

# PRESS RELEASE

**CMS Hasche Sigle**  
**Partnerschaft von Rechtsanwälten**  
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**Date** 2 July 2014

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**Subject** CMS advises Telefónica/O2 on E-Plus acquisition

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## **O2 acquires E-Plus**

## **Telefónica/O2: Successful outcome with CMS Hasche Sigle before EU Commission**

### **One of the biggest merger control cases in the European mobile telecommunications market**

Brussels – The EU Commission today approved the merger of Telefónica Deutschland (O2) and E-Plus subject to certain conditions. This is by far the largest merger control case in the German market in recent years. It also represents one of the biggest-ever merger control cases in the European mobile telecommunications market, with the proceedings lasting almost a year. The merger is therefore widely seen as a benchmark with regard to a number of other mobile telecommunications markets in Europe where market consolidation is likewise to be expected.

The merger of Telefónica Deutschland and E-Plus gives rise to the largest mobile telecommunication services provider in Germany by number of customers. The company is well positioned to create one of the most advanced high-speed networks in Germany. Established brands, the right infrastructure for landlines and mobile telephony plus a large customer base allow Telefónica Deutschland to drive its growth strategy forward in a highly competitive market. The transaction offers substantial synergy, in particular with respect to distribution, customer service and network synergies, as well as increased value due to additional revenue. Minus integration costs, synergy effects worth a total of more than EUR 5 billion are expected.

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A very high degree of complexity was a feature of the proceedings. From the start, there was an intensive exchange of views with the EU Commission's Chief Economist team. In parallel, the EU Commission conducted extensive market surveys.

The acquisition reduces the number of mobile network operators in Germany from four to three. Because of this, the EU Commission had originally voiced a number of concerns in relation to competition and opened an in-depth examination.

The concerns raised by the EU Commission were resolved through a package of remedies. The remedy package comprises a number of elements, including granting up to three virtual mobile network operators access to Telefónica Deutschland's and E-Plus' networks on the basis of a new business model, the Mobile Bitstream Access model. Telefónica Deutschland must comply with this remedy before its acquisition of E-Plus can be completed.

A competition law team led by Brussels-based competition law partner Dr Michael Bauer and comprising lawyers from the Brussels, Frankfurt and Stuttgart offices advised Telefónica Deutschland throughout the merger control procedure and represented the company in the proceedings before the EU Commission. On the competition analysis side, Telefónica Deutschland was supported by a team from E.CA Economics.

Alongside the proceedings in Brussels, the German Federal Network Agency (BNetzA) initiated an investigation procedure under national telecommunications law. This investigation is still ongoing. Here, Telefónica Deutschland is being supported by CMS telecommunications expert Dr Jens Neitzel and his team.

The competition law team was supported by a Corporate/M&A team from the Munich CMS office led by Dr Martin Kolbinger during detailed definition of the package of remedies which was eventually aligned with the case team at the EU Commission.

The extensive document requests from the EU Commission were handled by a multi-location team consisting of twelve lawyers from the CMS offices in Brussels, Dusseldorf/Cologne, Frankfurt, Leipzig and Munich.

CMS has been advising Telefónica on a wide range of matters for many years. In July 2013, a CMS team led by Dr Oliver Thurn, Dr Martin Kolbinger and Dr Martin Kuhn worked on the legal side of the negotiations to acquire E-Plus and brought them to a successful conclusion in conjunction with Telefónica.

## **CMS Hasche Sigle**

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### Inhouse:

### **Telefónica**

Valentina Daiber, Vice President Regulatory Affairs

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CMS provides a wide range of expertise across 17 expert practice and sector areas including Corporate, Energy, Lifesciences/Pharmaceuticals, TMT, Tax, Banking and Finance, Commercial, Competition, Dispute Resolution, Employment, Intellectual Property and Real Estate & Construction.

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