

INSIGHTS

4-TO-3 – BACK TO 4?

A time of reckoning for the EU telecoms industry

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4-to-3 mobile mergers appear to be making a comeback in Europe after an 8-year hiatus. Operators have been calling for competition authorities to use a new playbook to assess these proposed mergers: one that recognises challenges in the industry and the need for continued investments. However, it is not clear whether competition authorities have heard this call for change, or whether the same rules will continue to apply as previously. In this article, we examine – at this crucial time for the EU telecoms industry – recent developments to assess whether the stance of authorities appears to be changing, and whether 4-to-3 mergers may indeed be back in business.

A wave of 4-to-3 mobile mergers in Europe between 2012 and 2016 reshaped the telecoms landscape in several countries, sparking debates on competition and consumer choice. Failed merger attempts in Denmark and the UK in 2015 and 2016 marked the end of that wave of consolidation and appeared to signal a reduced openness to consolidation from the Commission.

After an 8-year dry spell, recent developments suggest a resurgence of merger talks in key European markets like Spain, Portugal, Italy and the UK. This is reigniting discussions around consolidation, prompting stakeholders to reassess market dynamics and the framework for evaluating such mergers.

Operators have now for several years been calling for a new playbook to apply, citing weakening financial performance, lack of

scale and the need for transformative investments in 5G networks.

As this situation unfolds, everyone is wondering whether authorities will respond to the industry's request for a new set of rules, or whether the same playbook will continue to apply as a decade ago. Decisions in the coming months will send a critical signal to the market for the years to come.

After an eight-year dry spell, 4-to-3 mobile mergers may be making a comeback in Europe

Between 2012 and 2016, Europe witnessed a wave of 4-to-3 mobile mergers that reshaped the telecoms landscape in several countries. For operators seeking the regulatory green light, the argument was that size was critical. They warned that scale is essential in telecoms and defended that combining resources would make them better suited to big investments in new technologies (e.g., 4G) while becoming more efficient and competitive.¹

Despite the resulting debates regarding the impacts on competition and consumer choice, a combination of behavioural and structural remedies was for a while deemed sufficient to address competition concerns. Spectrum divestiture, in particular, seemed to play a






















central role, first as a way to support MVNOs in transitioning to becoming MNOs, later as a way to more directly support the immediate launch of a new MNO.²

After several approved mergers, a new regulatory landscape began to emerge in 2015 and seemed to settle in 2016. When Telia and Telenor sought to merge in Denmark, the Commission took a firm position on 4-to-3 mobile mergers, despite apparently receiving a strong remedies offer, suggesting that the creation of a fourth operator via structural divestments was a crucial ingredient for approval:

*"What we were looking at were very serious concerns. To me it was necessary to have a fourth mobile operator"*³

- Margrethe Vestager, European Commissioner for Competition

European 4-to-3 mobile mergers since 2012

Year	Country	Players	Mkt Share ¹	Outcome
2012		AT Orange (#3) H3G (#4)	24%	
2014		DE Telefonica DE (#3) E-Plus (#4)	31%	
2014		IE O2 (#2) H3G (#4)	40%	
2015		DK ² Telenor (#2) Telia (#3)	41%	
2016		IT Wind (#3) Tre (#4)	33%	
2016		UK Hutchinson (3UK) (#4) Telefonica UK (O2) (#2)	40%	
2018		NL T-Mobile (#3) Tele2 (#4)	25%	
Today		ES Orange (#2); MásMóvil (#4)	43%	
		PT Vodafone (#3); Nowo (#4)	27%	
		UK Vodafone (#3); 3 UK (#4)	30%	
		IT Vodafone (#2); Others ³	?	

Note: 1) Retail market share in terms mobile subscriptions. 2) The merging parties abandoned the planned merger before an official prohibition by authorities. 3) Vodafone is reportedly in talks with other operators seeking rival deals after rejecting Iliad's merger offer.

Source: Copenhagen Economics

This approach appeared to be cemented in 2016 when the Commission decided to block the merger between Hutchison and Telefónica in the UK. Despite saying that there was no "magic number", the decision seemed to send the opposite message: to clear a 4-to-3 merger, the Commission would require a "back to 4" remedy. Again, Commissioner Vestager specifically referred to the need to create a fourth operator in order to approve.⁴

Following an eight-year dry spell⁵ of relative calm, recent developments suggest a new merger renaissance, with official announcements or reported plans coming from at least Spain, Portugal, Italy and the UK, and rumours in further countries.⁶

Will these mergers unlock the new playbook operators have been asking for?

Operators have long been calling for a revised framework for evaluating mergers. These calls have intensified in recent years, as declining margins, soaring network traffic and the expensive deployment of 5G networks has sparked concerns about lagging investments and network resilience.

