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Current Trends of Competition Policy in Telecoms

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ANACOM Conference

Consolidation In The Telecommunications Sector – Trends And New Challenges

Lisboa, 22 September 2014

I. Investment in NGN and Consolidation in Telecoms in Europe

Is the European Commission making the right call?

Different views emerged on the role of regulation and competition policy …

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- Digital Agenda and the Connected Continent regulatory proposals urged for the need for drastic changes in the telecom industry configuration in Europe.
  - Fragmented markets: hundreds of telcos in Europe
  - A "*Patchy Pan-european Policy Framework*"
- ETNO; Leading European Telcos claim for:
  - need of scale to finance investment in NGN
  - a more lenient EU rules on merger control
- The counter-examples of the U.S. and Chinese concentrated telecom markets

Much speculation on the EU approach

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The Economist

EU telecoms regulation

Kroes control

The digital commissioner proposes a single market to speed up Euro

Se 14th 2013 | From the print edition

FINANCIAL TIMES

April 16, 2014 5:57 pm

Jean-Claude Juncker seeks to open door for EU telecoms deals

Europe's telecom companies could soon be getting what they have long been begging for: looser EU competition rules that would finally allow them to consoli

Bloomberg News Quick Markets Personal Finance

Jun 25, 2013 7:32 PM GMT

Consolidation in Europe's Telecom Market Tests Regulators

FINANCIAL TIMES

June 30, 2014 6:18 pm

Telecoms: Europe's scrambled signal

By Daniel Thomas and Alex Barker

The fragmented mobile phone industry undermines the single-market dream

REUTERS EDITION: U.S.

EU's Almunia defends merger rules against telecoms criticism

nerger control does not stand in the way of creating large successful European corporations," he told the European npetition Forum in Brussels.

DG COMP and DG Connect views

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- Vice President Neelie Kroes:

“Creating a single market is our policy objective. Consolidation, on its own, cannot be a policy objective.”

- Vice President Joaquín Almunia:

“…the principles of competition must be maintained in the digital economy with the same intensity that they are imposed in the brick and mortar world”

“… the new regulation will not be a regulatory holiday for the big telecom operators. We will not lose the benefits of a decade of liberalisation by creating new private monopolies”.

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I. Investment in NGN and Consolidation

Presumption that Scale brings Innovation

The Revival of a long-lasting discussion …

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- The relationship between scale and competition on investment and innovation
- Trade-off between services based competition and facilities based competition
- NGN's
  - Pro-investment environment for next generation network building
  - Key to ensure the conditions for a sustained competitive environment

But would fewer and bigger “pan-European” telcos deliver a more favourable innovation path?

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- This is no established empirical regularity (e.g., Nokia case)
- Mainstream economics inconclusive in this regard
- The presumption is more a matter of “beliefs” and “dogmas”
- Interplay of the various catalysts of innovation is a complex subject
- Little incentive to invest in the absence of competition
- Caution when interpreting the determinants of telecom investment trends

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I. Investment in NGN and Consolidation

Lessons from recent EC merger decisions

Most relevant EC merger decisions in telecoms
Timeline

M.5650	M.6497	M.6992	M.7018
T-MOBILE/ORANGE	H3G AUSTRIA/ ORANGE AUSTRIA	H3G UK/TELEFONICA IRELAND	TELEFONICA DEUTSCHLAND/E-PLUS
Mar 2010	*Dec 2012*	*May 2014*	*Jul 2014*

4 to 3 mergers in telecoms
No Structural Dogmas

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- All **4 to 3 mergers** except for T-Mobile/Orange (5 to 4)
- All 4 merger cases had Conditional Clearance Decisions
- Commission's Competitive Assessment: Effects-Based Approach
- Substantive Analysis based on market/merger specificities

4 to 3 mergers in telecoms
Facts are Key

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- The Merger Enforcers Algorithm (Malcom Coate 2011)

"Seven to six, nothing to fix

Six to five, likely to survive

Five to four, show us more

Four to three, facts are key

Three to two, ready to sue

Two to one, you are done!"

