

# **Anticipated acquisition by Hutchison 3G UK Limited of Transvision Investments Limited and its wholly-owned subsidiary UK Broadband Limited**

## **Decision on relevant merger situation and substantial lessening of competition**

**ME/6683/17**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 3 May 2017. Full text of the decision published on 10 May 2017.

**Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.**

### **SUMMARY**

1. Hutchison 3G UK Limited (**Three**) has agreed to acquire Transvision Investments Limited (**Transvision**), including Transvision's wholly-owned subsidiary, UK Broadband Limited (**UKB**) (the **Merger**). Three and UKB are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties will cease to be distinct as a result of the Merger, that the share of supply test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of retail fixed broadband services and the acquisition of mobile spectrum licences in the UK.
4. As the CMA did not find competition concerns on any plausible basis, it was not necessary for the CMA to conclude on the precise scope of the product or geographic frames of reference.
5. The CMA found no competition concerns in relation to the supply of retail fixed broadband services for the following reasons:

- (a) the Parties hold a negligible share of supply of less than [0-5%] on a UK-wide basis (and would not overlap within any plausible narrower product or geographic frame of reference);
  - (b) the Parties are not particularly close competitors; and
  - (c) the Parties will continue to be constrained post-Merger by a number of much larger competitors.
6. The CMA found no concerns in relation to competition for the acquisition of mobile spectrum licences as there will remain a number of likely bidders for mobile spectrum licences in future auctions held by Ofcom.
  7. The CMA considered whether Three's acquisition of UKB's mobile spectrum would give it a network advantage such that it could give rise to vertical effects as a result of input foreclosure in the supply of wholesale mobile services to downstream Mobile Virtual Network Operators (eg Virgin mobile, Sky mobile, etc.). The CMA concluded that the Parties would not have the ability to implement such a strategy since other Mobile Network Operators (ie BT/EE, O2 and Vodafone) will have sufficient mobile spectrum in order to continue to compete effectively with the merged entity.
  8. The CMA believes that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects or vertical effects.
  9. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## **ASSESSMENT**

### **Parties**

#### ***Three***

10. Three is an indirect wholly owned subsidiary of CK Hutchison. CK Hutchison is a multi-national conglomerate headquartered in Hong Kong and listed on the Hong Kong Stock Exchange. CK Hutchison has five core businesses: ports and related services; retail; infrastructure; energy; and telecommunications. In Europe, CK Hutchison's telecommunications division includes mobile network operators in Austria, Denmark, Ireland, Italy, Sweden and the UK, which operate under the "Three/3" brand. Three is one of four

mobile network operators (**MNOs**) in the UK, the others being BT/EE, O2 and Vodafone.

11. Three is primarily active in the provision of retail mobile telecommunications services, including voice, SMS and data (mobile internet) services to small businesses and consumers. Three also provides a home broadband service, HomeFi, which uses Three's mobile network. Three also provides wholesale network services to Mobile Virtual Network Operators (**MNVOs**).
12. Three holds various licences to mobile spectrum in the UK.
13. The turnover of Three in the year to 31 December 2015 was around £2.19 billion, with [X] revenues generated in the UK.

## **UKB**

14. UKB is a provider of fixed wireless broadband networks. Its business is divided into two areas:
  - (a) *Relish*: Relish provides fixed wireless broadband services to residential and commercial broadband users over LTE. Relish currently has approximately [X] customers with the vast majority located in Central London and a small number located in Reading and Swindon. Relish is marketed as an alternative to fixed line broadband. Customers access UKB's network via routers in their homes and business premises.
  - (b) *Enterprise Solutions*: Enterprise Solutions provides bespoke wireless networks to customers requiring campus solutions utilising wireless access networks (**WANs**) that connect multiple sites to each other and the internet.
15. UKB holds licences to radio spectrum (certain parts of which may become usable for mobile services) in the following bands: 3.4 GHz, 3.6 GHz, 3.9 GHz, 1800 MHz,<sup>1</sup> 28 GHz and 40 GHz.
16. The turnover of UKB in the year to 31 December 2015 was around £[X] million, with all turnover generated in the UK.

