# Completed acquisition by Vodafone Limited of 140 stores formerly controlled by Phones4U Limited

**ME/6483/14**

**Please note that [✂] indicates figures or text which have been deleted or replaced in ranges while the CMA consults with third parties whether those figures or text should be deemed to be commercially confidential.**

## SUMMARY


1. On 23 September 2014, Vodafone Limited (**Vodafone**) acquired businesses and assets comprising 140 stores formerly controlled by Phones4U Limited (**Target Stores**) (the **Merger**). Vodafone and the Target Stores are together referred to as the **Parties**.

2. The Competition and Markets Authority (**CMA**) considers that the Parties have ceased to be distinct and that the turnover test is met. The four-month period for a decision, as extended by section 25(1) of the Enterprise Act 2002, has not yet expired. The CMA therefore considers that a relevant merger situation has been created.

3. The Parties overlap in the retail supply of mobile phone connections, handsets and accessories in the United Kingdom (**UK**). The CMA assessed the impact of the Merger in the retail supply of these products and services at a local level in each of the 140 locations across the UK and at a national level.

4. In its assessment, the CMA applied a cautious approach and analysed the competitive impact on a narrow product frame of reference. This included retail supply through national chains of tied retailers (those linked to a mobile network operator (**MNO**) or a mobile virtual network operator (**MVNO**) such as Virgin Mobile) and national independent specialist retailers (such as Dixons Carphone). The CMA then analysed more closely those local areas where the Merger led to a fascia reduction leaving four or fewer different retailers in the relevant geographic catchment area. In these filtered areas, the CMA took into account the additional constraint imposed on the merged firm by non-national specialist retailers and other generalist retailers selling mobile phone connections, handsets and accessories.

5. The CMA's competitive assessment has concluded that:

   *(a)* At a local level, the CMA has identified sufficient remaining competition post-Merger in all locations where the Parties overlap.

      (i) In 131 locations, post-Merger there will be five or more different tied and/or national specialist retailers. The CMA considers this number of competitive retail alternatives would prevent any negative competitive impact resulting from the removal of the Target Stores.

      (ii) In each of the remaining nine areas the CMA found that the level of pre-Merger competition between the Target Store and Vodafone was limited and/or a sufficient number of competitive constraints would remain post-Merger.

   *(b)* The Merger is not expected to give rise to any competition concerns at a national level.

6. On vertical issues, the CMA has concluded that Vodafone will have neither the ability nor the incentive to input foreclosure other competitors at the retail level as a result of the Merger.

7. The CMA considers that the constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition.

8. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

# ASSESSMENT

## Parties

9. Vodafone supplies mobile telecommunications networks, related telecommunications services and retails its products and services through its own branded stores and specialist retailers. In the UK, it had 386 stores prior to the Merger. It forms part of a group of companies controlled by Vodafone Group PLC with similar activities worldwide.

10. Phones4U Limited **(Phones4U)** had three main trading businesses: a store network in which it sold connections, handsets and accessories, usually on an agency basis for MNOs in return for commissions; mobile phone insurance services; and an MVNO business.

11. The Target Stores formed part of Phones4U's portfolio of around 720 stores in the UK. However, on 15 September 2014 Phones4U went into administration. The turnover of the Target Stores in the year ended 31 July 2014 was around £[✄] million.

## Transaction

12. On 23 September 2014, Vodafone acquired the Target Stores by way of an asset purchase.

## Jurisdiction

13. The Merger involved the acquisition of each Target Store's underlying leasehold interest, its fixtures and fittings, and its stock. 887 Phones4U staff, who worked in the Target Stores, also transferred to Vodafone as a result of the Merger.

14. The CMA notes that the acquisition of a store associated by local customers with the retail supply of mobile phone handsets and connections, including from Vodafone, would carry an element of goodwill. Also, the continuity of staff would suggest a continuity of business. For these reasons, in the CMA's view, the transferred assets, goodwill and staff constituted more than bare assets. Rather they constituted the business and assets of the Target Stores, enabling Vodafone to win business more quickly than it would have done had it acquired different premises or employees at random. The CMA believes that the Merger amounts to the acquisition of an enterprise for the purpose of section 129 of the Act and that as a result of the Merger, the enterprises of Vodafone and the Target Stores have ceased to be distinct.

15. The UK turnover of the Target Stores for the year ending 31 July 2014 was around £[✄] million, and therefore exceeded £70 million. The parties submitted that the CMA should take account of the fact that the Target Stores had not been trading since mid-September 2014 in determining their turnover.[1] However, the CMA has decided not to adjust the turnover in this case. This is because the closure of the Target Stores can be viewed as a temporary event and the turnover attributed to them is a reasonable reflection of their value in the marketplace. Therefore, the CMA considers that the turnover test in section 23(1)(b) of the Act is satisfied.

16. The Merger completed on 23 September 2014, a relevant event which was made public on that date. The four month deadline for a decision under

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[1] By virtue of paragraph 11(3) of the Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003.

section 24 of the Act is 5 February 2015, following an extension under section 25(1) of the Act.

17. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

18. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 8 December 2014 and the statutory 40 working day deadline for a decision is therefore 4 February 2015.

## Background

### *Events leading up to Phones4U entering into administration*

19. In January 2014, Phones4U's connectivity agreement with O2 expired, leaving Phones4U with two ongoing providers: Vodafone and EE.

20. On [✂], Vodafone informed Phones4U of its intention not to renew its connectivity agreement. This was followed by a confirmation on [✂] and a public announcement on 1 September 2014. The CMA understands that on 12 September 2014, EE also formally notified Phones4U that it would not renew its connectivity agreement when it expired in September 2015.

21. The former majority owners of Phones4U, BC Partners, explained to the CMA that, following the decisions of O2, Vodafone and EE, Phones4U's directors had no choice but to call in administrators. PricewaterhouseCoopers LLP, which were appointed the administrators of Phones4U on 15 and 16 September 2014 (**the Administrators**), confirmed this to the CMA.

22. The Administrators told the CMA that, following the loss of its connectivity agreements with the MNOs, the Phones4U business was unviable. They explained that, given the financial terms of Phones4U's contract with EE, it was in the best interest of Phones4U and its creditors to terminate this remaining connectivity agreement with immediate effect. Without other connectivity agreements, this agreement would increase Phones4U's cash flow obligations. The Administrators said that some third parties were interested in acquiring different parts of the business but none were interested in acquiring the entire Phones4U business as a going concern. [Endnote [1]]

## Counterfactual

23. The CMA assesses a merger's impact relative to the situation that would have prevailed absent the merger (**the counterfactual**). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the

counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.[2]

24. In this case, the immediate pre-merger situation was that Phones4U was in administration and the Target Stores had recently ceased trading, though shortly before it had been a profitable independent retailer. Therefore, the CMA considered: (i) to what extent the Target Stores (and for the sake of completeness, the entire Phones4U business) would have exited (through failure or otherwise); (ii) whether there would have been an alternative purchaser for the Target Stores or their assets which might lead to a better outcome for competition than the outcome arising from the Merger; and, (iii) what would have happened to the sales of the Target Stores in the absence of any purchaser.

25. The CMA agreed with the Parties that Phones4U (and consequently the Target Stores) would have exited the market(s) in the absence of the Merger. The loss of Phones4U's connectivity agreements with MNOs and the limited scale of its own MVNO meant that it was not financially viable to continue trading. Therefore, the CMA agreed that a scenario in which Phones4U was trading as it was prior to the loss of its connectivity agreements would not have been a realistic counterfactual against which to assess the effects of the merger.

26. The CMA then sought to identify the realistic most competitive outcome for each of the Target Stores, which included considering evidence from the Administrators on potential other purchasers for each of the stores. However, in parallel, the CMA began to consider the competitive effects of the Merger and, on a cautious basis, did so against the hypothetical scenario in which Phones4U had continued trading as an independent specialist retailer.

27. On the basis of the evidence from the Administrators, the CMA notes that the only other potential purchasers for some of the Target Stores were other tied national retailers, and a purchase of any of the stores by one of these parties would not have led to a more competitive outcome than Phones4U continuing in business. The CMA reasoned that if it did not find cause for concern against this hypothetical counterfactual, which was more competitive than any

[2] *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, paragraph 4.3.5 et seq. The merger assessment guidelines have been adopted by the CMA (see Mergers: Guidance on the CMA's jurisdiction and procedure, Annex D).

realistic counterfactual, then it would not be necessary to consider the effects of the Merger against a less competitive scenario for each individual store. Given the findings of this competitive analysis, set out in this decision, the CMA found that it was not necessary to conclude on a precise counterfactual for each individual store.

## Frame of reference

28. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.[3]

29. The Parties overlap in the retail supply of mobile phone connections, handsets and accessories to end customers in the UK.

### *Product scope*

30. In O2/The Link the Office of Fair Trading (**OFT**) assessed the merger on a relevant frame of reference comprising the sale of pre- and post-pay mobile phone connections and handsets to end-users in the UK.[4]

31. In Carphone Warehouse/Dixons the European Commission (**EC**) left open the exact product market definition. It considered whether online and offline retail channels form part of the same frame of reference and if generalist retailers are a substitute channel for the purchase of mobile phones. It did not conclude on these issues but it noted that the product market was likely to include all categories of offline retailers.[5]

32. Vodafone submitted that the relevant product market is the retail supply of mobile phone connections, handsets and accessories and that no further segmentation is appropriate.

[3] *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, paragraph 5.2.2. The *Merger Assessment Guidelines* were adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure*, Annex D).
[4] OFT's decision of 10 October 2006 on the proposed acquisition by O2 UK Limited of The Link Stores Limited (O2/The Link) paragraph 20.
[5] EC's decision of 25 June 2014 on case No COMP/M. 7259- Carphone Warehouse./ Dixons, (Carphone Warehouse/Dixons), paragraph 24.

