Ref. Ares(2022)8281693 - 30/11/2022

Briefing for DG Guersent
Meeting with [redacted], [redacted] Orange
Date of meeting: 15/12/2021, 15:00-16:00

SUMMARY

- The meeting is with [redacted] ([redacted], Groupe Orange) and was requested by him.
- 15 December 2021, 15:00 to 16:00 – Meeting.
- The **purpose of the meeting** is to exchange views on issues related to the **Groupe Orange's activities in the EU**.

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RADIO ACCESS NETWORK (RAN) SHARING

Objectives

- **Objective of the other side:** [redacted]

Basis: COMP/11817

[redacted]

- **Objective of the Commission:** [redacted] With regard to the Communication on Competition, the Commission stressed that while network sharing is encouraged, the operators should ensure that it is done without unduly reducing competition. The Horizontal Guidelines are likely to emphasise the need for a case-by-case assessment and provide a general framework for assessment. A legal presumption that network sharing is outside the scope of Art. 101(1) TFEU is unlikely, as this would be contrary to the case-by-case assessment principle.

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Contents

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Basis: COMP/11817

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Contact :	[redacted] **, COMP.C.5 ☎** [redacted]

Telecom Market (in-country) Consolidation

KEY MESSAGES

- The Commission assesses each transaction on a case-by-case basis, there is no magic number of operators in Belgium or anywhere else in the EU.
- The Commission carefully considers the argument that greater mobile consolidation would facilitate investment. Pro-competitive efficiencies are taken into account in the merger control framework however there is limited evidence that higher profits would result in higher rates of investment, in contrast, we observe that high levels of investment are seen in competitive markets.

NECESSARY FACTS AND FIGURES

EU telco consolidation stats - Since 2015, the Commission has reviewed more than 30 telecom mergers:

- Just **two have been prohibited**: (i) the 4-to-3 mobile merger in Denmark (abandoned); and (ii) 4-to-3 mobile merger in the UK (in Court).
- **11 have been conditionally cleared**, namely the 4-to-3 mobile merger in Italy which facilitated the entry of Iliad, fixed mobile consolidation deals that had overlaps in fixed, and deals involving vertical integration into content.
- **17 have been unconditionally cleared**, namely cross-border mergers (such as Iliad/Play), FMC mergers such as *Tele2/ComHem* and the 4-to-3 mobile merger in the Netherlands.

Telecom companies including Groupe Orange strongly argue that in-country consolidation is necessary for investment in infrastructure in the telecoms sector in particular to roll-out 5G networks, but experience shows that competition and customer demand are the best stimulus for investment. **Relaxing competition rules is therefore not the answer to increase investment by telecom companies in Europe, including for the roll out of 5G**.

Mergers between two mobile operators within the same country that compete head to head may raise competition problems as they eliminate competition on price, investment and quality between the merging parties. Instead, cross-border telecom mergers have usually not been problematic from a competition perspective.

The Commission carefully assesses any claims that a merger would lead to increased investment to the benefit of consumers – for example in terms of increased network coverage, choice and innovation – not just price. In practice, the Commission assesses whether post-merger investment plans are credible and likely, merger-specific, and with benefits for end-consumers as opposed to shareholders. The Commission compares post-merger investment plans with the likely investment scenario absent the merger (the "counterfactual"). Only a fraction of the efficiency submissions we have seen in successive cases have met these criteria.

There is no "magic number" of mobile network operators for any given country. Regardless of the industry and geography, we aim to ensure that proposed mergers would not weaken competition to the detriment of consumers and businesses and that any remedies offered are sufficiently effective to address the specific competition concerns raised by each merger. There are good reasons to prefer structural remedies in horizontal mergers, as they are immediately effective and solve the competition concerns once and for all.

Consumer protection vs consolidation: We do not have a policy of preventing consolidation. For each proposed merger, we look at how it would affect the conditions for competition in the market, and whether the merger would have a detrimental effect on competition and thus on consumers.