## **Transaction**

17. Three is proposing to acquire the entire issued share capital of Transvision, including its wholly-owned subsidiary UKB. Transvision does not have any

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<sup>1</sup> UKB's 1800 MHz spectrum relates to frequencies awarded concurrently to 12 licensees for low power use only (often referred to as the DECT Guard Band).

standalone business or revenue-generating operations. Documents giving effect to the Merger were signed on 6 February 2017.

18. The Merger is not being notified in any other jurisdiction.

## **Jurisdiction**

19. As a result of the Merger, the enterprises of Three and UKB will cease to be distinct.
20. The turnover test in section 23(1) of the Act is not met as UKB's UK turnover in the last completed financial year (for which audited accounts are available) was only £[✂] million and below the £70 million threshold.
21. The CMA considered whether the share of supply test set out in section 23(2) of the Act was met.<sup>2</sup> Three submitted that the Merger does not give rise to the creation of a relevant merger situation pursuant to section 23(2) of the Act because, in its view, there is no horizontal overlap between the Parties' activities.
22. In particular, Three suggested that it was not appropriate to include the 3.6GHz spectrum currently held by UKB within the definition of the supply of goods or services for the purposes of the share of supply test. Three also suggested that if UKB's 3.6GHz spectrum were to be included within a definition of a share of supply based on "prospectively usable" mobile spectrum, then other spectrum bands to be auctioned in future by Ofcom (including 2.3 GHz, 3.4 GHz, 700 MHz and 3.6 GHz bands) should also be included. Three noted that if these "to be auctioned" spectrum bands were included in an estimated share analysis, the Parties' combined estimated share would be 19.1% (and therefore that the share of supply test would not be met).
23. The CMA notes that the Parties are each holders of radio spectrum assets, and have in the past both participated in Ofcom auctions to purchase radio spectrum. The CMA also notes that certain parts of the spectrum purchased by UKB may become usable for mobile services (and that this is [✂]).<sup>3</sup> Accordingly, the CMA considers that the Parties' combined share of acquired radio spectrum, by reference to spectrum that is currently or prospectively

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<sup>2</sup> In situations where two or more enterprises have ceased to distinct, section 23(3) of the Act states that the share of supply test is met where at least one-quarter of all the goods of any description are supplied by or supplied to (ie purchased by) one and the same person.

<sup>3</sup> Merger Notice, para. 2.11.

usable for mobile telecommunications,<sup>4</sup> is a reasonable description of a set of goods or services for the purposes of assessing whether the share of supply test is met.<sup>5</sup>

24. The CMA also notes that the share of supply test is intended as a basis for establishing jurisdiction where two or more enterprises cease to be distinct. As a jurisdictional test at a given point in time,<sup>6</sup> and not a basis for substantive competitive assessment, the CMA considers that it would not be appropriate, in the circumstances of the current case, to include “to be allocated” spectrum within the definition of spectrum for the purposes of the share of supply test.
25. On the basis of spectrum that is currently or prospectively usable for mobile telecommunications, the Parties would thus have a combined share of approximately 29% of mobile spectrum, with an increment of 12%, as a result of the acquisition. Accordingly, the CMA believes that the share of supply test in section 23 of the Act is met.
26. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
27. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 13 March 2017 and the statutory 40 working day deadline for a decision is therefore 10 May 2017.

## Counterfactual

28. The CMA assesses a merger’s impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing 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 believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is

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<sup>4</sup> For this purpose, share of supply calculations are based on mobile spectrum up to and including 3.6GHz.

<sup>5</sup> As explained in the CMA’s Jurisdictional and Procedural Guidance, the share of supply test is not an economic assessment of the type used in the CMA’s substantive assessment; therefore, the group of goods or services to which the jurisdictional test is applied need not amount to a relevant economic market. See [Mergers: Guidance on the CMA’s jurisdiction and procedure](#) (CMA2), January 2014, paragraph 4.56.

