



Commission for
Communications Regulation

European Commission completes its investigation into the proposed acquisition by Hutchison 3G UK Holdings Limited of Telefónica Ireland Limited

(EC Case M.6992)

Information Notice

Reference: ComReg 14/53

Date: 28 May 2014

An Coimisiún um Rialáil Cumarsáide

Commission for Communications Regulation

Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland

Telephone +353 1 804 9600 Fax +353 1 804 9680 Email info@comreg.ie Web www.comreg.ie

Introduction

- 1.1 The European Commission (**EC**) has today announced that it has completed its investigation into Hutchison 3G UK Holdings Limited's (**Hutchison**) proposed acquisition of Telefónica Ireland Limited (**O2**) (the "**Proposed Acquisition**"). The EC has decided to conditionally approve the Proposed Acquisition on the basis of commitments put forward by Hutchison in response to the competition concerns identified by the EC.

Background

- 1.2 The EC's investigation concluded that the Proposed Acquisition, in its original form, would firstly result in a significant impediment to effective competition in the Irish retail market for mobile telecommunications services; that is to say the market where mobile network operators (**MNOs**) and mobile virtual network operators (**MVNOs**) sell their telecommunications services to consumers and businesses ("**Retail Market**"). In this market, the EC considered that the Proposed Acquisition would:
- eliminate competition between the merging parties and remove Hutchison 3G Ireland Limited (**Three**) as an important competitive force in the market by changing its incentives to compete aggressively on price and service innovation and remove pressure on the remaining competitors' prices; and
 - affect Eircom Limited's (**Eircom**) ability to compete effectively after the Proposed Acquisition, because Three would have the ability and incentive to terminate or frustrate Eircom's existing network sharing agreement with O2.
- 1.3 The EC also found competition concerns in the Irish wholesale market for access to mobile networks and call origination ("**Wholesale Market**"). In this market, MNOs compete with each other as potential network hosts and providers of call origination services to MVNOs that use these services to compete in the Retail Market. The EC considered that the Proposed Acquisition would:
- reduce the number of MNO hosts for MVNOs. This could lead to deteriorated access conditions for MVNOs and a negative impact for end consumers; and
 - affect Eircom's ability to compete as a credible host for MVNOs, because Three would have the ability and incentive to terminate or frustrate Eircom's existing network sharing agreement with O2.

- 1.4 Given these concerns, the EC considered that, without remedies, the Proposed Acquisition would have led to higher prices and less competition.
- 1.5 Hutchison proposed a number of commitments to resolve the EC's competition concerns. In summary, the commitments accepted by the EC ("**Final Commitments**") involve Hutchison committing to the following:
- offering to Eircom to continue the existing network share agreement (between Meteor and O2) on improved terms;
 - providing wholesale access to Three's network to two MVNOs on the basis of "capacity agreements" in return for fixed payments; and
 - offering to one of the two MVNOs (but not both) the option to acquire certain spectrum rights of use to enable one or the other to become a MNO. The option will be available for 10 years starting from 1 January 2016.
- 1.6 Since the Proposed Acquisition was notified to the EC in October 2013, ComReg has provided data, analysis and comments to the EC on the potential impact of the Proposed Acquisition on competition, including whether the commitments proposed by Hutchison would, among other things, fully address the EC's competition concerns.

ComReg's view

- 1.7 While fully respecting the EC's position as the decision-making body for assessment of the Proposed Acquisition, ComReg remains concerned that, given the substance and form of the Final Commitments, the EC's competition concerns will not be fully addressed, and that significant negative consequences for Irish consumer welfare may result. In that regard, ComReg's primary concerns with the Final Commitments are, in summary, as follows:
- they appear inadequate and ineffective to address the serious competition concerns and consumer harm identified by the EC (for example higher prices);and
 - they do not appear to comply with the EC's requirements as set out in its Remedies Notice.
- 1.8 In light of the EC approved changes to the mobile market structure, ComReg, in keeping with its statutory powers will:
- monitor the competitive dynamic of the mobile markets affected; and

- proceed with its strategy for managing the radio spectrum including the identification of other spectrum releases in order to promote competition and further promote innovation and network investment, among other things.
- 1.9 In conclusion, ComReg remains of the strong view that the behavioural commitments are insufficient to address the structural competition deficit identified as likely to result from the Proposed Acquisition. Nevertheless, ComReg welcomes the end to the uncertainty surrounding the acquisition and looks forward to the anticipated network investment.
- 1.10 In the interests of contributing to an open market, ComReg will publish non-confidential versions of its key substantive submissions to the EC on the Proposed Acquisition in due course.

Notes

On 1 October 2013, the EC received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Hutchison 3G UK Holdings Limited, controlled by Hutchison Whampoa Limited, will acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Telefónica Ireland Limited by way of purchase of shares.

The EC assesses mergers and acquisitions involving companies with a turnover above certain thresholds (see Article 1 of the EC Merger Regulation) and to prevent concentrations that would significantly impede effective competition in the European Economic Area (EEA) or any substantial part of it. While this merger assessment is the sole responsibility of the EC, ComReg has facilitated any EC requests for information regarding the Irish mobile market.

Based on its first phase market investigation, the EC raised serious doubts as to the compatibility of the proposed acquisition with the internal market and adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation on 6 November 2013.

Based on its second phase investigation, the EC issued its Statement of Objections on 30 January 2014. Following acceptance of commitments put forward by Hutchison the EC has announced today that it has approved the proposed acquisition.

Further details on the EC Decision and the final commitments are available on the EC website.