Remedies in Competition Law

Merger Remedies: Ex-Post Assessment

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MERGER INTERVENTIONS

![Bar chart showing merger interventions from 1990 to 2016. The chart indicates the number of prohibitions and withdrawals, as well as Art 6.1 (b) and Art 8.2 compatible commitments each year.]
MEASURING EFFECTIVENESS

- Address the competitive harm
- Appropriate duration
- Practicality
- Risk: viability of the package, purchaser and implementation risks

Efficiencies
Impact costs
Operating costs

Does the remedy package maintain or restore competition?

### EX-POST STUDIES

**Immediate Follow-Up**
- Immediate follow-up, to check if the implementation was completed correctly, limited investment

**Case Studies**
- Formal, comprehensive study of a selected number of cases.
- Qualitative assessment based on interviews and some market information. Focus on impact, practicality and risks.

**Quantitative Assessment**
- Empirical evaluations of single mergers/remedies on price, quality, innovation
- Meta-analyses (e.g., Kwoka’s 2015 retrospective analysis of US policy)
## RETROSPECTIVE STUDIES OF EU MERGERS

<table>
<thead>
<tr>
<th>Author(s)</th>
<th>Findings</th>
</tr>
</thead>
</table>
- Harder to anticipate interventions—consistent with case by case assessment  
- Type I error more likely, type II less likely  
- Limited effect of remedies                                                                |
| Ormosi, Mariuzzo & Havell (2015)               | - Meta analysis  
- Evidence of price increases: <5% on average, 1-2% with remedies  
- Remedies reduce post-merger price-increases even in concentrated markets                  |
| Ormosi & Mariuzzo (forthcoming)                | - The analysis of pricing dynamics matters: post merger price increases tend to disappear by the second year after the merger                                                                                 |
## MOBILE MERGERS

<table>
<thead>
<tr>
<th>Merger</th>
<th>Country</th>
<th>Year</th>
<th>Market Share</th>
<th>Approval Phase</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>T-Mobile/Orange NL</td>
<td>Netherlands</td>
<td>2007</td>
<td>4 to 3</td>
<td>40-50%</td>
<td>Phase 1 approval</td>
</tr>
<tr>
<td>H3G/Orange AT</td>
<td>Austria</td>
<td>2013</td>
<td>4 to 3</td>
<td>&lt;25%</td>
<td>Phase 2 remedies</td>
</tr>
<tr>
<td>Telefónica DE/E-Plus</td>
<td>Germany</td>
<td>2014</td>
<td>4 to 3</td>
<td>30-40%</td>
<td>Phase 2 remedies</td>
</tr>
<tr>
<td>H3G/Telefónica UK</td>
<td>UK</td>
<td>2010</td>
<td>4 to 3</td>
<td>&gt;40%</td>
<td>Abandoned</td>
</tr>
<tr>
<td>H3G/Telefónica IE</td>
<td>Ireland</td>
<td>2014</td>
<td>4 to 3</td>
<td>~40%</td>
<td>Phase 2 remedies</td>
</tr>
<tr>
<td>H3G Italy/WIND JV</td>
<td>Italy</td>
<td>2016</td>
<td>4 to 3</td>
<td>Third and fourth largest</td>
<td>Phase 2 approval</td>
</tr>
<tr>
<td>T-Mobile/tele.ring</td>
<td>Austria</td>
<td>2006</td>
<td>5 to 4</td>
<td>30-40%</td>
<td>Phase 2 remedies</td>
</tr>
<tr>
<td>T-Mobile/Orange UK</td>
<td>UK</td>
<td>2010</td>
<td>5 to 4</td>
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<td>~40%</td>
<td>Phase 2 remedies</td>
</tr>
<tr>
<td>Telia Sonera/Telenor</td>
<td>Denmark</td>
<td>2015</td>
<td>4 to 3</td>
<td>&gt;40%</td>
<td>Abandoned</td>
</tr>
<tr>
<td>H3G/Telefónica UK</td>
<td>UK</td>
<td>2016</td>
<td>4 to 3</td>
<td>Largest provider</td>
<td>Abandoned</td>
</tr>
</tbody>
</table>
### T-Mobile/tele.ring, 2006

**Structural remedy**
- **Transfer of parts of tele.ring’s spectrum and sites to competitors** (H3G)

**EC 2015 study (2004-2010)**
- No market-wide price increase
- Price decreases (but unclear if “caused” by the merger)

### T-Mobile/Orange UK, 2010

**Behavioural and structural remedies**
- Amendments on existing network sharing agreements
- Spectrum divestiture (H3G)

**EC 2017 Study (2007-2014)**
- Mobile prices decreased relative to other countries
- Increase in CAPEX, but not in CAPEX per subscriber (economies of scale)
MOBILE MERGERS: REMEDIES AND EX POST ASSESSMENT

H3G/Orange AT, 2013

Remedy

- Facilitate MNO entry by divesting spectrum to a potential entrant
- Facilitate MVNO entry
  - Access to up to 30% of H3G’s network for to 16 MVNOs in 10 years
  - Pay-as-you-go wholesale terms
  - Upfront commitment to enter into an agreement with one MVNO (which entered 2 years later)

Ex post assessment

- Houngbonon 2015 (2013, 2014): Decrease in prices of data, due to larger bundling discounts (higher speed, data allowance)
- RTR 2016 Study (2011-2014): Positive effect of the merger on prices for the average smartphone and traditional users, in particular the second year after the merger (before remedies became effective)
- GSMA 2016 Study (2010-2016): Increase in H3G 4G coverage 2 years after the merger, improvements in market-wide network quality
## H3G/Telefónica IE, 2014

**Remedies**
- Upfront MVNO commitment
- Access to up to 30% of merged entity's capacity in coming 10 years
- Capacity MVNOs model
- Amendments to the network sharing agreement between Meteor (third largest player) and O2

**Ex-post assessment**
- Berec 2018 Study (2012-2016): Short-term price increases, which disappear in 2015 for low and medium baskets

## Telefónica DE/E-Plus, 2014

**Remedies**
- Upfront MVNO commitment, capacity based
- Committed to divest spectrum and certain assets either to a new entrant
- Extend existing wholesale agreements

**Ex-post assessment**
- Berec 2018 Study (2012-2016): Price increases for low usage profiles (but no data on MVNOs is considered); price increase in medium and high usage baskets

## H3G Italy /WIND JV, 2016

- Fix-it first divestiture of radio spectrum and fixed assets to MNO entrant
REFERENCES

Merger Remedy Studies


Merger Remedy Guides/Statements

REFERENCES


RTR. 2016. *Ex-post analysis of the merger between H3GAustria and Orange Austria.*