<sup>6</sup> Section 23(9), Enterprise Act.

a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>7</sup>

29. In this case, there is no evidence supporting a different counterfactual. Neither Three nor any other party suggested that an alternative counterfactual should be used. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

## Frame of reference

30. 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.<sup>8</sup>
31. Based on the CMA's findings in *BT/EE*,<sup>9</sup> Three submitted that the relevant candidate markets for the purposes of assessing the Merger are:
- (a) the retail fixed broadband market in the UK; and
  - (b) the retail mobile telecommunications services market in the UK.
32. However, as set out below, the Parties submitted that their activities do not overlap within either of these candidate frames of reference.

### *Retail fixed broadband market*

#### *Product scope*

33. Three submitted that the Parties' business activities do not overlap since UKB is active in the supply of retail fixed broadband to UK consumers (and bespoke wireless networks for business campus sites), whereas Three is a

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<sup>7</sup> *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

<sup>8</sup> *Merger Assessment Guidelines*, paragraph 5.2.2.

<sup>9</sup> In *BT Group plc and EE Limited: A report on the anticipated acquisition by BT Group plc of EE Limited (BT/EE)*, the CMA found a UK-wide market for retail fixed broadband services (excluding Hull) and a UK-wide market for retail mobile telecommunications services, including the provision of mobile broadband services.

provider of retail mobile telecommunications services to UK consumers and a provider of network services to MVNOs.

34. With respect to Three's "home broadband" offering, HomeFi, Three submitted that this is a type of mobile broadband which uses Three's mobile network and which seeks to attract consumers who want to use mobile broadband primarily within their homes. On this basis, Three submitted that HomeFi should appropriately be considered within the retail mobile telecommunications services market.
35. The CMA notes that while Three's HomeFi service utilises Three's mobile broadband network, HomeFi is marketed by Three as a home broadband service and is enabled using a box plugged into a mains power socket.<sup>10</sup> This indicates that HomeFi is intended to be used in a domestic setting rather than 'on-the-go', and is likely to compete more closely with fixed broadband offerings than with mobile telecommunications offerings. The CMA therefore considers that the Parties' activities may overlap in the supply of fixed broadband services through UKB's Relish and Enterprise Solutions (described above), and Three's HomeFi service.
36. Three also submitted that the type of fixed wireless broadband provided by UKB's Relish wireless service<sup>11</sup> should be considered as a sub-set of the retail fixed broadband market rather than as part of a retail mobile telecommunications market (on which basis there would be no overlap between the Parties' activities). However, consistent with its findings in recent decisions, the CMA did not receive any evidence to support this position.
37. Finally, the CMA did not receive any evidence suggesting that UKB's fixed wireless broadband offering competes with any other type of retail mobile telecommunications service. For this reason, the supply of retail mobile telecommunications is not considered further in this decision.

#### *Geographic scope*

38. The CMA notes that some smaller providers of retail fixed broadband services, including UKB, may focus their offerings in certain geographic areas, suggesting some supply-side constraints to providing services across the UK. However, most large providers of such services, including BT, Sky, Virgin Media and TalkTalk, are active on a UK-wide basis (and the Parties' activities

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<sup>10</sup> "Three is about more than mobile. It's a network that knows how to handle data, and that extends to home internet as well, which is what Home-Fi addresses." - see <https://3g.co.uk/three-home-fi>.

<sup>11</sup> Relish provides fixed wireless access residential and commercial broadband services using long-term evolution (LTE) and wide-area-networks (WAN).

would not, in any case, overlap within any plausible narrower geographic segment).

39. Accordingly, the CMA assessed the impact of the Merger on the supply of retail fixed broadband services in the UK.

#### *Acquisition of spectrum*

40. As set out above, the Parties are both active in the acquisition of spectrum that is currently or prospectively usable for mobile telecommunications. The CMA has therefore also considered the impact of the Merger on the acquisition of spectrum licences in the UK.

