



**Determination No. M/05/028 of the Competition Authority, dated 14 July 2005, under Section 21 of the Competition Act, 2002**

**Notification No. M/05/028 – the proposed acquisition by Alphyra Ireland Limited of Eason Electronic Limited**

**Introduction**

1. On 3 June 2005, the Competition Authority, in accordance with Section 18(1) of the Competition Act, 2002 (“the Act”), was notified, on a mandatory basis, of a proposal whereby Alphyra Ireland Limited (“Alphyra Ireland”) would purchase the entire issued share capital of Eason Electronic Limited (“EEL”). This is a joint notification by the parties.
2. The Authority received two submissions from third-parties that are discussed in greater detail below.

**The Parties and the Notified Transaction**

3. Alphyra Ireland, the acquirer, is a privately owned company and a wholly owned subsidiary of Alphyra Holdings Limited (“Alphyra”) and has its principal place of business at 4 Heather Road, Sandyford Industrial Estate, Dublin 18. Alphyra is active in the provision of a nationwide electronic payment network that allows retailers to process electronic payments. Additionally, Alphyra provides a number of value added services, including distributing terminals to retailers to sell prepaid mobile phone “top-ups”<sup>1</sup> and international calling cards, utility bill payments, and electronic lottery services, across its network. Alphyra operates electronic payment systems and networks in 16 countries across Europe, the Middle East and the Caribbean.<sup>2</sup>
4. 68.5% of the issued share capital of Alphyra is under the indirect control of Benchmark Management (UK) LLP (“Benchmark”), with the remaining 31.5% owned by members of Alphyra’s management. Benchmark is, in turn, part of the Benchmark Capital group of companies (“Benchmark Capital”). Benchmark Capital is a venture capital firm managing more than USD \$3 billion in committed venture capital that is focused on providing early-stage funding to technology-driven companies with significant growth potential, including companies involved in enterprise software and services, communications & security, semiconductors, mobile computing, consumer services and financial services. Benchmark Capital consists of nine limited partnership funds (five in the United States, two in Europe, and two in Israel). In particular, the Benchmark Europe funds (namely, Benchmark Europe I L.P. (“Benchmark Europe I”) and

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<sup>1</sup> “Top-ups” refer to pre-paid mobile phone vouchers.

<sup>2</sup> Information obtained from <http://www.alphyra.com> and the parties.



Benchmark Europe II L.P. ("Benchmark Europe II"), are owned and managed by the partners based in Benchmark Capital's London, United Kingdom office. Benchmark Europe I is the direct owner of Benchmark Capital's shares in Alphyra. According to information provided by Alphyra, neither Benchmark Europe I or II, directly or indirectly, compete with Alphyra or EEL in the island of Ireland.

5. EEL, the target, is a privately owned company having its principal place of business at 36 Dame Street, Dublin 2. EEL is jointly controlled by Eason & Son Limited ("Eason"), which holds 51% of EEL's issued share capital, and by Arealogic Limited ("Arealogic"), which holds the remaining 49%. Eason and Arealogic are collectively referred to herein as the "Sellers." EEL is engaged in the provision of terminals and related software allowing retailers to sell top-ups for mobile phones and international calling cards, debit and credit card transactions.

