are presented in **Table 4** above.

(a) The Notifying Party's view

(108) The Notifying Party submits that the Transaction will not result in any anticompetitive foreclosure concerns for the reasons set out below.

(109) First, the Notifying Party submits that the market for the provision of wholesale fixed call termination services are subject to *ex ante* regulation by the respective national regulatory authorities. Such regulations ensure that access to call termination is granted on reasonable conditions and rates remain reasonable and non-discriminatory. In addition, as set out in paragraph (76) following the adoption

93 Questionnaire Q1 – reply to questions 6.2 and 6.4. In relation to the fixed telephony market, some respondents noted that the Transaction allows the merged entity a competitive advantage, based on its presence in other European markets, which could weaken the ability of local operators to compete, e.g. in Poland. In this regard, the Commission addresses the question whether this Transaction would impede effective competition (irrespective of whether this competition stems from local operators or not) in the Polish fixed telephony market in recitals (95) to (104) above. In relation to the wholesale market for mobile call termination services, please see footnote 83 above.

94 Questionnaire Q1 – reply to questions 6.2.1.

of the respective delegated act, by 31 December 2020, mobile and fixed termination rates will no longer be established by the Cypriote, French, Irish and Maltese national regulators, but by the Commission through a delegated act.[95] Therefore, in the Notifying Party's view, in line with previous Commission decisions,[96] the merged entity would not have the ability to discriminate against P4 Group' competitors in Poland for access to fixed call termination services in these countries.[97]

(110) Second, the Notifying Party asserts that in essence, any attempt by the merged entity to foreclose P4 Group's competitors in Poland is unlikely to be effective, since neither Party can influence the cost structure of P4 Group's downstream competitors in a significant manner. International fixed-to-fixed voice calls originating in Poland represent extremely limited traffic flows, according to the Notifying Party. The Notifying Party considers that the Parties represent [0-5]% of the overall demand on each of the upstream markets for fixed call termination services in Cyprus, France, Ireland and Malta. Therefore, the Notifying Party considers that any risk of customer foreclosure can be ruled out.[98]

(b) The Commission's assessment

(111) In the first place, the Commission considers that the Transaction does not raise any input foreclosure concerns with respect to the market for the retail supply of fixed telephony services in Poland, by means of discrimination against XNG's competitors for access to fixed call termination services in Cyprus, France, Ireland and Malta, or by degrading terms and conditions for access to these services, for the following reasons.

(112) First, in line with what has been discussed in recitals (79) - (81), the Commission notes that, pursuant to Article 15 of the Framework Directive, the upstream market for the provision of wholesale call termination services on fixed networks is included in the Annex to Commission's Recommendation, on the relevant product and service markets within the electronic communication sector susceptible to *ex ante* regulation.[99] In this regard, the National Regulatory Authorities, in each of Cyprus, France, Ireland and Malta have imposed a number of regulatory obligations on operators holding a significant market power.[100] Such regulatory obligations include obligation of access to and use of specific network facilities.[101]

95 Form CO, para. 106.

96 Commission decisions: of 27 July 2018 in case M.8883, *PPF Group/Telenor Target Companies*, paras. 56 and 59; of 20 April 2015 in case M.7499, *Altice/PT Portugal*, paras. 183-188.

97 Form CO, para. 106.

98 Form CO, para. 106.

99 Commission Recommendation of 9 October 2014, on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services. OJ L 295, 11.10.2014, p. 79–84.

100 Décision n°2017-1453 de l'Autorité de régulation des communications électroniques et des postes en date du 12 décembre 2017 portant sur la détermination des marchés pertinents relatifs à la terminaison d'appel vocal sur les réseaux fixes en France et à la terminaison d'appel vocal sur les réseaux mobiles en France, la désignation d'opérateurs exerçant une influence significative sur ces marchés et les obligations

(113) In this regard, network operators should meet reasonable requests for access to and use of their network elements and associated facilities. Additional obligations include, transparency (in relation to publication of draft interconnection agreements on the network operator's website),[102] non-discrimination, aiming at ensuring that operators apply equivalent conditions in equivalent circumstances to undertakings providing equivalent services, including a ban on favouring their own services[103] and price control.[104]

(114) Second, as established by Article 75 of the European Electronic Communications Code, by 31 December 2020 the Commission shall adopt a delegated act setting the Eurorates (a single Union-wide mobile and a single Union-wide fixed termination rate). More precisely, the European Electronic Communications Code, with the aim to "*reduce the regulatory burden in addressing the competition problems relating to wholesale voice call termination consistently across the Union*", empowers the