33. The CMA notes that the boundaries of the relevant market are primarily determined with reference to demand-side substitution. However there are circumstances where several narrow markets may be aggregated into a broader one on the basis of considerations about the response of suppliers to changes in prices.[6]

34. In relation to possible segmentations of the retail supply of mobile phone connections, handsets and accessories, the CMA notes that:

*(a)* **Pre- and post-pay mobile phone connections**, on the demand side, appear to be substitutable for many customers. On the supply side, tied and specialist retailers typically offer both types of connections. The same does not apply to many generalist retailers, which often sell pre-pay connections only, meaning that these retailers are likely to be effective competitors only for these products.[7] A generalist retailer noted that the technical requirements to provide post-pay connections raises the barriers to entry as compared with pre-pay connections.

*(b)* **Contract handsets** (those contracts which include a handset and a network contract) **and SIM only contracts,**[8] while generally not substitutable on the demand side, as they comprise different products, are sold by both MNOs and specialist retailers. These retailers and most generalist retailers also sell handsets and accessories separately.

*(c)* **MNOs**[9] **and MVNOs** offer similar network connection services and appear to be substitutable from the demand side. The CMA notes that all four MNOs (Vodafone, O2, EE and Three) and some MVNOs (eg Virgin Mobile) have a national retail presence with branded stores. Also large grocery retailers offer their own branded mobile services (to a greater or lesser extent): Tesco Mobile, Sainsbury's Mobile, Asda Mobile and the Phone Co-op.

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[6] The [CMA] may aggregate narrow markets in one when: (i) production assets can be used by firms to supply a range of different products that are not demand-side substitutes, and the firms have the ability and incentives quickly (generally within a year) to shift capacity within these difference products depending on demand for each; and (ii) the same firms compete to supply these different products and the conditions of competition between the firms are the same for each product; in this case aggregating the supply of these products and analysing them as one market does not affect the Authorities' decision on the competitive effect of the merger. *Merger Assessment Guidelines*. CC2 (Revised) OFT1254. Paragraph 5.2.17.

[7] The CMA acknowledges the exception represented by large grocery retailers such as Tesco, Sainsbury's and Asda (see point *(c))*.

[8] SIM only refers to contracts where customers only purchase mobile phone connection services, without the handset. SIM only contracts are available both as pre-pay and post-pay contracts.

[9] MNOs hold a radio spectrum licence to provide mobile phone connection services (ie voice, text and data services) to customers. They own and operate part of the network infrastructure necessary to supply these services. MNOs can provide mobile phone connection services directly to consumers and/or wholesale their services to MVNOs.

(d) **Tied** and **independent**[10] **specialist retailers** compete for consumers as independent retailers sell mobile phone connections as agents of MNOs and/or MVNOs.

*Conclusion on product scope*

35. On the basis of the evidence set out above, the CMA has, on a cautious basis, considered the impact of the Merger in the retail supply of mobile phone connections, handsets and accessories, through national tied and independent specialist retailers. These are: O2, EE, Three, Dixons Carphone, Virgin Mobile and the acquirer, Vodafone.

36. As noted above, many generalist retailers which supply pre-pay connections and handsets and accessories do not supply post-pay connections, and, for this reason, the CMA did not include them in its cautious product frame of reference. However, to the extent that generalist retailers sell both pre- and post-pay connections the CMA has taken this into account in its local competitive assessment on a case by case basis.

***Geographic scope***

37. In O2/The Link the OFT assessed the merger at both the national and local level, recognising that the most intense competition comes from competitors located in the same shopping area.[11] Although the OFT did not conclude on the exact boundaries of local markets, it assessed the overlaps resulting from a preliminary filter based on RCR listings,[12] and subsequently a closer assessment of competitors located within a geographic radius of 3 miles for market and provincial towns and 1 mile for city centres.

38. In Carphone Warehouse/Dixons, the EC left the exact geographic market definition open. It noted that, from a demand side, its market investigation showed mixed results as to the national or local scope of offline retailing. It found that a precise radius could not be estimated as it depended on several factors (population density, characteristics of the neighbourhood, transport connections, etc).[13]

39. Vodafone submitted that the relevant geographic market is national since: (i) mobile tariffs are set, and marketing and advertising is undertaken by MNOs

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[10] Independent specialists (such as Dixons Carphone and, formerly, Phones4U) sell network connections of a few MNOs. Some independent specialists also sell their own MVNO services, eg Dixons Carphone.
[11] O2/The Link, paragraph 23.
[12] The OFT understood that the merger parties located their stores based on RCR listings (or goad centres), an index used in the retail sector. It provides 2,392 retail centres across the UK. See O2/The Link, paragraph 13.
[13] Carphone Warehouse/Dixons, paragraphs 30 to 33.

at the national level; (ii) competition in the retail sale of mobile phone connection services is driven by competition between MNOs and MVNOs at the wholesale level; and, (iii) location of retail outlets is secondary given that consumers compare various offers online, or in physical outlets in their work area, on holidays, at home, during the week or the weekend, and ultimately make their purchase only once.

