C/2024/2860

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Summary of Commission Decision

of 25 May 2023

declaring a concentration compatible with the internal market and the functioning of the EEA Agreement

(Case M.10807 – Viasat/Inmarsat)

(notified under document number C(2023) 3528)

(Only the English version is authentic)

(Text with EEA relevance)

(C/2024/2860)

On 25 May 2023 the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings [1]*, and in particular Article 8(1) of that Regulation. A non-confidential version of the full Decision, can be found in English on the website of the Directorate-General for Competition, at the following address: https://competition-cases.ec.europa.eu/search.*

1. INTRODUCTION

(1) The attached Decision declares the acquisition of Inmarsat Group Holdings Limited ('Inmarsat', UK) by Viasat, Inc. ('Viasat', or the 'Notifying Party', USA) compatible with the internal market and the functioning of the EEA Agreement, in accordance with Article 2(2) and Article 8(1) of the Merger Regulation and Article 57 of the EEA Agreement. Viasat and Inmarsat are together referred to as the 'Parties'.

2. PROCEDURE

(2) On 17 June 2022, the European Commission (the 'Commission') received a referral request from the national competition authority of Spain pursuant to Article 22(1) of the Merger Regulation concerning the proposed transaction by which Viasat will acquire sole control of the whole of Inmarsat within the meaning of Article 3(1)(b) of the Merger Regulation (the 'Transaction') [2].

(3) The national competition authorities of Belgium, Bulgaria, Cyprus, Denmark, Finland, France, Ireland, Italy, the Netherlands, Romania, Sweden, and Norway (together with Spain, the 'Referring States') subsequently joined the request made by the national competition authority of Spain.

(4) On 26 July 2022, the Commission issued decisions by which it accepted the referral requests of the Referring States and decided to examine the Transaction pursuant to Article 22(3) of the Merger Regulation (the 'Article 22 Decisions').

(5) On 9 January 2023, the Commission received notification of the Transaction pursuant to Article 4 of the Merger Regulation.

(6) After the phase I investigation, the Commission concluded that the Transaction raised serious doubts as to its compatibility with the internal market and adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation on 13 February 2023 (the 'Article 6(1)(c) Decision').

[1] OJ L 24, 29.1.2004, p. 1.
[2] OJ C 14, 16.1.2023, p. 7.

(7) On 14 February 2023 and on 20 February 2023, the Commission provided a number of key documents to the Notifying Party.

(8) On 27 February 2023, the Notifying Party submitted its written comments to the Article 6(1)(c) Decision (the 'Article 6(1)(c) Response').

(9) On 7 March and on 20 April 2023, state of play meetings between the Notifying Party and the Commission took place.

(10) The draft Decision was consulted with the Member States during the Advisory Committee on Concentrations on 15 May 2023, which provided a favourable opinion. The Hearing Officer provided its favourable opinion on the proceedings in his report which was submitted on 3 May 2023.

3. **THE PARTIES**

(11) Viasat is a U.S. publicly-listed company (listed on the NASDAQ) based in Carlsbad California, which provides two-way satellite-based communication services. Viasat owns and operates four geostationary earth orbit satellites ('GEOs'). In addition, Viasat leases capacity on third-party satellites. Viasat has three core business segments: Satellite Services, Commercial Networks, and Government Systems.

(12) Inmarsat is a privately-held UK company, headquartered in London, which offers two-way satellite-based communication services globally. Inmarsat owns and operates three proprietary satellite networks across its fleet of fifteen GEOs. Inmarsat's business is organised into four customer segments: Aviation, Maritime, Enterprise, and Government.

(13) The Transaction consists in the acquisition of sole control by Viasat over Connect Topco Limited ('Connect Topco'), Inmarsat's ultimate parent company, pursuant to a sale and purchase agreement dated 8 November 2021. On completion of the Transaction, Viasat will hold 100 % of Connect Topco's shares and voting rights, which will (indirectly) hold 100 % of the shares in Inmarsat. As a result, Viasat will acquire sole control over Inmarsat. The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

4. **JURISDICTION OF THE COMMISSION**

(14) The Transaction does not have a Union dimension within the meaning of Article 1 of the Merger Regulation, as the Parties' turnover does not meet the thresholds of Article 1(2) or 1(3) of the Merger Regulation.

(15) On 26 July 2022, the Commission issued the Article 22 Decisions and acquired jurisdiction to scrutinise the effects of the Transaction.

5. **THE RELEVANT PRODUCT MARKETS**

(16) For the assessment of the Transaction, the following business activities of the Parties are relevant: (i) Viasat and Inmarsat are both active in the supply of satellite capacity; (ii) Viasat and Inmarsat are both active in the supply of broadband in- flight connectivity ('IFC') services for commercial aviation customers (i.e., in-flight Wi-Fi to passengers in the cabin); and (iii) Viasat and Inmarsat are both active in the supply of IFC services for business aviation customers.

