



Brussels, 15 February 2024

Final Report of the Hearing Officer ⁽¹⁾

Case M.10896 – Orange/MásMóvil/JV

1. On 13 February 2023, the Commission received the notification of a proposed concentration by which Orange S.A. ('Orange') and Lorca JVCo Limited ('Lorca', together the 'Parties') would acquire joint control within the meaning of Articles 3(1) and 3(4) of the Merger Regulation² over a newly founded joint venture ('JV') combining Orange Espagne S.A.U. and MásMóvil Ibercom S.A.U. (the 'Proposed Transaction').³
2. On 3 April 2023, the Commission adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation, as the Commission's first phase investigation raised serious doubts as to the compatibility of the Proposed Transaction with the internal market. The Parties submitted comments on this decision to the Commission on 20 April 2023.
3. On 27 April 2023, following a request from the Parties the Commission extended the legal deadline of the procedure by 10 working days, pursuant to Article 10(3), second subparagraph, first sentence of the Merger Regulation.
4. On 26 June 2023, the Commission adopted a statement of objections (the 'SO') addressed to the Parties. The SO was formally notified to the Parties on the same day, and they were given until 10 July 2023 to submit their replies.
5. In the SO, the Commission came to the preliminary view that the Proposed Transaction would significantly impede effective competition in a substantial part of the internal market within the meaning of Article 2(3) of the Merger Regulation, as a result of horizontal non-coordinated effects in: (a) the market for the retail supply of mobile telecommunication services in Spain; (b) the market for the retail supply of fixed internet access services in Spain; (c) the potential market for the retail supply of multiple-play bundles (and the potential narrower retail market for the

⁽¹⁾ Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, OJ L 275, 20.10.2011, p. 29 ('Decision 2011/695/EU').

⁽²⁾ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').

⁽³⁾ On 2 March 2023, the Spanish national competition authority requested the referral of the case pursuant to Article 9 of the Merger Regulation, which extended the Phase I deadline by 15 working days.

supply of multiple-play bundles without premium Pay-TV football content) in Spain; and (d) the potential market for the retail supply of FMC bundles (and the potential narrower retail market for the supply of FMC bundles without premium Pay-TV football content) in Spain.

6. The Parties were given access to the file on 27 June 2023 by means of a file transfer using One Drive. Additional documents, including less redacted versions of documents already transmitted, were made available to the Parties on 28 and 30 June and 5 and 7 July 2023, in part following requests by the Parties to the Commission's Directorate-General for Competition ('DG Competition'). Further access was granted on 26 July and 22 December 2023 as well as on 12 January 2024.
7. While the hearing office was copied in some of the exchanges between the Parties and DG Competition, I did not receive any complaints or requests from the Parties related to access to file.
8. On 10 July 2023, the Parties replied to the SO. The Parties did not request a formal oral hearing.
9. On 27 July 2023, the Commission adopted a decision pursuant to Article 11(3) of the Merger Regulation, requiring the Parties to reply to a request for information ('RFI'). Due to the Parties' failure to reply to the RFI by the deadline set in the decision, the merger review time limits were subsequently suspended. The applicable time limit referred to in Article 10(3) of the Merger Regulation was suspended from 27 July up to and including 11 December 2023.
10. On 1 September 2023, the Commission adopted a letter of facts ('LoF'), containing further evidence in support of the findings in the SO. The Parties submitted a reply to the LoF on 22 September 2023.
11. During the proceedings, I admitted seven undertakings as interested third persons, pursuant to Article 5 of Decision 2011/695/EU.
12. DG Competition generally informed the interested third persons in this case of the nature and subject-matter of the procedure through a non-confidential summary of the SO (the 'SO summary') and invited them to submit written comments within a set time limit. Four interested third persons replied.
13. On 22 August 2023, one of the interested third persons that received the SO summary submitted a request to me pursuant to Article 7(2)(d) of Decision 2011/695/EU, in which it complained that the SO summary was insufficiently detailed. It requested to receive either a non-confidential version of the full SO or a more detailed summary. I rejected this request by decision of 26 September 2023, considering that the SO summary revealed for which markets the Commission had preliminarily found that the Proposed Transaction would significantly impede effective competition and set out the main elements which supported that conclusion. I therefore concluded that it contained sufficient information to inform

the interested third person of the nature and subject matter of the procedure within the meaning of Article 16(1) of the Merger Implementing Regulation.⁴

14. I am informed by DG Competition that one interested third person, instead of receiving the SO Summary, was informed by DG Competition of the nature and subject-matter of the procedure through other means. I did not receive a request pursuant to Article 7(2)(d) of Decision 2011/695/EU from this interested third person.
15. On 12 December 2023, the Parties submitted commitments in accordance with Article 8(2) of the Merger Regulation, with a view to rendering the Proposed Transaction compatible with the internal market and the functioning of the EEA Agreement. The Commission launched a market test of these commitments on 12 December 2023.
16. On 30 January 2024, having received feedback from the Commission on the commitments submitted earlier, the Parties submitted revised and final commitments, in accordance with Article 8(2) of the Merger Regulation, with a view to rendering the Proposed Transaction compatible with the internal market and the functioning of the EEA Agreement (the ‘Final Commitments’).
17. On 31 January 2024 and in agreement with the Parties, the Commission extended the legal deadline of the procedure by 5 working days, pursuant to Article 10(3), second subparagraph, third sentence of the Merger Regulation.
18. The draft decision declares the Proposed Transaction compatible with the internal market and the functioning of the EEA Agreement, subject to full compliance with the Final Commitments.
19. I have reviewed the draft decision pursuant to Article 16(1) of Decision 2011/695/EU and I conclude that it deals only with objections in respect of which the Parties have been afforded the opportunity of making their views known.
20. Overall, I consider that the effective exercise of procedural rights has been respected in this case.

DOROTHE DALHEIMER
Hearing Officer

⁽⁴⁾ Commission Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ L 133, 30.4.2004, p. 1 (the ‘Merger Implementing Regulation’). In accordance with Article 25 of Commission Regulation (EU) 2023/914 (OJ L 119, 5.5.2023, p. 22), the Merger Implementing Regulation has been repealed with effect on 1 September 2023 but continues to apply to concentrations notified on or before 31 August 2023 such as the Proposed Transaction.