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## Information and Notices

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<sup>(1)</sup> Text with EEA relevance

## II

*(Information)*INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES  
AND AGENCIES

## EUROPEAN COMMISSION

**Non-opposition to a notified concentration****(Case M.7840 — LetterOne Holdings/E.ON E&P Norge)****(Text with EEA relevance)**

(2015/C 407/01)

On 2 December 2015, the Commission decided not to oppose the above notified concentration and to declare it compatible with the internal market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004 <sup>(1)</sup>. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- in the merger section of the Competition website of the Commission (<http://ec.europa.eu/competition/mergers/cases/>). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,
- in electronic form on the EUR-Lex website (<http://eur-lex.europa.eu/homepage.html?locale=en>) under document number 32015M7840. EUR-Lex is the online access to European law.

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<sup>(1)</sup> OJ L 24, 29.1.2004, p. 1.

**Non-opposition to a notified concentration****(Case M.7812 — Swiss RE Life Capital/Guardian Holdings Europe)****(Text with EEA relevance)**

(2015/C 407/02)

On 2 December 2015, the Commission decided not to oppose the above-notified concentration and to declare it compatible with the internal market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004 <sup>(1)</sup>. The full text of the decision is available only in English language and will be made public after it is cleared of any business secrets it may contain. It will be available:

- in the merger section of the Competition website of the Commission (<http://ec.europa.eu/competition/mergers/cases/>). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,
- in electronic form on the EUR-Lex website (<http://eur-lex.europa.eu/homepage.html?locale=en>) under document number 32015M7812. EUR-Lex is the online access to the European law.

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<sup>(1)</sup> OJ L 24, 29.1.2004, p. 1.

**Non-opposition to a notified concentration**  
**(Case M.7791 — Aviva/PSP/Property Portfolio JV)**  
**(Text with EEA relevance)**  
(2015/C 407/03)

On 2 December 2015, the Commission decided not to oppose the above-notified concentration and to declare it compatible with the internal market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004 <sup>(1)</sup>. The full text of the decision is available only in English language and will be made public after it is cleared of any business secrets it may contain. It will be available:

- in the merger section of the Competition website of the Commission (<http://ec.europa.eu/competition/mergers/cases/>). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,
- in electronic form on the EUR-Lex website (<http://eur-lex.europa.eu/homepage.html?locale=en>) under document number 32015M7791. EUR-Lex is the online access to the European law.

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<sup>(1)</sup> OJ L 24, 29.1.2004, p. 1.

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**Non-opposition to a notified concentration**  
**(Case M.7763 — TCCC/Cobega/CCEP)**  
**(Text with EEA relevance)**  
(2015/C 407/04)

On 9 November 2015, the Commission decided not to oppose the above notified concentration and to declare it compatible with the internal market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004 <sup>(1)</sup>. The full text of the decision is available only in the English language and will be made public after it is cleared of any business secrets it may contain. It will be available:

- in the merger section of the Competition website of the Commission (<http://ec.europa.eu/competition/mergers/cases/>). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,
- in electronic form on the EUR-Lex website (<http://eur-lex.europa.eu/homepage.html?locale=en>) under document number 32015M7763. EUR-Lex is the online access to European law.

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<sup>(1)</sup> OJ L 24, 29.1.2004, p. 1.

## IV

(Notices)

## NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

## EUROPEAN COMMISSION

Euro exchange rates <sup>(1)</sup>

7 December 2015

(2015/C 407/05)

1 euro =

Currency	Exchange rate	Currency	Exchange rate
USD US dollar	1,0809	CAD Canadian dollar	1,4550
JPY Japanese yen	133,40	HKD Hong Kong dollar	8,3771
DKK Danish krone	7,4607	NZD New Zealand dollar	1,6238
GBP Pound sterling	0,71770	SGD Singapore dollar	1,5191
SEK Swedish krona	9,2188	KRW South Korean won	1 264,00
CHF Swiss franc	1,0830	ZAR South African rand	15,6593
ISK Iceland króna		CNY Chinese yuan renminbi	6,9266
NOK Norwegian krone	9,3265	HRK Croatian kuna	7,6380
BGN Bulgarian lev	1,9558	IDR Indonesian rupiah	14 965,26
CZK Czech koruna	27,022	MYR Malaysian ringgit	4,5744
HUF Hungarian forint	311,85	PHP Philippine peso	50,880
PLN Polish zloty	4,3133	RUB Russian rouble	74,6306
RON Romanian leu	4,4803	THB Thai baht	38,761
TRY Turkish lira	3,1349	BRL Brazilian real	4,0425
AUD Australian dollar	1,4849	MXN Mexican peso	18,1229
		INR Indian rupee	72,1325

<sup>(1)</sup> Source: reference exchange rate published by the ECB.

**COMMISSION IMPLEMENTING DECISION****of 4 December 2015**

**on the publication in the *Official Journal of the European Union* of the single document referred to in Article 94(1)(d) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council and of the reference to the publication of the product specification for a name in the wine sector**

**[Dons (PDO)]**

(2015/C 407/06)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 <sup>(1)</sup>, and in particular Article 97(3) thereof,

Whereas:

- (1) Denmark has applied for protection of the name 'Dons' in accordance with the provisions of Regulation (EU) No 1308/2013 on the protection of designations of origin and geographical indications in the wine sector. In accordance with Article 97(2) of that Regulation, Denmark's application was examined by the Commission.
- (2) The conditions laid down in Articles 93 to 96, Article 97(1), and Articles 100 to 102 of Regulation (EU) No 1308/2013 are met.
- (3) In order to allow for the submission of statements of objection in accordance with Article 98 of Regulation (EU) No 1308/2013, the *Official Journal of the European Union* should therefore publish the single document referred to in Article 94(1)(d) of that Regulation and the publication reference of the product specification made in the course of the preliminary national procedure for examining the application for protection of the name 'Dons',

HAS DECIDED AS FOLLOWS:

*Sole Article*

The single document referred to in Article 94(1)(d) of Regulation (EU) No 1308/2013 and the publication reference of the product specification for the name 'Dons' (PDO) are set out in the Annex to this Decision.

In accordance with Article 98 of Regulation (EU) No 1308/2013, the publication of this decision confers the right to object to the protection of the name specified in the first paragraph of this Article within two months from the date of its publication.

Done at Brussels, 4 December 2015.

*For the Commission*

Phil HOGAN

*Member of the Commission*

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<sup>(1)</sup> OJ L 347, 20.12.2013, p. 671.

## ANNEX

## SINGLE DOCUMENT

**1. Name(s) to be registered**

Dons

**2. Geographical indication type**

PDO — Protected Designation of Origin

**3. Categories of grapevine products**

5. Quality sparkling wine

**4. Description of the wine(s)**

Analytical requirements

Acceptance criteria for Dons

— Malic acidity: &lt; 0,3 g/l

— Carbon dioxide content: &gt; 4 bar excess pressure at 20 °C

— Residual sugar content: &lt; 25 g/l

Organoleptically, Dons quality sparkling wine is characterised by a particularly 'brilliant' acidity. The sparkling wines are light and elegant, dominated by crisp acids resulting from the conversion of its originally high malic acidity into lactic acidity. The nose has a hint of citrus/lime/elder and a characteristic toastiness, with a long after-taste ending on a note of acidity.

In terms of appearance the wine is transparent with hues of white to pink/rosé/light red, and with fine, small and long-lasting bubbles.

## General analytical characteristics

Maximum total alcoholic strength (in % volume)	
Minimum actual alcoholic strength (in % volume)	10,0
Minimum total acidity	4,5 g/l, expressed as tartaric acid
Maximum volatile acidity (in milliequivalents per litre)	16,66
Maximum total sulphur dioxide (in milligrams per litre)	150

**5. Wine making practices***a. Essential oenological practices*

Pressing of the grapes

Specific oenological methods

The pressing method used is gentle pressing of entire grape bunches at a maximum pressure of 1,6 bar.

