

**Opinion of the Advisory Committee on Restrictive Agreements and dominant position given at its meeting of 27 April 2016 regarding a draft decision relating to Case M.7612 Hutchison 3G UK/ Telefónica UK**

**Rapporteur: Sweden**

(2016/C 357/06)

1. The Advisory Committee agrees with the Commission that the notified transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings <sup>(1)</sup>.
2. The Advisory Committee agrees with the Commission that the notified transaction has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

**Market definition**

3. The Advisory Committee agrees with the Commission's definitions of the relevant product and geographic markets in the draft Decision.
4. In particular, the Advisory Committee agrees that the following markets should be distinguished:
  - a) Retail market for mobile telecommunications services in the United Kingdom. A minority disagrees.
  - b) Wholesale market for access and call origination services on public mobile telephone networks in the United Kingdom.

**Competitive assessment**

5. The Advisory Committee agrees with the Commission's assessment that the notified transaction is likely to give rise to non-coordinated horizontal effects that would significantly impede effective competition on the retail market for mobile telecommunications services in the United Kingdom mainly due to the removal of the important competitive constraints that O2 and Three exerted upon each other, together with a reduction of the competitive pressure on the remaining competitors.
6. The Advisory Committee agrees with the Commission's assessment that the notified transaction is likely to give rise to non-coordinated horizontal effects that would significantly impede effective competition on the retail market for mobile telecommunications services in the United Kingdom due to the reduced competitive pressure exercised by one or both of BT/EE and Vodafone and the overall reduced level of industry-wide network investments resulting from the merged entity's network consolidation plans.
7. The Advisory Committee agrees with the Commission's assessment that the notified transaction is likely to give rise to non-coordinated horizontal effects that would significantly impede effective competition in the wholesale market for mobile network access and call origination services on public mobile networks in the United Kingdom mainly due to the removal of the important competitive constraints that O2 and Three exerted upon each other, together with a reduction of the competitive pressure on the remaining competitors.

**Remedy**

8. The Advisory Committee agrees with the Commission that the commitments offered by the Notifying Party on 6 April 2016 pursuant to Article 8(2) of the Merger Regulation do not address the competition concerns identified by the Commission on the retail market for mobile telecommunications services in the United Kingdom.
9. The Advisory Committee agrees with the Commission that the commitments offered by the Notifying Party on 6 April 2016 pursuant to Article 8(2) of the Merger Regulation do not address the competition concerns identified by the Commission on the wholesale market for access and call origination services on public mobile networks in the United Kingdom.
10. The Advisory Committee agrees with the Commission's conclusion that the notified transaction is likely to significantly impede effective competition in the internal market or in a substantial part of it.
11. The Advisory Committee agrees with the Commission that the notified transaction must therefore be declared incompatible with the internal market in accordance with Articles 2(2) and 8(3) of the Merger Regulation.

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<sup>(1)</sup> OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation')