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PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

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Subject: **Case M.11308 – VODAFONE UK / THREE UK / VODAFONE UK HOLDINGS**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

[1] OJ L 24, 29.1.2004, p. 1 (the "**Merger Regulation**"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("**TFEU**") has introduced certain changes, such as the

Dear Sir or Madam,

(1) On 30 October 2023, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004, by which Vodafone Group Plc, ("**Vodafone**", United Kingdom) and CK Hutchison Group Telecom Holdings Limited ("**CK Hutchison**", Cayman Islands, together with Vodafone, the "**Notifying Parties**") would create a joint venture ("**JV**") to merge their telecommunications businesses in the UK, within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation (the "**Transaction**").[3]

1. THE PARTIES

(2) **Vodafone** is a holding company of a group primarily involved in the operation of mobile and fixed telecommunications services, such as voice, messaging and data services, principally across Europe and Africa.

(3) Vodafone's indirect subsidiary Vodafone Limited ("**Vodafone UK**") is a mobile network operator ("**MNO**") in the United Kingdom. Vodafone UK is active primarily in mobile services and the resale of fixed voice and broadband services.

(4) **CK Hutchison** is an indirectly wholly-owned subsidiary of CK Hutchison Holdings* ("**CKHH**", Cayman Islands). CK Hutchison is active as an MNO in Austria, Denmark, Ireland, Italy, Sweden and the United Kingdom. CK Hutchison controls Hutchison 3G UK Limited ("**Three UK**"), which is an MNO in the United Kingdom.

(5) The business activities of the JV will combine the activities of Vodafone UK and Three UK.

2. THE CONCENTRATION

(6) The Transaction leads to the creation of a joint venture between Vodafone and CK Hutchison to merge their telecommunications businesses in the UK, namely Vodafone UK and Three UK respectively.

2.1. Joint control

(7) At completion, Vodafone will own 51% and CK Hutchison will own 49% of the shares in the JV. CK Hutchison and Vodafone have agreed a comprehensive joint governance framework for the JV pursuant to a Shareholders' Agreement.

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replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

2 OJ L 1, 3.1.1994, p. 3 (the "**EEA Agreement**").

3 Publication in the Official Journal of the European Union No C 414, 13.10.2021, p. 4.

* Should read: 'CK Hutchison Holdings Limited'.

(8) The Shareholders' Agreement provides that (i) each of CK Hutchison and Vodafone will appoint 3 directors to the JV's board of directors, none of which will hold a casting vote; (ii) both CK Hutchison and Vodafone will be able to veto the […]; and, (iii) both CK Hutchison and Vodafone will be able to veto the business plan and budget of the JV.[4]

(9) On this basis, the Commission concludes that both CK Hutchison and Vodafone will exercise joint control over the JV after the Transaction.

2.2. Full functionality

(10) The JV will have sufficient resources to operate independently on the market, notably a dedicated management, sufficient financial resources, staff and assets. The JV will also have its own access to or presence on the market independent from its parent companies and achieve most of its sales from third parties on a lasting basis. Finally, the JV is intended to operate on a lasting basis.[5]

(11) The Transaction will therefore result in the creation of a full function joint venture within the meaning of Article 3(4) of the EU Merger Regulation, which will be jointly controlled by Vodafone and CK Hutchison.

3. UNION DIMENSION

(12) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[6] (Vodafone: EUR 45 706 million; CK Hutchison: EUR 47 608 million). Each of them has a Union-wide turnover in excess of EUR 250 million (Vodafone: […]; CK Hutchison: […]) but each of them does not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

4. COMPETITIVE ASSESSMENT

(13) The JV has no current or expected (over the next three years following notification) turnover within the territory of the European Economic Area (EEA), and the undertakings concerned have not planned to transfer any assets within the EEA to the JV, at the time of notification. The concentration thus fulfils the conditions set out in 5(a) of the Commission's Notice on a simplified treatment for certain concentrations under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings ("**Simplified Notice**").[7]

(14) As such, the Transaction does not give rise to any affected markets in the EEA.

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4 See Short Form CO, section 6.2.