Harvest, sorting and pressing

Cultivation methods

The grapes must be hand-picked before reaching full physiological maturity to ensure conservation of high acidity, in particular malic acidity.

Grape bunches must be sorted by hand following specific instructions.

Fermentation

Specific oenological practice

The product is made sparkling by a second alcoholic fermentation in a bottle. The cuvee's total alcoholic strength after primary fermentation is at least 9 %.

Before the secondary fermentation the cuvée undergoes malolactic fermentation.

The length of the production process, including ageing, is at least nine months calculated from the start of the fermentation process.

The fermentation is designed to make the cuvée sparkling, and the cuvée must be left to age on the lees inside the bottle for at least 180 days.

After fermentation in the bottle the product is separated from the lees by disgorging.

b. *Maximum yields*

5 000 kg of grapes per hectare

**6. Demarcated area**

Defined area: The town of Dons near Kolding, Denmark; more specifically the tunnel valley of fluvioglacial gravel and sand sediments within the cadastral district of Dons By, Almind. The Dons By cadastral district, comprising an area of 853 ha, has been clearly demarcated on plot maps since 1821.

The vineyards are located at an altitude of 25-60 m and within a short distance of the sea, about 7 km from Kolding Fjord.

**7. Main wine grapes**

Zalas Perle

Cabernet Cortis

Orion

Madeleine Angevine

Solaris

Rondo

Regent

Pinot Noir

**8. Description of the link(s)**

The vineyards are located around the town of Dons, at an altitude of 25-60 m and within a distance of about 7 km from the sea. The area is a tunnel valley formed by subglacial erosion, with lakes formed as dead-ice kettles with hilly slopes and nutrient-poor heathland on sandy sediments.

The analytical parameters differ from those of classical sparkling wines in terms of a higher lactic acidity attributable to the northern growing conditions.

The profile of the wine, in particular its acidity profile, is attributable to the geographical conditions of the area and its specific terroir, characterised by nutrient-poor sediment gravel and deep sand layers far above the groundwater aquifers, resulting in large rootstocks, and to the selection of relatively hardy varieties.

**9. Essential further conditions**

*Method of production*

Legal framework:

EU legislation

Type of further condition:

Additional provisions relating to labelling

Description of the condition:

Reference to the production method: The words 'bottle-fermented' or 'bottle-fermented by the traditional method' must appear on the label, as appropriate and documented in terms of the duration of the fermentation on lees.



*EU logo*

Legal framework:

EU legislation

Type of further condition:

Additional provisions relating to labelling

Description of the condition:

Use of the EU logo: 'Protected Designation of Origin' must be indicated together with the EU symbol/logo.

*Wine grape variety*

Legal framework:

EU legislation

Type of further condition:

Additional provisions relating to labelling

Description of the condition:

Vine variety: The label must indicate the wine grape variety from which the product is made insofar as only one variety is used. If the product is made from a cuvée of several vine varieties covered by the product specification, the producer may choose to mention all the varieties in descending order, or not to mention them on the label.

*Labelling with the vintage year*

Legal framework:

EU legislation

Type of further condition:

Additional provisions relating to labelling

Description of the condition:

Vintage year: The label must indicate the vintage year insofar as the wine is produced from one single harvest. If the wine is produced from a cuvée of several vintages, a vintage year need not be indicated.

*Bottling*

Legal framework:

EU legislation

Type of further condition:

Packaging in the demarcated area

Description of the condition:

Bottling:

Under Section (c) of the product specification, the product must be grown, produced and bottled within the defined area as this has proved a prerequisite for obtaining its specific qualities. Moreover, transport outside the area could affect specific production methods relating to storage, disgorging and ageing, leading to a quality degradation beyond the winemaker's control. There is no production of wine in areas adjacent to that covered by the application.

**Link to the product specification**

[http://www.foedevarestyrelsen.dk/SiteCollectionDocuments/Kemi%20og%20foedevarekvalitet/Varestandarder-handelsnormer-kvalitet/Produktspecifikation%20Dons%20rev%20nov%202014%20\(2\).pdf](http://www.foedevarestyrelsen.dk/SiteCollectionDocuments/Kemi%20og%20foedevarekvalitet/Varestandarder-handelsnormer-kvalitet/Produktspecifikation%20Dons%20rev%20nov%202014%20(2).pdf)

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**COMMISSION DECISION****of 24 November 2015****on the coordination of the actions of the Union and of the Member States through a coordination mechanism — the Refugee Facility for Turkey**

(2015/C 407/07)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular its Articles 210(2) and 214(6),

Whereas:

- (1) The international community faces an unprecedented refugee crisis which requires solidarity, togetherness and efficiency. Challenges are common and responses need to be coordinated.
- (2) Due to its geographical position Turkey is a major first reception and transit country for migrants that will by the end of 2015 be hosting more than 2 million of asylum seekers and refugees, the highest number in the world. Turkey is making commendable efforts to provide massive humanitarian aid and support to an unprecedented and continuously increasing influx of people seeking refuge and has already spent more than EUR 7 billion of its own resources on addressing this crisis.
- (3) Turkey and the EU are determined to confront and surmount the existing challenges in a concerted manner. To this end, a policy document reflecting the understanding between the European Union and the Republic of Turkey to step up their cooperation on support of Syrians under temporary protection and migration management in a coordinated effort to address the crisis (hereinafter: 'the EU-Turkey Joint Action Plan'), agreed ad referendum by Turkey on 15 October 2015, aims to address the refugee crisis and migration management. The European Council Conclusions the same day welcomed 'the joint Action Plan with Turkey as a part of a comprehensive cooperation based on shared responsibility, mutual commitments and delivery' and stated that 'the EU and its Member States stand ready to increase cooperation with Turkey and step up their political and financial engagement substantially within the established framework'.
- (4) As foreseen in the EU-Turkey Joint Action Plan, the EU needs to mobilise substantial new financial resources, in a sustained and responsive manner to assist Turkey in addressing the emerging needs and coping with the challenge represented by the presence of Syrians under temporary protection. The funds should be mobilised in the most flexible and rapid way possible. The identification of the priorities and the areas where they should be allocated should be decided in consultation with the Turkish authorities, except for actions providing immediate humanitarian assistance. Priority will be given to immediate humanitarian, development and other assistance to refugees and host communities, national and local authorities in managing and addressing the consequences of the inflows of refugees should be provided.
- (5) The European Union and Member States budgets have so far mobilised a total of EUR 3,6 billion since the start of the Syrian conflict (around EUR 1,6 billion from the Union budget and EUR 2,0 billion from Member States), making them the main world donor in addressing the consequences of this crisis. This assistance has allowed for urgent delivery of humanitarian assistance and supported the national and local capacities to deliver services for those affected by the crisis (education, health, basic services such as water and waste management services, support to livelihoods). However, the various European Union instruments and Member States' programmes work in parallel through various bilateral channels (United Nations (UN) agencies, Non-Governmental Organisations, national agencies, host country governments).
- (6) Title III of Part Five of the Treaty on the Functioning of the European Union (TFEU) concerns, inter alia, development cooperation with third countries and humanitarian aid. The exercise of the Union's competence in these areas does not result in Member States being prevented from exercising their competence, in accordance with Article 4(4) TFEU.
- (7) Turkey is included in the OECD Development Assistance Committee's list of Official Development Assistance recipient countries as 'upper middle income country'.
- (8) Pursuant to Article 210(1) TFEU the Union and the Member States shall coordinate their respective policies and shall consult each other. An increased coordination is therefore needed. In accordance with Articles 210(2) and 214(6) TFEU, the Commission may take any useful initiative to promote coordination between actions of the Union and those of the Member States, in order to enhance the efficiency and complementarity of Union and national aid measures.

