

# Anticipated acquisition by Capita plc of the one-way wide-area paging services business of Vodafone

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

**ME/6662/16**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 10 May 2017. Full text of the decision published on 30 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.**

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## SUMMARY

1. Capita plc (**Capita**) has agreed to acquire Vodafone Limited's (**Vodafone**) one-way wide-area paging (**WAP**) services business in the UK (the **Merger**). Capita and Vodafone (together, the **Parties**) are the only suppliers of one-way WAP services in the UK.
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. WAP services allow customers to send or broadcast short messages over a wide area (covering virtually the whole of the UK) to pager devices. WAP services are used in the UK by customers in the public and private sectors, including healthcare providers and emergency services, for the perceived advantages they provide over other technologies in terms of signal coverage, reliability, cost, and battery life.
4. The CMA has found that alternative technologies, such as mobile telecommunications, do not provide a suitable alternative to one-way WAP services for some of these customers. By reducing the number of suppliers of one-way WAP services from two to one, the CMA believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition due to horizontal unilateral effects.
5. The CMA considered whether to exercise its discretion under the *de minimis* exception contained in section 33(2)(a) of the Enterprise Act (the **Act**). The CMA, however, considers that the market is of sufficient importance to justify making a reference. The Merger may have a significant impact on crucial services, such as hospitals, fire services, and nuclear power stations, that rely on one-way WAP services.
6. The CMA is therefore considering whether to accept undertakings under section 73 of the Act. The Parties have until 17 May 2017 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger under sections 33(1) and 34ZA(2) of the Act.

## ASSESSMENT

### Parties

7. Capita plc is the parent company of PageOne Communications Limited (**PageOne**). PageOne supplies one-way and two-way WAP services in the UK.
8. Vodafone supplies mobile telecommunications networks, related telecommunications, and retail services in the UK. It also supplies one-way WAP services. The target business is Vodafone's UK one-way WAP services business (**Vodafone Paging**). Vodafone Paging's turnover in the financial year ending April 2016 was around [X].

### Transaction

9. The Merger relates to Capita's purchase of the Vodafone Paging business.
10. Capita will acquire Vodafone Paging's customer base, customer contracts, and some assets related to Vodafone Paging's provision of one-way WAP services in the UK (including paging equipment and paging devices), but not the network infrastructure (which, post-Merger, would be switched off or dismantled).

### Jurisdiction

11. As a result of the Merger, the enterprises of Capita and Vodafone Paging will cease to be distinct.
12. The Parties are the only suppliers of one-way WAP services in the UK and therefore have a combined share of supply of 100% (with an increment from the Merger of around 50%) of these services. The CMA therefore believes that the share of supply test in section 23 of Act is met.
13. The CMA thus believes that it is or may be the case that arrangements are in progress or in contemplation that, if carried into effect, will result in the creation of a relevant merger situation.
14. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 10 March 2017. The statutory 40 working day deadline for a decision is 10 May 2017.

## Background and rationale for the Merger

15. WAP services allow customers to send or broadcast short messages over a wide area (covering virtually the whole UK) to pager devices. These services can be both one-way (ie, they can only receive messages) and two-way (ie, they can both transmit and receive messages). Vodafone does not offer two-way WAP services and PageOne is the only provider of two-way WAP services in the UK.
16. Demand for WAP services has declined from a peak in the mid-1990s of 750,000 units in service to an estimated [100,000-150,000] units in service at present.
17. WAP services, however, continue to be used in the UK by the healthcare and emergency services, in utilities sectors, and by commercial organisations.<sup>1</sup> Customers informed the CMA that WAP remains a valuable service to them. For example, fire and rescue services use WAP to communicate, a supplier of pagers to a nuclear waste facility noted that WAP is operationally and commercially critical for the site's needs, and doctors use WAP when they are on call.
18. These customers use WAP for the perceived advantages that they provide over other technologies. These advantages include, in particular, superior signal coverage across geographic areas (and the ability for signal to penetrate inside buildings), greater reliability, longer battery life, low cost, and the ability for simultaneous multiple group delivery of messages.
19. Customers of WAP services include those in the public and private sectors:
  - (a) Public sector customers can purchase WAP services using the framework agreed by the Crown Commercial Services (**CCS**). Prices are set via bilateral negotiations with customers, with negotiations typically starting from the price card submitted under the CCS framework. Around 60% of the Parties' revenues derive from customers on the CCS framework.
  - (b) Private sector customers cannot purchase via the CCS framework, but instead purchase directly from PageOne, Vodafone Paging, or a reseller. Prices are set via bilateral negotiations with the customer, typically starting from fixed price lists.
20. Resellers are independent retailers that sell WAP services to customers, typically in combination with a paging device. These resellers can be