#### *Wholesale access and call origination services to MVNOs*

41. The four MNOs in the UK (EE, H3G/Three, O2 and Vodafone) currently provide wholesale access and call origination services to MVNOs (wholesale mobile services) in the UK. This allows companies that do not have their own mobile network infrastructure or hold spectrum to sell retail mobile services.
42. The CMA has considered whether, as a result of increased concentration of mobile spectrum, the merged entity will have the ability and incentive to increase prices for these services to adversely impact downstream MVNOs. Accordingly, the CMA has assessed the impact of the Merger on the supply of wholesale mobile services in the UK.

#### *Conclusion*

43. The CMA has considered the effects of the Merger within:
  - (a) the supply of retail fixed broadband services in the UK;
  - (b) the acquisition of spectrum licences in the UK; and
  - (c) wholesale mobile services in the UK.
44. However, it was not necessary for the CMA to reach a conclusion on the frames of reference, because, as set out below, no competition concerns arise on any plausible basis.



## Competitive assessment

### *Horizontal unilateral effects*

45. 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.<sup>12</sup> 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 in relation to unilateral horizontal effects in the supply of retail fixed broadband services in the UK and the acquisition of spectrum licences in the UK.

### *Supply of retail fixed broadband services in the UK*

#### *Shares of supply*

46. In its 2016 Communications Market Report (**Communications Report**), Ofcom estimated that there were approximately 24.7 million residential and SME fixed broadband lines in the UK at the end of 2015.<sup>13</sup> Three submitted that UKB's Relish business has approximately [X] customers and Three's HomeFi service has approximately [X] customers. Using Ofcom's report as a proxy for total industry size, the Parties would have a share of supply of less than [0-5%]. While the number of fixed broadband customers may have changed since 2015, the CMA does not consider any such change would likely have a material impact on this estimate of the Parties' market position.
47. Accordingly, the CMA believes the Parties to have only a minor presence in the supply of retail fixed broadband services.

#### *Closeness of competition*

48. Three submitted that Three's HomeFi service and UKB's Relish service are not close competitors.
49. The CMA understands that there are material qualitative differences between the HomeFi and Relish services. Relish is able to offer near super-fast broadband speeds of between [X] Mbps, whereas Three's HomeFi speeds

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<sup>12</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

<sup>13</sup> Ofcom, [2016 Communications Market Report](#), page 149.

are [redacted] due to the fact that HomeFi users must share available bandwidth on the network with Three's mobile customers.

50. Moreover, there is very little regional geographic overlap between the Parties' offerings, with Relish's customer base mainly located in Central London and Three's HomeFi customer base located mainly in [redacted] areas.
51. The Parties' internal documents further support the view that the Parties are not particularly close competitors, with Three [redacted].<sup>14</sup>
52. On the basis of this evidence, the CMA believes the Parties are not particularly close competitors in the supply of retail fixed broadband services.

#### *Competitive constraints*

53. Ofcom estimated in its Communications Report that the largest providers of retail fixed broadband services in 2015 were BT (with a 32% share), Sky (with a 23% share), Virgin Media (with a 19% share), TalkTalk (with a 13% share) and EE (with a 4% share). BT and EE have since merged. Neither Three nor UKB are specifically identified within Ofcom's share estimates (instead falling into the "Others" category that accounts for the remaining 7% share).<sup>15</sup>
54. Accordingly, the CMA believes that post-Merger the Parties will continue to be constrained by these much larger suppliers.

#### *Conclusion on horizontal unilateral effects in relation to the supply of retail fixed broadband services in the UK*

55. As set out above, the CMA believes that the Parties have a negligible share of supply, are not particularly close competitors and will continue to be constrained post-Merger by a number of much larger competitors. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects in relation to the supply of retail fixed broadband services in the UK.

#### *Acquisition of spectrum licences in the UK*

56. Spectrum is the range of frequencies over which radiocommunication is possible. Mobile spectrum is the portion of spectrum that has been licensed

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<sup>14</sup> Relish [redacted].

