



# Decision

## Proposed acquisition of Arqiva Group by D9 Wireless (C-050)

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Jersey Competition Regulatory Authority  
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## 1. Summary

- 1.1 D9 Wireless OpCo Limited (the **Purchaser** or **D9**) proposes to acquire the entire current stake held by Frequency Infrastructure Communications Assets Limited (the **Seller**) in Arqiva Group Limited (the **Target** or **Arqiva**). The proposed transaction has been notified to the Jersey Competition Regulatory Authority (the **Authority**) for approval pursuant to Article 21 of the Competition (Jersey) Law 2005 (the **2005 Law**).
- 1.2 The Authority has determined that the Notified Transaction will not lead to a substantial lessening of competition in any relevant market and hereby approves the Notified Transaction.

## 2. The Notified Transaction

- 2.1 On 28 July 2022, the Authority received an application from the Purchaser and Seller (together, the **Parties**) for the proposed acquisition of 48.02% of the Target's voting shares as well as a single share and certain loan notes held by the Seller Target. On completion, the Purchaser will hold strategic rights of veto over the appointment of senior management and to amendments to the long-term business plan and therefore control of the Target.
- 2.2 The Authority registered the application on its website with a deadline for comments of 10 August 2022. No submissions were received.

## 3. The Parties

- 3.1 The Purchaser, D9, is an investment vehicle subsidiary of Digital 9 Infrastructure Plc (**D9 Plc**), a UK listed infrastructure investor (registered number 14084155). D9 Plc has invested in datacentres, sub-sea cable and fixed wireless network access infrastructure projects in the UK, Ireland and Iceland. D9 Plc is managed by Triple Point Investment Management LLP, an alternative investment manager that manages private, institutional, and public capital with a focus on social housing, digital infrastructure and energy efficiency projects.
- 3.2 D9 is incorporated in Jersey and has its registered office, company secretary and company administrator in Jersey, however no investments of D9 (or of its manager, Triple Point Investment Management LLP) are present in Jersey. D9's investments are active on the market in the UK, Republic of Ireland and Iceland only. D9 has no turnover in Jersey.
- 3.3 The Seller is an investment vehicle that is ultimately controlled by Canada Pension Plan Investment Board, a professional investment management organisation based in Canada.
- 3.4 The Target is a company incorporated in England and Wales (registered number 05254001) and a UK based data, network and communications service provider. It owns and operates the UK's national terrestrial television and radio broadcast networks, as well as 'Internet of Things' and utilities connectivity platforms and satellite ground infrastructure.

## 4. Requirement for Authority Approval

- 4.1 Under Article 2(1)(b) of the 2005 Law, a merger or acquisition<sup>1</sup> (**merger**) occurs where a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking. On completion of the Notified Transaction, the Purchaser will hold strategic rights of veto over the appointment of senior management and to amendments to the long-term business plan which are currently held by the Seller. The Notified Transaction therefore constitutes a merger as defined in the 2005 Law.
- 4.2 Article 20(1) of the 2005 Law provides that a person must not execute certain mergers or acquisitions except and in accordance with the approval of the Authority. Article 4 of the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the **Order**) requires the approval of the Authority where one or more undertakings involved in the proposed merger or acquisition has an existing share of 40% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey, unless one of two exemptions apply.
- 4.3 The Target is a UK-based data, network and communications service provider. It owns and operates the UK national terrestrial television broadcast network and a radio broadcasting network. It also owns two UK national commercial ‘multiplexes’ (enabling the broadcast of multiple digital TV channels over the same frequency band), and provides a number of other media distribution and smart utilities services in the UK.
- 4.4 In the Channel Islands, the Target owns and operates the main radio and television broadcast towers in Jersey and Guernsey<sup>2</sup>. As a result, this meets the 40% threshold in the supply of radio and television broadcasting services in Jersey. The Notified Transaction therefore requires the approval of the Authority prior to its execution.

## 5. Market Definition

- 5.1 Under Article 22(4) of the 2005 Law, the Authority must determine if the merger would substantially lessen competition in Jersey or in any part of Jersey. As an initial step, the Authority will identify the markets which are likely to be affected by the merger since market definition provides a framework within which the competitive effects of a merger can be assessed.
- 5.2 The boundaries of the market do not necessarily determine the competitive effect of the merger as there can be constraints on the merger from outside the relevant market, segmentation within the relevant market or other ways in which certain constraints are more significant than others. The Authority will, where appropriate, take these factors into account in its assessment.
- 5.3 When defining a market, the Authority may take note of its own previous decision-making practice and/or market definitions applied by other competition authorities. However, these previous decisions are not precedents and are not binding, either on the merging parties or on the

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<sup>1</sup> For brevity, mergers and acquisitions are referred to as ‘mergers’ in this document.

