

Commissioner Margrethe Vestager
European Commission
1049 Bruxelles/Brussels
BELGIQUE/BELGIE

Alex Chisholm
Chief Executive
Competition and Markets Authority
United Kingdom

11 April 2016

Dear Margrethe,

Case M.7612 Hutchison 3G UK / Telefonica UK

As you are aware, the Competition and Markets Authority (CMA) has serious concerns regarding the proposed merger between Hutchison 3G UK and Telefonica UK. We believe this merger would give rise to a significant impediment to effective competition in retail and wholesale mobile telecoms markets in the United Kingdom. This letter briefly sets out our concerns regarding the merger and proposed remedies, which have also been thoroughly detailed by the CMA in a number of formal submissions to the Commission's case team.

First however, I would like to praise the level of co-operation between our two authorities – and indeed with Ofcom – which has been a notable feature of this case. From the outset there have been timely, productive and meaningful interactions, and these have assisted the investigation by helping to ensure that the Commission's analysis of the case reflects fully the specificities of the UK market situation.

There is no doubt that this is a multifaceted case, in a complex and concentrated market, with a number of interested stakeholders, and important UK-specific characteristics such as the two pairs of network sharing arrangements. In our view the EC case team has negotiated these complexities with skill, producing a statement of objections in February which was a very well-reasoned and thorough assessment of the concerns and which we, as well as Ofcom, were able to support. The EC statement of objections clearly detailed how this merger is likely to lead to increased prices and/or a reduction in the quality offered to UK consumers as a result of significant harm to competition in the UK mobile telecoms market.

While I appreciate the considerable efforts made by the Commission to explore remedies with the merging parties that seek to eliminate the adverse effects identified, it is clear that the remedies offered fall well short of what would be required to meet the relevant legal standard, as detailed in our case submissions.

The proposed remedies are materially deficient as they will not lead to the creation of a fourth Mobile Network Operator (MNO) capable of competing effectively and in the long-term with the remaining three MNOs such that it would stem the loss of competition caused by the merger. In addition, they fail to address concerns arising from the presence of the merged entity in both the network sharing arrangements, including the greater risk of coordination that this brings.

The only appropriate remedy that would meet the criteria that the Commission is bound to apply (ie that the remedies eliminate the competition concerns in their entirety, are comprehensive, effective and capable of ready implementation) is the divestment – to an appropriate buyer approved by the Commission – of either the Three or O2 mobile network businesses, in entirety, or possibly allowing for limited ‘carve-outs’ from the divested business. The divestment would need to include the mobile network infrastructure and sufficient spectrum to ensure a commercially viable fourth MNO in the UK. Absent such structural remedies, the only option available to the Commission is prohibition.

The CMA urges the Commission to act to prevent the long-term damage to the UK mobile telecoms market, and therefore to the interests of UK consumers, that both of our authorities have predicted will result from this merger.

Yours sincerely

Alex Chisholm
Chief Executive