

Telefónica May Face Review of Merger Proceedings

- **AIRDATA files action with the EU**
- **European Commission's merger requirements insufficient**
- **Merger comes at a cost to German consumers**

The acquisition of E-Plus by Telefónica, which the European Commission approved in 2014, is now having legal repercussions. The General Court of the European Union will decide whether the approval is legal in its current form.

Stuttgart, 7 June 2015: AIRDATA has filed action with the General Court of the European Union (EGC) against the 2014 approval of Telefónica's acquisition of the mobile telecommunications provider E-Plus in Germany and the insufficient requirements that the European Commission placed on this acquisition.

"The approval of the acquisition is not legally valid. The commitments Telefónica made are by no means sufficient to maintain active competition in the interest of consumers. That's why the European Commission should never have allowed the merger", said AIRDATA CEO Christian Irmler, who pointed out that the German Monopolies Commission has sharply criticised the narrowing of the market to three mobile telecommunications providers in Germany.

As a result of the acquisition, the number of mobile telecommunications providers in Germany shrank from four to three. Deutsche Telekom, Vodafone and Telefónica now dictate the prices.

According to the Finnish consultancy Rewheel, this type of consolidation leads to significant increases in mobile telecommunications prices – as the situation in Austria has shown. According to the Austrian regulatory authorities, the mobile telecommunications prices had increased by 30 percent by September 2014 after Hutchison acquired the French subsidiary of Orange.

If the legal action is successful, the proceedings would have to be reopened. "In this process, they need to provide a frequency package for new market players", said Irmler. In his opinion, it is now the responsibility of the European Commission to take a stand for fair competition on the German telecommunications market.

According to the frequency awarding conditions in Germany, frequency owners must remain competitively independent throughout the entire period of frequency usage. This means that even the German Telecommunications Act would require the companies to give up their frequencies. However, rather than ordering them to do so, the German Federal Network Agency decided that Telefónica could even retain

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frequencies it is not using. These frequencies include the frequencies AIRDATA uses in the 2.6 GHz band.

"The Federal Network Agency has repeatedly asked us to switch off our regional broadband networks and stop providing services to our customers because Telefónica supposedly needs the frequencies", said Irmler, adding that no commercial use has been made of these frequencies. In Irmler's opinion, the agency's decision to allow Telefónica and E-Plus to retain these frequencies in the course of their merger is unlawful and will impair competition on the market in the long term. In Germany, the Cologne Administrative Court will address this matter in a public hearing on 10 June.

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