- (9) The overall objective of the Turkey Facility is to coordinate and streamline actions financed from the Union's budget and bilateral contributions from Member States in order to enhance the efficiency and complementarity of support provided to refugees and host communities in Turkey.
- (10) EU and Member States assistance shall enable a comprehensive response commensurate to the challenges. This response should contribute to mitigating the consequences of the refugee influx both for the refugees and for Turkey as a host country. It should bring together funds and actions from the EU and its Member States to address the needs in a coordinated and comprehensive manner.
- (11) EU instruments currently used in response to the Syrian crisis, such as the European Neighbourhood Instrument (ENI) <sup>(1)</sup>, the Development Cooperation Instrument (DCI) <sup>(2)</sup>, the Instrument for Pre-Accession Assistance (IPA II) <sup>(3)</sup>, the Instrument contributing to Stability and Peace (IcSP) <sup>(4)</sup> and funding under Council Regulation (EC) No 1257/96 concerning humanitarian aid <sup>(5)</sup> may contribute to the Turkey Facility within the limits laid down in the multiannual financial framework 2014-20. Any humanitarian assistance under the Turkey Facility shall be administered and provided in full respect for humanitarian principles and the European Consensus on Humanitarian Aid <sup>(6)</sup>.
- (12) Actions and measures to be financed by the Union's budget will be implemented in accordance with its financial rules and regulations — which includes both direct and indirect management and Union trust funds as one of the implementing tools foreseen in line with Article 4 of Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action <sup>(7)</sup>.
- (13) The Commission acknowledges the expressed intentions of the Member States to contribute EUR 2 500 000 000 out of a total amount of EUR 3 000 000 000. The Commission invites Member States to commit formally their financial share in line with the breakdown described in the Annex which uses the GNI-key.
- (14) The Commission notes that there is currently a 'windfall' of 'other revenue' and customs duties of EUR 2 300 000 000 in the 2015 EU budget; this revenue comes from a higher level of collected competition fines, revenues from investments and loans granted, penalties, late payment interests and higher than expected customs duties. This amount of EUR 2 300 000 000 is part of draft amending budget 8/2015 recently adopted by the European Parliament and Council. These windfall revenues from the 2015 budget will be deducted from the contributions of the Member States to the EU Budget.
- (15) Financial contributions from Member States should be included into the Union's budget as external assigned revenue in accordance with Article 21(2)(b) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 <sup>(8)</sup>,

HAS DECIDED AS FOLLOWS:

#### *Article 1*

#### **Establishment of the Refugee Facility for Turkey**

This Decision establishes a coordination mechanism — the Refugee Facility for Turkey ('the Facility') — to assist Turkey in addressing the immediate humanitarian and development needs of the refugees and their host communities, national and local authorities in managing and addressing the consequences of the inflow of refugees.

<sup>(1)</sup> Regulation (EU) No 232/2014 of the European Parliament and of the Council establishing a European Neighbourhood Instrument (OJ L 77, 15.3.2014, p. 27).

<sup>(2)</sup> Regulation (EU) No 233/2014 of the European Parliament and of the Council establishing a financing instrument for development cooperation (OJ L 77, 15.3.2014, p. 44).

<sup>(3)</sup> Regulation (EU) No 231/2014 of the European Parliament and of the Council establishing an Instrument for Pre-accession Assistance (OJ L 77, 15.3.2014, p. 11).

<sup>(4)</sup> Regulation (EU) No 230/2014 of the European Parliament and of the Council establishing an instrument contributing to stability and peace (OJ L 77, 15.3.2014, p. 1).

<sup>(5)</sup> OJ L 163, 2.7.1996, p. 1.

<sup>(6)</sup> Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission 'The European Consensus on Humanitarian Aid' (OJ C 25, 30.1.2008, p. 1).

<sup>(7)</sup> OJ L 77, 15.3.2014, p. 95.

<sup>(8)</sup> OJ L 298, 26.10.2012, p. 1.

*Article 2***Objectives of the Facility**

1. The Facility aims at coordinating and streamlining actions financed from the Union's budget and bilateral contributions from Member States.
2. Its specific objective is to enhance the efficiency and complementarity of support provided to refugees and host communities in Turkey.
3. The Commission shall ensure that all actions undertaken under the Union's external financing instruments as well as individual measures by Member States are complementary to those coordinated under the Facility.

*Article 3***Scope and form of support**

1. The Commission shall coordinate the Union and Member States' actions by setting priorities and by coordinating the allocation of resources.

It will do so in accordance with the mechanism set out in Article 5 of the present Decision.

2. Through the Facility the provision of humanitarian, development and other assistance to refugees and host communities, national and local authorities in managing and addressing the consequences of the inflows of refugees will be coordinated.
3. The assistance may take the form of grants, except if the nature of the project to be financed requires another form of support, in line with Article 4 of Regulation (EU) No 236/2014.
4. The Commission shall ensure that equality between men and women and the integration of the gender perspective are taken into account and promoted during the various stages of the implementation of the Facility.

The Commission shall take appropriate steps to prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation in obtaining access to the projects supported by the Facility.

*Article 4***Coordination of resources under the Facility**

1. The Facility shall coordinate an amount of EUR 3 000 000 000.

*EU budget*

2. EUR 500 000 000 out of the overall amount shall be financed from the EU budget, subject to subsequent individual financing decisions in accordance with Article 84(2) of Regulation (EU, Euratom) No 966/2012 and in accordance with its financial rules and the requirements of the respective basic act.

*Member States contributions*

3. On the basis of their pledged financial contributions, Member States shall provide an amount of EUR 2 500 000 000, in accordance with the breakdown set out in the Annex to the present Decision.

*Article 5***Steering committee**

1. The steering committee of the Facility shall provide strategic guidance on the coordination of the assistance to be delivered.

It shall also permanently monitor the implementation of the Facility.

The steering committee shall be composed of two representatives of the Commission and one representative of each Member State.

Turkey shall be member of the steering committee in an advisory capacity, so as to ensure full coordination of the actions on the ground, except for actions providing immediate humanitarian assistance.

The Commission shall chair the steering committee.

It shall be ensured that Member States and the Commission representatives in the Committee are not in a situation of conflict of interests, as defined by Regulation (EU, Euratom) No 966/2012.

2. The Commission shall retain the responsibility for the final decision on the setting of priorities, on the identification of actions and on the allocation of funds, while seeking to reach a consensus whenever possible.
3. Upon proposal by the Commission, the steering committee shall draw up and adopt its rules of procedure within two months of the date of adoption of this Decision.
4. The secretariat of the facility shall be provided by the Commission.

#### *Article 6*

#### **Implementation modalities**

1. The Commission shall select and coordinate the implementation of the relevant actions, in particular through *ex-ante* screening of proposed actions.
2. Priority will be given to actions providing immediate humanitarian, development and other assistance to refugees and host communities, national and local authorities in managing and addressing the consequences of the inflows of refugees.

The Turkish authorities shall be consulted in respect to all actions other than those providing immediate humanitarian assistance.

The Commission shall have regular meetings with the Member States competent authorities and the appropriate authorities in Turkey.

#### *EU budget*

3. Actions and measures to be financed by the Union's budget will be implemented in accordance with its financial rules and the requirements of the respective basic act.

#### *Member States contributions*

4. Member States' contributions aimed at financing actions and measures selected and coordinated in accordance with the present Decision shall be included into the Union's budget as external assigned revenue in accordance with Article 21(2)(b) of Regulation (EU, Euratom) No 966/2012. These financial contributions shall either be implemented directly by the Commission pursuant to point (a) of Article 58(1) of Regulation (EU, Euratom) No 966/2012 or indirectly by entrusting budget implementation tasks to entities pursuant to Article 58(1)(c) of Regulation (EU, Euratom) No 966/2012, including bodies governed by the private law of a Member State.
5. Actions providing immediate humanitarian assistance which are coordinated under the Facility will be selected and implemented in accordance with the principles laid down in the European Consensus on Humanitarian Aid.