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<sup>1</sup> [REDACTED]

specialised in paging or they can provide WAP-related services as one of a suite of IT and communications services. Some resellers sell WAP services as a means of delivering other services, such as inbound call management services or specialised alerts.

21. Capita submitted that the Merger would allow PageOne to provide high-quality WAP services to customers for longer than it would otherwise be able to by giving it access to a greater volume of customers on its network than it would have attracted on the open market.<sup>2</sup>

## Counterfactual

22. 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.
23. The CMA will, however, 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 a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>3</sup>
24. In the present case, the Parties submitted that the appropriate counterfactual was one where Vodafone Paging exited the market in around 1-2 years.
25. For the CMA to accept an exiting firm counterfactual, it would need to believe, based on compelling evidence, that the following three cumulative conditions are met:<sup>4</sup>
  - (a) Absent the Merger, it is inevitable that Vodafone Paging would have exited.
  - (b) There is no substantially less anti-competitive purchaser for Vodafone Paging than Capita.

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<sup>2</sup> PageOne estimates that between [X] and [X] of Vodafone Paging's units in service will migrate to PageOne after the Merger. [X].

<sup>3</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>4</sup> *Merger Assessment Guidelines*, paragraphs 4.38-4.3.18.

(c) The Merger does not represent a substantially less competitive outcome compared with what would have happened to Vodafone Paging's sales in the event of its exit.

26. In assessing an exiting firm counterfactual, the CMA seeks to understand the rationale for the merger. Evidence of the firm planning an exit may be more probative if prepared prior to contemplation of the merger,<sup>5</sup> as compared to evidence that post-dates the start of merger discussions.<sup>6</sup> This is even more important when strategic considerations (which may be relatively subjective and subject to review and change) – and not financial failure – drive the decision to exit.<sup>7</sup>

*Limb 1: Would Vodafone Paging have inevitably exited absent the Merger?*

27. In assessing whether Vodafone Paging would inevitably have exited absent the Merger, the CMA reviewed data on Vodafone Paging's financial performance, the Parties' internal documents, and the actions taken by Vodafone's management over the last few years. The Parties also provided submissions on this point.

*Financial failure*

28. Vodafone's internal documents indicate that Vodafone Paging was a profitable business. For the financial year ending in 2016, its earnings before interest, tax, depreciation, and amortisation were [REDACTED], with an operating cash flow of [REDACTED].<sup>8</sup> The Parties have not disputed that Vodafone Paging's financial viability was not at risk in the short term.

*Strategic exit*

29. The Parties submitted that, despite having a positive operating cash flow, Vodafone Paging would nonetheless have strategically exited absent the Merger, given that:

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<sup>5</sup> *Merger Assessment Guidelines*, paragraph 4.3.9.

<sup>6</sup> See for example the approach adopted in *Proposed acquisition by Dorf Ketal Chemicals AG of the titanate and zirconate business of Johnson Matthey plc*

<sup>7</sup> *Ibid*, paragraphs 16-24: the seller provided documents indicating that it was considering closing the target business. These documents, however, post-dated the discussions with the buyer to sell the target business. The OFT considered there was insufficiently compelling evidence to suggest that the target business would inevitably have exited absent the merger.