(17) For the purpose of the assessment of the Transaction the Commission considers that the relevant product markets are likely the markets for:

i. Supply of broadband satellite capacity;

ii. Supply of broadband IFC services to commercial aviation customers; and

iii. Supply of IFC services to business aviation customers

(18) The market investigation did not provide for a conclusive finding as to whether the relevant product markets should be segmented further ([3]) or even be part of a broader market ([4]) than the markets listed above. The precise product market delineation could however ultimately be left open since the Transaction would not significantly impede effective competition under any plausible market definition.

6. **THE RELEVANT GEOGRAPHIC MARKETS**

(19) Following its investigation, the Commission has come to the conclusion that the markets for the supply of satellite capacity (and any potential segments thereof, including the supply of broadband satellite capacity) and for the supply of IFC services to business aviation customers (and the potential segment for large business jets) are worldwide in scope.

(20) With regards to the market for the supply of broadband IFC services to commercial aviation customers, the Commission considered that the relevant geographic market is likely worldwide. However, for the purpose of the assessment of the Transaction, the question of whether the market is at least EEA-wide or worldwide in scope could be left open since the Transaction would not significantly impede effective competition under any plausible market definition.

7. **ASSESSMENT**

(21) The following sections of the present note summarise the main findings of the Commission.

7.1. **No finding of a significant impediment to effective competition as a result of horizontal non-coordinated effects in the market for the supply of broadband satellite capacity**

(22) In the Decision, the Commission concludes that the Transaction is unlikely to lead to a significant impediment of effective competition as a result of horizontal non- coordinated effects on the global market for the supply of broadband satellite capacity (and potential segments thereof, as well as the broader market for the supply of satellite capacity), in particular because:

(23) *First*, the Parties' combined capacity market shares remain moderate and the increment limited today (with Viasat and Inmarsat holding a [10-20]% and [0-5]% share respectively in 2022). Both Parties lease only a small proportion (less than [20-30]%) of their satellite capacity to third parties downstream, which is significantly less than competitors, and so this figure likely overestimates the Parties' position on the merchant market.

([3]) The possible market segmentations assessed by the Commission are: (1) for the supply of broadband satellite capacity, the possible segmentation (i) by industry segment of the downstream end-use of the capacity, (ii) between GEO and non-geostationary orbit ('NGSO')/low earth orbit ('LEO') satellite capacity, (iii) between high-throughput satellites ('HTS') and non-HTS (broadband) capacity, and (iv) between Ka-band and Ku-band satellite capacity; (2) for the supply of broadband IFC services to commercial aviation customers, the possible segmentation (i) between short-haul and long-haul flights, (ii) between Ku- and Ka-band, (iii) between GEO and LEO-based IFC solutions, and (iv) between satellite technology and air-to-ground ('ATG') or hybrid technology; and (3) for the supply of IFC services to business aviation customers, the possible segmentation (i) by type of aircraft and (ii) by size of aircraft.

([4]) For the supply of broadband satellite capacity, the Commission assessed whether the market could be part of a possible broader market for the supply of satellite capacity (including both broadband and narrowband).

(24) *Second*, the Parties are not likely to possess any appreciable market power in the near future, despite higher capacity market shares in the near future (with Viasat and Inmarsat holding a [50-60]% and [5-10]% share respectively in 2025). The market is characterized by a significant proportion of spare capacity, such that spare capacity amongst competitors could cover the Parties' entire leased capacity to its customers at least […] times over (both today and in the near future). Therefore, the Parties' capacity is not pivotal, and so it appears unlikely that the merged entity would have an appreciable degree of market power over its current customers or any potential customers.

(25) *Third*, a sufficient number of credible competitors remain post-Transaction and are a credible alternative to the merged entity. This includes both existing GEO and LEO satellite network operators, who appear to compete closely with the Parties, such as Echostar Corporation, Eutelsat, SES, Intelsat, Iridium, SpaceX, Telesat (Lightspeed) and OneWeb.

7.2. **No finding of a significant impediment to effective competition as a result of horizontal non-coordinated effects in the market for the supply of broadband IFC services to commercial aviation customers**

(26) On the basis of its in-depth investigation, the Commission has found that the Transaction would not significantly impede effective competition as a result of horizontal non-coordinated effects on the global or EEA-wide market for the supply of broadband IFC services to commercial aviation customers (and potential segments thereof), in particular because:

(27) *First*, the merged entity's combined market share ([30-40]%, in terms of committed aircraft) would not allow the merged entity to significantly impede competition in this market, despite the fact that it is the highest, as after the Transaction, there will remain a number of competitors with a significant share on the market, the highest being Intelsat with a market share of [20-30]% and Panasonic with a market share of [20-30]%.

(28) In addition, the Commission notes that market shares seem to have a limited evidentiary value in a nascent market such as the market for the supply of broadband IFC services to commercial aviation customers, and especially in the EEA where the penetration rate of IFC services is relatively low, where evolving needs of passengers and continuously improved rival offerings constantly shift the key parameters of competition. The Commission considers that, based on the results of the market investigation, it appears that demand from airlines is significantly differentiated, and the Parties do not have particular competitive advantages for a given set of key parameters of competition that would set them apart from rivals.

