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The Autorité de la concurrence clears Virgin Mobile's acquisition by Numericable

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The Autorité de la concurrence has cleared the acquisition of Omer Telecom Limited ("OTL") by Numericable. OTL is a virtual mobile phone operator operating under the Virgin Mobile brand. This decision takes place after the Autorité conditionally cleared SFR's acquisition by Numericable last month[1].

The only competition risk identified relates to the foreclosure of Virgin subscribers with Numericable's multiple play services, and has already been remedied by Numericable's commitments in the context of the SFR merger review, whereby all MVNOs can access its cable network in order to market bundled fixed and mobile services.

Numericable acquires an MVNOs largely hosted SFR's network

The Numericable/OTL merger notification was filed with the Autorité on 25 September 2014 and declared complete on 6 November 2014. For the merged Numericable-SFR entity, the transaction consists in acquiring a Mobile Virtual Network Operators (or "MVNOs[2]") primarily hosted on SFR's network prior to the merger. Virgin Mobile, which has no mobile licence and cannot operate its own network, had in fact previously purchased most of the services it needed from SFR.

As a first rank operator in the telecoms sector, the acquirer is one of the main

providers on the wholesale market for call origination and termination on fixed and mobile networks. After the merger, Numericable will incorporate 1.7 million subscribers.

The Autorité identified a competition risk whereby the new entity could foreclose new subscribers by offering them a subscription for innovative multiple play offers

Following an investigation during which various stakeholders were involved, the Autorité considers that the operation reinforces a competition risk that had already been identified in the context of the Numericable/SFR review.

By incorporating Virgin Mobile's business into Numericable, the transaction increases the risk that the merged entity could exploit the existing relationship between its fixed telecommunications activities (very high bandwidth internet, a sector in which Numericable is the market leader) and mobile telephony. The merger would thus enable Numericable to exercise leverage on a customer base that is once again increasing only weeks after its acquisition of SFR, by marketing offers that combine very high bandwidth internet access and mobile services.

The Autorité thus considers that, even though few MVNOs currently offer quadruple play services, these services' generalization in the long term makes it necessary to ensure that the MVNOs are able to market similar service offerings.

Numericable's committed to give access to its cable network to MVNO s in the context of the Numericable/SFR decision

Numericable's commitments in the Numericable/SFR decision do however remedy this risk. Numericable undertook to give MVNOs access to a very high bandwidth wholesale offer, in particular through a white label very high brandwidth distribution agreement on the cable network, using set-up boxes provided by Numericable if necessary. All operators active on the market, including MVNOs, will thus be able to market bundled services comparable to those offered by the merged entity.

The transaction will not lessen competition on other markets

The merger will not have other anticompetitive effects. In particular, with respect to the wholesale markets for access and call origination on which network operators host MVNOs, the transaction will not induce foreclosure effects. SFR's commitments to the telecommunications regulator (Arcep) require the operator to host MVNOs on its network under conditions that are non-restrictive to competition and ensure commercial autonomy on the wholesale market. In addition, once the transaction is completed, Numericable will be subject to competition from two alternative wholesale providers, Orange and Bouygues Telecom.

Nor does the merger involve a competition risk on the retail market for mobile telecommunications services in view of Virgin Mobile's small market share (less than 3%). Similarly, in view of its limited market share, the acquisition of Virgin shops will not lessen competition on distribution markets.

[1] See Decision no. 14-DCC-160 by the Autorité de la concurrence dated 30 October 2014 concerning exclusive control of SFR by the Altice Group, and the press release.
[2] Mobile Virtual Network Operator.

> Full text of Decision 14-DCC-179 concerning the acquisition of Omer Telecom Limited by Numericable Group.

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