40. In the CMA's view, competitive interaction between the Parties (prior to the collapse of Phones4U) and between Vodafone and its remaining competitors in the retail supply of mobile phone connections, handsets and accessories takes place at both a national and a local level. The CMA recognises that some competitive variables are set at the national level (eg the prices of connections), and that competition between MNOs and MVNOs at the wholesale level plays a role in shaping competition at the retail level. However, the CMA also considers that competition in retail supply takes place at the local level. Customers travel to local stores and store location is considered by retailers an important factor to attract customers. The set of competitors active in retail supply is broader than the set of competitors (MNOs and MVNOs) which operate at the wholesale level, and varies by local area. Some competitive variables, such as service quality and marketing activities, appear to be set locally.

*Conclusion on geographic scope*

41. Given the evidence set out above and in line with O2/The Link and Carphone Warehouse/Dixons, the CMA considers that the Merger may have both local and national effects. Given that Phones4U was an independent specialist retailer and that the Merger involves the acquisition of 140 retail stores located in different local areas, the CMA has assessed whether there is a realistic prospect of a substantial lessening of competition arising in each of these local areas and on a national basis.

***Conclusion on frame of reference***

42. For the reasons set out above, the CMA has considered the impact of the Merger in the retail supply of mobile phone connections, handsets and accessories, through national tied and independent specialist retailers at both the local level and on a national basis.

## Competitive assessment

43. The CMA has considered the following theories of harm:

*(a)* horizontal unilateral effects in the retail supply of mobile phone connections, handsets and accessories, through national tied and independent specialist stores; and

*(b)* vertical effects triggered by Vodafone's presence in both the wholesale supply of mobile phone connections to independent retailers (upstream) and the retail supply of mobile phone connections, handsets and accessories (downstream) and whether this may give rise to input foreclosure.

### *Horizontal unilateral effects*

44. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.[14] Horizontal unilateral effects are more likely when the merger parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition through unilateral horizontal effects in the retail supply of mobile phone connections, handsets and accessories.

45. Based on the number of retail outlets and mobile phone connections, Vodafone is the third largest retailer of mobile phone connections in the UK. Taking into account tied and national independent specialist retailers only, Dixons Carphone is the largest operator accounting for an estimated share of supply of [25–35]%. The second largest provider is EE ([20–30]%), followed by Vodafone ([15–25] %), O2 ([15–25] %), Three ([10–20] %) and Virgin Mobile ([5–15]%).[15] Vodafone estimated that the Merger would result in a small increment of [0–5]% in its share of supply by number of retail outlets.

46. Survey results and internal analysis provided by Vodafone suggested that [✄] was the closest competitor to Phones4U, followed by [✄].[16] These survey results provided some useful information on the closeness of competition

[14] *Merger Assessment Guidelines*, from paragraph 5.4.1.
[15] Vodafone's 2013 estimates. These estimates have been calculated taking into account that Dixons Carphone acquired 160 in-store concessions from Phones4U and that EE acquired 58 Phones4U stores.
[16] In 2013, Vodafone commissioned a market research to assess its customers' reliance on independent specialist retailers and in particular, [✄]. Customers were asked about their choice in network switching if Vodafone connections and handsets were not distributed through [✄] retail stores.

between retailers.[17] Based on these results, Vodafone assumed that, if Phones4U exited the market, the majority of volumes ([✄]%) would be redistributed to [✄], followed by [✄]% to [✄][18] and [✄]% to other indirect channels.[19]

47. Given the evidence outlined above (namely, five national tied or independent specialist retailers remaining at the national level, the small increment in national share of supply and the Parties not being distinctively close competitors) and that the Merger involves the acquisition of several retail stores located in different local areas, the CMA first focussed on assessing the effects of the merger at the local level.

*Local assessment*

48. Vodafone conducted a catchment area analysis for each of the 140 acquired stores and each of the corresponding nearest (in terms of radial distance)[20] Vodafone stores. Vodafone calculated the radial distance around each store which captures 80% of that store's customers.[21] On the basis of this analysis, Vodafone identified 92 overlaps where a Vodafone store is located within the catchment area of a Target Store and 121 overlaps where a Target Store is located within the catchment area of a Vodafone store. When a fascia reduction filter is applied, Vodafone identified only five overlapping areas where as a result of the Merger there is a reduction in fascia to four or fewer different tied and/or national specialist retailers.