<sup>8</sup> [REDACTED]

- (a) Vodafone Paging is running on end-of-life legacy technology and, in order to continue competing, would need to upgrade its WAP network at a cost of £[0-5] million.<sup>9</sup>
- (b) Vodafone Paging's subscriber base continues to decline and this has accelerated with the announcement of the Merger.<sup>10</sup>
- (c) There was an unscheduled outage of the network on [REDACTED], which has accelerated Vodafone's decision to shut down.
- (d) The appointment of Nick Jeffrey as Vodafone's new CEO in September 2016 signalled a step change in Vodafone's strategy of migrating to next generation products.
- (e) [REDACTED].

30. Notwithstanding the above, the CMA does not believe that there is compelling evidence that Vodafone would have inevitably shut down the Vodafone Paging business absent the Merger:

- (a) First, Vodafone acknowledged at the Issues Meeting that Capita's approach in September 2015 prompted it to consider shutting down the Vodafone Paging business. The Parties repeated this in their submissions.<sup>11</sup> In other words, the Merger appears to have prompted Vodafone's decision to strategically exit.
- (b) Second, an internal document produced for Vodafone's Board in August 2016 (the **August 2016 Board Paper**) listed closure of the network as the least viable option alongside selling to Capita or retaining and investing in the network.<sup>12</sup>
- (c) Third, the CMA believes that Vodafone would have strong reputational reasons for maintaining the existing network, given its importance to a number of customers that purchase other services from Vodafone.<sup>13</sup>
- (d) Fourth, Vodafone Paging is at present profitable and returning positive cash flow [REDACTED].<sup>14</sup> The August 2016 Board Paper factored in the £[0-5]

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<sup>9</sup> [REDACTED]  
<sup>10</sup> [REDACTED]  
<sup>11</sup> [REDACTED]  
<sup>12</sup> [REDACTED]  
<sup>13</sup> [REDACTED]  
<sup>14</sup> [REDACTED]

million investment for the network, yet concluded that retaining the network was preferable to closure.<sup>15</sup>

31. In light of these factors, while it is possible that Vodafone would have decided at some point in the future to close Vodafone Paging, the evidence does not suggest that this would have occurred had Capita not approached Vodafone.
32. In conclusion, the CMA believes that limb 1 of the exiting firm counterfactual is not satisfied. In particular, the Parties have not provided compelling evidence that Vodafone Paging would inevitably exit absent contemplation of the Merger.
33. Given that the CMA does not consider that limb 1 of the exiting firm counterfactual is met, the CMA has not had to conclude on limb 2 (whether there was a substantially less anti-competitive purchaser for Vodafone Paging) or limb 3 (what would have happened to Vodafone Paging's sales in the event of its exit).

*The appropriate counterfactual by which to assess the Merger*

34. In Phase 1, if the CMA cannot reach a sufficient level of confidence in relation to any of the limbs of the exiting firm counterfactual, it will use the pre-merger situation as its counterfactual to assess the merger.<sup>16</sup> In the present case, because the CMA considers that limb 1 of the exiting firm counterfactual is not satisfied, the CMA will assess the Merger against the pre-Merger situation.<sup>17</sup>

## **Frame of reference**

35. 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. There can be constraints on merger parties from outside the relevant market, segmentation can exist within the relevant market, and some constraints can be more important than others. The CMA will consider these factors in its competitive assessment.<sup>18</sup>

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<sup>15</sup> [🔗]

<sup>16</sup> [Merger Assessment Guidelines](#), paragraph 4.3.10.

<sup>17</sup> [🔗]

<sup>18</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.