#### *Article 7*

#### **Visibility**

The Commission shall provide information on and promote the actions supported by the Facility so as to ensure its visibility.

#### *Article 8*

#### **Information, monitoring and evaluation**

1. The Commission shall keep the European Parliament and the Council regularly informed about the implementation of the Facility.
2. The Commission shall report annually to the European Parliament and to the Council on the implementation of the Facility.
3. The Commission shall carry out an evaluation of the Facility in full coordination with the Member States by 31 December 2019.

*Article 9***Final provisions**

1. This Facility is established as from 1 January 2016 for financial contributions under the budgetary years 2016 and 2017. By 21 December 2015, Member States shall communicate the timing of their contributions, including their envisaged payment schedule for 2016-17 to the Commission.
2. The Commission shall review the financial capacity, duration and nature of the funding by 31 December 2016.

Done at Strasbourg, 24 November 2015.

*For the Commission*

Johannes HAHN

*Member of the Commission*

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## ANNEX

Member State	1 % of gross national income (EUR)	GNI key	National contribution for the Turkey Refugee Facility (EUR)
Belgium	4 044 908 000	2,88 %	72 055 025,81
Bulgaria	412 388 025	0,29 %	7 346 181,86
Czech Republic	1 429 950 658	1,02 %	25 472 799,77
Denmark	2 691 551 852	1,92 %	47 946 662,36
Germany	29 998 426 500	21,38 %	534 384 810,63
Estonia	195 941 500	0,14 %	3 490 455,12
Ireland	1 605 484 000	1,14 %	28 599 708,83
Greece	1 758 757 000	1,25 %	31 330 077,48
Spain	10 723 591 000	7,64 %	191 027 490,92
France	21 697 735 000	15,46 %	386 518 273,19
Croatia	414 701 663	0,30 %	7 387 396,46
Italy	15 782 177 500	11,25 %	281 139 943,61
Cyprus	162 048 000	0,12 %	2 886 684,40
Latvia	245 937 500	0,18 %	4 381 071,93
Lithuania	363 756 951	0,26 %	6 479 879,52
Luxembourg	302 768 000	0,22 %	5 393 436,90
Hungary	1 028 794 578	0,73 %	18 326 701,09
Malta	79 473 735	0,06 %	1 415 726,15
Netherlands	6 589 010 000	4,70 %	117 375 051,69
Austria	3 201 701 000	2,28 %	57 034 337,54
Poland	3 997 275 344	2,85 %	71 206 509,04
Portugal	1 708 890 500	1,22 %	30 441 767,55
Romania	1 517 506 692	1,08 %	27 032 502,06
Slovenia	366 916 000	0,26 %	6 536 154,06
Slovakia	737 276 500	0,53 %	13 133 667,62
Finland	1 992 220 500	1,42 %	35 488 940,55
Sweden	4 301 727 510	3,07 %	76 629 947,27
United Kingdom	22 990 023 751	16,38 %	409 538 796,60
Total		1	2 500 000 000,00

**Opinion of the Advisory Committee on mergers given at its meeting of 7 May 2015 regarding  
a draft decision relating to Case M.7421 Orange/Jazztel**

**Rapporteur: Ireland**

(2015/C 407/08)

**Concentration**

1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
2. The Advisory Committee agrees with the Commission that the notified transaction has a Union 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.
  - (i) Spanish market for fixed telecommunication services to end customers (retail fixed voice services market).
  - (ii) Spanish market for fixed internet access services to end customers (retail fixed internet access services market).
  - (iii) Spanish market for mobile telecommunication services to end customers (retail mobile telecommunication services market).
  - (iv) Possible Spanish markets for multiple-play services:
    - (a) possible Spanish market for dual-play services to end customers;
    - (b) possible Spanish market for triple-play services to end customers;
    - (c) possible Spanish market for triple- and quadruple-play services to end customers;
    - (d) possible market for multiple-play services to end customers.
  - (v) Spanish wholesale market for call termination services on fixed networks.
  - (vi) Spanish wholesale access and call origination on mobile networks.
  - (vii) Spanish wholesale mobile call termination market.
  - (viii) Spanish wholesale broadband access services.

**Horizontal effects**

5. The Advisory Committee agrees with the Commission's assessment that the proposed operation is likely to give rise to non-coordinated horizontal effects that would significantly impede effective competition due to the removal of two important competitive forces (Orange and Jazztel) on:
  - (i) the Spanish market for fixed internet access services to end customers (retail fixed internet access services market);
  - (ii) the possible Spanish retail market for dual-play services;
  - (iii) the possible Spanish retail market for triple-play services;
  - (iv) the possible Spanish retail market for triple- and quadruple-play services; and
  - (v) the possible Spanish retail market for multiple-play services.
6. The Advisory Committee agrees with the Commission's assessment that the proposed operation is not likely to give rise to non-coordinated horizontal effects that would significantly impede effective competition in:
  - (i) the Spanish retail market for fixed voice services;
  - (ii) the Spanish retail market for mobile telecommunication services; and
  - (iii) the Spanish wholesale market for broadband access services.



**Vertical effects**

7. The Advisory Committee agrees with the Commission's assessment that the proposed operation is not likely to give rise to non-coordinated vertical effects that would significantly impede effective competition in:
  - (i) the wholesale market for fixed call termination services and the retail supply of fixed voice services and retail supply of mobile telecommunication services;
  - (ii) the wholesale market for mobile call termination services and the retail supply of fixed voice services and retail supply of mobile telecommunication services; and
  - (iii) the wholesale market for access and call origination services on mobile networks and the retail supply of mobile telecommunication services.

**Efficiencies**

8. The Advisory Committee agrees with the Commission's assessment not to accept efficiency claims of the Notifying Party relating to:
  - (i) allegedly increased fibre roll-out after the merger;
  - (ii) improved offer of quadruple play bundles; and
  - (iii) improved ability to serve consumers based on fibre network and save xDSL access charges.
9. The Advisory Committee agrees with the Commission's assessment to accept efficiency claims of the Notifying Party relating to the elimination of double marginalisation of mobile services provided by Orange to Jazztel.

**Remedies**

10. The Advisory Committee agrees with the Commission that the final commitments offered by the Notifying Party on 20 April 2015 address the competition concerns identified by the Commission on the Spanish retail market for fixed internet access services, the possible Spanish retail market for dual-play services, the possible Spanish retail market for triple-play services, the possible Spanish retail market for triple- and quadruple-play services, and the possible Spanish retail market for multiple-play services.
11. The Advisory Committee agrees with the Commission's conclusion that, subject to the full compliance with the final commitments, the notified transaction is not likely to significantly impede effective competition in the internal market or in a substantial part of it.
12. The Advisory Committee agrees with the Commission that the notified transaction must therefore be declared compatible with the internal market and the functioning of the EEA Agreement in accordance with Articles 2(2) and 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.

**Other issues raised during the discussion:**

Several Member States expressed their disagreement with the Commission's decision not to refer the case to Spain on the basis of Article 9 of the Merger Regulation.

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**Final Report of the Hearing Officer <sup>(1)</sup>****Orange/Jazztel****(M.7421)**

(2015/C 407/09)

**Introduction**

1. On 16 October 2014, the European Commission (the 'Commission') received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation <sup>(2)</sup> by which Orange SA ('Orange' or the 'Notifying Party') will acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control over Jazztel plc ('Jazztel') by way of a public bid (the 'Proposed Transaction'). Orange and Jazztel are together referred to as the 'Parties'. The Proposed Transaction has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.
2. Based on the first phase investigation, the Commission raised serious doubts as to the compatibility of the Proposed Transaction with the internal market and on 4 December 2014, it adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation. The Notifying Party submitted written comments on 15 December 2014 complemented by economic reports in January and February 2015.
3. On 5 November 2014, the Kingdom of Spain, through its competition authority, submitted a full referral request of jurisdiction over the Proposed Transaction under Article 9(2)(a) of the Merger Regulation. Following the initiation of proceedings and the reminder sent by the Kingdom of Spain on 19 December 2014, after having heard the Notifying Party, on 26 January 2015, the Commission adopted a decision rejecting the referral request pursuant to Article 9(3) of the Merger Regulation.

