Competition
& Regulatory

June
2014

# CONDITIONAL APPROVAL FOR HUTCHINSON 3G AND 02

**Mergers between mobile network operators (MNOs) active in the same Member State always throw up interesting competition aspects. The latest, Hutchinson 3G/O2, recently approved, subject to commitments by the European Commission, is no exception.**

On 28 May, Hutchison 3G (branded as H3G) gained conditional approval to buy Telefonica's Irish business (branded as O2 Ireland), reducing the number of MNOs from four to three in Ireland. The merged entity will be the second largest player in the Irish market, with a market share of around 40%. The European Commission had voiced competition concerns with regard to the retail market for mobile communication and the wholesale market for network access and call origination.

In order to gain clearance the parties committed, inter alia, to divest 30% of their merged network capacity to two mobile virtual network operators (MVNOs) for a minimum of five years (extendable up to 10) and at a fixed price. Accordingly, the MVNOs will have access to a fixed amount of network capacity rather than having a 'pay-as-you-go' arrangement. This new model provides them with a strong incentive to fill and make use of the network capacity that they have been allotted, and to offer attractive prices and innovative solutions as a result. In addition, this commitment is expected to address the loss of the competitive constraints that H3G was exercising in the market. The two MVNOs will have the opportunity to become MNOs going forward as a result of the divestiture of five blocks of valuable spectrum, following commitments to this effect provided by H3G. In addition, the parties committed to the continuity of the network sharing arrangement with the third largest operator in the market, thus maintaining an important network host for the MVNOs. H3G also committed to provide the necessary technical assistance and ancillary services as required.

Whether this case will be regarded as a benchmark case for other similar cases going forward remains to be seen. The Telefonica and E-Plus merger in Germany is still being investigated. Some sources have reported that the European Commission may apply similar thinking before granting clearance. However, significant concerns have been raised against the deal by the national competition authority in Germany. The German Regulator has warned against the approval of the merger on similar grounds and has urged for tougher remedies in this respect.

The European Commission's view, however, is that the same model does not necessarily provide a workable solution for other markets. A case-by-case approach is the norm, albeit past experience and cases often provide useful precedents for future deals. After all, the European telecommunications market remains fragmented and each national market is to be assessed on its own merits as a result of its own competitive conditions.

Moreover, it may be highly unlikely that the European Commission approves on similar grounds merger deals that reduce the number of players from three to two, leading to a duopoly. It also remains to be seen how merger deals are to be treated going forward, in particular as regards operators merging on the same national market, if no interest from a sufficient number of MVNOs exists.


For more information, please contact the author of this Briefing:

**Eliza Petritsi**
Partner, London
T: +44 (0)20 7264 8772
E: eliza.petritsi@hfw.com



For further information, please also contact:

**Anthony Woolich**
Partner, London
T: +44 (0)20 7264 8033
E: anthony.woolich@hfw.com

**Konstantinos Adamantopoulos**
Partner, Brussels
T: +32 2 643 3401
E: konstantinos.adamantopoulos
@hfw.com