

Recent mobile telecommunications mergers

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*Disclaimer: the views expressed are those of the presenter and cannot be regarded as stating an official position of the European Commission

Past mobile telecom cases of the Commission

Case	Description, Outcome
T-Mobile/tele.ring (2006)	<ul style="list-style-type: none">• 5 to 4 in Austria• Phase II, cleared with remedies
T-Mobile/Orange NL (2007)	<ul style="list-style-type: none">• 4 to 3 in the Netherlands• Phase I, cleared unconditionally
T-Mobile/Orange UK (2010)	<ul style="list-style-type: none">• 5 to 4 in the UK• Phase I, cleared with remedies
H3G Austria/Orange AT(2012)	<ul style="list-style-type: none">• 4 to 3 in Austria• Phase II, cleared with remedies
H3G/Telefónica IE (2014)	<ul style="list-style-type: none">• 4 to 3 in Ireland• Phase II, cleared with remedies
Telefónica DE/E-Plus (2014)	<ul style="list-style-type: none">• 4 to 3 in Germany• Phase II, cleared with remedies

The H3G/Telefónica Ireland merger



Characteristics of (retail) Irish mobile telecommunications market

Retail market shares (subscribers)

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• Three Ireland	[~10]%
• O2 (including Tesco)	[~30]%
Merging Parties	
• Vodafone	[~40]%
• Eircom	[~20]%

Further characteristics

- Existing Network Sharing agreements of O2/Eircom as well as Three/Vodafone
- Especially residential customers (atomistic with virtually no bargaining power)
- Entry of MNOs very unlikely (high investment costs and relatively low profitability)
- MVNO entry (absent commitments) unlikely to create significant competitive pressure



Key Notifying Party's claims

- Three and O2 target different customer groups (different brand perceptions)
- Merger will lead to large cost savings and higher cashflows
- Both Three Ireland and O2 will be constrained in their ability to compete effectively if the merger does not happen

Main Theory of Harm

Main observations

- Focus on non-coordinated effects
- Loss of an important competitive force:
 - There is currently an important competitive force
 - Degradation of competition in the absence of the merger unlikely
 - Competitors likely to follow price increases after the merger
- Weakening of Eircom due to degradation of network sharing

Used evidence

- Diversion ratios and market shares (also at the segment level)
- Internal documents
- Accounting data (profitability)
- Market investigation
- Quantitative analysis
 - "UPP" analysis (based on diversion ratios and margins)
 - Demand estimation based on detailed tariff data proved eventually unreliable

Quantitative analysis

- Calibration-based approach used segment level data (i.e. post-paid, pre-paid, business)
 - Diversion ratios computed from mobile number portability data
 - 2 margin measures used: (i) contribution margins; (ii) estimated incremental margins
 - Price measure: ARPUs
 - Reaction of non-merging parties incorporated into analysis
- Results (conservative scenario)
 - 5-8% price effects for merging parties (post-paid)
 - 4-6% price effects across all post-paid segment

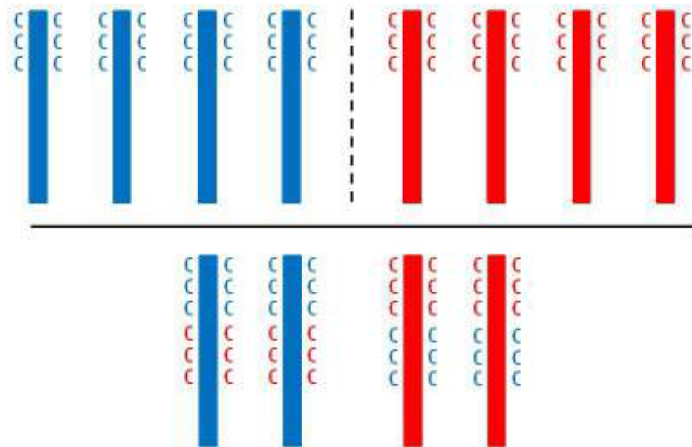
Quantitative analysis (contd.)

- Parties argued that analysis inappropriate by ignoring:
 - Quality competition through investments;
 - Customer inertia;
 - Product repositioning.
- EC considered that
 - Model of quality competition presented by Parties not sufficiently robust, and in any event consistent with adverse unilateral effects
 - Incentives for product repositioning by non-merging parties are weak

Efficiencies: mobile network synergies?

Although network savings are generally plausible...

- Combined spectrum allows to use equipment more efficiently



... there are some important issues

- A large part of network savings can be achieved by network sharing
- Final effect of reduction in network costs on customers unclear (better network quality and/or more aggressive competition?)

