



EUROPEAN UNION - MERGERS

Prohibition of Hutchison's proposed acquisition of Telefónica's O2

🔗 [Decision of the European Commission M.7612 - Hutchinson 3G UK / Telefonica UK, May 11, 2016](#)

On May 11, 2016, the European Commission (the "EC") blocked the transaction between the two mobile operators Hutchison (active in the UK market through Three) and O2 (Telefónica's subsidiary). The EC found that the transaction raised the following serious competition concerns with respect to the UK mobile market:

- on the one hand, a reduction in the number of operators would have led to a reduction in choice for consumers, as well as a decrease in quality and an increase in price;
- on the other hand, the involvement of Three and O2 in two separate network-sharing agreements with each of the remaining competitors (EE and Vodafone, respectively) would have allowed the merged entity to be part of these two agreements

and thereby to have a good overview of the network strategies of its competitors; and

- lastly, the transaction would have led to a reduction in the number of operators willing to host mobile virtual network operators ("MVNOs").

Furthermore, the EC found that the corrective measures offered by the parties were not sufficient to address such competition concerns and blamed the reduction in the number of operators in the market on the lack of remedies allowing the entry of new mobile operators. The EC stated in its press release that the proposed remedies "aimed at strengthening the development of existing mobile virtual operators or supporting the market entry of new ones" would not have allowed the emergence of viable operators independent of the merged entity.

Commissioner Vestager's statements in October 2015 following the withdrawal of the contemplated merger between Telenor and Teliasonera in Denmark assured that the Commission does not apply any general rule requiring that a certain number of operators should be active in mobile markets ("*no magic rule*") and its assurances that all the decisions to be made would be examined on a case-by-case basis. This case nevertheless sends a strong message concerning the sector's various acquisition projects, especially for transactions leading to a shift from four to three operators. Indeed, prohibition decisions of the Commission are rare in practice, this being the first one since 2013. However, other consolidation projects collapsed lately in the sector, such as the abovementioned merger between Telenor and Teliasonera in Denmark in 2015 and the acquisition of Bouygues Telecom by Orange in France in 2016.

The second project of Hutchison in Europe, the creation of a joint venture with the Italian VimpelCom - which led to the elimination of the fourth national telecom player - had a different fate: on September 1st, 2016, the Commission decided to authorize the deal. The approval is conditional on the divestment of sufficient assets in order to allow a new competitor, the French operator Iliad, to enter the market.

Finally, Hutchison stated that it will challenge the prohibition decision before the General Court of the European Union.