EUROPEAN COMMISSION
DG Competition

Case M.10875 - AXA IM / SWISS LIFE / MORRISON & CO / LYNTIA NETWORKS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004 MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 11/11/2022

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Subject: **Case M.10875 – AXA IM / SWISS LIFE / MORRISON & CO / LYNTIA NETWORKS**
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]

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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').

Dear Sir or Madam,

(1) On 7 October 2022, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("Merger Regulation") by which AXA PIE Lux 4 S.à.r.l. ("AXA"), Swiss Life Roth Investment S.à.r.l. ("SLAM") and Sorolla Investment Co S.à.r.l. ("Sorolla"), acquire joint control of the whole of Gunalta ITG, S.L.U. ("Lyntia") pursuant to Articles 3(1)(b) and 3(4) of the Merger Regulation (the "Transaction"). AXA, SLAM and Sorolla are designated hereinafter as the "Notifying Parties", while the Notifying Parties and Lyntia are jointly referred to as the "Parties".

1. THE PARTIES

(2) **AXA** is a global insurance group, active in life, health and other forms of insurance, as well as in investment management, headquartered in France. AXA controls [90-100]% of the capital of Data 4 Infrastructure Spain SL and Data 4 Services Spain SL ("Data4"), active in the co-location / data centres industry in Spain.

(3) **SLAM** is an asset management company that is part of the Swiss Life Group, an insurance company listed in Switzerland.

(4) **Sorolla** is part of H.R.L. Morrison & Co Group Limited Partnership ("Morrison"), an investment company investing on behalf of sovereign wealth funds, pension funds and wholesale investors, headquartered in New Zealand.

(5) **Lyntia** is an independent fibre operator in the telecommunications market, mainly providing services through optic fibre in Spain. The current owner and seller of Lyntia is Antin Infrastructure Partners ("Antin").[3]

2. THE OPERATION

(6) The concentration is accomplished by way of purchase of shares through a common special purpose vehicle constituted by the Notifying Parties and Antin. The Transaction will be implemented by the conclusion of a Share Purchase Agreement concluded on 14 May 2022 and amended on 20 July 2022. Following the Transaction, Lyntia will be jointly controlled by AXA ([30-40]%), SLAM ([30-40]%) and Sorolla ([30-40]%).

(7) The Transaction will therefore lead to the acquisition of joint control by AXA, SLAM and Sorolla over Lyntia within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation.

3. UNION DIMENSION

(8) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (AXA: […]; SLAM: […]; Sorolla: […]; Lyntia: […]) and each of the Notifying Parties have an EU-wide turnover exceeding

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[3] Before completion of the Transaction, Antin will carve out Lyntia's FTTH division (Lyntia Access S.L.U.). Therefore, Lyntia will not provide FTTH services after closing of the Transaction.

EUR 250 million (AXA: […]; SLAM: […]; Sorolla: […]; Lyntia: […]), but none of them achieved more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.

(9) Therefore, the notified operation has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

(10) The Transaction concerns the following markets: (i) the market for the wholesale supply of leased lines, and (ii) the market for the supply of colocation services provided by third party data centres.

4.1. Market for the wholesale supply of leased lines

4.1.1. The Parties' activities

(11) **Lyntia** is an independent Spanish telecommunications company focused on providing dark fibre and lit fibre services, as well as alternative connectivity solutions. Lyntia also provides ancillary telecommunication services, such as satellite communications or data centre colocation services.[4]

4.1.2. Product market definition

4.1.2.1. Past Commission's decisions

(12) In previous decisions, the Commission considered possible segmentations of the market for the wholesale supply of leased lines according to (i) network layer (trunk vs. terminating (i.e., backhaul) segments of leased lines); (ii) speed (terminating leased lines with bandwidth below 2 Mbps vs. above 2 Mbps); (iii) passive or active nature of the line (the distinction corresponding to dark fibre on the one hand and managed leased lines and Ethernet services with guaranteed bandwidth on the other); (iv) leased lines with traditional interfaces vs. Ethernet services with guaranteed bandwidth; and (v) transmission means (wireless, fibre, copper lines), but ultimately left open the exact product market definition.[5]

(13) In Spain, the national competition authority ("CNMC") most recently reviewed the market in a case concerning Lyntia.[6] It concluded that the market for the wholesale supply of leased lines should be segmented between (i) managed wholesale leased lines ("lit fibre") and (ii) dark fibre.