## **Product scope**

36. The Parties both operate networks that allow them to supply one-way WAP services in the UK.

### *The supply of one-way WAP services*

37. Capita submitted that the appropriate frame of reference comprises operational wireless messaging services in the UK, including private paging, radio technologies, and mobile technology.<sup>19</sup> Capita argued that these alternative technologies provided an alternative for different types of paging customers, such as hospitals, emergency services, or nuclear power stations.<sup>20</sup>
38. As part of its merger investigation, the CMA sent customer questionnaires to a large number of the Parties' customers. These questionnaires sought to understand the extent to which customers considered WAP services to be substitutable with alternative technologies.
39. The most commonly mentioned reason for preferring WAP was its superior signal coverage across geographic areas compared to alternatives. Customers explained that WAP services had superior coverage in rural and non-populated areas, as well as inside buildings. WAP's superior signal coverage was emphasised by hospitals, emergency services, and power station customers.
40. Customers also indicated that they value the following features of WAP services compared to alternative technologies:
- (a) pagers have very long battery life;
  - (b) pagers support broadcasting to many recipients (at low cost);
  - (c) pagers can be used as a reliable back-up for other messaging services and mobile phones;
  - (d) pagers are suitable for locations where mobile phones cannot be used;
  - (e) pagers attract attention for the purposes of critical messaging (unlike, for example, email); and
  - (f) pagers are cheap to use and to replace.

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<sup>19</sup>   
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41. Evidence from Vodafone's internal documents corroborates these customer responses. A Vodafone document explains that the [advantages] of WAP services are parallel group messaging to unlimited group sizes, overlapping coverage with other technologies, better building penetration, long battery life, and very low cost.<sup>21</sup>
42. In light of the above, the CMA adopted as a starting point a product frame of reference for the supply of one-way WAP services. The CMA has considered the role of alternative technologies to WAP services for certain customers – and the extent to which they constrain the Parties – in its competitive assessment.

### *Customer segmentation*

43. The CMA assessed whether it was appropriate to delineate within the adopted product frame of reference between different customer groups.<sup>22</sup> This may be relevant where suppliers can charge higher prices to certain customers willing to pay more than others (ie, price discriminate) or otherwise flex the terms of their offer between customer groups.
44. The Parties supply one-way WAP services to both end-users and independent retailers who resell WAP services (typically alongside paging devices). The CMA's merger investigation has found that the Parties treat independent resellers just like any other customer: resellers purchase WAP services from the Parties in the same way as other customers. The CMA will therefore not define separate frames of reference for resellers and end-users.
45. The CMA has also investigated whether to segment customers into public sector customers and private sector customers. Capita submitted that there are no material differences between customer requirements based on industry sector, size, or geographic location.<sup>23</sup>
46. The CMA's merger investigation found that there are some differences in customers' reasons for using WAP services. The critical nature of WAP, however, did not vary significantly by customer group. Customers of all types consistently identified geographic signal coverage and reliability as the main reasons for using WAP services.
47. Public and private sector customers do use different methods to purchase WAP services. As noted at paragraph 19 above, public sector customers typically use the CCS framework, while private sector customers procure

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<sup>21</sup> [REDACTED]

<sup>22</sup> [Merger Assessment Guidelines](#), paragraph 5.2.5.

<sup>23</sup> [REDACTED]

directly from PageOne, Vodafone Paging, or resellers. Therefore, the Parties might discriminate between public and private sector customers and the CMA has taken this into account in its competitive assessment.

### ***Geographic scope***

48. Capita submitted that most wireless messaging technologies, including one-way WAP services, are provided on a national basis. This is due primarily to the existence of national frequency bands and infrastructure (eg, paging sites, base stations, and transmitters). The CMA's merger investigation confirmed that providing one-way WAP services requires national infrastructure, which both of the Parties have. The CMA therefore assessed the impact of the Merger on a UK-wide basis.

### ***Conclusion on frame of reference***

49. For the reasons set out above, the CMA has assessed the impact of the Merger on the supply of one-way WAP services in the UK.

## **Competitive assessment**

### ***Horizontal unilateral effects***

50. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint. This allows the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.<sup>24</sup>
51. 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 WAP services in the UK.

