# European Commission clears WIND and Hutchison joint venture in Italy

On 1 September 2016, the European Commission cleared a 50/50 joint venture between VimpelCom's subsidiary WIND and CK Hutchison's subsidiary 3 Italia (or H3G), respectively the third and fourth largest mobile network operators in the Italian market. The EU merger clearance decision is conditional on the divestment of sufficient assets to France-based Iliad to allow it to enter the Italian market.

**The parties notified the proposed full-function joint venture (JV) to the European Commission ("Commission") in February 2016. Competition concerns identified by the Commission prompted an in-depth (Phase II) investigation under the EU Merger Regulation of the effects of the JV on the level of competition in the Italian mobile market. The Commission considers that its concerns have now been addressed by the remedies offered by the JV parties, which involve both parties divesting sufficient assets to enable a new mobile network operator to enter the Italian market alongside existing operators TIM and Vodafone.**

## Competition concerns

The Italian mobile market currently has four mobile network operators (**MNOs**) – WIND, 3 Italia, TIM and Vodafone – and a limited number of mobile virtual network operators (**MVNOs**), the largest of which are PosteMobile and Fastweb, who do not own mobile networks but operate on the MNOs networks under wholesale access arrangements.

The proposed JV led the Commission to voice three main competition concerns:

- **Elimination of competition**. The transaction would reduce the number of MNOs active in the market, eliminate competition between the two strong MNOs that are party to the transaction, and create the largest player in the Italian retail mobile market in terms of subscriber numbers. The Commission considered that 3 Italia, the smallest and most recent MNO to have entered the Italian mobile market, was a major driver of competition, and WIND, the third largest MNO, also played an important competitive role. It also found that, post-transaction, the JV would have much less incentive to compete with TIM and Vodafone compared to the status quo, and that TIM and Vodafone would have fewer incentives to compete with the JV and against each other. On that basis the Commission concluded that the transaction was likely to result in less choice, lower quality of services and higher mobile prices for end users.
- **Risk of coordinated behaviour**. Given their similar market shares, the Commission found that the transaction would enhance the risk of sustained coordination of competitive behaviour between the three remaining MNOs, and that this would be likely to lead to a further increase in retail mobile prices on the Italian market.
- **Limitation of MVNO access**. Finally, the Commission was concerned that the transaction would reduce the number of potential host networks available to existing and potential MVNOs, lessening choice and weakening the MVNOs' negotiating position to obtain favourable wholesale access terms.

## Remedies

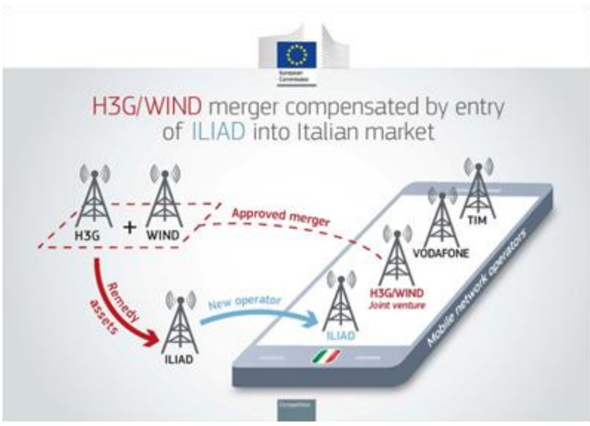
To address the Commission's competition concerns, the JV parties offered remedies involving the divestment of certain assets necessary to enable a new entrant to enter the Italian market as a fourth MNO. The Commission approved the selection of Iliad, a French telecommunications operator, as the purchaser (or "remedy taker") in relation to these assets. Iliad previously entered the French mobile market in 2012 with disruptively aggressive pricing through its subsidiary Free Mobile.

More specifically, the remedies consist of:

- transferring to Iliad a certain amount of the JV's mobile radio spectrum from different (3G/4G) frequency bands (900 MHz, 1800 MHz, 2100 MHz and 2600 MHz);
- transferring to Iliad - or otherwise making available by means of co-location - several thousand mobile base station (macro) sites; and
- concluding a transitional 2G, 3G and 4G roaming agreement on the merged network of the JV parties, for a period of five years (renewable for one further five-year period at the initiative of Iliad), enabling Iliad to offer its customers a nationwide mobile service in the period before it is able to provide (nationwide) services on its own mobile network.

The implementation of the remedies package through completion of an agreement with Iliad is a condition to the Commission's approval of the joint venture (a so-called "fix-it-first" remedy). This means that the JV cannot be implemented until the agreement with Iliad is in place.

In accepting the remedies package, the Commission has confirmed that, in its view, these measures will effectively replace the competitive constraints lost as a result of the integration of Wind's and Hutchison's Italian operations and ensure that Italian mobile customers are not harmed as a result of the transaction.




## Conclusion

The transaction is another example of the ongoing consolidation in the telecoms sector. MNOs are confronted with significant investment costs associated with rolling out, maintaining and upgrading network infrastructure in line with technological developments (including the evolution from 2G to 3G and 4G services) and ever-increasing data usage and demand for bandwidth, whilst at the same time experiencing heavy competition on bundle prices, including from MVNOs and from quad-play and over-the-top competitors, all of which together is resulting in declining revenues in core telecoms services.

In the face of the M&A activity triggered by these industry trends, the Commission is demonstrating a preference for structural (divestment) remedies in MNO-to-MNO merger cases, aimed at introducing a new entrant in order to replace the competitive pressure eliminated by the concentration. In 2015, the absence of a suitably "significant" package of structural remedies led Telenor and TeliaSonera (now Telia Company) to withdraw the proposed merger of their Danish mobile operations in anticipation of a prohibition decision by the Commission. More recently, the Commission adopted a decision prohibiting the proposed acquisition by CK Hutchison of Telefónica's O2 in the United Kingdom after the parties failed to convince the Commission to accept their proposed remedies package.

Whilst national market conditions differ in Italy as compared to the UK and Denmark, it is apparent that the JV parties in the present transaction were alive to the Commission's clear preference for structural solutions to enable a new mobile network operator to enter the market, and designed remedies that sought to meet these demands in order to achieve a clearance decision.

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