### **Relevant Markets**

6. There is some level of overlap in the State with respect to the products and services by the parties. Specifically, these areas of overlap arise where the parties distribute, at the wholesale level, terminals and software to retailers for three discrete product markets: retail mobile phone services<sup>3</sup>, electronic funds transfer ("EFT"), and international calling cards.
7. With respect to EFT, both Alphyra and EEL have relatively small market shares. Based on information provided in the Notification, EEL's market share in the State is [less than 5%] and Alphyra's market share is [less than 5%].
8. Similarly, as it relates to terminal and related software used by retailers to sell international calling cards, information provided by the parties suggests that the extent of the overlap is of little competitive significance. Specifically, EEL's market share is estimated to be [less than 5%] and Alphyra's market share is approximately [between 5-10%].
9. In the Authority's view, the relatively small market shares of EEL and Alphyra in products and services distributed by them affecting both the EFT and international calling card markets suggest that it is unlikely that there will be a significant lessening of competition in either market if the proposed transaction were consummated.
10. Regarding overlap affecting the wholesale provision to the retail mobile phone services market, the parties contend that the Authority's Decision No. E/02/0002 ("The Increase in the Wholesale Price of Electronic Top-up by Vodafone Ireland Limited") ("the Vodafone Decision")<sup>4</sup> should control in the Authority's review of the Notification. In the Vodafone Decision, the Authority examined commissions paid to retailers selling mobile telephone top-ups through retailer-based terminals distributed by Alphyra, EEL, and

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<sup>3</sup> As more fully explained at Paragraphs 14-20, *infra*, "retail mobile phone services" relates to the payment/obtaining usage credit for mobile phone services through various means, such as via the internet, text/SMS, ATMs, vending machines, and obtaining post-paid accounts, as well as from retailers operating terminals and related software distributed by Alphyra, EEL, and An Post.

<sup>4</sup> See [http://www.tca.ie/decisions/enforcement/e\\_02\\_002.pdf](http://www.tca.ie/decisions/enforcement/e_02_002.pdf).



others. Specifically, the Authority had received several complaints in relation to a reduction in retailers' margins for electronic mobile phone top-up.

11. Under the market definition adopted by the Authority in the Vodafone Decision, which includes the various forms of top-up as more particularly described in note 3, *supra*, Alphyra estimates that its market share in the State is approximately [between 15-20%] and that EEL's market share is approximately [less than 5%], resulting in the combined companies having a post-consummation market share of approximately [less than 25%].
12. Under the narrower market definition described in the Vodafone Decision, which includes all forms of top-ups, but does not include switching from pre-paid to post-paid accounts, the parties state that they would have a post-acquisition market share of approximately [less than 45%].

### **Competitive Analysis**

13. In the Vodafone Decision, the complainants contended that the relevant market was "[Vodafone] pre-paid mobile phone top-up." *Id.* at p. 3. The Authority, however, noted that "[t]here at least two possible markets that are relevant to an analysis of the effects of this behaviour: the market for provision of mobile telephony services and a related or sub-market for the sale of pre-paid mobile phone vouchers, i.e., top-up."
14. The Authority further noted that Vodafone mobile phone users could top-up through several different means, many of which are relevant to the instant notification: a) mobile top-up; b) text top-up; c) Online/web top-up; d) ATM top-up; e) e-top ups; and f) switching from pre-paid to post-paid services. Relevant to the instant notification, the Authority determined that the "[t]here is a huge degree of interchangeability possible between these methods." *Id.* at p. 7.
15. Consequently, the Authority concluded that the relevant market to analyse the situation was "... the wider market for mobile telephony services." In reaching its decision as to the relevant market, the Authority focused on "...the high degree of substitutability between the different methods of top-up distribution" and "...the relatively low barriers to switching from pre-paid to post-paid mobile phone contracts."
16. Ultimately, in the Vodafone Decision, the Authority viewed that a market for pre-paid mobile telephony services or "Etop-up" was too narrow and, instead, adopted the broader market of retail mobile phone services.
17. As set forth in the Authority's Vodafone Decision, end-consumers of mobile telephony in the State have a myriad of choices with respect to payment options. For a significant number of end-consumers, it is likely that any or all of the various methods of top-up available in the State can be used for this larger group.
18. However, even if switching from pre-paid services to post-paid accounts with the mobile phone operators were categorised as a substitute for pre-paid mobile telephony services or Etop-ups, it would appear likely that a small but significant subsection of end-consumers might not be able to



avail of post-paid accounts for any number of reasons, including, but not limited to, failing to meet the account opening criteria of the mobile phone operators.