### ***Current competition between the Parties***

52. The Merger reduces the number of suppliers of one-way WAP services in the UK from two to one. Post-Merger, Capita will not be constrained by any other supplier of one-way WAP services.
53. The Parties submitted that Vodafone Paging does not provide a meaningful constraint because [X]. At the same time, Capita argued that customers have

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<sup>24</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

switched in large numbers to alternative technologies (such as mobile telecommunications), that these currently provide a more significant competitive constraint on PageOne than Vodafone Paging, and that this constraint will remain post-Merger.

54. The available evidence, however, indicates that the Parties are constraining each other:
- (a) The CMA investigated what customers would choose to do if their current WAP provider withdrew their service. It found that 20 out of 39 customers would switch to the other WAP provider.<sup>25</sup>
  - (b) A number of Capita's internal documents discussing the rationale for the Merger refer to Vodafone Paging as [competing] with PageOne.<sup>26</sup>
  - (c) A fire service and a hospital explained that if their WAP supplier tried to increase prices, they would approach the other supplier. Five large customers, including three resellers, stated that, after the Merger, they would have no choice but to accept a significant price increase. Several customers suggested that they would have to accept price increases of between 15% and 50% post-Merger.<sup>27</sup>
  - (d) PageOne confirmed to the CMA at the Issues Meeting that it had recently actively tried to win customers from Vodafone Paging.<sup>28i</sup>
  - (e) New customers have continued to join Vodafone Paging through resellers. Resellers told the CMA that they have responded to PageOne's price increases by steering new customers towards Vodafone Paging.
  - (f) For public customers, the price lists published by the Parties under the CCS framework may inform the price negotiations with their WAP service providers.
  - (g) PageOne and Vodafone Paging compete on maintaining quality of coverage. Customers expressed particular satisfaction with Vodafone Paging's network. Some stated that they use Vodafone Paging specifically because of its high quality of coverage. Customers also

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<sup>25</sup> This excludes those respondents who said they did not know. Specifically: 15 of 49 total respondents chose 'another brand of wide area paging services'; 5 of the 8 respondents who chose 'other' gave explanations that suggested that switching to the other provider was their first-best alternative; and 10 respondents said that they did not know.

<sup>26</sup> [REDACTED]

<sup>27</sup> The median response in the customer questionnaire was in the order of 15%-20%. The highest answer given in phone conversations was 50%.

<sup>28</sup> PageOne stated at the Issues Meeting that it [REDACTED].

explained that if the coverage were not satisfactory with one supplier, they would approach the other.

55. The CMA considers that the Merger will bring about a loss of competition for both public and private sector customers.
  - (a) First, both types of customers could face price rises. For private sector customers, resellers will no longer be able to direct customers towards Vodafone Paging. For public sector customers, Vodafone Paging would not participate on the CCS framework [X].<sup>29ii</sup>
  - (b) Second, for both types of customers, there would no longer be competition on maintaining quality of coverage.
56. The CMA acknowledges that in recent years there has been limited customer switching between the Parties and that [X]. This is consistent with the fact that competition is taking place in a gradually declining market.
57. The CMA nonetheless believes that the Parties have been constraining each other pre-Merger and would continue to do so absent the Merger. This is the case for both public sector and private sector customers. The CMA has therefore investigated the extent to which alternative technologies could continue to constrain the Parties post-Merger.

#### *Constraints from outside the frame of reference*

58. Capita submitted that both public and private sector customers are switching away from WAP services to more modern technologies. Capita argued that the most significant constraint on PageOne and Vodafone Paging is the substantial competition from providers of alternative wireless messaging technologies, and not from each other.
59. The CMA examines the constraint from alternative technologies – specifically, mobile technology, private on-site paging, and radio technologies – on WAP services in the sections below.