<sup>2</sup> [Redacted]

Authority. Competition conditions may change over time, changing the market definition. Market definition will always depend on the prevailing facts<sup>3</sup>.

## Views of the Parties

5.4 The Parties propose that there is no relevant economic market as the Notified Transaction does not give rise to any plausible horizontal or vertical link in any market in Jersey. Accordingly, the Parties do not believe it is necessary to define the product market or geographic market on the basis that the Notified Transaction will not impact competition in Jersey or in any part of Jersey.

5.5 Product markets for broadcasting services in the UK equivalent to those which the Target operates in Jersey were considered in detail by the UK Competition Commission in its review of the merger that led to the creation of the Target in 2008<sup>4</sup>. However, unlike that transaction, there is no overlap in relation to the Notified Transaction as D9 has no relevant presence in the sector or any market in Jersey.

## Authority Consideration

5.6 The relevant product market is defined primarily by reference to the likely response of consumers and competitors. It will comprise products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products characteristics, prices and intended use. An undertaking cannot have a significant impact on the prevailing conditions of a market if customers can easily switch to other service providers. However, for the purpose of this transaction, it has not been necessary to reach a conclusion on the precise market definition since there are no competition concerns.

## 6. Effect on Competition

6.1 The analysis of a notifiable transaction will consider whether the merger creates or enhances the ability or incentive to exercise market power, either unilaterally or in co-ordination with competitors, and whether other market forces (such as the entry of new competitors or countervailing power of customers will eliminate these potential effects and risks. The assessment will also consider any pro-competitive effects or efficiencies that may result from the merger.

6.2 When considering the effect on competition, the Authority has regard to the guidelines produced by the European Commission<sup>5</sup> (**European Guidelines**). It may also consider the substantive merger guidelines applied by the Competition and Markets Authority in the UK, as well as those of other competition authorities.

6.3 After determining the appropriate market definition or frame of reference within which to assess the transaction, the Authority estimates the respective positions of both before and after the

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<sup>3</sup> This approach is consistent with that taken under EU law – see, for example, Joined Cases T-125/97 and T-127/97 [2000] ECR II-01733, paragraphs 81-82. Article 60 of the 2005 Law requires the Authority to attempt to ensure that so far as possible questions arising in relation to competition are dealt with in a manner that is consistent with the treatment of corresponding questions arising under European Union law in relation to competition within the European Union.

<sup>4</sup> [Macquarie UK Broadcast Ventures / National Grid Wireless Group merger inquiry \(CC\) - GOV.UK \(www.gov.uk\)](#)

<sup>5</sup> <https://op.europa.eu/en/publication-detail/-/publication/19597169-c020-4a72-816a-0b15416119f7>

proposed transaction. This can be used as an indication of the overall level of market concentration, as a result of the merger.

6.4 There are no horizontal overlaps between the services provided by the Parties. There is also no vertical relationship.

### Non-Horizontal Effects

6.5 Conglomerate mergers are mergers between firms that are in a relationship which is neither purely horizontal (as competitors in the same relevant market) nor vertical (as supplier and customer). In practice, the focus is on mergers between companies that are active in closely related markets (e.g. mergers involving suppliers of complementary goods or of products which belong to a range of products that is generally purchased by the same set of customers for the same end use)<sup>6</sup>.

6.6 The main concern in the context of conglomerate mergers is that of foreclosure. The combination of products in related market may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another by means of tying or bundling or other exclusionary practices. These may not be anticompetitive as they may provide customers with better or more cost-effective products or services. However, in certain circumstances, they may lead to a reduction in rivals' ability or incentive to compete.

6.7 With regard to the Notified Transaction, whilst the Target has a high market share in respect of its radio and television broadcasting services, there would be no change to this as a result of the Notified Transaction. D9 does not own or operate television or radio broadcasting networks, or any service upstream or downstream of such networks in Jersey, other than through the UK negotiated contracts. Therefore, the Notified Transaction will not lead to any reduction in competition between them in Jersey.

## 7. Decision

7.1 Based on the previous analysis, the Authority concludes that the acquisition will not substantially lessen competition in Jersey or any part of Jersey; and the Notified Transaction is therefore approved under Article 22(1) of the 2005 Law.

**11 August 2022**

**By Order of the Jersey Competition Regulatory Authority**

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<sup>6</sup> Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07), para 91-93