The path to approval seemingly became clearer in 2020, when the General Court ruled that the

¹ See arguments of merging operators in e.g. Commission's decisions (i) approve Telefonica DE/ E-Plus ([link](#)); and to (ii) prohibit Hutchison 3G /Telefonica UK ([link](#)).

² In the German, Irish and Austrian mergers, spectrum divestiture offers were never taken up by alternative operations, hence no effective spectrum divestiture occurred.

³ Vestager reportedly told reports on 11 September 2015, during the conference "European Competition Policy and the Energy Transition, organised by Bruegel in Florence. See TeliaSonera and Telenor fail to get Danish merger approved, Reuters, 11 September 2015 ([link](#)).

⁴ See the Statement by Commissioner Vestager on competition decision to prohibit Hutchison's proposed acquisition of Telefónica UK: "In this case, an effective remedy would, for example, have been the

creation of a fourth mobile network operator to replace either Three or O2 in one of the network sharing agreements", 11 May 2016 ([link](#)).

⁵ Between 2016 and 2024, not considering the merger approved in the Netherlands in 2018, involving T-Mobile and Tele2, where albeit not concluding on whether Tele2 would have continued operating in the market, the Commission's decision hinged on Tele2 not being an important competitive force due to low market share, limitations in its network and the fact that its competitive strength would have likely deteriorated in the absence of the merger.

⁶ E.g. Sweden and Denmark. See "CK Hutchison reportedly looks to Telenor for Sweden and Denmark merger", Reuters 20 March 2023 ([link](#)).

Commission's decision to block 3UK/O2 had been unlawful, suggesting that there would be a higher bar to block mergers on oligopolistic markets going forward. The decision rippled through the industry as a potential turning point in the Commission's stance on consolidation. However, hope for a new playbook took a blow in 2023, when the CJEU overruled the General Court's decision, essentially rolling back the merger playbook to the rules that had applied in 2016.⁷

Despite that setback, operators did not halt their efforts, warning that the EU needs a new playbook to support effective investments in telecoms networks: one which facilitates consolidation.⁸

Operators assert that they are now playing a different game compared to a decade ago – due to weakening financial performance, high required investments, pressure from OTT players, and more – and hence that different rules should apply.

Operators hope for a different merger playbook

“So we clearly do not expect necessarily remedies [...]

Do not apply sort of old methodologies and old approaches to something which is really very different in a different set of conditions.”

Margherita Della Valle, Vodafone Group CEO, 2023 (in reference to the UK case)

“We are at a very early stage to talk about them [the possible remedies], but we don't believe that there should be any 'remedies' – if there are any, they should be light”

Jean François Fallacher, CEO Orange España, 2023

“Given the dimension and the impact on the market, there is no objective reason [to anticipate a prohibition].

We anticipate neither decision complexity nor substantial remedies”

Mário Vaz, CEO Vodafone Portugal, 2022

Against this background, the key question is: will authorities answer the industry's calls for a new play-

Spectrum divestiture levels in 4-to-3 mobile mergers since 2012

Year	Country	Market share ¹	Outcome	Spectrum divestiture		
				Low bands ²	Mid bands ³	High bands ⁴
2012	AT	24%	●		■ ■	
2014	DE	31%	●		■ ■ ■ ■	
2014	IE	40%	●	■	■ ■ ■ ■	
2015	DK	41%	●			
2016	IT	33%	●	■	■ ■ ■ ■ ■ ■	
2016	UK	40%	●			
2018	NL	25%	●			
Today	ES	43%	●		■ ■ ■ ■	■ ■
	PT	27%	●		■ ■	■ ■
	UK	30%	●	?	?	
	IT	?	●	?	?	

Caption: ■ 2x5 MHz (non-materialised divestiture⁵) ■ 2x5 MHz (materialised divestiture) ■ 1x10 MHz

Notes: 1) Retail market share in terms mobile subscriptions. 2) Sub-1GHz spectrum bands. 3) Spectrum bands between 1 and 3 GHz. 4) Spectrum bands above 3 GHz. 5) Non-materialised spectrum divestitures occurred when spectrum divestiture was destined for new MNO entrants that did not occur.

Source: Copenhagen Economics (based on publicly available information, including documentation from the European Commission and National Regulatory Authorities)

book?

⁷ See Copenhagen Economics article CK Telecom Judgement: Setting the Standards ([link](#)).

⁸ See, ETNO-GSMA position paper European Spectrum Policy for the Digital Decade, 3 July 2023 ([link](#)).

At first glance, the “playbook” remains the same

We have examined the commitments that are being offered by operators in the latest round of proposed mergers and evaluated how authorities seem to be receiving them. At first glance, although many operators seem to be willing to try their luck in a new round of consolidation, there are few signs yet that the goalposts have moved substantially compared to a decade ago.