<sup>15</sup> Ofcom, [2016 Communications Market Report](#), page 149.

by Ofcom for mobile telecoms use.<sup>16</sup> Ofcom has a duty to secure the optimal use of spectrum. Ofcom is responsible for allocating spectrum to use for mobile telecommunications. It usually does this by way of an auction. Ofcom has announced that it intends to auction the PSSR (2.3 GHz and 3.4GHz) spectrum bands later in 2017.<sup>17</sup>

57. While UKB has previously bid for radio spectrum that is currently or prospectively usable for mobile telecommunications, the Merger will not, in practice, decrease the number of MNOs that will be able to bid for mobile spectrum licences in future auctions. Ofcom advised the CMA that it is not concerned about the impact of the Merger on the acquisition of mobile spectrum. No third parties were concerned about the impact of the Merger on spectrum acquisition.
58. Therefore, the CMA found that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of a reduction in competition for the acquisition of spectrum licences in the UK.

### ***Vertical effects***

59. Under certain conditions, non-horizontal mergers can weaken rivalry. The theories of harm raised by such mergers typically involve the merged firm harming the ability of its rivals to compete post-merger, for example by raising effective prices to its rivals, or by refusing to supply them completely. Such actions may harm the ability of the merged firm's rivals to provide a competitive constraint into the future.<sup>18</sup>
60. The CMA will typically frame its analysis of non-horizontal mergers by reference to the following three questions:
  - (a) Ability: Would the merged firm have the ability to harm rivals, for example through raising prices or refusing to supply them?
  - (b) Incentive: Would it find it profitable to do so?
  - (c) Effect: Would the effect of any action by the merged firm be sufficient to reduce competition in the affected market to the extent that, in the context of the market in question, it gives rise to an SLC?

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<sup>16</sup> BT/EE, Annex G, paragraph 3.

<sup>17</sup> Ofcom, [Award of the 2.3 and 3.4 GHz spectrum bands: Competition issues and auction regulations](#).

<sup>18</sup> *Merger Assessment Guidelines*, paragraph 5.6.5.

61. Mobile spectrum is an important input into the supply of mobile telecommunication services. As the CMA noted in *BT/EE*:

*There is a relationship between spectrum and the capacity of mobile networks to support users and the speed at which operators can transmit data. The capacity and speed of mobile networks is affected by the amount of spectrum available to an operator; and for a given amount of spectrum, transmission speed is affected by the number and location of users within a particular mobile cell site and their demand for access. Additional spectrum can be used to serve more simultaneous users at a certain level of data transfer speed, or provide a set number of users with higher speeds.*<sup>19</sup>

62. The four MNOs operating in the UK (EE, O2, Three and Vodafone) provide wholesale access and call origination services to MVNOs, ie wholesale mobile services. The CMA therefore considered whether Three's acquisition of UKB's spectrum would give it a network advantage such that it could give rise to competition concerns as a result of input foreclosure in the supply of wholesale mobile services. In principle, input foreclosure might occur through the merged entity increasing the price for its wholesale mobile services, or totally foreclosing access, which would in turn make downstream rival MVNOs less competitive in the provision of retail mobile services to consumers. The CMA has considered below whether the Parties would have the ability and incentive to implement such a strategy post-Merger.

### *Ability*

63. Through the Merger, Three will acquire the spectrum licences held by UKB. A part of UKB's spectrum holdings – in particular its 3.4 GHz spectrum – is expected to become "usable" for mobile services in the future (by 2020 according to Ofcom).<sup>20</sup> It is also possible that other frequencies, such as 3.6 GHz, may likewise become usable for mobile services (although this is generally considered to be less certain).
64. Given that 3.6 GHz spectrum is not as certain to become usable for mobile services at the same time as 3.4GHz spectrum, the CMA has considered both the inclusion and exclusion of 3.6 GHz spectrum within the definition of usable spectrum for the purposes of its competitive assessment of the potential

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<sup>19</sup> BT/EE, paragraph 5.16.