**Statement of Objections**

4. On 25 February 2015, the Commission adopted a Statement of Objections ('SO') in which it reached the preliminary view that the Proposed Transaction would significantly impede effective competition in a substantial part of the internal market within the meaning of Article 2 of the Merger Regulation.
5. The Notifying Party replied to the SO on 11 March 2015 and Jazztel submitted comments to the SO on 11 March 2015.

**Access to the file**

6. Orange received access to the file via CD-ROMs on 26 February 2015, 3 March 2015, 27 March 2015 and 30 April 2015. Orange's economic advisors received access to confidential data underlying the Commission's economic analysis in the SO via a data room.

**Letter of facts**

7. On 10 March 2015, the Commission sent a letter of facts to Orange informing it about additional evidence identified after the adoption of the SO that supported the preliminary conclusions reached in the SO and that could be relied upon in the final decision. The Notifying Party submitted written comments on 13 March 2015.

**Suspension of the time limit**

8. Following Orange's failure to respond to a request for information dated 7 January 2015 on 14 January 2015 the Commission adopted a decision under Article 11(3) of the Merger Regulation suspending the time limit to review the Proposed Transaction as of the same day. The Notifying Party replied to the request for information on 19 January 2015 and the procedure resumed on 20 January 2015.
9. Following Orange's failure to respond to a request for information dated 11 December 2014 on 18 March 2015 the Commission adopted a decision under Article 11(3) of the Merger Regulation suspending the time limit to review the Proposed Transaction as of 4 March 2015. The Notifying Party replied to the request for information on 27 March 2015 and the procedure resumed on 28 March 2015.

<sup>(1)</sup> 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').

<sup>(2)</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').

**Interested third persons**

10. Upon their reasoned requests, I admitted Másmovil Ibercom SA ('Másmovil'), Vodafone Group plc ('Vodafone') and Xfera Móviles SA ('Yoigo') to be heard as interested third persons. The interested third persons submitted written comments. I also acceded to requests from each of these persons to participate in the formal oral hearing.
11. Following the oral hearing, upon request, I admitted R Cable y Telecomunicaciones Galicia, SA ('R Cable') to be heard as an interested third person in the proceedings. R Cable provided written comments.

**Oral hearing**

12. The formal oral hearing was held on 16 March 2015 and it was attended by the Parties; the interested third persons, Másmovil, Vodafone and Yoigo; the relevant Commission services; representatives from the competition authorities of eleven Member States (Belgium, Finland, France, Ireland, Italy, Poland, Portugal, Romania, Spain, Sweden and United Kingdom); and a representative from the EFTA Surveillance Authority. The Parties requested and were granted a closed session for parts of their respective presentations.

**Commitments**

13. In order to address the competition concerns raised by the Commission in the SO, the Notifying Party submitted on 6 March 2015 commitments to the Commission. The Commission carried out a market test of those commitments on 13 March 2015.
14. The Notifying Party submitted revised commitments on 29 March 2015 and on 6 April 2015. The latter commitments were market tested on 8 April 2015. The Notifying Party submitted a final set of commitments on 20 April 2015.
15. On the basis of the final set of commitments, the Commission concluded that the Proposed Transaction is compatible with the internal market and the EEA Agreement.

**Conclusion**

16. Pursuant to Article 16 of Decision 2011/695/EU, I have examined whether the draft decision deals only with objections in respect of which the Parties have been afforded the opportunity of making known their views and I have come to a positive conclusion.
17. Overall, I conclude that all parties have been able to effectively exercise their procedural rights in this case.

Brussels, 11 May 2015

Joos STRAGIER

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**Summary of Commission Decision****of 19 May 2015****declaring a concentration compatible with the internal market and the functioning of the EEA Agreement****(Case M.7421 — Orange/Jazztel)***(notified under document C(2015) 3370)***(only the English version is authentic)****(Text with EEA relevance)****(2015/C 407/10)**

On 19 May 2015 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<sup>(1)</sup>, and in particular Article 8(2) of that Regulation. A non-confidential version of the full Decision can be found in the authentic language of the case on the website of the Directorate-General for Competition, at the following address: [http://ec.europa.eu/comm/competition/index\\_en.html](http://ec.europa.eu/comm/competition/index_en.html)

**I. THE PARTIES**

- (1) Orange SA ('Orange' or the 'Notifying Party'), via its fully owned subsidiary France Telecom España SAU which operates under its trade name Orange España, offers mobile telecommunication, fixed telephony and internet access services to customers in Spain. Orange is the third largest Mobile Network Operator ('MNO') in Spain. For its provision of fixed internet access and fixed telephony services, Orange mainly relies on regulated direct access, via local loop unbundling ('LLU'), to the copper network of the incumbent telecom operator, Telefónica, using its own xDSL network. It also operates its own Fibre to the Home ('FTTH') network, covering 800 000 building units ('BUs') as of the end of 2014. On the retail market for fixed internet access services, in 2014 Orange is the third largest player both by revenues and by subscribers.
- (2) Jazztel plc ('Jazztel', together with Orange the 'Parties') offers fixed telephony, internet access and mobile telecommunication services in Spain. Jazztel offers fixed internet access and fixed telephony services via its proprietary xDSL network relying on LLU access to Telefónica's copper network and via its own FTTH network, covering 3 million BUs in Spain. Jazztel offers mobile telecommunication services as a mobile virtual network operator ('MVNO') on Orange's network. In the retail markets for fixed internet access services, in 2014 Jazztel is the fourth largest player both by revenues and by subscribers.

**II. THE OPERATION**

- (3) On 16 October 2014, the European Commission received a formal notification pursuant to Article 4 of the Merger Regulation by which Orange intends to acquire sole control over Jazztel by way of a public bid (the 'Proposed Transaction').
- (4) The merger therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

**III. THE PROCEDURE**

- (5) On 4 December 2014, the Commission found that the Proposed 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.
- (6) On 5 November 2014, the Commission received a request from the Kingdom of Spain to refer the whole of the case to the Spanish competition authority Comisión Nacional de los Mercados y la Competencia ('CNMC') pursuant to Article 9(2)(a) of the Merger Regulation. After the initiation of the proceeding by means of the Article 6(1)(c) decision, the Kingdom of Spain sent a reminder of its referral request on 19 December 2014. On 26 January 2015, the Commission adopted a decision pursuant to Article 9(3) of the Merger Regulation, rejecting the referral request.

<sup>(1)</sup> OJ L 24, 29.1.2004, p. 1.

- (7) On 6 March 2015, Orange submitted commitments to the Commission. Following the results of the market test and the feedback of the Commission on those commitments, Orange submitted new sets of commitments on 29 March 2015 and 6 April 2015 respectively. On 20 April 2015, Orange submitted a final set of commitments that render the transaction compatible with the internal market.

