



Mergers: Commission clears acquisition of Jazztel by Orange, subject to conditions

Brussels, 19 May 2015

The European Commission has approved under the EU Merger Regulation the proposed acquisition of Jazztel plc, a telecommunications company registered in the UK but mainly active in Spain, by rival Orange SA of France. The approval is conditional upon the full implementation by Orange of a number of commitments that will ensure effective competition on the fixed internet access services markets after the takeover.

The Commission had concerns that the takeover, as initially notified, could have led to higher prices of fixed internet access services for Spanish consumers. To address these concerns, Orange submitted commitments to ensure that a new competitor can enter the retail markets involving fixed internet access services. The commitments remove the Commission's initial concerns. For more information see also the [Factsheet](#).

The Commissioner in charge of competition policy Margrethe Vestager commented: "*A very important thing before agreeing to Orange's takeover of Jazztel was to make sure that consumers in Spain would not suffer from higher prices for fixed internet access services. With the remedies in this merger a new player may enter the market and compete as strongly as Orange and Jazztel do today.*"

The takeover would bring together the third and the fourth providers of fixed telecommunication services in Spain. The Commission's investigation revealed that both Orange and Jazztel are currently important competitors in the retail markets involving fixed internet access services in Spain. In particular, they have attracted a higher share of new customers than their market shares would suggest and are the only two nationwide operators that have significantly increased their market shares in recent years. In the absence of effective remedies, a merger of these two dynamic players would have significantly reduced competition.

The Commission's findings showed, in particular, that:

- the merged entity would have had fewer incentives to compete aggressively against the remaining operators;
- the remaining major competitors - Telefónica and Vodafone – would have been unlikely to replace the competitive pressure formerly exercised by Orange and Jazztel because they would also have stood to benefit from the reduced price pressure;
- new players would have faced significant difficulties to enter the market due to the high investments needed to enter the retail markets involving fixed internet access services;
- end consumers would have no countervailing negotiation power to influence contractual conditions offered by strong providers.

The main impact of this reduced level of competition would have been in the short- to medium-term in the market segment with speeds up to 30 megabits per second, which represented around 4 out of 5 internet connections in Spain in 2014.

The Commission also considered the fact that Orange and Jazztel's offers for the provision of mobile telecommunication services are complementary and could lead to efficiencies. Although these efficiencies reduce the anti-competitive effects of the transaction, the Commission concluded that the loss of competition caused by the merger as initially notified would still remain significant.

The commitments

To address the Commission's concerns, Orange submitted commitments based on two different technologies:

- on optical fibre: Orange has committed to divest an independent **Fibre-To-The-Home (FTTH) network** covering 700 000 - 800 000 building units, which is similar to the size of Orange's current FTTH network in Spain. This high speed network covers 13 urban districts located in five of

the largest Spanish cities: Madrid, Barcelona, Valencia, Sevilla and Málaga.

- on copper: Orange has committed to grant the purchaser of the FTTH network **wholesale access to Jazztel's national ADSL network** for up to 8 years. This commitment is for an unlimited number of subscribers and will allow the purchaser to compete immediately on 78% of Spanish territory. The cost for this wholesale access to Jazztel's ADSL network will allow the new player to compete as aggressively as Orange and Jazztel do today.

The vast majority of fixed internet contracts in Spain are bundled with a mobile component so that a new entrant will need access to a mobile network to compete effectively. Orange has also committed to grant to the purchaser of the FTTH network wholesale **access to its mobile network including 4G services**, unless the purchaser already has access to a mobile network. This will be at conditions that are at least as favourable as those Orange currently grants to Jazztel.

The remedies taken as a whole ensure that a fourth nationwide operator can enter the Spanish market and be able to compete effectively in markets involving fixed internet access services. They address in full the competition concerns raised by the merger on the markets involving fixed internet access services in Spain.

Background

The transaction was notified to the Commission on 16 October 2014. The Commission opened an in-depth investigation [in December 2014](#). A statement of objections, setting out the Commission's competition concerns, was sent to Orange in February 2015. Throughout the investigation the Commission has cooperated closely with the Spanish competition authority and telecoms regulator CNMC.

Companies

Orange is a provider of telecommunication services in more than 30 countries. Orange is present in the Spanish telecommunication markets through its wholly-owned Spanish subsidiary operating under the name of Orange España S.A.U.

Jazztel, through its subsidiary Jazz Telecom, S.A.U., provides telecommunication services in Spain.

To provide fixed internet access services, both Orange and Jazztel mainly rely on regulated direct access to the unbundled local loops of the copper network of the incumbent telecom operator Telefónica. In addition, they are deploying their own FTTH networks in parts of Spain.

Orange is also a mobile network operator in Spain. Jazztel provides mobile telecommunications services as a virtual mobile network operator relying on Orange's network.

Only two other major fixed telecommunications network operators are active nationwide, namely Telefónica and Vodafone. In addition, regional cable operators including Euskaltel, R Cable and Telecable as well as smaller providers are currently active in the market.

Merger rules and procedures

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 European Economic Area or any substantial part of it.

There are currently six other on-going phase II merger investigations.

- the proposed joint venture between the three collective rights management organisations PRSfM, STIM and GEMA in the [online licensing of musical works](#), with a decision deadline of 26 June 2015;
- the proposed acquisition of US-based rotating equipment manufacturer [Dresser-Rand by Siemens](#) of Germany, with a decision deadline of 24 July 2015;
- the acquisition of the [industrial chocolate business of Archer Daniels Midland \("ADM"\) by Cargill](#) with a decision deadline of 6 August 2015;
- [General Electric's proposed acquisition of Alstom's energy business](#), with a decision deadline of 21 August 2015;
- the proposed joint venture between [the Danish operations of TeliaSonera AB and Telenor ASA](#) with a decision deadline of 2 September 2015 and;

- the proposed acquisition of the Greek gas transmission system operator DESFA by the State Oil Company of Azerbaijan Republic (SOCAR);

More information on this case is available on the Commission's [competition](#) website, in the public [case register](#) under the case number [M.7421](#).

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