49. Given that catchment areas are a pragmatic approximation for a candidate market, the CMA carried out sensitivity checks to understand if and to what extent the number of areas that require a more detailed assessment is sensitive to variations in the size of the catchment area of each store.[22] The CMA performed sensitivity checks applying a margin of error of +/-10% on the distance radius of the 80% catchment area of each Target's store and the nearest Vodafone store.[23] On the basis of this analysis, the CMA identified

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[17]The CMA interpreted these results as an approximation of diversion ratios at the national level.
[18] These are [✄].
[19] These are other independent and specialist retailers.
[20] Radial distance is the distance as calculated in a straight line.
[21] For the Target Stores, Vodafone used its customers as it only held customer data for these customers. Vodafone did not hold customer data for those Phones 4U customers which used a different MNO/MVNO.
[22]More generally on catchment areas in retail cases, see *Commentary on retail mergers*, a joint publication by the OFT (OFT1305) and the CC (CC2 com 2[Version 1A]), March 2011. Section 2.
[23] Consistent with the CMA's recommendation and usual practice to apply a sensitivity analysis in its economic models. See CMA's *Suggested best practice for submissions of technical economic analysis from parties to the Competition Commission*, CC2 com3, 1 February 2009, paragraph 31. These suggestions have been adopted by the CMA Board, and can be found at www.gov.uk/government/publications/economic-analysis-submissions-best-practice.

four additional areas that failed the fascia reduction filter and required a more detailed local assessment.

50. The CMA has assessed the effects of the Merger in each of the nine local overlapping areas in which the Merger resulted in a reduction to four or fewer national tied and specialist retailers. In its substantive assessment the CMA considered the following evidence: (i) the radial distances between the Parties' stores and competitor stores, (ii) the number and geographic locations of competitor stores within the catchment area, (iii) the number and geographic locations of competitor stores outside the catchment area, if relevant, and (iv) the presence of other generalist retailers located within and outside the catchment area, if relevant.

51. Out of the 140 local areas, the following nine areas required a closer competition assessment. The detailed assessment below focuses on these areas.

**Table 1 Overlaps and fascia reductions**

| Overlapping area | Basis of the overlap | Fascia reduction |
|---|---|---|
| Hyde | • 80% catchment area | • 5:4 fascia reduction within the Target's catchment area |
| Burgess Hill | • 80% catchment area | • 4:3 fascia reduction within the Target's and Vodafone's catchment areas |
| Feltham | • 80% catchment area | • 5:4 fascia reduction within the Target's catchment area |
| Caerphilly | • 80% catchment area | • 5:4 fascia reduction within Vodafone's catchment area |
| Stourbridge | • 80% catchment area | • 3: 2 fascia reduction fascia within the Target's catchment area |
| Leatherhead | • -10% on the Vodafone and Target's catchment areas | • 4:3 fascia reduction within Vodafone's catchment area<br>• 5:4 fascia reduction within the Target's catchment area |
| Epsom | • -10% on the Vodafone's catchment area | • 5:4 fascia reduction within Vodafone's catchment area |
| Omagh | • +10% on the Vodafone's catchment area | • 4:3 fascia reduction within Vodafone's catchment area |
| Selby | • +10% on the Vodafone's catchment area | • 4:3 fascia reduction within Vodafone's catchment area |

Source: CMA assessment based on data submitted by Vodafone

*Hyde*

52. The Target Store is located in Hyde (Greater Manchester). An overlap arises in relation to both stores' catchment areas.[24]

53. Post-Merger, the Target Store's catchment area has three competitor fascia: O2, Dixons Carphone and EE.

54. The CMA notes that the location of the Parties' stores in two different towns is likely to have limited their competitive interaction pre-Merger. Also, the overlapping stores do not represent each other's nearest competitors. In the CMA's view, post-Merger there would remain a sufficient number of competitors in the local area (within and just outside the boundaries of the Target's catchment area) to constrain the behaviour of the merged firm.

*Burgess Hill*

55. The Target Store is located in Burgess Hill (West Sussex). An overlap arises in respect of both stores' catchment areas.[25]

56. Vodafone is the nearest competitor to the Target Store based on radial distance. However, there would remain two competitor fascia within both the Target Store and Vodafone's catchment areas post-Merger, Dixons Carphone and EE.

57. The CMA notes that the location of the Parties' stores in two different towns is likely to have limited their competitive interaction pre-Merger. However, in the CMA's view, post-Merger there would remain a sufficient number of competitors in the local area (within and just outside the boundaries of the Target's catchment area) to constrain the behaviour of the merged firm.

*Feltham*

58. The Target Store is located in Feltham, Hounslow (West London). An overlap arises in respect of both stores' catchment areas.[26]

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[24] This area fails the fascia filter even when applying a margin of error of -10% on the distance radius of the Target's 80% catchment area.
[25] This area fails the fascia filter even when applying a margin of error of -10% on the distance radius of both 80% catchment areas.
[26] This area does not raise competition concerns when applying a margin of error of +/-10% on the distance radius of both 80% catchment areas.

59. Three competitor fascia remain within the Target Store's catchment area post-Merger: Dixons Carphone, EE and Three. Vodafone is the furthest competitor from the Target Store within its catchment area.