5 See Short Form CO, section 6.3.

6 Turnover calculated in accordance with Article 5 of the Merger Regulation.

7 See publication in the Official Journal of the European Union No C/2023/910 of 13.11.2023, paragraph 4.

(15) On 7 November 2023, the Commission received a submission ("**Submission**")[8] explaining that the Transaction could result in coordination in the Irish telecommunications market due to:

(a) The high number of current members of Three UK's management that have responsibility and oversight of CK Hutchison's activities in Ireland ("**Three Ireland**"),[9] and;

(b) The likelihood that Three UK and Vodafone UK would share information post-Transaction with Three Ireland and Vodafone Ireland, respectively.

(16) Based on the concerns submitted, the Submission requests that the proposed activities of the JV should be firmly ring-fenced from each of CK Hutchison's and Vodafone's activities in order to mitigate any risk of inappropriate coordination in Ireland. In addition, the Submission requests that Three Ireland and Vodafone's activities in Ireland ("**Vodafone Ireland**") should stay outside the perimeter of the JV and that a strict Chinese wall should be established between the JV and each of Three Ireland and Vodafone Ireland.

(17) In view of the content of the Submission, and the fact that it was submitted within the time limit laid down for third party comments, the Commission has decided to revert to the normal review procedure to address the concerns received.

4.1. Assessment of the Submission

4.1.1. Legal framework

(18) Under Article 2(4) of the Merger Regulation, to the extent that the creation of a joint venture constituting a concentration pursuant to Article 3 has as its object or effect the coordination of the competitive behaviour of undertakings that remain independent, such coordination shall be appraised in accordance with the criteria of Article 101(1) and (3) of the Treaty, with a view to establishing whether or not the operation is compatible with the common market.

(19) Under Article 2(5) of the Merger Regulation, in making this appraisal, the Commission shall take into account in particular: (i) whether two or more parent companies retain, to a significant extent, activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market; and (ii) whether the coordination which is the direct consequence of the creation of the joint venture

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8 The Submission is addressed to the Competition and Markets Authority ("**CMA**") in the UK and responds to the CMA's invitation to comment. Consequently, most of the Submission deals with competition concerns unrelated to the EEA. The complainant forwarded its response to the CMA's invitation to comment to the European Commission.

9 Taking into account the high combined market share of CK Hutchison and Vodafone in the Irish market for the retail supply of mobile telecommunications services. In addition to the Irish market for the retail supply of mobile telecommunications services, the concerns raised in the Submission could also in theory be relevant in relation to the Irish market for the wholesale supply of access and call origination services on mobile networks, or other markets in which the activities of CK Hutchison and Vodafone in Ireland overlap. For simplicity, in this decision, a reference to the "**Irish market for the retail supply of mobile telecommunications services**" will include all the product markets in Ireland in which the activities of CK Hutchison and Vodafone overlap.

affords the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products or services in question.

(20) A restriction of competition under Article 101(1) TFEU is established when the coordination of the parent companies' competitive behaviour is likely and appreciable and results from the creation of the joint venture, be it as its object or its effect.

(21) On this basis, the Commission will assess whether, due to the current existence of members of Three UK's management with responsibilities and oversight also of Three Ireland, the creation of the JV is likely to lead to coordination between Three Ireland and Vodafone Ireland in an appreciable way.

4.1.2. The Notifying Parties' view

(22) The Notifying Parties submit that the creation of the JV is not likely to lead to coordination between Three Ireland and Vodafone Ireland in an appreciable way for the following reasons.[10]

(23) First, the Notifying Parties submit that, whereas both Parties are active in the mobile telecommunication services market in the UK and in the markets for mobile and fixed telecommunication services in Ireland, their activities in Ireland fall outside of the scope of the Transaction, which solely concerns their UK activities.

(24) Second, the Notifying Parties note that the structure of the Board of Directors and executive management of Three UK and Three Ireland before the implementation of the Transaction has no direct relevance for the competitive effects that might occur after the implementation of the Transaction. Once the JV will be created, the JV will have its own newly appointed Board of Directors and its own dedicated management team. Only these would be relevant to assess the risk of potential spill-over effects.

