

European Commission clears acquisition of Jazztel by Orange

Subject to conditions

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USPA NEWS - 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 that "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, and 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. This is one of the more important fusion technology in the Spanish market of communications.

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