4 Form CO, paragraph 7.

5 See, e.g., Commission decision of 28 July 2021 in case M.10153 – *Orange/Telekom Romania Communications*, paragraph 86; and Commission decision of 26 July 2021 in case M.10070 – *Eurofiber/Proximus/JV*, paragraph 32.

6 CNMC, Case C/0575/14 – *REI / Activos ADIF*; CNMC, Case C/1020/19 – *Restel / Hispasat*; and CNMC, Case C/1031/19 – *Lyntia / Activos Iberdrola*.

4.1.2.2. The Notifying Parties' views

(14) The Notifying Parties submit that the exact market definition can be left open as the Transaction does not raise competitive concerns under any possible product market definition.[7]

4.1.2.3. The Commission's assessment

(15) The Commission's investigation did not provide any indications that it would be appropriate for the Commission to depart from its previous decisional practice. In this case, the question whether the market for the wholesale supply of leased lines should be further segmented according to (i) network layer (trunk vs. terminating (i.e., backhaul) segments of leased lines); (ii) speed (terminating leased lines with bandwidth below 2 Mbps vs. above 2 Mbps); (iii) passive or active nature of the line (the distinction corresponding to dark fibre on the one hand and managed leased lines and Ethernet services with guaranteed bandwidth on the other); (iv) leased lines with traditional interfaces vs. Ethernet services with guaranteed bandwidth; and (v) transmission means (wireless, fibre, copper lines), can be left open since the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible product market definition.

4.1.3. Geographic market definition

4.1.3.1. Past Commission's decisions

(16) The Commission previously considered that the market for the wholesale supply of leased lines is national in scope.[8]

(17) In Spain, the CNMC has previously considered that the managed lines market is national while the dark fibre market could be segmented between a national interurban market and several metropolitan markets.[9]

4.1.3.2. The Notifying Parties' views

(18) The Notifying Parties submit that the exact market definition can be left open as the Transaction does not raise competitive concerns under any possible geographic market definition.[10]

4.1.3.3. The Commission's assessment

(19) The Commission's investigation did not provide any indications that it would be appropriate for the Commission to depart from its previous decisional practice. In this case, the question whether the geographic market should be defined as national or narrower (limited to a metropolitan area) can be left open since the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible geographic market definition.

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7 Form CO, paragraph 81.

8 See, e.g., Commission decision of 28 July 2021 in case M.10153 – *Orange/Telekom Romania Communications*, paragraph 100; Commission decision of 26 July 2021 in case M.10070 – *Eurofiber/Proximus/JV*, paragraph 43.

9 CNMC, Case C/1031/19 – *Lyntia / Activos Iberdrola*, paragraphs 57–62.

10 Form CO, paragraph 88.

4.2. Market for the supply of colocation services provided by third party data centres

4.2.1. The Parties' activities

(20) AXA is active in the market for the supply of colocation services by third party data centres in Spain through its investment in **Data4**, a data centre company, which operates a data centre in Madrid.[11]

(21) Lyntia is active in the market for the supply of colocation services by third party data centres in Spain through four data centres located in Huelva, Jaen, Seville and Zaragoza.[12]

4.2.2. Product market definition

4.2.2.1. Past Commission's decisions

(22) In previous decisions, the Commission defined a market for colocation services provided by third party data centres (excluding in-house data centres). The Commission considered that it was not appropriate to sub-divide this product market depending on (i) carrier-owned and carrier-neutral data centres, (ii) wholesale and retail data centres, and (iii) type of customer.[13]

4.2.2.2. The Notifying Parties' views

(23) The Notifying Parties identify the overall market for the supply of colocation services provided by third party data centres as the relevant product market in this case, without any further segmentations.[14]

(24) The Commission's assessment

(25) Nothing in the Commission's files indicates that it would be appropriate to depart from the Commission's previous decisional practice with regard to the product market definition of the market for colocation services provided by third party data centres.

4.2.3. Geographic market definition

4.2.3.1. Past Commission's decisions

(26) The Commission previously defined the geographic scope of the market for the supply of colocation services provided by third party data centres as each metropolitan area corresponding to a radius of around 50 km from the centre of the city concerned.[15]

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[11] Form CO, paragraph 27.

[12] Form CO, paragraph 95.

[13] See, e.g., Commission decision of 7 July 2020 in case M.9843 – *Colony Capital/PSP/NGD*, paragraph 19; and Commission decision of 13 November 2015 in case M.7678 – *Equinix/Telecity*, paragraph 26.

