C/2023/1521

18.12.2023

Final Report of the Hearing Officer [1]

Case M.10663 – Orange/VOO/Brutélé

(Text with EEA relevance)

(C/2023/1521)

On 22 June 2022, the Commission received a notification pursuant to Article 4 of the Merger Regulation [2] of a proposed concentration by which Orange S.A. ('Orange' or the 'Notifying Party'), through its solely controlled Belgian subsidiary Orange Belgium S.A., would acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, sole control over VOO S.A. ('VOO') and the telecommunications, media and technology activities [3] of Société Intercommunale pour la Diffusion de la Télévision ('Brutélé') (together with Orange and VOO, the 'Parties') (the 'Proposed Transaction').

On 28 July 2022, the Commission initiated proceedings pursuant to Article 6(1)(c) of the Merger Regulation ('Article 6(1)(c) Decision'). The Notifying Party submitted written comments on the Article 6(1)(c) Decision, on 22 August 2022.

On 8 August 2022, at the request of the Notifying Party, the Commission extended the time period for the adoption of a decision pursuant to Article 8 of the Merger Regulation by ten working days, pursuant to Article 10(3), second subparagraph, first sentence, of the same regulation.

On 12, 14, 18 and 21 October 2022, at the request of the Notifying Party, the Commission extended the time period for the adoption of a decision pursuant to Article 8 of the Merger Regulation by two, two, two and four working days respectively, pursuant to Article 10(3), second subparagraph, third sentence, of the same regulation.

On 26 October 2022, the Commission adopted a decision pursuant to Article 11(3) of the Merger Regulation (the 'Article 11(3) Decision'), requiring the Notifying Party to supply certain information in connection with a possible wholesale access agreement with Telenet Group Holding NV (a third-party competitor), of relevance for the assessment of the Proposed Transaction on certain affected markets. Pursuant to Article 9(2) of the Merger Implementing Regulation [4], the Commission considered it appropriate to request this information without proceeding first by way of simple request for information. The Article 11(3) Decision suspended the time limit referred to in Article 10(3) of the Merger Regulation, pursuant to Article 10(4) of the Merger Regulation. The Notifying Party complied with the information request contained in the Article 11(3) Decision on 30 January 2023, which ended the suspension of the above-mentioned time limit.

Between 11 October 2022 and 18 January 2023, I admitted two undertakings active in 'or upstream of' some of the markets affected by the Proposed Transaction as interested third persons pursuant to Article 18(4) of the Merger Regulation.

On 30 January 2023, the Notifying Party submitted commitments pursuant to Article 8(2) of the Merger Regulation in order to address the competition concerns identified by the Commission (the 'Commitments'). On 31 January 2023, the Commission launched a market test of the Commitments. The Parties were informed about the results of the market test of the Commitments during a call held on 10 February 2023.

The draft decision declares the Proposed Transaction compatible with the internal market and the EEA Agreement, subject to full compliance with the Commitments.

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[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 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1) ('Merger Regulation').

[3] As defined in the Commission's draft decision.

[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').

Overall, I consider that the effective exercise of procedural rights has been respected during the present proceedings.

Brussels, 9 March 2023.

Eric GIPPINI FOURNIER