Efficiencies

Key claims

EC assessment

1 Scale economies

- Reduction in costs will lead to a higher cash flow which triggers additional investments
- Similar savings could not be achieved by network sharing

- Presented evidence (e.g. price concentration study; cashflow constraints in internal capital markets) insufficient to show customer benefit from fixed cost savings
- Network sharing would lead to similar cost savings

2 LTE deployment efficiencies

- Improved coverage and speed because without the merger
 - Three lacks 800 MHz spectrum
 - O2 plans slower LTE rollout

- O2 would roll out LTE to a similar extent
- Significant improvement of download speeds unlikely

3 Continued service in NBS¹ area

- Without the merger, Three would dismantle unprofitable sites and stop satellite solutions as well as repeaters

- Small part of submitted efficiencies accepted
- In the long run, LTE coverage of competitors in entire NBS area

1: National Broadband Scheme

Final Commitments

- One MVNO upfront; one as a condition
- Capacity-based MVNO model: MVNOs commit to purchase a share of the merged entity's capacity (committed capacity share increases over time)
- Option to acquire up to 30% of the merged entity's network capacity (more than the overlap due to the merger)
- Minimum term of five years, with the possibility to extend the agreement up to 10 years
- Spectrum offered during 10 years to capacity MVNOs (additional remedy involving Eircom also included)

Telefónica DE/E-Plus (Germany)



Characteristics of German mobile telecommunications market

Retail market shares (subscribers)

- T-Mobile (DTAG) [20-25]%
- Vodafone [20-25]%

- E-Plus [15-20]%
- O2 Deutschland [15-20]%

Merging Parties

- Freenet [10-15]%
- Drillisch [0-5]%
- 1&1 [0-5]%
- Other SPs/MVNOs [0-5]%

Further market characteristics

- Both O2 and E-Plus strong in pre-paid segment
- Freenet hosted by all MNOs, in particular by T-Mobile and VF
- Especially residential customers atomistic with virtually no bargaining power
- Industry generally profitable
- Entry of MNOs post-merger might be possible but barriers to entry remain high
- MVNO entry (absent commitments) unlikely to create significant competitive pressure¹³

Key claims of Notifying Party

- Merged entity intends to offer improved quality network and become stronger in the segment of high value customers ("Merger to compete")
- In low value segment, competitive pressure maintained due to non-MNOs
- E-Plus declining force in the future
- Large claimed synergies with NPV of roughly EUR 5 bln, mostly stemming from network consolidation

Main Theory of Harm

Main observations

- Focus on non-coordinated effects
- Both E-Plus and O2 are currently important competitive forces (especially E-Plus growing, and profitable)
- E-Plus and O2 are close competitors with a focus on pre-paid customers
- Competitors would likely follow price increases

Used evidence

- Diversion ratios and market shares (also at the segment level)
- Market investigation
- Internal documents
- Accounting data (profitability)
- Quantitative analysis
 - UPP analysis (based on diversion ratios and margins)
 - Demand estimation & Merger simulation (successfully implemented in this case)

Efficiency analysis: Some differences between German and Irish case

Three Ireland/O2 Ireland

Telefónica DE/E-Plus

1 Network sharing

- Two preexisting network sharing (NS) agreements
- NS may be reduced as a consequence of the Transaction

- No existing NS, but MNOs have been in NS negotiations
- Transaction may prevent NS that otherwise would likely occur

2 Impact of (fixed) cost savings

- Claimed positive impact because of more investments due to relaxed liquidity constraints

- Claimed positive impact because of MNO's pricing approach that includes also non-incremental cost savings

3 Presented evidence

- Submitted evidence contains mostly general arguments as to why Transaction is pro-competitive (studies on price effects, financial constraints and quality enhancing effects)

- Submitted evidence quantifies specific benefits of German Transaction (on demand and supply side)

Final Commitments

Similar to
Irish remedy

MVNO Remedy

- Commitment to sell share of total capacity of the merged company's network (up to 30%) to capacity MVNO(s)
- Capacity MVNO(s) need to commit to buying capacity upfront
- Capacity MVNO(s) obtain access to all current and future technologies

MNO Remedy

- Offer designed to facilitate MNO entry
- Spectrum lease of 2x10 MHz in the 2.1 GHz band and of 2x10 MHz in the 2.6 GHz band
- National roaming
- Divestiture of sites
- Passive radio network sharing
- Sale of shops offer

Non-MNO Remedy

- Extend existing wholesale agreements with wholesale partners
- Offer 4G services to the wholesale market

Conclusions on Irish and German cases

- Theories of harm based on standard unilateral effects in concentrated markets with high barriers to entry
- Reaction of non-merging parties does not mitigate competition concerns
- Quantitative assessment aimed at providing order of magnitude of likely price effects
- Efficiency claims failed at least one of the three criteria in the Horizontal Merger Guidelines (most notably merger specificity)
- Remedies seek to replicate ability/incentives to compete of MNOs