[14] The Notifying Parties' reply to RFI 5.

[15] See, e.g., Commission decision of 7 July 2020 in case M.9843 – *Colony Capital/PSP/NGD*, paragraph 28; and Commission decision of 13 November 2015 in case M.7678 – *Equinix/Telecity*, paragraph 37.

4.2.3.2. The Notifying Parties' views

(27) The Notifying Parties submit that this geographic market definition should be maintained for the purpose of assessing the Transaction.[16]

4.2.3.3. The Commission's assessment

(28) Nothing in the Commission's files indicates that it would be appropriate to depart from the Commission's previous decisional practice with regard to the geographic market definition of the market for the supply of colocation services provided by third party data centres, which is considered to be at most corresponding to a radius of around 50 km from the centre of the city concerned.

5. COMPETITIVE ASSESSMENT

(29) The Transaction does not result in any horizontal overlaps. Neither SLAM nor Sorolla are active in the telecommunications infrastructure industry in Spain. AXA has no activities in the telecommunications infrastructure industry in Spain other than through its division Data4.[17] While Data4 and Lyntia provide colocation services in Spain, their respective data centres are located in different geographic markets.[18]

(30) The Transaction creates a vertical relationship between the upstream market for the wholesale supply of leased lines (where Lyntia is active) and the downstream market for the supply of colocation services provided by third party data centres (where Data4 is active).

(31) The Transaction results in vertically affected markets only on the narrowly defined sub-segment for the upstream market for the wholesale supply of dark fibre in Spain (where Lyntia is active) and the downstream market for the supply of colocation services provided by third party data centres (where Data4 is active).

(32) The Commission also considers that there are no (newly created) conglomerate relationships resulting from the Transaction.

5.1. Market shares

5.1.1. Upstream market

(33) The Notifying Parties submitted market share estimates for the market for the wholesale supply of leased lines on a national level (Spain), based on the data published by the CNMC. Lyntia's market share on the market for the wholesale supply of leased lines in Spain did not exceed 10% by revenue in 2021.[19]

(34) The Notifying Parties also submitted market share estimates for the potential sub-segment of the wholesale supply of leased lines, the supply of lit fibre, on a

16 Form CO, paragraph 91.
17 Form CO, paragraph 95.
18 Data4 is only active in the Madrid metropolitan area, while Lyntia has four data centres located in Huelva, Jaen, Seville and Zaragoza. Form CO, paragraph 95.
19 Form CO, paragraphs 109 and 110.

national level (Spain). Lyntia's market share on the market for lit fibre in Spain did not exceed 5% by revenue in 2021.[20]

(35) Lyntia's market share exceeded 30% only on the potential sub-segment of the wholesale supply of leased lines, the supply of dark fibre, on the potential national market (Spain) and on the potential geographic market encompassing the metropolitan area of Madrid.

Table 1: Estimated shares for the supply of dark fibre in Spain[21]

Company	**2019**		**2020**		**2021**	
	Revenues (mEUR)	**Market share (%)**	**Revenues (mEUR)**	**Market share (%)**	**Revenues (mEUR)**	**Market share (%)**
Reintel	-	-	[…]	[40-50]%	-	-
Lyntia	**[…]**	**[20-30]%**	**[…]**	**[30-40]%**	**[…]**	**[30-40]%**
Others[22]	-	-	[…]	[10-20]%	-	-
Total	**[…]**	**100%**	**[…]**	**100%**	**[…]**	**100%**

Source: Form CO

Table 2: Estimated shares for the supply of dark fibre in Madrid[23]

Company[24]	**Dark fibre kms (Madrid)**	**%**
Lyntia	**[…]**	**[30-40]%**
Reintel	[…]	[20-30]%
Correos	[…]	[10-20]%
Adamo	[…]	[5-10]%
Evolutio	[…]	[5-10]%
American Tower	[…]	[5-10]%
Interroute	[…]	[0-5]%
Colt	[…]	[0-5]%
Axent	[…]	[0-5]%

20 Form CO, paragraph 116.

21 Lyntia has estimated the competitors' market share in the Spanish dark fibre market based on the kilometres of fibre that Lyntia estimates are currently deployed in Spain.

22 There is no other operator in addition to Lyntia and Reintel in the Spanish dark fibre market with a market share higher than 5%.

