

## **PCA's decision to block Vodafone from acquiring Nowo (Portugal)**

### **Context**

On July 3, 2024, the Portuguese Competition Authority (PCA) issued a prohibition decision concerning Vodafone Portugal S.A.'s (Vodafone) proposed acquisition of exclusive control over Cabonitel S.A., which includes Nowo Communications, S.A. (Nowo).

Vodafone Portugal is a multi-service electronic communications operator active in Portugal, where it provides fixed and mobile communications, fixed and mobile Internet services, subscription television services and telecommunications packages. It is part of the Vodafone Group, active worldwide in the telecommunications sector, whereas Nowo is a company that offers electronic communications services limited to certain regions of mainland Portugal, including fixed communications, mobile telecommunications, fixed Internet services, pay-TV and telecommunications packages.

Almost two years since the beginning of the procedure, and following an in-depth investigation, the PCA concluded that the acquisition would reduce competition in the identified relevant markets, therefore negatively impacting Portuguese telecommunications consumers.

### **Background**

Vodafone revealed its intention to acquire Nowo's owner Cabonitel on November 7, 2022, in a move to increase its customer base and fixed network coverage in the country.

Taking into account the impact of the notification, several stakeholders had the opportunity to submit their comments, namely, MEO Group, NOS Group, Ius Omnibus Association and Digi Portugal. In this sense, the PCA sought opinions from National Communications Authority (ANACOM) and Regulatory Entity for Social Communication (ERC).

The deal aimed to strengthen Vodafone's position against larger rivals, in particular, MEO and NOS.

### **Decision**

When assessing the Portuguese telecommunications market in a pre-merger scenario, the PCA identified a high level of market concentration.

This phenomenon is essentially explained by the loyalty periods and bundled offers, which characterize this market. Also, significant parallelism was identified in the

offerings of the three leading market operators: MEO, NOS, and Vodafone. Consequently, barriers to market entry are reinforced, on the one hand, due to the reduced customer mobility between operators, and, on the other, considering the entry and growth conditions that new competitors face. That being the case, the PCA ended up identifying a clearly significant degree of coordination, pre-merger.

At a second stage, and following the theory of harm, the i) unilateral and ii) coordinated effects were evaluated.

In terms of unilateral effects, the Authority argued that Nowo exerts considerable competitive pressure on other operators and that its merger with Vodafone would result in significant price increases. Vodafone's products would increase to a lesser extent, and services from competitors would rise marginally.

Regarding the coordinated effects, since that in a pre-merger scenario the market was already described as highly concentrated and coordinated, in the Authority's perspective, implementing this merger would increase the already existing coordination schemes and incentives, and so no other players would be enticed to enter the market post-merger.

The PCA highlighted specific and major concerns regarding Vodafone's increased control over spectrum, especially considering that Nowo had recently acquired radio spectrum, via the 5G frequency auction. These 5G service licenses were reserved to new entrants through an auction held in 2021, licenses which, in a scenario where the merger was authorized, would end up being operated by one of the main existing telecommunications operators (*i.e.*, Vodafone), thus distorting the goals introduced by ANACOM in the previous auction. Accordingly, this concentration of spectrum was identified as a significant factor contributing to the regulatory decision to block the merger.

All in all, the PCA stated that the acquisition's primary aim was to bolster Vodafone's market position, potentially resulting in annual losses of consumer surplus and social welfare amounting to approximately EUR 54 million and EUR 20 million, respectively.

### **Key Takeaways**

One of the key aspects to highlight in the analysis of this case seems to be the need for further justification and responsiveness to the concerns raised by Competition Authorities in highly concentrated markets, such as the telecommunications market. Bearing in mind that, in the case at stake, the Notifier submitted a total of Four Commitment Packages, all of which were rejected.

In its First Commitment Package, Vodafone proposed:

1. Selling some radio spectrum usage rights (RSUR) reserved to new entrants recently acquired by Nowo to Digi.
2. Providing Digi with a wholesale offer on Vodafone's fiber optic network.

The commitments presented in the First Package were of a different nature: on the one hand, the transmission of RSUR is a commitment of a structural nature, on the other hand, the wholesale offer is a commitment of a behavioral nature.

The wholesale offer made to Digi, would give the company access to Vodafone's fiber optic network so that it could, in areas where Nowo was present, offer its services to residential customers, thus maintaining the competition that would be eliminated as a result of the merger.

Regarding the second commitment, ANACOM noted the lack of clarity of information on topics relevant to an in-depth assessment of the economic viability of the offer. Consequently, ANACOM considered that there were doubts as to the effectiveness of this commitment in annulling the unilateral effects resulting from the operation. It is also unclear whether the expected entry of a new operator into the market - Digi - would be sufficient to overcome the problems of coordinated effects.

Accordingly, the PCA adopted a similar reasoning, considering that the wholesale commitment was not sufficiently clear to address the competition concerns of the case.

In the three subsequent Packages, the Notifier sought to refine the commitments already submitted and added other aspects to reach the PCA's acceptance. However, the Authority maintained its position.

The PCA justified that a commitment of this nature could not be accepted, since the proposed wholesale offer constitutes a mere imperfect provision of a wholesale supply area, where the use remains entirely dependent on the commitment taker, in this case, Digi.

In this sense, the PCA emphasizes that the legal and competitive concerns identified do not have a limited time horizon and cannot be based on factors beyond the company's control.

The PCA's decision was the result of an extensive quantitative analysis which included, alongside the simulation model of the possible effects of the operation, an econometric model in which the so-called "*Nowo Effect*" was identified. This effect establishes an association between Nowo's presence and a corresponding reduction in the prices of these services in the municipalities concerned.

Even though the “*Nowo Effect*” was not confirmed in the study carried out by the Consulting Firm Compass Lexecon, the competent Authority ruled out this possibility and reinforced its understanding. The PCA argued that the econometric analysis implemented by Compass Lexecon was based on the aggregation of observations at county level, and as such led to significant distortions in the composition of the database.

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