(29) Regarding the Parties' potential competitive advantages of vertical integration, Ka- band offering, and broad range of certifications, the phase II market investigation clarified that:

i. Vertical integration is not necessary to effectively compete in the market, in particular in light of the excess supply of satellite capacity both today and in the coming years, which is fungible across different use cases/ industry segments. In addition, IFC providers can successfully compete and win tenders with leased capacity and several IFC providers, including Viasat and Intelsat (who are vertically integrated), have successfully built their businesses on the basis of leased capacity.

ii. Offering IFC services using the Ka-band is not necessary to effectively compete in the market. There is no unambiguous technical or performance advantage of the Ka-band over the Ku-band. Both frequencies have different benefits and disadvantages from an airlines' perspective but offer similar performance from a passenger's perspective.

iii. Holding a broad range of certifications is not necessary to effectively compete in the market. While many airlines value existing certification at the time of the tender, line-fit and retrofit certifications are not a prerequisite for bidding for or winning IFC contracts, as long as the bidder commits to or submits a strict timeline for their obtention.

(30) *Second*, a sufficient number of credible competitors remain post-Transaction. The Commission notes that the Parties' main customers in the EEA are large commercial airlines, the majority of which pursue a multi-sourcing approach. Based on the results of the market investigation, the Commission concluded, for the purposes of the assessment of the Transaction, that Intelsat, Panasonic and Anuvu each constitute a credible alternative to the merged entity post-Transaction. In addition, SpaceX has started bidding for IFC contracts and, since its market entry in 2022, has already won commercial IFC contracts with six airlines. Although it is not certain today when SpaceX will fully perform those contracts, and whether and to what extent SpaceX may further expand in the commercial IFC space, SpaceX will at least constrain the merged entity in IFC tenders post- Transaction, if not constitute a credible alternative to the merged entity in the next three years.

(31) *Third,* the market is nascent, with a number of potential new entrants. Europe in particular provides significant opportunities for current competitors and new entrants for additional IFC uptake for airlines headquartered in Europe, in particular for short-haul (intra-European) flights. Indeed, the penetration rate for short-haul aircraft in Europe is 24,4 %, compared to 72,9 % in the U.S., and almost all airlines that replied to the Commission's market investigation expect the demand for IFC services to increase in the coming three years. Both LEO and GEO operators are investing to expand their capabilities in a number of ways, such as through launches of new satellites or through partnerships with SSPs active in the supply of IFC services (including for the supply of hybrid GEO/LEO IFC solutions). A number of potential new entrants have publicly announced their intention to enter the market. The Commission therefore considers it likely that in the next three years, if not entry, at least partnerships with potential new entrants will occur.

7.3. **No finding of a significant impediment to effective competition as a result of horizontal non-coordinated effects in the market for the supply of IFC services to business aviation customers**

(32) In the Decision, the Commission concludes that the Transaction is unlikely to lead to a significant impediment of effective competition as a result of horizontal non- coordinated effects on the global market for the supply of broadband IFC services to business aviation customers (and the potential segment for large business jets), in particular because:

(33) *First*, the merged entity's combined share is moderate. A number of competitors remain with higher market shares, the highest being Iridium Communications with a market share of [40-50]% and Gogo Business Aviation with a market share of [30-40]%. Furthermore, at the global level of the market for the supply of broadband IFC services to large business jets, the merged entity's share would also remain moderate with a combined market share of [30-40]%. The merged entity would still be smaller than Gogo, with [60-70]% market share.

(34) *Second*, a sufficient number of credible competitors remain post-Transaction and are a credible alternative to the merged entity. The result of the market investigation confirmed that competitors such as Iridium Communications, Gogo, SES (Luxstream), IDAIR, Intelsat (FlexExec), Smart Sky, and SpaceX compete closely with the Parties.

(35) *Third,* the disruptive current market conditions set out for commercial aviation IFC, apply equally to business aviation IFC services, including for the competitive advantages of the newly entering NGSOs/LEOs such as a lower latency, greater network density and resilience, quasi-global coverage, and lower costs. Furthermore, the market is very dynamic and will be undergoing significant changes in the future. In addition, the total number of connected large business aircraft is expected to grow from less than 4 500 at year-end 2021 to over 12 000 by 2031. The Commission therefore considers it likely that in the next three years, if not entry, at least partnerships with potential new entrants will occur.

7.4. **Conclusion**

(36) The Decision, therefore, concludes that the notified concentration does not raise serious doubts as to its compatibility with the internal Market.

8. **CONCLUSION**

(37) The attached Decision concludes that the proposed concentration would not significantly impede effective competition in the internal market or in a substantial part of it.

(38) Consequently, the Decision proposes to declare the Transaction compatible with the internal market, in accordance with Article 2(2) and Article 8(1) of the Merger Regulation and Article 57 of the EEA Agreement.