23 Lyntia does not have information on the revenues or market shares of its competitors in Madrid, nor can it rely on public sources for this purpose. Lyntia provides regional good faith market share estimates using the kilometres of fibre that Lyntia estimates may currently be deployed in the Madrid area as a proxy. The Notifying Parties note that the size of the network is not directly related to the sales associated to such network and therefore that this estimate may under or overestimate the real market share. Form CO, paragraph 115.

24 In addition to these operators, there are other companies (such as Telefónica, Vodafone, Orange-Masmóvil or Digi) which have very extensive dark fibre networks in Madrid; and new operators that have started to deploy dark fibre in Madrid such as GTD. Form CO, paragraph 116.

Company[24]	Dark fibre kms (Madrid)	%
Metro de Madrid	[…]	[0-5]%
Citynet	[…]	[0-5]%
Total	**[…]**	**100%**

Source: Form CO

5.1.2. *Downstream market*

(36) The Notifying Parties submitted market share estimates for the market for the supply of colocation services provided by third party data centres in the area of Madrid. Based on this estimate, AXA's data centre division Data4 had a market share of [5-10]% by kW of available UPC power in 2021.[25]

5.2. Analytical framework

(37) 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 as a result of the creation or strengthening of a dominant position.

(38) A merger giving rise to a significant impediment of effective competition may do so as a result of the creation or strengthening of a dominant position in the relevant market(s). Moreover, mergers in oligopolistic markets involving the elimination of the important competitive constraints that the parties previously exerted on each other, together with a reduction of competitive pressure on the remaining competitors, may also result in a significant impediment to effective competition, even in the absence of dominance.

(39) The Commission Guidelines on the assessment of non-horizontal mergers under the Merger Regulation (the "Non-horizontal Merger Guidelines") distinguish between two main ways in which vertical mergers may significantly impede effective competition, namely input foreclosure and customer foreclosure.[26]

(40) For a transaction to raise input foreclosure competition concerns, the merged entity must have a significant degree of market power upstream.[27] 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.[28]

(41) 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

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[25] The Notifying Parties' source for the data is S&P Global/451 Research and the Spanish DC association. The information corresponds to the last quarter of each year.

[26] OJ L 24, 29.1.2004, p. 1.

[27] Non-horizontal Merger Guidelines, paragraph 35.

[28] Non-horizontal Merger Guidelines, paragraph 32.

the downstream market.[29] 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.[30]

5.3. Total or partial input foreclosure of access to Lyntia's dark fibre by third party data centres in Madrid

(42) The market for the wholesale supply of leased lines is upstream to the market for the supply of colocation services provided by third party data centres. Lyntia is active upstream on the market for the wholesale supply of leased lines and its potential sub-segments, wholesale supply of dark fibre and wholesale supply of lit fibre, in Spain and the metropolitan area of Madrid. AXA's data centre division Data4 is active on the downstream market for the supply of colocation services in the metropolitan area of Madrid.

(43) This vertical relationship is affected within the meaning of the Merger Regulation, as the Parties exceed the 30% threshold on the upstream market for the potential sub-segment of the wholesale supply of dark fibre in Spain (Lyntia, [30-40]%) and the metropolitan area of Madrid (Lyntia, [30-40]%).

(44) In its market investigation, the Commission has sought to verify if the Parties have the ability and incentive to foreclose competing third party data centres in the metropolitan area of Madrid, either by restricting access to Lyntia's supply of dark fibre or degrading the terms under which Lyntia's dark fibre is supplied to third party data centres in the metropolitan area of Madrid. The Commission likewise sought to establish whether such a foreclosure strategy may have a negative impact on competition in the downstream market for the supply of colocation services by third party data centres in the metropolitan area of Madrid.

5.3.1. The Notifying Parties' view

(45) The Notifying Parties submit that the Transaction does not give rise to any competition concerns with regard to a potential total or partial input foreclosure strategy for the following reasons.[31]

(46) With regard to ability, the Notifying Parties submit that Lyntia would have no ability to pursue a total or partial input foreclosure strategy as there is a high number of alternative suppliers of dark fibre in Spain and specifically in the area of Madrid.

(47) With regard to incentive, the Notifying Parties consider that Lyntia would have no incentive as any benefits of such a strategy that AXA would accrue, would be to the detriment of the other acquirers (SLAM and Sorolla) which are financial investors.