In Spain and Portugal, despite previously having signalled that remedies need not be on the cards, merging operators have already offered to divest spectrum. The ‘quantity’ of spectrum that they are offering to forego seems quite similar to that of some of the approved mergers in the previous consolidation wave. Moreover, both in Spain and Portugal, operators have committed to sell spectrum to make way for a new fourth MNO, in what looks like an attempt to meet the ‘back to four’ standard that was outlined in the EU after Commissioner Vestager took office.

In Spain, the Commission has just cleared the Orange/MásMóvil merger⁹ conditional on spectrum being sold to a new entrant. This suggests that the recipe from the old playbook is still the one to follow: divest enough spectrum to ensure a fourth MNO. In Portugal, despite operators having adopted the same recipe and proposing to sell spectrum to a fourth player, the national competition authority has rejected Vodafone’s initial commitments. However, this decision seems to have been driven largely by concerns about lower competitive pressure arising in fixed services and not in mobile services¹⁰, and Vodafone is reportedly proposing new remedies to the regulator.¹¹

It is still too early to assess whether this is a clear win for the same old playbook, or whether the rules may be bending slightly. The Commission has been willing to clear Orange/MásMóvil despite a) a slightly higher combined market share of the Spanish operators than in previous cases,¹² and b) slightly higher predicted price increases on the retail market than in previous cases.¹³ It also remains to be seen how things will play out in other countries.

In the UK, the CMA is currently probing the Vodafone/3UK merger. However, this decision will of course

be made by a different authority, and it is possible that there will be a divergence in playbooks.

The Commission hints at openness to more consolidation. But what kind of consolidation?

In 2023, the Commission otherwise left the strongest hints yet at revising the telecoms regulatory framework the market had seen in years.¹⁴ After a consultation on the future of the sector and its infrastructure, the Commission promised a white paper intended to pave the way for a Digital Networks Act (DNA). It would explore key challenges related to connectivity, spectrum and investment and how to address them. However, already then, it was clear that the Commission was preparing to adopt at least a new narrative towards the future of telecoms consolidation in Europe:

*“Telecoms operators need scale and agility to adapt to this technology revolution, but **market fragmentation holds them back. Too many regulatory barriers to a true telecoms Single Market still exist, on spectrum acquisition, **consolidation**, legacy networks, security, and so on.**”¹⁵*

- Thierry Breton, European commissioner for Internal market

The long-awaited white paper leaked last week (now officially published)¹⁶ suggests that the Commission is embracing many of the arguments that operators have been using in support of consolidation.¹⁷ Overall, it acknowledges that scale is needed to allow for investments in future networks – particularly for cross-border services and the deployment of IoT – and that consolidation may be a means to achieve it.

However, while the Commission seems to be open to further cooperation between telecoms operators, for instance in cases where there may be little current network overlap, such as cross-border consolidation, or where downstream competition can be preserved, such as network sharing agreements, the paper stops shy of proposing a new playbook for national mergers.

*“Against this backdrop of fragmentation in the EU (which is specific to the EU compared to other regions of the world) and low profitability levels, **the question arises as to whether industrial policy measures further facilitating the cross-further provision of electronic communications networks or different forms of cooperation upstream could allow operators to***

⁹ See the Commission press release on the approval decision, 20 February 2024 ([link](#)).

¹⁰ See “Autoridade da Concorrência rejeita “remédios” para a compra da Nowo pela Vodafone”, Expresso, 17 January 2024 ([link](#)).

¹¹ See “Vodafone avançou com novo pacote de “remédios” na compra da Nowo e mantém o espanto com a demora do processo”, Expresso, 21 February 2024 ([link](#)).

¹² Market share of 43% compared to 24-40%.

¹³ Price increases in excess of 10% compared to 5-7%.

¹⁴ See Commissioner Breton’s LinkedIn blog post, 10 October 2023 ([link](#)).

¹⁵ Idem.

¹⁶ Document leaked by Politico ([link](#)). The official version was published by the European commission on 21 February 2024 ([link](#)).

¹⁷ European Commission’s White Paper “Building Europe’s digital infrastructure of tomorrow: towards a Digital Networks Act.”

acquire sufficient scale, without compromising downstream competition”

- European Commission's White Paper

Indeed, in parallel with the paper being released Vestager has clarified that there is (to her knowledge) no change in the Commission's approach to national mergers. When asked whether possible changes to EU merger rules were underway, Vestager reportedly denied, simply telling reporters *“No, none that I have heard of”*.¹⁸

What the implications will be, if any, on merger battlegrounds is still highly uncertain. Like the developments on the announced mergers, the ensuing discussion about the Commission's new narrative will help us paint a clearer picture of what is to come. One certainty remains: the coming months will be the crucial towards shaping the telecoms landscape in relation to regulation and competition in the EU for years to come.

¹⁸ See *“No easier merger rules for telcos, EU's Vestager says”*, Reuters, 19 February, 2024 ([link](#)).

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