#### *Mobile telecommunications*

60. Capita submitted that mobile technology (GSM, 3G, 4G) is the most significant constraint on the Parties.

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<sup>29</sup> The CCS informed the CMA that Vodafone Paging submitted a bid in July 2015 under the CCS framework, and that Vodafone Paging's price card was available on the Government's eMarketplace since then.

61. The CMA investigated what customers would do if their current WAP provider withdrew their services. While the most common response was that customers would switch to another WAP provider, the second most commonly chosen alternative was to switch to mobile technology, with 12 of the 39 respondents giving this answer.
62. The CMA acknowledges that mobile technology may provide an alternative to WAP for some customers. Customers have indeed switched from WAP to mobile technology over the last few years. The available evidence, however, suggests that mobile technology is not a viable alternative for many WAP customers.
63. Specifically, customers consistently identify coverage as the most important reason why mobile devices are not a suitable alternative to WAP services. Respondents to the CMA's customer questionnaire noted the following:
  - (a) WAP coverage is substantially better than mobile coverage.
  - (b) Pagers run on low frequencies compared to mobile phones. This is particularly valuable for those customers whose staff and buildings are underground, or whose buildings have thick, secured walls.
  - (c) Some hospital staff prefer pagers because they provide better coverage. By contrast hospital staff stated that with mobiles they end up with significant black spots with no coverage.
  - (d) Many users of WAP services use pagers as a backup for mobile phones. WAP services provide a communications solution in case the user is in a mobile black spot. For customers, the absolute geographic coverage of mobile and WAP services is less important than the fact that WAP services have coverage in those areas where mobile phones do not.
64. Capita submitted that mobile coverage for population and premises is equivalent to WAP coverage. Customers, however, informed the CMA that WAP coverage is substantially better than mobile coverage particularly in rural and non-populated areas. The enhanced coverage over landmass – and within buildings – is the specific advantage that WAP provides over mobile technology.
65. Capita also submitted that users can enhance mobile coverage by using SIM cards that are not linked to a specific mobile operator and that instead automatically select the network with the strongest signal. Customers, however, told the CMA that this does not provide a solution in locations where no mobile operators have coverage.

66. Other than coverage, customer responses and Capita's submissions (consistent with their internal documents) identify the following distinguishing characteristics between WAP services and mobile technology:
- (a) Pagers have a better battery life than mobiles. The battery life for a pager is around 8 weeks.<sup>30</sup> By contrast, the battery life for mobile devices is just 1-3 days.<sup>31</sup>
  - (b) WAP is a broadcast technology. It can transmit one message to many thousands of people at once.<sup>32</sup> By contrast, mobile technology cannot support mass transmitting of messages without a messaging management service.
  - (c) Paging is perceived as more secure because it cannot record and transmit information. By contrast, achieving the same security with smartphones requires disabling cameras and recording functions, and enabling encryption services.<sup>33</sup>
67. Finally, the CMA also received evidence that many WAP customers use their WAP devices side-by-side with mobile phones, suggesting that those customers perceive these products as complements rather than substitutes.

*Private on-site paging*

68. Private on-site paging is a private communications system comprising paging terminals, transmitters, and pagers. Private on-site paging tends to be used within buildings or on campuses, for example, hospitals.<sup>34</sup> While the coverage of private paging systems can be extended by linking different systems, the coverage is by nature limited to those private areas with a system in place.
69. Capita submitted that private on-site paging technology competes with WAP services and delivers messages more quickly than WAP. According to Capita, this makes it better suited to delivering emergency messages where any delay is not desirable.
70. The available evidence, however, suggests that the immediate constraint from private on-site paging on WAP services is limited.

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<sup>30</sup> In the CMA's customer questionnaire, 12 respondents out of 50 selected battery life as one of the reasons why alternative technologies would be inferior to WAP services. Customers mentioned this in phone conversations, too.

