

You've been disconnected: the Commission blocks British telecom merger

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The European Commission has earlier cleared several 4-to-3 mergers in the mobile telecommunications sector. But as illustrated by the European Commission's recent refusal to clear the proposed acquisition of mobile network operator O2 by Hutchison, 4-to-3 mergers generally give rise to competition concerns. O2 is the second largest mobile operator in terms of revenue in the UK, and the largest in terms of number of subscribers. Hutchison's Three is a recent entrant on the UK market and is considered one of the most important drivers of competition. According to the Commission, the proposed acquisition would have resulted in less choice and higher prices for UK mobile customers. In the absence of an effective remedy, the European Commission blocked the acquisition: its 25th prohibition in 25 years. Companies should therefore be aware that 4-to-3 mergers are not impossible but need careful scrutiny and, possibly, remedies.

The UK mobile telecoms market currently has four mobile network operators: Vodafone, BT's mobile business EE, Telefónica's O2, and Hutchison's Three. The European Commission had the following three main [concerns](#) with regard to Hutchison's planned acquisition of O2:

1. *Elimination of competition between O2 and Three* – according to the Commission, Three is the most aggressive and innovative player in the market, and O2 has a strong position with high brand value and reputation. Combined, Three and O2 would have had a market share of more than 40%. This limitation of competition would have led to higher prices and reduced choice and quality for consumers.
2. *Change in the UK's mobile network infrastructure* – the merged entity O2/Three would have been part of two network sharing agreements. Network sharing agreements allow mobile network operators to share the costs of rolling out their networks while continually competing with each other for retail customers. EE and Three have combined their networks as MBNL, whereas Vodafone and O2 have combined their networks to set up Beacon. The merged entity would thus have had a full overview of the network plans of its two biggest competitors.
3. *Reduced number of hosting mobile network operators* – the transaction would have reduced the number of mobile network operators willing to host other mobile operators on their networks. These mobile virtual network operators rely on access to the infrastructure to provide mobile services to consumers.

The Commission has previously [approved](#) several 4-to-3 mobile mergers in other member states, such as Austria, Denmark,

Ireland and Germany. The difference with these approved mergers seems to be that the merged entity O2/Three would have had network sharing agreements with both remaining operators. As a result, the Commission concluded that the proposed transaction would have impacted the entire UK mobile infrastructure.

The Commission indicated that the creation of a fourth mobile network operator to replace either Three or O2 in one of the network sharing agreements would have been an effective remedy to resolve its competition concerns. Hutchison did offer a number of behavioural remedies, but these were rejected for not adequately addressing all of the competition concerns. The proposed acquisition was therefore blocked by the Commission.