Mergers: Commission confirms approval of acquisition of Dutch cable TV operator Ziggo by Liberty Global, subject to conditions

Before the transaction, Ziggo and Liberty Global were separate cable TV operators providing mainly fixed telecommunications services, with non-overlapping activities in the Netherlands. In particular, they operated in different parts of the Netherlands and did not compete for the same customers. The merger between both companies was notified to the Commission in March 2014 and approved in October 2014, subject to conditions. This approval was then annulled by the General Court in October 2017 for procedural reasons.

Following a new investigation, the European Commission has confirmed its approval of the acquisition of Dutch cable TV operator Ziggo by Liberty Global, subject to conditions.

The Commission's competition concerns

In 2014 the Commission had concerns that the merger, as initially notified, would have hindered competition by removing two close competitors and important competitive forces in the Dutch market for the wholesale of premium Pay TV film channels. In order to maintain effective competition for the wholesale of premium Pay TV film channels in the Netherlands, Liberty Global committed to divest its Film1 channel to a third party purchaser. The channel was divested to Sony.

In its new assessment, the Commission confirmed its concerns that the merger, as initially notified, would have increased Liberty Global's negotiating power *vis-à-vis* TV channel broadcasters, hindering innovation in the delivery of audio visual content over the internet (the so-called *over-the-top* or "OTT" services). The renewed approval is therefore again conditional upon the implementation of a commitments package.

The proposed remedies

To address the Commission's competition concerns, Liberty Global offered commitments similar to those offered in 2014, in particular:

- to terminate clauses in channel carriage agreements that limit broadcasters' ability to offer their channels and content over the internet, and
- not to include such clauses in future channel carriage agreements for eight years from today's decision;
- to maintain adequate interconnection capacity through at least three uncongested routes into its Internet network in the Netherlands, helping

to ensure sufficient capacity for competing OTT services, also for eight years from today's decision;
- not to re-acquire the Film1 channel, to ensure that this divestment is a structural change to the market.

The Commission concluded that the proposed transaction, as modified by the commitments, would no longer raise competition concerns. The decision is conditional upon full compliance with the commitments.

The re-assessment of the transaction

Today's Commission decision follows a re-assessment of the merger, which was initially notified on 14 March 2014 and approved by the Commission on 10 October 2014, subject to certain conditions.

On 26 October 2017, the General Court annulled the Commission's decision, on the ground that the Commission did not fully state the reasons of its conclusion that the merger would not lead to vertical anti-competitive effects on the potential market for premium pay TV sports channels. The reassessment confirmed that there are no concerns on this possible market and this is fully motivated in today's decision.

In order to comply with the judgment and in line with Article 10(5) of the EU Merger Regulation, the Commission has undertaken a re-assessment of the entire transaction, including all affected markets, under current market conditions.

Companies and products

Liberty Global, based in the UK, owns and operates cable networks and some mobile networks worldwide. It offers television, broadband internet, mobile and telephony services as well as mobile services. Today, Liberty Global is active in the Netherlands via its joint venture with Vodafone – VodafoneZiggo.

Ziggo, based in the Netherlands, owned and operated a cable network at the time of the approval of the decision in 2014. The network covers more than half of the Netherlands, including the third and fourth biggest cities, Den Haag and Utrecht. Ziggo provided digital and analogue cable video, broadband internet, mobile telephony and digital telephony (VoIP) services. In 2016, Ziggo became part of the newly formed joint venture VodafoneZiggo.

Merger control rules and procedures

In line with EU merger rules, the Commission received a supplementary notification of the merger on 4 April 2018.

The Commission has the duty to assess mergers and acquisitions involving companies with a turnover above certain thresholds (see Article 1 of the Merger Regulation) and to prevent concentrations that would significantly impede effective competition in the EEA or any substantial part of it.

The vast majority of notified mergers do not pose competition problems and are cleared after a routine review. From the moment a transaction is notified, the Commission generally has a total of 25 working days to decide whether to grant approval (Phase I) or to start an in-depth investigation (Phase II).

More information will be available on the Commission's competition website, in the public case register under the case number M.7000.