Global Counsel

Telco competition and consolidation: Vestegar squares the circle

Blog post by Adviser Conan D'Arcy, 02 September 2016

Yesterday brought a remarkable turn-around in the fortunes of Hutchison and its plans to acquire greater market share in Europe's mobile markets, only months after its acquisition of Telefonica's O2 had been rejected. The European Commission announced that it had approved a joint venture between WIND and H3G in Italy, owned respectively by Vimpelcom and Hutchison, two of the country's four major mobile operators.

On the surface, the decision appears as if a relenting of the tough line that the Competition Commissioner Vestager has taken towards mergers in Europe's mobile markets and a tentative step forward for those arguing that consolidation in national mobile markets is necessary to boost telco profitability and, therefore, their ability to invest in high-speed networks.

However, the significance of the announcement is less a dramatic policy U-turn and, instead, represents a compromise between the Commission's competing, often contrary priorities, of promoting competition and consumer choice in the sector, and allowing companies to consolidate and create larger and potentially more profitable entities. At times, the Commission has appeared to speak with two voices on the issue – Digital Commissioner Oettinger has publicly supported greater consolidation and has worked closely with major telcos to promote increased investment in 4G and 5G networks; Vestager, on the other hand, buoyed by bullish national regulatory authorities, such as the UK's Ofcom, has scuppered mobile mergers in the UK and Denmark, refusing to rubber stamp consolidations which would have reduced competition from four to three mobile operators in national markets.

Today's announcement attempts to square off both priorities. Allowing the Vimpelcom/Hutchison joint venture represents a major consolidation in the sector and creates a company with over 30 million mobile customers and of the scale to compete with Telecom Italia and Vodafone. This comes attached with the promise of €7 billion of investment in Italy's broadband infrastructure. Competition advocates will also welcome the conditions of the merger which required the sale of spectrum and mobile base stations to French challenger telco Iliad, in order to allow a new fourth operator to emerge. Crucially for Vestager, this should create renewed competitive pressure on the market, not only in pricing and choice, but also by driving new innovative products and services, a role that Three has previously played in the UK and Iliad in France.

Looking forward companies should work under the assumption that Commissioner Vestager believes that four national mobile competitors are the competitive minimum. However, deals between existing players can gain approval if, through the sale of assets, the creation of a viable, fourth competitor forms part of the deal. The blueprint for telecoms competition policy under the Juncker Commission is now becoming clearer – consolidation is possible but only where continued competition is guaranteed.