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imposées à ce titre pour la période 2017-2020 (**France**) ; Commission for Communications Regulation, Decision D11/19 of 23 May 2019, Price Control Obligations for Fixed and Mobile Call Termination Rates (**Ireland**), Malta Communications Authority, 18 December 2018, decision MCA/D/18-3411, The provision of call termination on individual public telephone networks at a fixed location in Malta - Definition, assessment of SMP & regulation of relevant markets (**Malta**). For **Cyprus**, the relevant decisions are: ΓΕΡΗΕΤ, Απόφαση αναφορικά με την εξέταση της Αγοράς χονδρικής παροχής σε σταθερή θέση τερματισμού κλήσεων στο μεμονωμένο δημόσιο τηλεφωνικό δίκτυο της Primetel PLC και την επιβολή ρυθμιστικών υποχρεώσεων σε αυτήν, ως Οργανισμό με Σημαντική ισχύ στη σχετική (Αγορά 1 της Σύστασης της 9ης Οκτωβρίου 2014), ΓΕΡΗΕΤ, Απόφαση αναφορικά με την εξέταση της Αγοράς χονδρικής παροχής σε σταθερή θέση τερματισμού κλήσεων στο μεμονωμένο δημόσιο τηλεφωνικό δίκτυο της MTN (Cyprus) Ltd και την επιβολή ρυθμιστικών υποχρεώσεων σε αυτήν ως Οργανισμό με Σημαντική Ισχύ στην σχετική Αγορά (Αγορά 1 της Σύστασης της 9ης Οκτωβρίου 2014), ΓΕΡΗΕΤ, Απόφαση αναφορικά με την εξέταση της Αγοράς χονδρικής παροχής σε σταθερή θέση τερματισμού κλήσεων στο μεμονωμένο δημόσιο τηλεφωνικό δίκτυο της ΑΤΗΚ και την επιβολή ρυθμιστικών υποχρεώσεων σε αυτή ως Οργανισμό με Σημαντική Ισχύ στην σχετική Αγορά (Αγορά 1 της Σύστασης της 9 ης Οκτωβρίου 2014), ΓΕΡΗΕΤ, Απόφαση αναφορικά με την εξέταση της Αγοράς χονδρικής παροχής σε σταθερή θέση τερματισμού κλήσεων στο μεμονωμένο δημόσιο τηλεφωνικό δίκτυο της Callsat International Telecommunications Ltd και την επιβολή ρυθμιστικών υποχρεώσεων σε αυτήν ως Οργανισμό με Σημαντική ισχύ στην σχετική Αγορά (Αγορά 1 της Σύστασης της 9ης Οκτωβρίου 2014), ΓΕΡΗΕΤ, Απόφαση αναφορικά με την εξέταση της Αγοράς χονδρικής παροχής σε σταθερή θέση τερματισμού κλήσεων στο μεμονωμένο δημόσιο τηλεφωνικό δίκτυο της Cablenet Communications Systems Ltd και την επιβολή ρυθμιστικών υποχρεώσεων σε αυτήν ως Οργανισμό με Σημαντική ισχύ στη σχετική Αγορά (Αγορά 1 της Σύστασης της 9ης Οκτωβρίου 2014), ΓΕΡΗΕΤ, Απόφαση αναφορικά με την εξέταση της Αγοράς χονδρικής παροχής σε σταθερή θέση τερματισμού κλήσεων στο μεμονωμένο δημόσιο τηλεφωνικό δίκτυο της MYTELCO Ltd και την επιβολή ρυθμιστικών υποχρεώσεων στην MYTELCO Ltd, ως Οργανισμό με Σημαντική ισχύ στην σχετική Αγορά (Αγορά 1 της Σύστασης της 9ης Οκτωβρίου 2014).

[101] Article 12 of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), O.J. L. 108, 24.04.2002, p.007

[102] Article 9 of the Access Directive

[103] Article 10 of the Access Directive

[104] Article 13 of the Access Directive. With respect to **Cyprus**, see Commission decision CY/2019/2219 and CY/2019/2220, Wholesale call termination on individual public telephone networks provided at a fixed location and wholesale voice call termination on individual mobile networks in Cyprus; with respect to **France**, see Commission decision FR/2011/1236, call termination on individual public telephone networks provided at a fixed location in France; with respect to **Ireland**, see Commission decision IE/2020/2263, wholesale call termination on individual public telephone networks provided at a fixed location in Ireland; with respect to **Malta**, see Commission decision MT/2018/2128, Wholesale call termination on individual public telephone networks provided at fixed location in Malta.

Commission to establish by means of a delegated act a single maximum voice termination rate for fixed services that apply Union-wide. That means that termination rates, currently established by the Cypriot, French, Irish and Maltese regulators, will be set by the European Commission through a delegated act, to be adopted pursuant to the said Directive. The Commission observes that while the said act is not yet in force, the fact that its introduction is imminent implies that even if the merged entity could discriminate –which does not appear likely in light of the reasons set out in this section– any such effects would not be long-term.