(25) Third, the Contribution Agreement agreed between the Notifying Parties provides […].[11] If […], the Notifying Parties intend that such […] will be entirely assigned to the JV and will no longer continue to work in their current position for Three Ireland.[12]

(26) Fourth, the Notifying Parties explain that there are strict obligations imposed in the Shareholders' Agreement relating to the disclosure and use of confidential information (as defined in the agreed form Shareholders' Agreement). On this basis, each Notifying Party must treat as strictly confidential all information obtained through its interest in the JV (including through nominated directors to the JV's board of directors). In particular, each Notifying Party must procure that its nominated directors to the JV's board of directors maintain confidential information

10 See Notifying Parties' response of 15 November 2023 to RFI 1 and the Notifying Parties' submission on lack of coordination and co-operative effects of 24 November 2023.

11 […].

12 Notifying Parties' submission on lack of coordination and co-operative effects of 24 November 2023, paragraph 2.5.

in strict confidence and do not use any confidential information other than for the purpose of conducting the JV's business.[13]

(27) Furthermore, under the Contribution Agreement, the Notifying Parties have agreed to an information sharing protocol to govern information flows between the JV and any CK Hutchison company and/or Vodafone company following the completion of the Transaction.

(28) Fifth, the Notifying Parties submit that it is in the commercial interest of each of the Notifying Parties to ensure that any confidential information relating to other businesses outside the scope of the JV is protected.

4.1.3. The Commission's assessment

(29) For the reasons set out below, the Commission considers that the Transaction is unlikely to lead to coordination between Three Ireland and Vodafone Ireland in an appreciable way due to the current presence of members of Three UK's management with responsibilities and oversight of Three Ireland.

(30) First, the Commission notes that current overlaps between the legal entities operating Three's business in Ireland and in the UK cannot give rise to competition concerns following the implementation of the Transaction. The Transaction will create a new entity, the JV, that will combine the activities of Three UK and Vodafone UK and be jointly controlled by the Notifying Parties. Any existing overlaps will therefore cease to exist as of the implementation of the Transaction, as the business of Three UK will not be conducted separately, but will be transferred to the JV and conducted by the JV. The Submission does not set out how existing overlaps between management functions at Three UK and Three Ireland would be relevant for an assessment of whether there will be a merger-specific increased risk of coordination that is being created by the JV.

(31) Second, the existing shared responsibilities of the members of the board of directors of Three Ireland and Three UK do not provide an indication of overlaps between the JV and Three Ireland or Vodafone Ireland. As set out by the Notifying Parties, […]. The agreements between the Notifying Parties anticipate that […].[14] Further, this is also the case for Vodafone UK and Vodafone Ireland, whose […] […].[15] In relation to […], the Commission notes that the Notifying Parties intend that […] that will be assigned to the JV will no longer continue in their position for Three Ireland.[16]

(32) Third, the Commission notes that the Notifying Parties have agreed to mechanisms to avoid the flow of sensitive information from the JV to each of CK Hutchison and Vodafone.[17] The Commission notes that these mechanisms, if adequately enforced, are able to block or minimise the flow of information from the JV to Three Ireland and Vodafone Ireland. The Commission considers that the Submission does not set

13 […].
14 See paragraph 26 above.
15 See Notifying Parties' response to RFI 1, paragraph 3.5.
16 Notifying Parties' submission on lack of coordination and co-operative effects of 24 November 2023, paragraph 2.5.
17 See paragraph (27) above as well as […].

out any facts or arguments that would put the effectiveness of such measures into question.

(33) In light of the above and for the purpose of this decision, the Commission considers that, contrary to that set out in the Submission, the Transaction is unlikely to lead to coordination of Three Ireland and Vodafone Ireland in an appreciable way due to the current presence of a high number of members of Three UK's management with responsibilities and oversight of Three Ireland in the Irish retail market for the supply of mobile telecommunications services.[18]

4.1.4. Conclusion

(34) For the reasons set out above, the Commission concludes that the Transaction as such would not increase the risk of coordination of conduct between CK Hutchison and Vodafone on the Irish market for the supply of mobile telecommunication services. Therefore, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market.

5. CONCLUSION

(35) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Didier REYNDERS
Member of the Commission

[18] The Commission further notes that, despite not receiving any complaints in that regard, the same conclusion could be reached in relation to any other Member State in which both CK Hutchison and Vodafone maintain any activities.