



An Coimisiún um  
**Rialáil Cumarsáide**  
Commission for  
**Communications Regulation**

# Publication of a Study into the Price Effects of the Acquisition of Hutchison 3G UK Holdings Ltd of Telefónica Ireland Ltd.

## Information Notice

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**Commission for Communications Regulation**

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## Introduction

1. On 20 June 2018, the Body of European Regulators for Electronic Communications (“BEREC”)<sup>1</sup> published the results of its *ex-post* analysis into the price impact of recent mobile mergers in Austria, Germany and Ireland. In particular, the study examines the acquisition of Telefónica Ireland Ltd (O2) by Hutchison 3G UK Holdings Limited (Hutchison) (“the Merger”).

## Background

2. On 28 May 2014, the EC announced its decision to approve the Merger. The Merger reduced the number of mobile network operators (“MNOs”) in Ireland from four to three, and resulted in Three, Hutchison’s Irish undertaking, moving from being the smallest MNO to the second largest in terms of revenue and subscribers. The Merger was approved subject to commitments put forward by Hutchison in response to the EC’s competition concerns (“Commitments”). In summary, the Commitments involved Hutchison:
  - Offering to Eircom the continuation of the existing network sharing agreement (between Meteor and O2) on improved terms;
  - Providing wholesale access to Three’s network to two Mobile Virtual Network Operators (“MVNOs”<sup>2</sup>) on the basis of capacity agreements in return for fixed payments; and
  - Divesting spectrum rights to one of these MVNOs if the MVNO could show a Monitoring Trustee a credible business plan to become an MNO within a reasonable period of time. This spectrum divestment option would remain open for ten years.
3. The objective of the EC’s remedies was to eliminate competition concerns and to be comprehensive and effective from all points of view<sup>3</sup>. ComReg provided data, analysis and comments to the EC on the potential impact of the Proposed

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<sup>1</sup> BEREC was founded based on EU Regulation (EC No. 1211/2009). BEREC’s duty is to establish greater coordination in national regulatory practices through the uniform implementation – as far as possible – of the European regulatory framework for electronic communications networks and services, in order to promote the development of an internal market.

<sup>2</sup> An MVNO is a wireless communications services provider that does not own the wireless network infrastructure over which it provides services to its customers.

<sup>3</sup> European Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 Remedies Notice, § 9.

Acquisition on competition, including an assessment that the Commitments were largely inadequate and would not fully address the competition concerns identified.

4. Following the EC's announcement, ComReg issued an Information Notice (Document 14/53)<sup>4</sup> which highlighted a number of its concerns. In particular, ComReg was concerned that the Commitments appeared inadequate and ineffective as a means to address the serious competition concerns and consumer harm identified by the EC.
5. ComReg further stated that:

*“ComReg remains of the strong view that the behavioural commitments are insufficient to address the structural competition deficit identified as likely to arise from the proposed acquisition”*

## Results of the BEREC Study

6. This study was prepared by BEREC, the group of European telecoms regulators, on four-to-three mobile network operator (MNO) mergers that were conditionally approved by the European Commission in Austria (2012), Germany (2014) and Ireland (2014). The price implications of the Mergers were examined for three different types of mobile users based on their usage of national voice minutes, national SMS and domestic data. Across the three countries, the study found evidence that these concentrations led to price increases in the short to medium term.
7. For Ireland, the results of the estimations<sup>5</sup> indicate that the Merger led to price increases for low, medium and high mobile users in the first half year after the merger with this effect persisting for the duration of the study (one and a half years) for the high basket. In particular, prices for medium and high mobile users are estimated to be over 20% higher in the first half of 2015 than they would have been had the merger not occurred<sup>6</sup>.
8. The study also noted that the impact of the MVNO remedy in Ireland was small;

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<sup>4</sup> ComReg, Document 14/53, Information Notice, “European Commission completes its investigation into the proposed acquisition by Hutchison 3G UK Holdings Limited of Telefónica Ireland Limited”

<sup>5</sup> A difference in difference analysis was undertaken in this report. This is the standard statistical methodology used to determine the impact of a change in market structure.

<sup>6</sup> The results of the difference in difference analysis show that, at a 95% confidence level, price increases of at least 20% occurred for these types of mobile users in this period.

- iD Mobile, the first MVNO to enter as a result of the Commitments, launched on 20 August 2015. However, it exited the market on 6 April 2018.
  - The second MVNO, Virgin Mobile, launched its services on 5 October 2015, and has grown from a revenue and subscriber share of 0.2% in Q2/2016 to 0.9% in Q3/2017.<sup>7</sup> Virgin Mobile is now the only MVNO that can avail of the spectrum divestment commitment.
9. In ComReg's view, the concerns expressed to the EC regarding the Commitments remain valid. In keeping with its statutory powers, ComReg will:
- continue to monitor the competitive dynamic of the mobile markets;
  - proceed with its strategy for managing the radio spectrum, including the identification of other spectrum releases in order to promote competition, innovation and network investment among other things<sup>8</sup>; and
  - promote the use of its Compare price comparison tool which allows consumers to compare prices, thereby lowering barriers to switching within the market. The Compare tool is available at [www.comreg.ie/compare](http://www.comreg.ie/compare)
  - continue to monitor compliance by undertakings with relevant regulations with respect to consumer contracts and investigate any matters arising as appropriate.
10. The full report "BEREC Report on Post-Merger Market Developments – Price Effects of Mobile Mergers in Austria, Ireland and Germany" is available [here](#).

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<sup>7</sup> Prior to the merger, Three had a subscriber based market share of 8.9%

<sup>8</sup> ComReg assigned rights of use in the 3.6 GHz and 26 GHz bands in 2016 and 2018.

<https://www.comreg.ie/publication/results-3-6-ghz-band-spectrum-award-2/>

<https://www.comreg.ie/publication/results-of-the-26-ghz-spectrum-award-2018/>