



DETERMINATION OF MERGER NOTIFICATION M/18/044 – CDC/NETGEM/REUNICABLE (THE OCEINDE GROUP)/VITIS (JV)

Section 21 of the Competition Act 2002

Proposed acquisition of joint control by Réunicable S.A.S., la Caisse des Dépôts et Consignations and Netgem S.A. of VITIS

Dated 6 July 2018

Introduction

1. On 30 May 2018, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby Réunicable S.A.S (“Réunicable”), a wholly-owned subsidiary within the Oceinde group of companies (the “Oceinde Group”), would increase its share of the issued share capital of, and its share of the voting rights in, VITIS to approximately [>15]% and approximately [>15]%, respectively (the “Proposed Transaction”). The parties have informed the Commission that the Proposed Transaction would confer joint control of VITIS on each of the Oceinde Group, Netgem S.A. (“Netgem”) and La Caisse des Dépôts et Consignations (“CDC”).

The Proposed Transaction

2. On 27 May 2016, CDC, Netgem and the Oceinde Group, through Réunicable, entered into an investment agreement (“IA”), whereby the parties agreed to establish a full-function joint venture, VITIS. On 14 June 2016, VITIS was incorporated by Netgem in France as a single-member simplified stock company. At the time of VITIS’ incorporation, Netgem was the sole shareholder of VITIS and, thus, exercised sole control over VITIS.



3. The IA provided for an increase in the share capital of VITIS and for each of CDC and the Oceinde Group to subscribe for shares in VITIS in order to effect the formation of the joint venture. Following such share capital increase and subscription for shares, CDC and the Oceinde Group held approximately [$>15\%$] and [$<15\%$], respectively, of the issued share capital of VITIS, while Netgem held approximately [$>15\%$] of the issued share capital of VITIS. Pursuant to a shareholders' agreement (the "SA") dated 3 November 2016 between CDC, Netgem, Réunicable and Mathias Hautefort, President of VITIS, CDC and Netgem could exercise veto rights over certain strategic decisions pertaining to VITIS¹ and, thus, CDC and Netgem had joint control over VITIS². The Oceinde Group held approximately [$<15\%$] of the issued share capital of VITIS and associated voting rights in VITIS, enabling it to act as a minority shareholder alongside Netgem and CDC.
4. At the time of the formation of VITIS in 2016, the parties agreed that certain common share purchase warrants would be granted to the Oceinde Group, which would allow it to acquire additional shares in VITIS. In April 2017 and December 2017, the Oceinde Group exercised certain of its common share purchase warrants on two occasions, after which its share of the issued share capital of VITIS increased to approximately [$<15\%$] and its share of the voting rights in VITIS increased to approximately [$<15\%$].
5. Netgem currently holds approximately [$>15\%$] of the issued share capital of, and approximately [$>15\%$] of the voting rights in, VITIS, while CDC currently holds approximately [$>15\%$] of the issued share capital of, and approximately [$>15\%$] of the voting rights in, VITIS. Netgem and CDC currently exercise joint control over VITIS. The Oceinde Group currently holds approximately [$<15\%$] of the issued share capital of, and approximately [$<15\%$] of the voting rights in, VITIS through its wholly-owned subsidiary Réunicable.

¹ Both the SA and the Articles of Association of VITIS dated 3 November 2016 provide that only a shareholder holding at least 15% of voting rights in VITIS obtain veto rights over certain strategic decisions pertaining to VITIS.

² The acquisition by CDC of a jointly controlling interest in VITIS on or about 3 November 2016 was notified to the Commission on 16 May 2018. The notification dated 16 May 2018 was rejected by the Commission because it considered that the two transactions referred to in the notification (i.e. the acquisition by CDC of a jointly controlling interest in VITIS on or about 3 November 2016 and the Proposed Transaction) were separately notifiable to the Commission. The acquisition by CDC of a jointly controlling interest in VITIS on or about 3 November 2016 was subsequently notified separately to the Commission on 30 May 2018 (reference number M/18/045).