(115) Therefore, XNG will not have the ability to discriminate against P4 Group's competitors in Poland for access to fixed call termination services in Cyprus, France, Ireland and Malta.

(116) Third, the Commission observes that the provision of wholesale fixed call termination services in Cyprus, France, Ireland and Malta to Poland (fixed networks) is limited.[105] In this regard, the Commission considers that any increase by the merged entity of its termination charges would have only a limited impact on the cost structure of the merged entities' competitors in these countries. Therefore, a possible input foreclosure strategy is unlikely to be profitable for the merged entity. In addition, in view of the small traffic volume, the Transaction is not expected to have a detrimental effect on the downstream retail market for fixed telephony services in Poland.

(117) Therefore, the Commission concludes that the merged entity is unlikely to have the ability or the incentive to engage in an input foreclosure strategy, and even if they did, there would be no significant detrimental effect on competition on the markets concerned.

(118) In the second place, the Commission considers that the Transaction does not lead to any customer foreclosure concerns in the market for the provision of wholesale fixed call termination services in the countries where XNG operates (Cyprus, France, Ireland and Malta) for the following reasons.

(119) First, the Commission observes that P4 Group's presence on the downstream market for retail fixed telephony services in Poland is limited ([0-5]%).

(120) Second, the Commission, on the basis of the provided information, observes that in Poland there are alternative operators active, with Orange holding a market share of [40-50]% and UPC holding a market share of [10-20]%.[106]

(121) Third, the Commission considers, that to the extent that each network operator holds a 100% market share in its individual network in the upstream market for wholesale fixed call termination services, and, as set out in recital (115), and in line with what has been discussed in recitals (79) - (81), regulatory obligations exist,

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[105] In line with the Notifying Party's submission, the incoming traffic flow to France, Ireland and Malta (XNG) originating from Poland (all operators; fixed networks, minutes) (P4 Group), represented respectively: [confidential], [confidential] and [confidential] against total international traffic which terminates in XNG's network (Information generated from Form CO, para. 106).

[106] Form CO, para. 98.

foreclosure of rivals in the upstream market is not effective. To the extent that fixed voice call termination rates regulation is envisaged to be established by the European Commission, following adoption of the relevant delegated act, the merged entity will not be in a position to impede P4 Group's competitors from obtaining access to fixed call termination services in Cyprus, France, Ireland and Malta.

(122) Therefore, the Commission concludes that the merged entity is unlikely to have the ability or the incentive to engage in a customer foreclosure strategy, and even if they did, there would be no significant detrimental effect on competition on the markets concerned.

(123) In the third place, confirming the Commission's conclusions in recitals (111) and (117), the Commission notes that the majority of the respondents to the market investigation did not raise any concerns related to the vertical issues arising from the Transaction in the market for wholesale fixed call termination services on the one hand, and the retail supply of fixed telephony services, on the other hand.[107] The market investigation has confirmed that the level of competition in these markets is anticipated to not change as a result of the Transaction.[108] For instance, from the supply-side, a telecommunications operator active in Poland, does not expect "*any changes to the competitive landscape on the retail market for fixed telephony services*".[109]

(124) On the basis of the foregoing, the Commission concludes that the proposed Transaction does not give rise to serious doubts as to its compatibility with the internal market relative to (1) any hypothetical input foreclosure strategy of the Notifying Parties in relation to the downstream markets for retail supply of fixed telephony services, and (2) any hypothetical customer foreclosure strategy of the Notifying Parties in relation to the upstream market for wholesale fixed call termination services.

5.2.2.4. Wholesale markets for fixed call termination services – Retail market for mobile telecommunication services.

(125) XNG is active on the market for wholesale fixed call termination services on its own network in Cyprus, France, Ireland and Malta. P4 Group is not active on the market for wholesale fixed call termination services. The wholesale markets where XNG holds 100% market share on their own networks are upstream of the markets for the retail supply of mobile telecommunication services. P4 Group's market shares in this downstream market are presented in **Table 3** above.

[107] Questionnaire Q1 – reply to questions 6.2 and 6.5. In relation to the wholesale market for fixed call termination services, one respondent submitted that after the Transaction Iliad could send all the traffic from Poland to one of the countries where XNG is active to the relevant subsidiary of the Group, thus decreasing the transited traffic other operators receive from international sources. The Commission has addressed foreclosure concerns in recitals (111) to (122). In relation to the retail market for fixed telephony services, please see footnote 93 above.

[108] Questionnaire Q1 – reply to questions 6.2 and 6.5.

[109] Questionnaire Q1 – reply to question 6.2.