19. Consequently, the Authority is concerned about the possible effect of the proposed transaction on end-consumers who rely on a cash-based method of top-up of mobile phones<sup>5</sup>. In particular, customers who do not have an account with one of the mobile phone companies, who do not have credit or debit cards, or do not have a bank account with banks offering ATM top-ups are essentially limited to purchasing top-ups with cash.
20. It is the Authority's view that retailers selling top-ups cannot achieve any sustainable form of price discrimination against this group of end-consumers vis-à-vis all other consumers (i.e., those who access to fully panoply of top-up methods) for several reasons. First, they are unlikely to be able to identify this group as a distinct segment<sup>6</sup>. This, together with the ability of the relatively larger group of consumers to switch to alternative means of top-up (i.e., those noted in paragraph 13, *supra*), will prevent retailers from raising prices. Second, the distribution or sale of Etop-up through vending machines, which is an additional method of top-up not specifically referenced in the Vodafone Decision, would appear to be a very close substitute to retail-based Etop-up sold through terminals. In other words, if retailers were to hypothetically impose a higher cost on this narrower band of end-consumers, this group would still have an alternative means of obtaining cash-based top-ups, either through vending machines or terminals distributed by companies other than Alphyra. Moreover, any such price-discrimination by retailers, even if it were at all possible, would have already been undertaken by retailers regardless of whether the proposed transaction were consummated.
21. [The Authority was concerned about future acquisitions by Alphyra of distributors or operators of mobile phone top-up vending machines]. Since vending machines are a growing source of Etop-ups generally and would appear to be a close substitute to retail-based top-ups, the Authority was concerned about the competitive effects of future acquisitions impacting on the top-up sector within the State<sup>7</sup>.
22. Additionally, the Authority received submissions from two third-parties that have significant involvement in the mobile phone sector in the State. Succinctly, both parties contended that the consummation of the proposed transaction would give the combined company over 50% share in the top-up market. Further, both parties contended that the proposed transaction would give Alphyra sufficient market power to distort the competitive landscape in the State relating to top-ups. For example, one party stated that the proposed transaction would permit Alphyra to threaten a withdrawal of its network of retailers with its top-up terminal in order to extract higher commissions from mobile phone operators.

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<sup>5</sup> The Vodafone Decision does not specifically address this group of customers.

<sup>6</sup> Stated another way, it would appear highly improbable that retailers selling top-ups would even be able to distinguish between the two groups of consumers in order to effectuate any attempt at price discrimination.

<sup>7</sup> It should be noted that Alphyra or its affiliated companies also sell or distribute vending machines distributing top-ups.



23. The other submission raised somewhat similar concerns regarding the proposed transaction, noting that Alphyra would have increased bargaining power with mobile phone operators regarding commissions and further adding that the proposed transaction could give rise to Alphyra's increased market power in the top-up sector in its negotiations with retailers, including "symbol group" buying groups such as Musgraves, BWG, and Londis. This submitting party also argued that the increased market power of Alphyra as a result of the consummation of the proposed transaction, retailers might face declining margins and opt to decline to sell top-ups.
24. Echoing somewhat similar concerns relating to the subset of consumers identified in Paragraph 18, *supra*, one of the submitting parties also stated that the proposed transaction, if consummated, would lead to a reduction in consumer choices for the category of consumers "in the age bracket of 14-24 yrs, [and] a major proportion of this market is unbanked and would not have access to other methods of distribution, particularly ATM."
25. In the Authority's view, the concerns voiced in the submissions relate to three discrete groups involved in the market: a) consumers; b) mobile phone providers; and c) retailers.<sup>8</sup>
26. With respect to a) a significant portion of consumers, and b) mobile phone operators, the vast number of alternative forms of mobile phone top-ups that are available in the State, as detailed herein and the Vodafone Decision, means that these two groups would appear to have many suitable alternatives to mobile phone top-up if the proposed transaction were consummated. Further, the third group, retailers, have an immediately obvious alternative to terminal-based top-up in the form of vending machines.
27. In the Authority's view, it is the existence of all these alternative forms of top-up (i.e., the market for retail mobile phone services) that act as a constraint on the upstream wholesale market. In particular, this would serve as a likely check on Alphyra's exercise of its putative market power, after consummation of the proposed transaction that might otherwise result in a substantial lessening of competition in the State. More specifically, it would appear that even if Alphyra were able to reduce margins paid to retailers, retailers would be able to switch to remaining competitors of Alphyra or to vending machines, thereby negating any deleterious pricing effects to end-consumers. Furthermore, in this case it is likely that mobile phone operators, as the ultimate supplier of top-ups, would serve as a competitive check against any reduction in margins in order to protect their own market share.
28. Nonetheless, as noted in Paragraph 18, *supra*, the Authority shares the concerns raised in the above-quoted submission about end-consumers who rely on cash-based top-ups, particularly in the light of [the Authority's concerns about the possible acquisition by Alphyra of suppliers of top-up vending machines].
29. Consequently, in order to assuage the Authority's concerns, Alphyra made the following proposal regarding its future acquisitions regarding the mobile phone top-up sector in the island of Ireland:

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The Authority also notes that the issues raised in the submissions are largely theoretical.



*For five years from the date on which the acquisition is put into effect, Alphyra Holdings Limited, its subsidiaries and affiliated companies (to the extent controlled by Alphyra Holdings Limited, as that term is used in Section 16(2) of the Competition Act, 2002) and its successors (“Alphyra”) will inform the Competition Authority in writing in advance of all proposed mergers or acquisitions in the mobile phone top-up sector on the island of Ireland, in which it is the proposed acquirer, and will notify such proposed transactions in accordance with Section 18(3) of the Competition Act, 2002 and when requested to do so by the Authority. In addition, Alphyra will inform the Competition Authority in writing in advance of the sale of its mobile phone top-up business to a third party, although no obligation will be imposed on Alphyra to notify such sale to the Competition Authority.<sup>9</sup>*

*The foregoing obligations will also apply, on a several basis and for the same period of five years, to Benchmark Management UK L.L.P (“Benchmark”) for so long as Benchmark retains control, as that term is used in section 16(2) of the Competition Act, 2002, of Alphyra during that five year period.*

30. While it does not appear that the proposed transaction would substantially lessen competition given the large amount of substitute forms of Etop-ups specifically and top-ups generally, as well as the ability of significant amount of consumers to switch from pre-paid to post-paid accounts, the proposal submitted by Alphyra does give the Authority an opportunity to assess future mergers or acquisitions by Alphyra to determine whether any increase in market power would result in a detriment to consumers.
31. Consequently, the Authority accepts the proposal, takes it into account in making this determination, and confirms that it forms part of the basis of this determination, pursuant to Section 20(3) of the Act. The proposal is deemed to take effect from 14 July 2005, the date of this determination.
32. The parties have also agreed that the Sellers and a director of EEL, who also owns 42.75% of the shares in Arealogic, would be restricted from competing with the business being transferred through the notified transaction for a period of two years in the island of Ireland. As an ancillary restraint to the proposed transaction, this restraint does not appear to raise significant competition concerns.

## **Determination**

The Competition Authority, in accordance with Section 21(2) of the Competition Act, 2002 (“the Act”), and having taken into account the proposal made by Alphyra in accordance with Section 20(3) of the Act, has determined that, in its opinion, the result of the proposed transaction will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the proposed transaction may be put into effect.

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<sup>9</sup> The proposal submitted by Alphyra would not relate to internal reorganisations of or public offerings by Alphyra, as that term is defined in the proposal.



**The Competition Authority**  
An tÚdarás Iomaíochta

**For the Competition Authority**

**Edward Henneberry**  
**Member of the Competition Authority**

**14 July 2005**