6. The parties have informed the Commission that the Proposed Transaction involves the acquisition by the Oceinde Group of joint control, with Netgem and CDC, of VITIS by way of the following steps:
- The Oceinde Group, through Réunicable, will acquire approximately an additional [<15]% of the issued share capital of, and approximately an additional [<15]% of the voting rights in, VITIS pursuant to a letter from Réunicable to VITIS dated 7 November 2017, in which Réunicable expressed its intention to exercise certain of its common share purchase warrants to acquire additional shares and voting rights in VITIS.
 - As a result of the increase in the Oceinde Group's shareholding and voting rights in VITIS, the Oceinde Group would obtain the ability to exercise veto rights over certain strategic decisions pertaining to VITIS, which, according to the parties, would permit the Oceinde Group³ to exercise joint control over VITIS with Netgem and CDC.
7. Following implementation of the Proposed Transaction, the Oceinde Group, through Réunicable, will hold approximately [>15]% of the issued share capital of, and approximately [>15]% of the voting rights in, VITIS and CDC will hold approximately [>15]% of the issued share capital of, and approximately [>15]% of the voting rights in, VITIS, while Netgem will hold approximately [>15]% of the issued share capital of, and approximately [>15]% of the voting rights in VITIS. The parties have informed the Commission that the abovementioned shareholdings and voting rights in VITIS would confer on each of the Oceinde Group, CDC and Netgem the ability to exercise joint control over VITIS.
8. Table 1 summarises the current allocation of shares and voting rights in VITIS and the proposed allocation of shares and voting rights in VITIS following the implementation of the Proposed Transaction.

³ Please see footnote 1 above.



Table 1: Evolution of share capital and voting rights allocations in VITIS

Shareholder	Current allocation of shares		Allocation of shares following the implementation of the Proposed Transaction	
	Share Capital	Voting Rights	Share Capital	Voting Rights
Netgem	[>15]%	[>15]%	[>15]%	[>15]%
CDC	[>15]%	[>15]%	[>15]%	[>15]%
The Oceinde Group	[<15]%	[<15]%	[>15]%	[>15]%
VITIS' management (fully diluted)	[<15]%	[<15]%	[<15]%	[<15]%

Source: Information provided by the parties.

The Undertakings Involved

The Oceinde Group

9. Oceinde S.A. is the ultimate parent company within the Oceinde Group. The principal activities of the Oceinde Group are focused in the construction and paint industries, the food sector and the provision of telecommunications and media services worldwide.
10. Réunicable, the direct acquirer in the Proposed Transaction, is an indirectly wholly-owned subsidiary within the Oceinde Group. It rolls out and operates fibre networks and is active in the retail electronic communications services market under the *ZEOP* brand in Réunion, France.
11. For the financial year ended 31 December 2016, the Oceinde Group's worldwide turnover was €[...], none of which was generated in the State.

CDC

12. CDC is a French public group serving the public interest and France's economic development. The activities of CDC primarily fall into four categories, namely: (i) environment and energy; (ii) real estate; (iii) investment; and (iv) provision of services. CDC also has a controlling interest in companies in France which have been delegated by French local authorities to construct and operate public initiative networks.



13. Table 2 below provides a list of all of the companies owned and controlled by CDC (the “CDC Companies”) that are currently active in the State.

Table 2: CDC Companies active in the State

CDC Company	Business Activity
[...]	Management and operation of road infrastructure
[...]	Operation of public transport
[...]	Manufacturing semiconductors
[...]	Provision of shipping, reefer transport and handling facilities in ports as well as freight transport and logistics on land
[...]	Postal and banking services
[...]	Manufacturing and designing wood stoves, pellet stoves, fireplaces and inserts, barbecues, planchas, casseroles and other decorative objects
[...]	Manufacturing of biscuits
[...]	Manufacturing of biscuits
[...]	Supplying artificial insemination of cattle
[...]	Providing solutions for electrical industrial heating and cooling including temperature measurement, control and power supply.