60. The CMA notes that the Parties are not each other's nearest competitors based on radial distance. Also, Vodafone is located at Heathrow Airport whereas the Target Store is in a town surrounded by a number of competitors. The CMA therefore considers that Vodafone and the Target Store were likely to exert only a limited constraint on each other pre-Merger. In the CMA's view, post-Merger there would remain a sufficient number of competitors (within and just outside the boundaries of the Target Store's catchment area) to constrain the behaviour of the merged firm.

*Caerphilly*

61. The Target Store is located in Caerphilly (South Wales). An overlap arises in respect of Vodafone's catchment area.[27]

62. There would remain three competitor fascia within Vodafone's catchment area post-Merger: Dixons Carphone, Three and EE. The Target Store is the furthest competitor from Vodafone's store within its catchment area.

63. The CMA notes that the Parties are not each other's closest competitors based on radial distance. The Parties' stores are located in different towns over 5 miles apart with three competitor fascia located between them. This suggests that the competitive interaction between the Parties' stores pre-Merger was limited. In the CMA's view, post-Merger there would remain a sufficient number of competitors within the boundaries of the Target Store's catchment area to constrain the behaviour of the merged firm.

*Stourbridge*

64. The Target Store is located in Stourbridge (West Midlands). An overlap is created in respect of both store's catchment areas.[28]

65. There would remain one competitor (Dixons Carphone) within the Target Store's catchment area post-Merger, located in the same location as the Target Store. Given that in this location, the effect of the Merger was to reduce to two the number of different tied and national specialist retailers in

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[27] This area fails the fascia filter even when applying a margin of error of +10% on the distance radius of the Target's 80% catchment area and +/-10% on the distance radius of Vodafone's 80% catchment area.
[28] This area fails the fascia filter even when applying a margin of error of +10% on the distance radius of the Target's 80% catchment area.

the catchment area, the CMA looked closely at the locations of the Parties' stores and those of competitors and other generalist retailers.

66. The CMA notes that in the Target's catchment area, there are two distinct clusters of stores:

*(a)* The Target Store and Dixons Carphone are in the same location in Stourbridge. In this location there is also a Tesco, which offers both pre-pay and post-pay mobile phone connections under the Tesco Mobile brand, 0.11 miles away from the Phones4U store.

*(b)* Vodafone is located in another town, Brierley Hill, 2.15 miles away from the Phones4U store.

67. There are four competitor fascia located [✂] outside the Target Store's catchment area all clustered in The Merry Hill Centre in Brierley Hill: O2 and EE are 2.29 miles away from the Target ([✂] away from the border of the Target Store's catchment area), Three and Virgin Mobile are 2.87 miles away from the Target Store ([✂] away from the border of the Target Store's catchment area).

68. The CMA notes that the Parties are not each other's closest competitors based on radial distance and that they are located in different towns. The CMA therefore considers that the constraint exerted by the Parties' stores on each other pre-Merger was likely to be limited as customers would be less likely to travel to a different town and would first look for competitors located in the same town. In addition, the CMA notes that there are a few competitors just outside the Target Store's catchment area. In the CMA's view, post-Merger there would remain a sufficient number of competitors (within and just outside the boundaries of the Target Store's catchment area) to constrain the behaviour of the merged firm.

*Leatherhead*

69. The Target Store is located in Leatherhead (Surrey). The 80% catchment area of both the Target Store and the nearest Vodafone store do not fail the filter given that there would remain five or more different tied or national specialist retailers in each catchment area. However, applying a sensitivity of -10% to both catchment areas, the fascia reduction filter fails in relation to both stores' catchment areas.[29] The CMA therefore considered the competitive conditions in the 'adjusted' catchment areas.

[29] See footnote 35 above.

70. There would remain three competitor fascia within the Target Store's 'adjusted' catchment area post-Merger: Dixons Carphone, EE and O2. There would remain two competitor fascia within Vodafone's catchment area: Dixons Carphone and O2, which are 0.12 miles and 0.08 miles from Vodafone, respectively.

71. The CMA notes that there are two distinct clusters of stores:

*(a)* The Target Store and Dixons Carphone are in the same location in the Swan Shopping Centre, in Leatherhead.

*(b)* Vodafone, O2 and EE are all located in another town, Epsom, and are 3.66 miles, 3.58 miles and 3.58 miles away from the Target Store, respectively.

72. There are also several competitor fascia [✄] outside the Parties' catchment areas. Three and Virgin Mobile are located in Sutton and are 7.47 miles and 7.49 miles away from Phones4U, respectively. EE, Three and Virgin Mobile, located in Sutton, are 3.88 miles, 3.86 miles and 3.88 miles away from Vodafone, respectively ([✄] away from the border of Vodafone's 'adjusted' catchment area). There is also a Tesco just outside the Target's 'adjusted' catchment area, located in Weybridge, 7.23 miles away ([✄] away from the border of the Target's catchment area). Tesco offers both pre-pay and post-pay mobile phone connections under the Tesco Mobile brand.