<sup>31</sup> [REDACTED]

<sup>32</sup> [REDACTED]

<sup>33</sup> [REDACTED]

<sup>34</sup> [REDACTED]

- (a) First, the CMA's customer questionnaire asked customers what alternative technology they would use if WAP services were withdrawn. Only 1 out of 47 customers stated that they would switch to private on-site paging. Customers indicated that on-site paging is not a suitable alternative because it does not provide the necessary service across a wide geographic area.
- (b) Second, establishing a private on-site paging solution requires significant expense (as Capita acknowledged in its submissions).<sup>35</sup> By contrast, WAP services are very low cost (as emphasised in Vodafone's internal documents).<sup>36</sup>
- (c) Third, WAP services are deployed alongside private on-site paging solutions in many sites, including fire stations, hospitals, lifeboat rescue services, hospitals, ambulance services, and nuclear power stations.<sup>37</sup> This suggests that those customers consider WAP and private on-site paging services to be complementary, rather than substitutable.

### *Radio technologies*

- 71. Capita submitted that radio technologies, such as Terrestrial Trunked Radio (**TETRA**) and Digital Enhanced Cordless Telecommunications (**DECT**), constrain the Parties to a significant degree.
- 72. TETRA is a standard for a mobile radio specification that is used as a public safety communications technology. DECT is technology that allows portable units (such as cordless telephones) to access a fixed telecoms network via radio. It is used primarily in home and small offices.<sup>38</sup>
- 73. The available evidence does not suggest that radio technologies, such as TETRA and DECT, provide a particularly significant constraint on the Parties:
  - (a) TETRA is not a suitable alternative to WAP services primarily because it is substantially more expensive.<sup>39</sup> No customers that the CMA contacted in its questionnaire chose TETRA as an alternative if WAP services were not available.<sup>40</sup>

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<sup>35</sup> According to Capita, establishing an on-site paging solution requires, at least, the following: (i) allocation of frequency from Ofcom, (ii) leasing or purchase of transmission equipment from an on-site paging manufacturer, and (iii) leasing or purchasing paging receivers in sufficient quantities for the site. [REDACTED]

<sup>36</sup> [REDACTED]

<sup>37</sup> [REDACTED]

<sup>38</sup> [REDACTED]

<sup>39</sup> [REDACTED]

<sup>40</sup> Nor did the customers that the CMA engaged with through phone conversations say that TETRA might be their first-best alternative to WAP services.



- (b) DECT is not a suitable alternative because it has only limited geographic range, and cannot transmit over a wide area. Customers told the CMA that DECT was not a suitable alternative to WAP services for this reason.

*Customers for whom there are no viable alternatives to WAP services*

74. Capita submitted that, over the last few years, large numbers of customers have switched away from one-way WAP services. It argued that for every type of customer (eg, hospitals, emergency services, power stations, prisons), suitable alternatives exist.
75. The CMA's merger investigation, however, has found that despite some customers switching away, the customers that remain would not switch to alternative technologies in response to a small worsening of offering:
- (a) Customers told that the CMA that switching away from WAP to rival technologies would be a negative experience. Around half of customers that responded to this question in the CMA's questionnaire – 23 out of 44 – indicated that there would be a great deal or a fair amount of negative impact on their organisation if they had to use a technology other than WAP.<sup>41</sup> Only two respondents indicated using an alternative technology would not have a negative impact.
- (b) Capita submitted that customers may use a variety of different technologies for messaging, including WAP services.<sup>42</sup> It emphasised that WAP may serve as an alternative method for contacting employees in the case of a terrorist attack, when public mobile telecoms network may be vulnerable.<sup>43</sup> It also noted that organisations, such as hospitals, may choose to use pagers, basic mobile phones, and smartphones at the same time in order to maximise cost-effectiveness.<sup>44</sup> This suggests that WAP services are complementary to these alternatives and that WAP serves an important and distinct customer demand.
- (c) Data provided by PageOne concerning cancellations between [REDACTED] show that [REDACTED]% of cancellations (by volume) are marked as being related to a reduced requirement, not an outright cancellation.<sup>45</sup> In other words, a significant proportion of customers who are switching away are not cancelling entirely, but only reducing their requirement. While alternative

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<sup>41</sup> 11 respondents said they did not know.