#### IV. EXPLANATORY MEMORANDUM

##### A. THE RELEVANT PRODUCT MARKETS

- (8) In compliance with previous Commission decisions concerning the markets for fixed and mobile telecommunications services, the relevant product markets in Spain for the purpose of this decision are delineated as follows:
- (9) At retail level: (i) provision of fixed voice services; (ii) provision of fixed internet access services; (iii) provision of mobile telecommunication services; (iv) possible market for the provision of multiple play services.
- (10) At wholesale level: (v) call termination on fixed networks; (vi) call termination on mobile networks; (vii) domestic call transit services on fixed networks; (viii) broadband access services; (ix) internet connectivity; (x) global telecommunication services ('GTS'); (xi) international carrier services; (xii) access and call origination on mobile networks; (xiii) international roaming on mobile networks; and (xiv) end-to-end calls.
- (11) Further details on market definition as regards the market for the retail provision of fixed internet access services and the possible market for the retail provision of multiple play services, which are horizontally affected and of particular importance in this case, are set out below.

##### *Market for the retail provision of fixed internet access services*

- (12) In line with previous Commission decisions, the Commission considers in this case that there are separate markets, on the one hand, for residential and small business customers (that are part of the market for the retail provision of fixed internet access services) and, on the other hand, for large business customers (that are part of the separate retail market for business connectivity). The Commission considered in this case possible segmentations of the market for fixed internet access services based on speed (above and below 30 Mb/s), or distribution technology (copper, hybrid fibre coaxial 'HFC' cable and FTTH). Ultimately, the Commission leaves the exact market definition open in this regard. The Commission concludes that fixed internet access services to residential and small business customers, regardless of whether speeds are below or above 30 Mb/s and irrespective of the distribution technology used for the delivery of these services to the end user, belong to the same relevant market for the retail provision of fixed internet access services in Spain.
- (13) In line with previous Commission decisions and with the Notifying Party's view, the geographic scope of the above market is considered to be national, that is to say, it corresponds to the territory of the Kingdom of Spain.

##### *Possible market(s) for the retail provision of multiple play services*

- (14) Multiple play services comprise a bundle of two or more of the following services to end-consumers: fixed telephony services, fixed internet access services, mobile telecommunication services and TV services. Such packaged services may consist of so called dual-play, triple-play or even quadruple-play packages comprising some or all of the above services. In previous decisions<sup>(1)</sup>, the Commission ultimately left open the question as to whether there exists a market for multiple play services that is separate from the markets for each of the components of the bundles.
- (15) Bundled services, which allow end-consumers to obtain better prices and simplify customers' purchasing decisions, play a significant role in the residential segment in Spain. The Commission concludes that the question can be left open as to whether (i) multiple play services constitute a separate product market (including all possible dual-, triple- and quadruple-play combinations) or (ii) there are several separate multiple play product markets (including selected combinations of bundled components, e.g. dual-play only, triple-play only, triple- and quadruple-play combined, quadruple-play only), distinct from the markets for each of the underlying telecommunications services.

<sup>(1)</sup> Commission decision of 16 June 2011 in Case M.5900 — LGI/KBW, paragraphs 183-186; Commission decision of 25 January 2010 in Case M.5734 — Liberty Global Europe/Unitymedia, paragraphs 43-48; Commission decision of 3 July 2012 in Case M.6584 — Vodafone/Cable&Wireless, paragraphs 102-104; Commission decision of 20 September 2013 in Case M.6990 — Vodafone/Kabel Deutschland, paragraph 261; Commission decision of 2 July 2014 in Case M.7231 — Vodafone/ONO, paragraph 49.

- (16) Previously <sup>(1)</sup>, the Commission considered that a possible market for triple-play services comprising fixed telephony services, fixed internet access services and Pay-TV services would be national in scope. In this case, the Commission concludes that the exact geographic delineation, whether national or regional, of the possible market(s) for the retail provision of multiple play services can be left open.

#### B. COMPETITIVE ASSESSMENT

- (17) Following its in-depth investigation, the Commission concludes that the Proposed Transaction does not raise competition concerns with respect to the following markets in Spain: (i) the retail market for fixed telephony services; (ii) the retail market for mobile telecommunications services; (iii) the wholesale market for the provision of broadband access services; and (iv) the wholesale market for fixed call termination services, (v) the wholesale market for mobile call termination services, (vi) the wholesale market for the provision of domestic call transit services on fixed networks; (vii) the wholesale market for internet connectivity; (viii) the GTS market; (ix) the wholesale market for international carrier services; (x) the wholesale market for access and call origination services on mobile networks; and the (xi) the wholesale market for end-to-end calls. The Commission also concludes that the Proposed Transaction does not raise competition concerns on the wholesale markets for international roaming services in France, Poland and Romania.
- (18) However, the Commission concludes that while the Proposed Transaction would not lead to the creation or strengthening of a (single) dominant position of the merged entity, it would nevertheless result in a significant impediment to effective competition on the retail market for provision of fixed internet access services, as well as on the possible market for multiple play services, the possible market for dual-play services, the possible market for triple-play services, and the possible market for combined triple- and quadruple-play services, in Spain.

##### (a) Market for fixed internet access services

- (19) Currently there are four providers of fixed telecommunications services at a national level in Spain (Telefónica, Vodafone, Orange and Jazztel). These four providers account for around 91 % of the market in terms of revenue and almost 94 % in terms of subscribers. The remaining part of the market is served (i) by the three regional cable operators operating in the north of Spain <sup>(2)</sup> and (ii) largely service-based minor competitors (mainly relying on bitstream or resale of fixed telecommunication products), such as Másmovíl or Pepephone.
- (20) The evolution of the market shares demonstrates that Orange and Jazztel have been the most dynamic fixed internet access operators in the last years. In contrast, Telefónica has experienced a strong decline in both subscribers and revenue share while the other national operators, Vodafone and ONO, had a stable performance.
- (21) The Commission considers that the Proposed Transaction will reduce the number of nationwide players in the overall market for fixed internet access services by merging the two most successful (in terms of market share growth) operators in the last years. The major impact would be in the short term in the segment with speeds up to 30 Mb/s, while no strong conclusion can be drawn in the Very High Broadband ('VHBB') segment of fixed internet access services with speeds above 30 Mb/s due to the uncertainty related to the take-up and roll-out of Next Generation Access ('NGA') <sup>(3)</sup> network in the next years.
- (22) The Commission concludes that both Orange and — particularly — Jazztel have played an important role in exerting competitive constraints upon each other and on the remaining competitors in the recent years. The Commission acknowledges Telefónica's role in the market as an important player. However, contrary to the Notifying Party's claims that Telefónica is the most price aggressive operator, the Commission finds that Telefónica is more focused on customer retention and higher value offers.
- (23) Furthermore the Commission considers, based mainly on the analysis of Orange's internal documents, that the merged entity will have lower incentives to compete in comparison to the incentives that Orange and Jazztel would have on a standalone basis. In addition, the Commission considers that the Proposed Transaction will lead to a loss of competitive pressure, because of the disappearance of the low-cost, convergent offers of Jazztel, which exerted a constraint on the offers of all mainstream operators.

<sup>(1)</sup> Commission decision of 16 June 2011 in Case M.5900 — LGI/KBW, paragraphs 183-186.

<sup>(2)</sup> The three regional cable operators (Euskaltel, R Cable and Telecable) compete in the Northern regions of Spain only, namely the Basque country, Galicia, and Asturias, respectively.

<sup>(3)</sup> NGA networks are wired access networks which consist wholly or in part of optical elements and which are capable of delivering broadband access services with enhanced characteristics (such as higher throughput) as compared to those provided over already existing copper networks.

- (24) Both Parties exert an important competitive pressure on all other competitors, including Telefónica and Vodafone. The change of the merged entity's incentives and the likely price increase post-merger would significantly reduce this pressure on the customer bases of the competing operators. Competitors would therefore find it easier to retain their existing customers or even to attract new customers from the merged entity. The increase in the demand will incentivise competing operators to raise their prices in turn.
- (25) The Commission concludes that it is unlikely that competitors of the merged entity — namely Telefónica and Vodafone — will counter potential price increases of the merged entity after the Proposed Transaction, and that the Proposed Transaction will significantly impede effective competition on the market for the retail provision of fixed internet access services in Spain.