<sup>20</sup> Ofcom, Award of the 2.3 and 3.4 GHz spectrum bands: Competition issues and auction regulation", 21 November 2016, Figure 4.2.

vertical effects of the Merger.<sup>21</sup> As explained below, competition concerns would not arise on either basis.

65. At present, Ofcom estimates shares of the current allocation of immediately usable and allocated spectrum (including 800 MHz, 900 MHz, 1800 MHz, 2.1 GHz and 2.6 GHz) between the MNOs as follows:<sup>22</sup>

<b>Spectrum owner</b>	<b>Share of immediately useable and allocated spectrum</b>
Three	12%
BT/EE	45%
Vodafone	28%
O2 UK	15%
<b>Total</b>	<b>100%</b>

66. When the 2.3 GHz and 3.4 GHz bands of spectrum become usable for mobile services (which will follow the auctioning of certain “to be allocated” spectrum by Ofcom), but 3.6 GHz spectrum is not included in mobile spectrum, the CMA estimates that merged entity’s share would be higher at 16%, combining the existing holdings of Three (11%) and UKB (5%). Significant shares would also be held by BT/EE (30%), Vodafone (21%), O2 (10%) on this basis, with the “to be auctioned” spectrum also accounting for a significant share (23%).<sup>23</sup>
67. Finally, where spectrum in the 700 MHz and 3.6 GHz ranges is also included, the estimated combined share of the Parties would increase to 19%, with “to be auctioned” spectrum accounting for a 35% share. The Parties’ combined shares therefore remain relatively modest on any plausible basis.

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<sup>21</sup> As explained above, the CMA considers that it is appropriate, in the circumstances of the current case, to include spectrum up to and including 3.6GHz within the definition of spectrum that is currently or prospectively usable for mobile telecommunications for the purpose of assessing whether the share of supply test is met. As noted above, that the share of supply test is not an economic assessment of the type used in the CMA’s substantive assessment and therefore the group of goods or services upon which the jurisdictional test is based may vary from the relevant economic market used as a frame of reference for the purposes of substantive competitive assessment. See *Mergers: Guidance on the CMA’s jurisdiction and procedure* (CMA2), January 2014, paragraph 4.56.

<sup>22</sup> Ofcom, Award of the 2.3 and 3.4 GHz spectrum bands: Competition issues and auction regulation”, 21 November 2016, Page 30.

<sup>23</sup> Ofcom, *Award of the 2.3 and 3.4 GHz spectrum bands: Competition issues and auction regulations*, page 30. This estimate includes already allocated spectrum in the range 1452-1492 MHz.

68. The Parties submitted that the acquisition of UKB's spectrum holdings will allow Three to expand and improve its mobile network and improve its ability to compete with MNO competitors.
69. No third parties contacted by the CMA were concerned about the effect of Three's increase in spectrum holdings on competition in any telecommunications markets. Some third parties thought that the Merger would have pro-competitive effects by potentially allowing the merged entity to better serve MVNOs.
70. The CMA considers that the Parties' combined share of mobile spectrum (on any plausible basis) is not *prima facie* high enough to raise vertical competition concerns. The three other MNOs to whom MVNOs could switch in the event of price increase for the merged entity's wholesale mobile services will still have sufficient holdings of mobile spectrum in order to remain competitive.
71. Accordingly, the CMA believes that the Parties will not have the ability to foreclose MVNOs from accessing competitive wholesale mobile services. Having concluded that the Parties will not have the ability to implement an input foreclosure strategy it was unnecessary to consider whether the Parties would have the incentive to do so.

#### *Conclusion on vertical effects*

72. The CMA therefore believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of vertical effects.

#### ***Barriers to entry and expansion***

73. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>24</sup>
74. However, 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.

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<sup>24</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

## **Third party views**

75. The CMA contacted customers and competitors of the Parties. No third parties raised concerns about the Merger.

## **Decision**

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

77. The Merger will therefore **not be referred** under section 33(1) of the Act.

**Colin Raftery**

**Director, Mergers**

**Competition and Markets Authority**

**3 May 2017**