Source: Information provided by the parties.

14. For the financial year ending 31 December 2017, CDC’s worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

Netgem

15. Netgem, a public limited company listed on NYSE Euronext Paris, offers digital entertainment solutions to providers of television (“TV”) services. In the State, Netgem supplies TV solutions (namely, TV set-top boxes with related software and services) to eir.

16. For the financial year ending 31 December 2016, Netgem’s worldwide turnover was approximately €74.3 million, of which approximately €[...] was generated in the State.

VITIS



17. The principal activities carried out by VITIS relate to the provision of broadband Internet, fixed-line voice telephony and TV services on public initiative networks in France. In addition, VITIS provides TV programme content in France and video on demand services in France and other francophone countries.
18. For the financial year ending 31 December 2017, VITIS' worldwide turnover was approximately €[...], none of which was generated in the State.

Rationale for the Proposed Transaction

19. The parties state the following in the notification:

“Through its proposed acquisition of a joint controlling interest in VITIS, the Oceinde Group is seeking to consolidate its partnership with CDC and Netgem and to develop its activities in metropolitan France”.

Third Party Submissions

20. No submission was received.

Competitive Analysis

Horizontal Overlap

21. There is no horizontal overlap in the State between the activities of the Oceinde Group, CDC and Netgem. As described above, the Oceinde Group is not currently active in the State. Netgem is active in the provision of TV solutions in the State. None of the CDC Companies currently generating turnover in the State are engaged in the same business activities as Netgem in the State. Similarly, Netgem is not currently involved in any of the business activities in which the CDC Companies currently generating turnover in the State are engaged.
22. VITIS, as described above, is not currently active in the State. Thus, there is no horizontal overlap in the State between the activities of VITIS and the activities of the Oceinde Group, Netgem and CDC.



23. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State.

Vertical Relationship

24. The parties informed the Commission that there is no existing vertical relationship between the Oceinde Group, CDC and Netgem in the State. The Commission has not identified any vertical relationship between the Oceinde Group, CDC and Netgem. While there is a potential for a vertical relationship between [...] (a CDC Company manufacturing integrated circuits [...]) and Netgem, the Commission considers that this potential relationship does not give rise to any vertical foreclosure concerns in the State for the following reasons:

- [...] does not currently supply integrated circuits for suppliers of TV solutions in the State. Furthermore, there are a number of well-established companies competing with [...] for the supply of integrated circuits on a worldwide basis, such as Broadcom, Inc., MaxLinear, Inc. and MediaTek Inc.. Thus, the Commission considers that the Proposed Transaction will not result in input foreclosure as competitors of Netgem will continue to have a choice between a number of suppliers of integrated circuits which are active in the State.
- With regard to customer foreclosure, following the implementation of the Proposed Transaction, there will remain other significant purchasers of integrated circuits for TV solutions including Sky plc, Samsung Electronics Co., Ltd. and Sagemcom SAS. On this basis, the Commission considers that [...] competitors will not be foreclosed from supplying integrated circuits to suppliers of TV set-top boxes in the State.

25. Therefore, the Commission considers that the Proposed Transaction will not raise any vertical competition concerns in the State.

Conclusion

26. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.



Ancillary Restraints

27. No ancillary restraints were notified.



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition, whereby Réunicable S.A.S., a wholly-owned subsidiary within the Oceinde group of companies, would increase its share of the issued share capital of, and its share of the voting rights in, VITIS to approximately [>15] % and approximately [>15] % respectively, which would thereby confer joint control of VITIS on each of the Oceinde Group, Netgem S.A. and La Caisse des Dépôts et Consignations, will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Brian McHugh

Member

Competition and Consumer Protection Commission