73. The CMA notes that the Parties are not each other's closest competitors (based on radial distance) and that they are located in different towns. The CMA therefore considers that the constraint exerted by the Parties' stores on each other pre-Merger was likely to be limited as customers would be less likely to travel to a different town and would first look for competitors located in the same town. In addition, the CMA notes that there are a few competitors just outside both stores' catchment areas. In the CMA's view, post-Merger there would remain a sufficient number of competitors (within and just outside the boundaries of the catchment areas) to constrain the behaviour of the merged firm.

*Epsom*

74. The Target Store is located in Epsom (Surrey). The 80% catchment area of both the Target Store and the nearest Vodafone store do not fail the filter given that there would remain five or more different tied or national specialist retailers in each catchment area. However, applying a sensitivity of -10% to both catchment areas, the fascia reduction filter fails in relation to Vodafone's

'adjusted' catchment area. The CMA therefore considered the competitive conditions in this 'adjusted' local area.

75. There would remain three competitor fascia within Vodafone's 'adjusted' catchment area post-merger: O2 and EE (0.08 miles each) and Dixons Carphone (0.12 miles).

76. The Parties' and competitors' stores are clustered together in Epsom. Vodafone and Dixons Carphone are close to each other on the High Street, while O2 and the Target Store are located in the same shopping centre, Ashley Centre, just off the High Street. EE is located in another shopping centre, the Mall, 0.08 miles away from Phones4U.

77. There are two competitor fascia located [✄] outside Vodafone's 'adjusted' catchment area: Three and Virgin Mobile, located in Sutton, which are 3.86 miles and 3.88 miles away from Vodafone, respectively.

78. Overall, the CMA considers that, although the Parties' stores are near to each other (albeit not the nearest competitors in terms of radial distance); there are several competitors located in close proximity. These would constrain the behaviour of the merged firm. In the CMA's view, post-Merger there would remain a sufficient number of competitors (within and just outside the boundaries of Vodafone's adjusted catchment area) to constrain the behaviour of the merged firm.

*Omagh*

79. The Target Store is located in Omagh (Northern Ireland). The 80% catchment area of both the Target Store and the nearest Vodafone store do not overlap. However, applying a sensitivity of +10% to both catchment areas, the adjusted catchment areas do overlap and the fascia reduction filter fails in relation to Vodafone's 'adjusted' catchment area. The CMA therefore considered the competitive conditions in this 'adjusted' catchment area.

80. There would remain two competitor fascia within Vodafone's adjusted catchment area post-Merger: Dixons Carphone and O2. The Target Store is located at the border of Vodafone's adjusted catchment area.

81. The CMA notes that, in Vodafone's adjusted catchment area, there are two distinct clusters of stores:

*(a)* Phones4U is located alone in Omagh and is 22.40 miles away from Vodafone.

(b) Dixons Carphone, O2 and Vodafone are all located in Enniskillen. Dixons Carphone is in the same location as Vodafone and O2 is 0.16 miles from Vodafone. In Enniskillen there is also a Tesco which offers both pre-pay and post-pay mobile phone connections under the Tesco Mobile brand, located 0.38 miles away from Vodafone.

82. The CMA notes that the Parties are not each other's closest competitors (based on radial distance) and that their stores are located in different towns geographically far apart from each other. The CMA therefore considers that the constraint exerted by the Parties' stores on each other pre-Merger was likely to be limited as customers would be less likely to travel to a different town and would first look for competitors located in the same town. In the CMA's view, post-Merger there would remain a sufficient number of competitors to constrain the behaviour of the merged firm.

*Selby*

83. The Target Store is located in Selby (North Yorkshire). The 80% catchment area of both the Target Store and the nearest Vodafone store do not overlap. However, applying a sensitivity of +10% to both catchment areas, the adjusted catchment areas do overlap and the fascia reduction filter fails in relation to Vodafone's adjusted catchment area. The CMA therefore considered the competitive conditions in the 'adjusted' catchment area.

84. There would remain two competitor fascia within Vodafone's 'adjusted' catchment area post-Merger: Dixons Carphone and O2.

85. The CMA notes that, in Vodafone's adjusted catchment area, there are two distinct clusters of stores:

(a) Phones4U and O2 are located in Selby and are 9.81 and 9.90 miles away, respectively, from Vodafone.

(b) Dixons Carphone and Vodafone are located on the same street of another town, Goole. Dixons Carphone is 0.31 miles away from Vodafone.[30]

86. There are two other competitor fascia located [✂] away from the border of Vodafone's catchment area: Three and EE, which are located in another town, Scunthorpe, 12.02 miles away from Vodafone.

87. The CMA notes that the Parties are not each other's closest competitors (in terms of radial distance) and that their stores are located in different towns

[30] The CMA notes that there is another Phones4U store, located in Goole (0.31 miles away from Vodafone) which was not acquired by Vodafone as part of the transaction.

geographically far apart from each other. The CMA therefore considers that the constraint exerted by the Parties' stores on each other pre-Merger was likely to be limited as customers would be less likely to travel to a different town and would first look for competitors located in the same town. In the CMA's view, post-Merger there would remain a sufficient number of competitors (within and just outside the boundaries of Vodafone's adjusted catchment area) to constrain the behaviour of the merged firm.