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[29] Non-horizontal Merger Guidelines, paragraph 61.
[30] Non-horizontal Merger Guidelines, paragraph 59.
[31] Form CO, paragraph 118.

(48) With regard to effects, according to the Notifying Parties, any impact would be limited as connectivity is not a significant percentage of the cost base of a data centre.

5.3.2. The Commission's assessment

(49) The Commission considers that the Transaction does not raise any input foreclosure concerns in the downstream market for the supply of colocation services by third party data centres by restricting or degrading access to Lyntia's supply of dark fibre, irrespective of the exact geographic market definition, for the following reasons.

(50) First, the Parties will not have the ability to restrict or degrade access to Lyntia's supply of dark fibre for competing suppliers of colocation services. There are several suppliers of dark fibre available in the metropolitan area of Madrid, such as Reintel, Colt and Correos Telecom.[32] Lyntia's main competitor in the supply of dark fibre in Spain and the metropolitan area of Madrid is Reintel. Reintel is the leading dark fibre supplier in Spain ([40-50]% market share by revenue in 2020), where it operates the largest wholesale dark fibre network.[33] Reintel is a significant competitor also when considering the metropolitan area of Madrid ([20-30]% by kilometres of dark fibre in 2021).[34] At least half of the respondents to the market investigation expressing an opinion also confirm that sufficient alternative suppliers remain post-Transaction on a potential market for the wholesale supply of dark fibre in Spain and particularly the metropolitan area of Madrid.[35]

(51) Moreover, the Commission notes that Lyntia is bound by certain commitments to the CNMC in connection with its acquisition of Iberdrola's dark fibre business, which, among other, ensure that Lyntia's network will be accessible to all customers on non-discriminatory terms.[36] These commitments also include Lyntia's obligation not to unilaterally terminate contracts existing at the date of the CNMC's clearance decision, or those that have been subject to renewal, except for the reasons indicated in the contracts themselves. The commitments' duration expires in July 2024. [37]

(52) Second, the Parties would not have an incentive to engage in an input foreclosure strategy. None of the respondents to the market investigation expressing an opinion considered that the Parties would have incentives to foreclose access to Lyntia's supply of dark fibre. Further, the Commission notes that Lyntia will be controlled by three financial investors. Even if such foreclosure strategy were profitable for one of the controlling investors (AXA), it would not provide any benefits to the

32 Form CO, paragraph 122.
33 Form CO, paragraph 127.
34 Form CO, paragraph 113.
35 Replies to Questionnaire Q1, question 8.
36 Form CO, paragraph 118: In particular, Lyntia has committed to: (i) Offer dark fibre over its entire fibre optic cable network available in Spain at all times, except in specific cases where there are justified reasons of lack of capacity. (ii) The offer of dark fibre shall be made at reasonable market conditions and shall be offered in the different existing commercial modalities, in particular rental, irrevocable right of use and framework contracts, and shall incorporate, where appropriate, maintenance services. (iii) In its dark fibre pricing and commercial terms and conditions, Lyntia Networks undertakes not to discriminate on the basis of the geographic area or route on which it provides the dark fibre service. (iv) The dark fibre offer will be available to all customers.
37 CNMC, Case C/1031//19, *Lyntia/Activos Iberdrola*.

other financial investors, SLAM and Sorolla, who could veto the foreclosure strategy.

(53) Third, the Commission observes that any input foreclosure strategy would have only a limited impact on effective competition on the market for the supply of colocation services in the metropolitan area of Madrid. This is because there would only be a limited impact on the cost structure of the Parties' competitors downstream. Indeed, all of the market respondents expressing an opinion consider that the Transaction would have a neutral impact on the market for the supply of colocation services in Spain, in particular the metropolitan area of Madrid.[38] Therefore, the Transaction is not expected to have a detrimental effect on the downstream market for the supply of colocation services provided by third party data centres in Madrid.

(54) Finally, the Commission notes that none of the respondents to the market investigation considers the Transaction would have a negative impact on the markets for the supply of dark fibre or colocation services provided by third party data centres.[39]

(55) Based on the elements considered above, the Commission concludes that the Parties are unlikely to have the ability and the incentive to engage in an input foreclosure strategy, and even if it did, there would be no significant detrimental effect on competition on the market for the supply of colocation services provided by third party data centres in Madrid.

6. CONCLUSION

(56) 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

[38] Replies to Questionnaire Q1, question 12.
[39] Replies to Questionnaire Q1, question 10-12.