**(b) Possible market for multiple play services**

- (26) The Parties' activities overlap in the possible market for all multiple play services, in the possible separate markets for dual-play services <sup>(1)</sup> and for triple-play services <sup>(2)</sup>, as well as in the possible market combining triple- and quadruple-play <sup>(3)</sup> services. Because Jazztel is not active in Pay-TV services, there is no overlap in the provision of quadruple-play services.

*Market for multiple play services*

- (27) The position of the Parties in an overall market for multiple play services would be almost identical to their position in the market for fixed internet access services as all multiple play offers in Spain include fixed internet access services and the share of fixed internet access services provided as a standalone service outside of a bundle is negligible <sup>(4)</sup>. Therefore, an assessment of the impact of the Proposed Transaction on the possible market for multiple play services would conclude to a significant impediment to effective competition, as for the retail market for fixed internet access services.

*Separate market for dual-play services*

- (28) If a separate market for dual-play is analysed, the Commission considers that the competition concerns raised with regard to this market are less strong than for the retail market for fixed internet access services, but would still amount to a significant impediment to effective competition. Indeed, in such a market for dual-play services, the Parties are overall less aggressive but still important competitive forces. The quantitative analysis predicts lower but still significant price increases. In particular, the Commission concludes that the Proposed Transaction will remove two important competitive forces and reduce the merged entity's incentives to compete. Such loss of competition would not be offset by existing competitors or new entrants.
- (29) In light of the above, the Commission concludes that the Proposed Transaction will significantly impede effective competition also in a possible separate market for dual-play services.

*Separate market for triple-play services and market combining triple- and quadruple-play services*

- (30) The Commission also assessed the impact of the Proposed Transaction on a possible market combining triple- and quadruple-play services, given the commonality of the underlying infrastructure of the two markets and the current market shift from triple-play to quadruple-play services. The Commission considers that the Proposed Transaction would significantly impede effective competition in this market and *a fortiori* in the possible separate market for triple-play services, given the Parties' higher market shares in triple-play services.

*Conclusion on multiple play services*

- (31) The Commission concludes that the Proposed Transaction will significantly impede effective competition on the possible markets for multiple play services, on the possible market for dual-play services, on the possible market for triple-play services, and on the possible market comprising triple- and quadruple-play services in Spain.

<sup>(1)</sup> Dual-play services comprise fixed internet access services and fixed telephony services.

<sup>(2)</sup> Triple-play services comprise the same services as dual-play offers, in addition to mobile telecommunications services.

<sup>(3)</sup> Quadruple-play services comprise the same services as triple-play offers, in addition to Pay-TV services.

<sup>(4)</sup> Only about 1 % of all fixed internet access services are not provided as part of a bundle with at least fixed telephony services.

(c) **Quantitative analysis of horizontal non-coordinated effects**

- (32) The Commission has also carried out an assessment of the extent to which the elimination of competition between the Parties will generate an incentive to increase price for the merged entity post-transaction. The Commission's analysis focusses on two product types, namely (i) the dual-play product type consisting in fixed telephony and fixed internet access, and (ii) an aggregation of triple- and quadruple-play services consisting in dual-play plus mobile and possibly TV services. The Commission considers that these product types are good proxies for the computation of the quantitative analysis of price increases in the retail market for fixed internet access services, since almost the totality of fixed internet access services are sold as part of a bundle. All of these product types offer fixed internet access as part of the bundle<sup>(1)</sup>. The quantitative analysis conducted indicates that the Parties impose a significant competitive constraint on each other, in particular as regards triple- and quadruple-play services.
- (33) Overall, the quantitative assessment of the likely effects of the elimination of horizontal competition as a result of the merger indicates that the merger is likely to lead to significant price increases in the two baseline scenarios considered for the purpose of the analysis.

(d) **Limited likelihood of sufficient entry into retail markets involving fixed internet access services**

- (34) The Commission considers that the barriers to enter the retail markets involving fixed internet access services are high. This applies both to the VHBB segment, which is not regulated in Spain, as well as to the segment for speeds below 30 Mb/s that is subject to direct and indirect regulation.

(e) **Limited likelihood of sufficient entry into multiple play markets involving a mobile component**

- (35) As regards entry into the multiple play markets involving a mobile component, the Commission notes that, in order to offer mobile and fixed telecommunications services in a bundle, telecommunications operators need to have access to both the fixed and mobile components of the bundle. Moreover, such access should be granted at prices that would allow the operator to replicate the retail prices in the market and to charge a positive margin. Therefore, reasonable wholesale prices for mobile telecommunications services — including 4G technology — are key. Given the current legal uncertainty involving the correct interpretation of the current regulation of wholesale access and call origination services on mobile networks in Spain, in addition to the findings already exposed above as regards entry into retail markets involving fixed internet access services, the Commission considers that barriers to entry into multiple play markets involving a mobile component, such as triple-play and quadruple-play products, are high.

(f) **Impact of the Proposed Transaction on the deployment of NGA networks**

- (36) Both Orange and Jazztel are currently deploying their own FTTH networks. Orange has a less extensive footprint, with approximately 0,8 million BUs covered, compared to Jazztel's FTTH network of 3 million BUs.
- (37) The Commission considers that the combined FTTH roll-out of Orange and Jazztel in a standalone scenario would be greater or equal to the fibre roll-out of the merged entity. The Commission has therefore come to the conclusion that the Proposed Transaction is unlikely to lead to any significant increase in FTTH coverage by the merged entity, as compared to the standalone scenario. As regards the potential loss of competition in the areas where the NGA networks of the Parties would have overlapped in the future, the Commission considers that such a finding of a loss of future competition cannot be established with the required degree of certainty.

(g) **Efficiencies**

- (38) The Commission concludes that the efficiencies claimed by the Notifying Party related to (i) the claimed increase in the fibre footprint post-merger, (ii) its better position to offer quadruple-play products as a consequence of its increased customer base post-transaction, and (iii) a decrease in the marginal cost of the services offered to its DSL customers by migrating these customers to fibre, thus avoiding the access charges on copper infrastructure, are not verifiable or merger-specific and therefore cannot be acknowledged. However, the Commission considers that the efficiencies related to the elimination of double marginalisation of mobile services provided by Orange to Jazztel have been demonstrated to the standards required by the Horizontal Merger Guidelines and can be accepted. These efficiencies do not offset entirely the anti-competitive effects of the merger and that the net anti-competitive effects remain significant.

<sup>(1)</sup> The analysis is based on the entire bundles (and not just on the fixed internet access component) since customers make a single choice of subscribing to the entire bundle. Moreover, the incentive to raise prices depends on the characteristics of the whole bundle and not just the fixed internet access component.



## V. COMMITMENTS

### 1. Description of the commitments

- (39) In order to address the aforementioned competition concerns, Notifying Party submitted a final set of commitments on 20 April 2015 ('the Commitments') comprising two main components — the divestment of an FTTH network and a wholesale bitstream access to Jazztel's ADSL network (the 'Wholesale ADSL Bitstream Access') — as well as an optional wholesale access to the Notifying Party's mobile network.

#### *Divested FTTH Network*

- (40) The Notifying Party commits to divest an FTTH network that covers around 720 000 BUs in the five cities of Barcelona, Madrid, Malaga, Seville and Valencia. The divested FTTH network is independent from the Notifying Party and constitutes a coherent network at the level of the cables (which bundle many fibre lines). As the divested FTTH network covers BUs located on parts of Jazztel's non-overlapping fibre network, the Notifying Party will be reserved an Indefeasible Right of Use ('IRU') on 40 % of the capacity of the divested FTTH cables, measured at the level of each local exchange. The IRU will be granted for 35 years against a one-time fee and a recurrent fee covering maintenance costs payable by the Notifying Party.

