Liberty Global response to EC consultation on draft revised merger control rules in the EU

Liberty Global welcomes the possibility to comment on the draft revised Implementing Merger Regulation and the draft revised Notice on Simplified Procedure. We welcome the proposed changes aimed at simplifying merger control procedure and appreciate that points made in earlier stages of consultation are reflected in these drafts. We believe that the proposed changes will help to reduce the administrative burden on both the European Commission and businesses and will allow the European Commission to focus its detailed investigations on the most relevant cases.

In this regard, Liberty Global supports the expansion of the scope of the Notice on Simplified Procedure through the introduction under point 5 of two new categories of cases that can benefit from simplified treatment. These categories, which concern vertical relationships where parties have highly asymmetric positions on the downstream and upstream markets, usually do not raise competition concerns when assessed under a Phase I investigation. Additionally, the introduction of flexibility clauses (points 8 and 9) will further allow the Commission to treat under the simplified procedure additional concentrations which a priori do not fall under any of the simplified categories. The increments in the market share and turnover thresholds described in such clauses are marginal and, when assessed under a Phase I investigation, those types of transactions often result in unproblematic cases.

At the same time, point 11 et seq of the Notice on Simplified Procedure clarify situations where the European Commission retains discretion on a case-by-case basis to review under normal procedure simplified transactions. All these circumstances provide increased transparency and predictability for notifying companies and set out adequate safeguards that will allow the European Commission to carry out a full assessment when transactions raise competition concerns, especially in relation to killer acquisitions, stifling of innovation, obstacles to the development of pipeline products that are potentially disruptive, and tipping markets.

Such simplification of procedure is also adequately reflected in the amendments to the forms used for submission. In particular, the replacement of the Short Form CO with a tick-the-box form in full makes it finally proportionate to the aim pursued. Also, in the draft revised Form CO clearer rules to request waivers for certain Sections, limitation of information requirements for specific markets, and the elimination of certain information requirements under Section 8, which are often considered unnecessary, will greatly contribute to reducing administrative burdens and costs on notifying companies.

However, there is still room for further simplification. Limitation of information requirements in the short Form CO will allow the Commission to focus on key information only, such as market shares and competitors, and decide on cases more quickly. A short form decision will likely require the Commission less than 25 working days. Therefore, we believe timelines should also be reviewed and shortened. This is necessary to draw a true distinction between simplified procedures and Phase I procedures.

Lastly, we appreciate the decision of the European Commission to introduce electronic notifications on a permanent basis under the Merger Implementing Regulation. The majority of the documentation for a merger notification is nowadays produced electronically and requiring to provide the additional paper version would only be time consuming and would generate additional costs for companies. This decision is also in line with the European Commission's ambition is to have a sustainable approach in its policy decisions.

About Liberty Global

Liberty Global is a world leader in converged broadband, video and mobile communications services. We deliver next-generation products through advanced fiber and 5G networks that connect over 85 million subscribers across Europe and the United Kingdom. Our businesses operate under some of the best-known consumer brands, including Virgin Media-O2 in the UK, VodafoneZiggo in The Netherlands, Telenet in Belgium, Sunrise UPC in Switzerland, Virgin Media in Ireland and UPC in Eastern Europe. Through our substantial scale and commitment to innovation, we are building Tomorrow's Connections Today, investing in the infrastructure and platforms that empower our customers to make the most of the digital revolution, while deploying the advanced technologies that nations and economies need to thrive. Our consolidated businesses generate annual revenue of more than $7 billion, while our joint-ventures in the U.K. and the Netherlands generate combined annual revenue of more than $17 billion.

Liberty Global Ventures, our global investment arm, has a portfolio of more than 50 companies across content, technology and infrastructure, including strategic stakes in companies like Plume, ITV, Lions Gate, Univision and the Formula E racing series. Revenue figures above are provided based upon 2020 results and on a combined Virgin Media and O2 UK basis. For more information, please visit www.libertyglobal.com.