Facts are Key: Competitive Assessment

- **T-Mobile/Orange**
  - Merger between the 3rd (Orange) and 4th (T-Mobile) of 5 MNO's in UK retail mobile
  - T-Mobile's RAN sharing agreement with 3UK (important competitive force)
  - Spectrum concentration
  - Parties ability and incentive to terminate/frustrate the RAN sharing agreement

- **Hutchinson 3 G Austria/Orange Austria**
  - Merger between the two smallest of 4 MNOs
  - Concentrated market for mobile telecom services
  - Joint market share bellow 25%
  - Merging parties: close and important competitors in the market
  - Pressure for price increases (GUPPI)

Facts are Key: Competitive Assessment

- **Hutchinson 3G UK/Telefonica Ireland**
    - Three (H3G brand in Ireland) and O2 (Telefonica)
    - Merger between two of 4 MNOs
    - Elimination of Three as an important competitive force
    - Concerns with the future of the NSA Eircom has with O2 in Ireland
- **Telefonica/E-Plus**
    - Merger between two smallest of 4 MNO active in the German retail mobile market
    - Post merger market structure composed of three similarly sized MNOs
    - Telefonica and E-Plus close competitors
    - Merging Parties were important competitors in the market (particularly E-Plus)

Efficiencies and Commitments

- **Efficiencies**
  - Burden of proof upon merging parties
  - Verifiable, passed-through to consumers and merger specific
  - Increased network coverage, speed and quality could be attained by other means? Eg. NSAs?
  - "*Mobile telecom companies across Europe are already investing in 4G/LTE networks, without merging their operations*".
- **Commitments**
  - Spectrum divestitures, Wholesale access obligations, Upfront MVNOs
  - Reserved rights for upcoming spectrum auctions
  - Amendments to NSAs for ensuring their maintenance
  - Doubts over MNO-entry commitments (H3G Austria/Orange Austria)

In Portugal: ZON OPTIMUS Merger

- ZON: cable operator providing pay-tv, broadband internet and fixed voice
- Optimus: mainly a mobile operator, also provided these services via its fixed network
- Competitors: PT, Cabovisão and Vodafone
- Optimus and Vodafone NSA for their fiber networks
- Concerns:
  - Merging parties close competitors in some areas
  - Effects on Optimus' NSA with Vodafone

In Portugal: ZON OPTIMUS Merger

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- Commitments
  - Amendments to the NSA (duration, early termination payments and dispute resolution mechanism)
  - Call-option for Vodafone to buy Optimus fiber network
  - Wholesale access obligation to Optimus fiber network
  - Optimus: no early termination charges to consumers
- PCA issued a conditional clearance decision in August 2013

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II. Technological Progress and Changes in Consumption Patterns

New Challenges for Competition and Regulatory analysis

Technological Progress and changes in consumption patterns

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- Bundles including fixed and mobile voice, data and pay-tv services
- Consumers' growing preference for bundles
- New relevant markets have been defined for bundles
- Paradigm shift: access to premium media content - the new bottleneck
- Added relevance to vertical integration between telcos operators and *premium* media content/channel providers

ZON Optimus*PT*Controlinveste/Sport TV*PPTV merger

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- PCA recently blocked a merger by which PT was entering in an already existing Joint Venture (Sport TV) between ZON Optimus and Controlinveste
- Sport TV was the monopolist supplier of Sports premium channels until Benfica TV (premium) started broadcasting in July 2013.
- Pre-merger, Sport TV was a 50/50 joint venture between ZON Optimus and Controlinveste
- With the merger PPTV would be integrated in Sport TV
- Post merger: ZON Optimus and PT would each hold 25% of Sport TV; Controlinveste would have 50%

ZON Optimus*PT*Controlinveste/Sport TV*PPTV merger

- Concerns with **customer foreclosure**:
  - Non-integrated (with Sport TV) telecom operators share of pay-tv subscribers would be reduced from around 50% to 10%
  - Reduction on PT's incentives to promote the entry/expansion of premium Sports channels
  - Increase on ZON Optimus' incentives for customer foreclosure
- Concerns with **input foreclosure**:
  - Merger strengthened Sport TV's market power
  - Possibility of increased incentives to foreclose, under certain scenarios, not ruled out