(a) The Notifying Party's view

(126) The Notifying Party submits that the Transaction will not result in any anticompetitive foreclosure concerns.

(127) In addition to the arguments put forth in recital (109), the Notifying Party asserts that any attempt by XNG to foreclose P4 Group's competitors is unlikely to be effective, since XNG cannot influence the cost structure of P4 Group's downstream competitors on retail markets for mobile telecommunication services.[110] The Notifying Party considers that the P4 Group represents [0-5]% of the overall demand on each of the upstream markets for fixed call termination services in Cyprus, France, Ireland and Malta. Therefore, the Notifying Party considers that any risk of foreclosure can be ruled out.[111]

(b) The Commission's assessment

(128) In the first place, the Commission considers that the Transaction does not raise any input foreclosure concerns in the market for the retail supply of mobile communication services in Poland for the following reasons.

(129) First, the Commission observes that, for the reasons set out in recitals (112) - (114), the merged entity will not have the ability to discriminate against P4 Group's competitors in Poland, for access to fixed call termination services in Cyprus, France, Ireland and Malta. Accordingly, the Commission also considers that the merged entity will also not have the ability to otherwise degrade terms and conditions for the provision of wholesale fixed call termination services.

(130) Second, the Commission observes that the provision of wholesale fixed call termination services, originating from Poland (mobile networks) and terminating in Cyprus, France, Ireland and Malta are limited.[112] In this regard, the Commission considers that any increase by the merged entity of its termination charges would have only a limited no impact on the cost structure of P4 Group's competitors in Poland.

(131) Therefore, in view of the small traffic volume, the Transaction is not expected to have a detrimental effect on competition in the downstream market for the supply of retail mobile communication services in Poland.

(132) Therefore, the Commission concludes that the merged entity is unlikely to have the ability or the incentive to engage in an input foreclosure strategy, and even if they did, there would be no significant detrimental effect on competition on the markets concerned.

110 Form CO, para. 103.

111 Form CO, para. 103.

112 In line with the Notifying Party's submission, the traffic flow originating from Poland (P4 Group) and terminating to France, Ireland and Malta (XNG) represented (in minutes): [confidential], [confidential] and [confidential] respectively against total international traffic which terminates in XNG's network (Information generated from Form CO, para. 103).

(133) In the second place, the Commission considers that the Transaction does not lead to any customer foreclosure concerns in the wholesale market for the provision of fixed call termination services in Cyprus, France, Ireland and Malta for the following reasons.

(134) First, the Commission observes that P4 Group's market shares on the retail mobile market in Poland remain below 30% ([20-30]%).

(135) Second, on the basis of the data provided by the Notifying Party, in the Polish retail mobile market, there are alternative operators holding similar market shares, in 2019 in Poland such as: Orange, Polkomtel (Plus) and T-Mobile with, respectively, a market share of [20-30]%, [20-30]% and [10-20]%.[113]

(136) Third, due to the existence of regulatory obligations in the upstream market for wholesale fixed call termination services which XNG is subject to, as set out in recital (115), and in line with what has been discussed in recitals (79) - (81), foreclosure of the merged entity's rivals in the upstream market is not effective.

(137) Therefore, in view of a sufficient large customer base, other than the merged entity's customer base, the Transaction is not expected to have a detrimental effect on the upstream market for the provision of wholesale fixed call termination services in Cyprus, France, Ireland and Malta. Hence, it will not be profitable for the merged entity to engage in a customer foreclosure strategy.

(138) Therefore, the Commission concludes that the merged entity is unlikely to have the ability or the incentive to engage in a customer foreclosure strategy, and even if they did, there would be no significant detrimental effect on competition on the markets concerned.

(139) In the third place, confirming the Commission's conclusions in recitals (128) and (132), the Commission notes that the majority of the respondents to the market investigation did not raise any concerns related to the vertical issues arising from the Transaction in the market for wholesale fixed call termination services on the one hand, and the retail supply of mobile communication services, on the other hand.[114]

(140) On the basis of the foregoing, the Commission concludes that the proposed Transaction does not give rise to serious doubts as to its compatibility with the internal market relative to (1) any hypothetical input foreclosure strategy of the Notifying Parties in relation to the downstream market for retail mobile telecommunications services, and (2) any hypothetical customer foreclosure strategy of the Notifying Parties in relation to the upstream market for wholesale fixed call termination services.

[113] Form CO, para. 87.

[114] Questionnaire Q1 – replies to questions 6.1 and 6.5. In relation to the wholesale market for fixed call termination services, please see also footnote 107 above. In relation to the retail market for mobile telecommunication services, please see also footnote 59 above.

6. CONCLUSION

(141) 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
Executive Vice-President