Contact : [redacted], **COMP.C.5** ☎ [redacted]

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[redacted]

Contact:	[redacted], COMP.C.1 ☎ [redacted] [redacted], COMP.C.1 ☎ [redacted]

RADIO ACCESS NETWORK (RAN) SHARING

KEY MESSAGE

- The Commission sees network sharing in general as a source of efficiencies - such agreements can facilitate the roll-out of advanced technological solutions by reducing costs. However, potential anti-competitive effects have to be carefully assessed in order to avoid harm to competition and consumers.
- In the specific case of network sharing in Czechia, the Commission preliminarily considered that the network sharing agreements which were the object of the investigation, seen in their specific market context, have to some extent reduced the sharing parties' ability and incentives to unilaterally invest in network infrastructure.
- The sharing parties have offered commitments to remove the concerns that remained. These commitments have been market tested and we are currently assessing the replies, [redacted]
- As indicated in the Competition Communication, we are considering offering guidance on network sharing in the context of the Horizontal Guidelines review. Any guidance would likely emphasise the need for a case-by-case assessment, while also providing a general framework for assessment. Several relevant factors, such as the nature of the agreements and the market structure, need to be taken into account.
- While we hear the general call for legal certainty in the context of network sharing agreements and 5G deployment, guidance is not likely to go that far as to put in place legal presumptions that network sharing agreements are outside the scope of Art. 101(1) TFEU.

NECESSARY FACTS AND FIGURES

Network sharing – Czech Republic (AT.40305)

The network sharing agreements ("NSAs") concern the sharing of passive and active infrastructure for 2G, 3G and 4G mobile telecommunications technologies, while spectrum and the core network remain separate for each operator. The cooperation comprises the entire territory of Czechia, with the exception of Prague and Brno. Approximately three quarters of subscribers in Czechia use the common network infrastructure of the sharing parties.

The Commission adopted a Statement of Objections on 7 August 2019 against two out of three mobile operators in Czechia, O2/CETIN and T-Mobile CZ, and on 14 February 2020 against their respective parent companies, PPF and Deutsche Telekom. An Oral Hearing took place on 15-17 September 2020. After careful analysis of the evidence on the file, taking into account the parties' replies to the SO and the Oral Hearing, the Commission adopted on 27 August 2021 a preliminary assessment within the meaning of Article 9(1) of Regulation (EC) No 1/2003, which focused on certain of the concerns put forward in the Statement of Objections. The other concerns originally raised in the SO were dropped.

The scope of maintained concerns focused on 1) the lack of roll-out by T-Mobile of LTE2100 in CETIN's area (Eastern Czechia); 2) financial aspects of the agreement providing disincentives for the Visitor operator to request investments from the Master operator; 3) the scope of information being shared in the agreement.

To solve these preliminary concerns, T-Mobile CZ, CETIN and O2 CZ and their respective parent companies offered the following commitments:

- to modernise the mobile network through the deployment of multi-standard Radio Access Network ("RAN") equipment in certain Mid-band layers [redacted] This would technologically allow T-Mobile to deploy LTE2100 in the area served by CETIN's network;
- to set and review the financial conditions for unilateral network deployments in order to ensure cost-based pricing of any investments or services provided by the operator responsible for the shared network in that part of the country on behalf of the other operator;
- to improve the NSA's contractual provisions to limit information exchange to the absolutely necessary for the operation of the shared network;
- to implement measures in relation to the Mobile Network Services Agreement (between the infrastructure provider CETIN and its sister company, the mobile operator O2 CZ), to ensure that CETIN effectively prevents information spill-over between T-Mobile CZ and O2 CZ.

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Contact:	[redacted], **COMP.C.1** ☎ [redacted] [redacted], **COMP.C.1** ☎ [redacted]

IPCEI CLOUD AND MICRO ELECTRONIC

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NECESSARY FACTS AND FIGURES

1. **IPCEI**

In an IPCEI, the Commission's assessment must be in compliance with the rules outlined in the Commission's Communication on the Important Project of Common European Interest. The new revised 2021 IPCEI Communication will replace as of 1st of January 2022, the previous 2014 IPCEI Communication. It will therefore apply to any upcoming IPCEI in relation to Cloud or on Microelectronics 2.

IPCEIs are about truly, large exceptional projects, where several Member States come together and aim at addressing market failures and risks that are too high for a single Member State or company to take. In addition, IPCEIs need to deliver positive spillover effects (i.e. positive outcomes going beyond its objectives, such as for instance:

dissemination of new knowledge) across the EU, beyond the participating group of Member States or companies that directly participate.

State aid rules for IPCEIs are not meant to replace or circumvent other rules, such as those for environmental projects, research projects or for regional support. IPCEI rules should cover a handful of flagship, highly ambitious, joint large cross border projects generating significant spillover effects across Europe while other rules are better suited to allow support for 'ordinary' investments at national level.

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[redacted]

Contact:	[redacted], **H2 ☎** [redacted] **10/12/2021**

Basis: COMP/11817

CV – [redacted]

[redacted]

FULL NAME [redacted]

Nationality: [redacted]

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