ZON Optimus*PT*Controlinveste/Sport TV*PPTV merger

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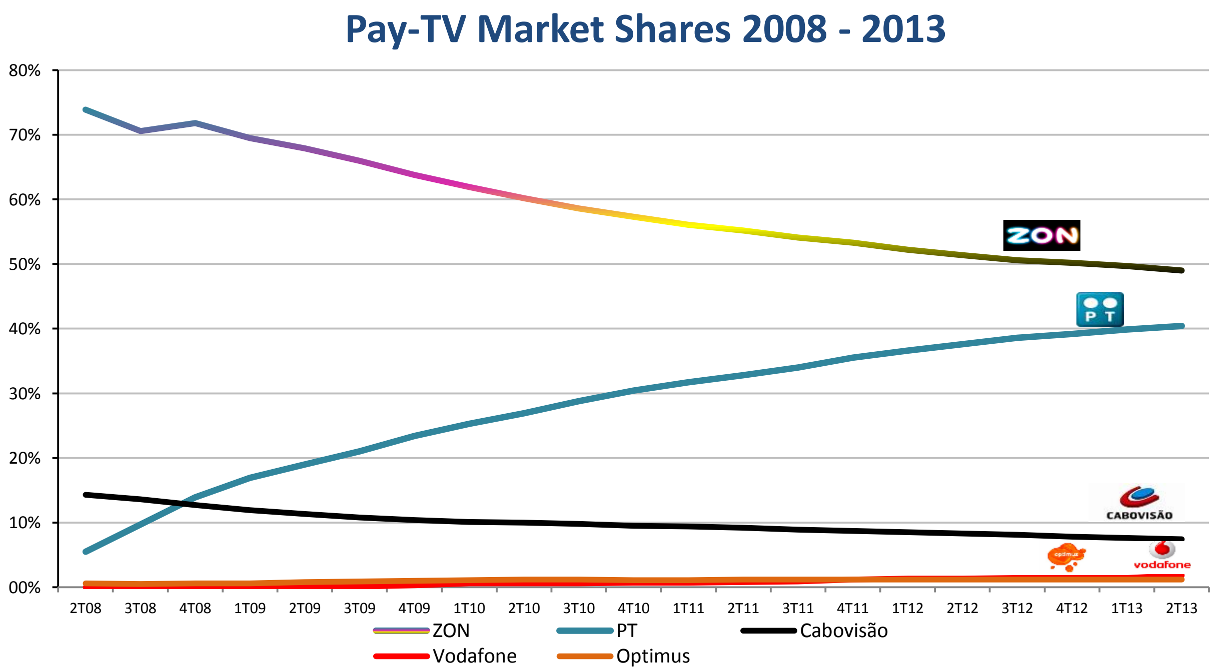
- Competition concerns with **coordinated effects** in pay-tv and triple play
  - The merger **created structural links** between rival telcos, **increased the symmetry in terms of vertical integration**, **reduced the scope and incentives for differentiation** via Sports Premium contents, **harmonized the degree of information** of ZON Optimus and PT concerning their rivals, **harmonized cost structures**, increased transparency creating ***fora* for information exchange** and **strengthened barriers to entry** as a result of the input and customer foreclosure effects.

ZON Optimus*PT*Controlinveste/Sport TV*PPTV merger

- Merger Impact: Increased probability of consensus and strengthened internal and external sustainability of coordination…
- … in a market which has become increasingly vulnerable to coordination:



Conclusions

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- *"Waiting will hurt everyone"*
- Economics is not just about the right policy, but also about the right time to apply the right policy
- Trial-and-error approach to telecom policy not advisable
- Debate between EC, NRAs, NCAs, undertakings, consultants and academics
- Continuous technological progress may call for competition policy and regulation to adjust the way they assess and intervene in these markets
- Sustainable competition throughout different technological eras.

Thank you

António Ferreira Gomes
President, Portuguese Competition Authority