#### *Wholesale ADSL Bitstream Access*

- (41) The Notifying Party commits to grant the purchaser of the divested FTTH network wholesale bitstream access to Jazztel's ADSL network. Access is provided as a national bitstream service with interconnection in one single point of presence, complemented by a back-up interconnection point. The wholesale access will use as an input the regulated direct access to Telefónica's copper network and provides access to more than one thousand Telefónica's local exchanges, reaching approximately 78 % of the Spanish territory.
- (42) The Notifying Party will provide the service initially for 4 years, renewable for a maximum additional period of 4 years.
- (43) During the initial 4-year period, the purchaser will pay a monthly access fee per line, in addition to a fixed fee to be agreed upfront between the Notifying Party and the purchaser. This fixed fee shall not be related to the number of lines eventually activated or used by the purchaser but can be linked to market parameters that are outside of the control of the Notifying Party or the purchaser.
- (44) During the additional period of up to 4 years, the purchaser will pay only a monthly access fee. Such monthly access fee cannot exceed a certain cap per month per line.
- (45) The Wholesale ADSL Bitstream Access will also allow the purchaser to provide fixed telephony services using voice over internet Protocol (VoIP) technology. Indeed, the Notifying Party commits to provide VoIP prioritisation technology on Jazztel's network and to ensure quality of service.

#### *Optional access to wholesale mobile services*

- (46) The Commitments also provide that, if the purchaser does not already benefit from access to a mobile telecommunications network including 2G, 3G and 4G services, the Notifying Party will provide the purchaser with such access to wholesale mobile services on competitive terms and, in any case, at terms as favourable as those that Orange has granted to Jazztel in its existing MVNO contract. This optional wholesale access to the Notifying Party's mobile network must be of a duration at least equal to the term of the Wholesale ADSL Bitstream Access.

### 2. Assessment of the Commitments

- (47) The decision concludes that the commitments fully address the competition concerns.

#### *Divested FTTH Network*

- (48) As regards the divested FTTH network, the Commission notes that its size exceeds the current overlap of the Parties' FTTH networks. Moreover, the divested BUs are located in 13 different local exchanges in five out of the six largest Spanish cities. The size and location of the divested FTTH network ensure that it is a standalone business that can be operated independently from Orange. Therefore, the Commission considers that the scope of the divested FTTH network is sufficient and reflects the geographic footprint of the overlap between the Parties' current fibre networks.

*Wholesale ADSL Bitstream Access*

- (49) As regards the Wholesale ADSL Bitstream Access, the Commission considers that the Commitments ensure that this undertaking has quasi-structural effects and result in similar incentives for the purchaser to compete as Jazztel has today. For the purchaser to be able to compete as aggressively as Jazztel or Orange currently do, its variable (recurrent) cost should be aligned with Jazztel or Orange's incremental cost for providing the service. The Commission has scrutinised in detail the cost that Orange and Jazztel currently incur in providing LLU-based services and considers that the monthly fee likely does not exceed their incremental cost. Therefore, the Commission considers that the purchaser will have incentives to compete aggressively similar to those Jazztel and Orange have today.
- (50) The Commission notes that the Commitments do not establish any limit for the number of subscribers that the purchaser can acquire and that Orange has the obligation to serve. The Commitments explicitly state that the fixed fee for the initial period shall not be related to the number of lines eventually used by the purchaser. Therefore, the Wholesale ADSL Bitstream Access has quasi-structural effects.
- (51) During the additional period of up to 4 years, the purchaser would pay only a monthly access fee, but no fixed fee. Given long term uncertainties regarding the competitiveness of ADSL technology, a purchaser would possibly not commit to significant upfront payments over a period of 8 years. At the same time, the purchaser's incentives to compete as aggressively as possible during the initial 4-year period are preserved, as a higher number of subscribers will lower the payable price during the extended period.

*Optional access to wholesale mobile services*

- (52) As regards the optional wholesale access to the Notifying Party's mobile network, the Commission considers that the purchaser will be able to offer multiple play bundles comprising a mobile component. The Commitments foresee that Orange will provide wholesale access and call origination services including 4G services to the purchaser, if the latter does not already have access to them. The terms need to be competitive and 'as favourable as those granted to Jazztel for a duration at least equal to the term of the Wholesale ADSL Bitstream Agreement'. The Commission considers that this clause is sufficiently clear. Furthermore, the Commission will assess the terms agreed between Orange and the purchaser against the existing MVNO contract between Orange and Jazztel.

**VI. CONCLUSION**

- (53) For the reasons mentioned above, the decision concludes that the concentration as modified by the commitments submitted on 20 April 2015 will not significantly impede effective competition in the Internal Market or in a substantial part of it.
- (54) Consequently, the concentration should be declared compatible with the Internal Market and the functioning of the EEA Agreement, in accordance with Article 2(2) and Article 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.
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## NOTICES FROM MEMBER STATES

**Information Communicated by Member States regarding closure of fisheries**

(2015/C 407/11)

In accordance with Article 35(3) of Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy <sup>(1)</sup>, a decision has been taken to close the fishery as set down in the following table:

Date and time of closure	1.11.2015
Duration	1.11 – 31.12.2015
Member State	Belgium
Stock or Group of stocks	COD/07D.
Species	Cod ( <i>Gadus Morhua</i> )
Zone	VIIId
Type(s) of fishing vessels	—
Reference number	63/TQ104

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 1.

**Information communicated by Member States regarding closure of fisheries**

(2015/C 407/12)

In accordance with Article 35(3) of Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy <sup>(1)</sup>, a decision has been taken to close the fishery as set down in the following table:

Date and time of closure	6.11.2015
Duration	6.11–31.12.2015
Member State	France
Stock or Group of stocks	PLE/7HJK.
Species	Plaice ( <i>Pleuronectes platessa</i> )
Zone	VIIh, VIIj and VIIk
Type(s) of fishing vessels	—
Reference number	65/TQ104

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 1.

**Information communicated by Member States regarding closure of fisheries**

(2015/C 407/13)

In accordance with Article 35(3) of Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy <sup>(1)</sup>, a decision has been taken to close the fishery as set down in the following table:

Date and time of closure	6.11.2015
Duration	6.11–31.12.2015
Member State	France
Stock or Group of stocks	LIN/05EL
Species	Ling ( <i>Molva molva</i> )
Zone	Union and international waters of V
Type(s) of fishing vessels	—
Reference number	64/TQ104

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 1.

## V

(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION  
POLICY

## EUROPEAN COMMISSION

**Prior notification of a concentration****(Case M.7875 — ICG/Capiton/Prefere Resins Holding)****Candidate case for simplified procedure****(Text with EEA relevance)**

(2015/C 407/14)

1. On 27 November 2015, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004<sup>(1)</sup> by which a fund managed by Intermediate Capital Group, plc ('ICG', UK) and a fund managed by Capiton AG ('Capiton', Germany), acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of Prefere Resins Holding GmbH ('Prefere Resins', Germany), hitherto under sole control of Capiton.
2. The business activities of the undertakings concerned are:
  - for ICG: UK-based investment firm, active in the structuring and provision of mezzanine finance, leveraged credit and minority equity, in Europe, Asia Pacific and the US,
  - for Capiton: investment firm headquartered in Berlin, focusing on investments in large SMEs in Germany, Austria and Switzerland by means of management buy-outs and expansion financing,
  - for Prefere Resins: manufacturer of phenolic and amino resins for industrial, construction and insulation applications.
3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004<sup>(2)</sup> it should be noted that this case is a candidate for treatment under the procedure set out in this Notice.
4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301), by email to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number M.7875 — ICG/Capiton/Prefere Resins Holding, to the following address:

European Commission  
Directorate-General for Competition  
Merger Registry  
1049 Bruxelles/Brussel  
BELGIQUE/BELGIË

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

<sup>(2)</sup> OJ C 366, 14.12.2013, p. 5.