*Impact at national level*

88. Given that the CMA finds no competition concern arising at the local level in any of these local areas, the CMA concludes that no adverse effects are likely to arise at the national level either.

*Conclusion on horizontal unilateral effects*

89. On the basis of the evidence and analysis set out above, the CMA concludes that the Merger does not raises competition concerns as a result of horizontal unilateral effects in the retail supply of mobile phone connections, handsets and accessories, through tied and independent specialist stores with a significant national presence in any of the local areas affected by the Merger, or nationally. Given that the CMA finds no competition concerns arising at the local level in any of these local areas and that five national tied or independent specialist retailers would remain at the national level and the merger would give rise to a small increment in national share of supply, the CMA concludes that no adverse effects are likely to arise at the national level either.

***Vertical effects***

90. Vertical effects may arise when a merger involves firms at different levels of the supply chain. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances they can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anti-competitive where it results in a substantial lessening of competition in the foreclosed market(s), not merely where it disadvantages one or more competitors.[31]

91. The CMA considered whether Vodafone's presence in both the wholesale supply of mobile phone connections to independent retailers (upstream) and

[31] In relation to this theory of harm 'foreclosure' means either the foreclosure of a rival or the substantial competitive weakening of a rival.

the retail supply of mobile phone connections, handsets and accessories (downstream) may give rise to input foreclosure. The CMA considered whether, given the increase in Vodafone's own tied retail outlets resulting from the Merger, Vodafone's incentive to use other retailers to sell its mobile phone connections would be reduced, adversely affecting competition at the retail level with a negative impact on end-customers.

92. The CMA's approach to assessing vertical theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.[32] This is discussed below.

*Ability*

93. Vodafone submitted that it would not have the ability to foreclose downstream rivals because: (i) Vodafone does not have sufficient market power in the upstream market, (ii) Vodafone's main retail competitors are also vertically integrated and, as such, do not rely on Vodafone's upstream services; and (iii) in case of foreclosure, independent specialist retailers would still be able to source mobile connections from other MNOs/MVNOs.

94. The CMA notes that, post-Merger, other MNOs/MVNOs will remain available to independent specialist retailers if Vodafone decided to terminate its contracts with them. Dixons Carphone, the largest independent specialist with a [25–35]% market share (by number of tied and national specialist stores) told the CMA that it has contracts with the three main MNOs (Vodafone, EE and O2) and that the termination of Vodafone' s contract would not have a material impact on its business. No independent specialist or generalist retailer consulted by the CMA raised any vertical concerns.

95. On the basis of this evidence, in the CMA's view Vodafone is unlikely to have the ability to foreclose downstream independent rivals.

*Incentive*

96. The CMA also notes that, on the basis of its assessment of horizontal unilateral effects in the retail supply of mobile phone connections, handsets and accessories at the local level (see paragraphs 48 ff), Vodafone is also unlikely to have the incentive to foreclose. The CMA concludes that there are a number of competitors at the local level and these parties would constrain the behaviour of the merged firm, reducing Vodafone's ability to recapture any

[32] *Merger Assessment Guidelines*, paragraph 5.6.6.

end customers who switch to other suppliers following the foreclosure of an independent rival.

*Conclusion on vertical effects*

97. Overall the CMA considers that there is no realistic prospect of a substantial lessening of competition arising through vertical input foreclosure post-Merger.

***Barriers to entry and expansion***

98. The CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

## Third party views

99. The CMA contacted all main competitors of the Parties, the Administrators and the former owners of the Target Stores. Some of these third parties raised some issues in relation to the events leading to Phones4U's collapse. No party raised specific competition concerns about the Merger.

100. Third party comments have been taken into account where appropriate in the competitive assessment above.

## Decision

101. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition within a market or markets in the United Kingdom.

102. The Merger will therefore **not be referred** under section 22(1) of the Act.

**Andrew Wright**
**Director, Mergers**
**Competition and Markets Authority**
**4 February 2015**

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Endnote

[1] Paragraph 22. The CMA wishes to clarify that it was the Phones4U directors who had concluded that the Phones4U business was unviable. The CMA notes that the Phones4U directors were subject to their fiduciary duties as directors of Phones4U when reaching that conclusion. The Administrators explained to the CMA that this was because the MNOs had indicated that they would not be prepared to renew contracts with Phones4U after those contracts were due to expire. The Phones4U directors therefore took steps to protect the assets of the Phones4U business by ceasing to trade and by filing for administration. The Administrators said that whilst there were expressions of interest in respect of Phones4U's business as a whole, the only firm offers received by the Administrators were in respect of Phones4U's stores on a piecemeal basis. These offers were from other national phone retailers. This amendment does not have any material impact on the outcome of this case, and thus, the outcome of this decision remains unchanged.