<sup>42</sup> [REDACTED]

<sup>43</sup> [REDACTED]. One of the Parties' customers also made this point during the CMA's merger investigation.

<sup>44</sup> [REDACTED]

<sup>45</sup> [REDACTED]

technologies may be suitable for some users, many users still require WAP services.<sup>46</sup>

### *Conclusion on horizontal unilateral effects*

76. The Merger will bring together the only two suppliers of one-way WAP services in the UK.
77. The CMA recognises that in recent years there has been relatively limited customer switching between the Parties. Yet the available evidence – including from customers and internal documents – shows that the Parties constrain each other and compete against each other. By removing the competitive constraint from Vodafone Paging, the Merger may therefore bring about increased prices and a reduction in quality of signal coverage.
78. The CMA does not believe that alternative technologies – including mobile telecommunications, private on-site paging, and radio technologies – would sufficiently constrain the merged entity post-Merger to prevent a realistic prospect of a substantial lessening of competition.
79. Accordingly, the CMA believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects in relation to the supply of one-way WAP services in the UK.

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

80. 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>47</sup>
81. The CMA's merger investigation found that in order to start supplying WAP services in the UK, a new entrant would need to acquire rights to a radio frequency channel from Ofcom; build a network or rent capacity in an existing network; and invest in equipment, set up operations, and attract customers. Vodafone emphasised that investing in its WAP network to keep it viable would cost around £[0-5] million. Capita also submitted that there has been no new entry anywhere in Europe in the last 5 years and the CMA is not aware of any companies planning to enter.

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<sup>46</sup> Customers that the CMA engaged with through phone conversations who had recently reduced their paging requirement confirmed that it would not be feasible for them to switch out of paging altogether.

<sup>47</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

82. The CMA therefore does not believe that entry or expansion would prevent the realistic prospect of a substantial lessening of competition identified in the competitive assessment.

### ***Countervailing buyer power***

83. In some circumstances, an individual customer may be able to use its negotiating strength to limit the ability of the merged firm to raise prices. The existence of such countervailing buyer power may be a factor in making a finding of a substantial lessening of competition less likely.<sup>48</sup>
84. Capita submitted that purchasers under the CCS framework have buyer power.
85. The CMA observes that any buyer power that may have existed before the Merger would be eroded post-Merger. CCS framework users, like the Parties' wider customer base, include customers who will not have viable alternatives to WAP services. As a result of the Merger, these customers will no longer have an alternative that they can credibly use in price negotiations.<sup>49</sup>
86. The CMA therefore does not believe that customers have countervailing buyer power that would prevent the realistic prospect of a substantial lessening of competition identified in the competitive assessment.

### **Third-party views**

87. The CMA contacted customers of the Parties. Customers raised concerns that the Merger would lead to reduced competition, higher prices, and degradations in signal coverage.
88. The CMA has considered third-party comments where appropriate in the competitive assessment above.

### **Conclusion on substantial lessening of competition**

89. Based on the evidence set out above, the CMA believes that there is a realistic prospect that the Merger will result in a substantial lessening of competition as a result of horizontal unilateral effects in relation to the supply of one-way WAP services in the UK.

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<sup>48</sup> [Merger Assessment Guidelines](#), from paragraph 5.9.1.

<sup>49</sup> [Merger Assessment Guidelines](#), from paragraph 5.9.2.

## Exceptions to the duty to refer

90. Where the CMA's duty to refer is engaged, the CMA may, pursuant to sections 33(2)(a) and 33(2)(c) of the Act, decide not to refer the merger under investigation for a Phase 2 investigation on the basis that the market concerned is not of sufficient importance to justify the making of a reference (the *de minimis* exception) or if relevant customer benefits outweigh the substantial lessening of competition.
91. The CMA has considered below the *de minimis* exception and relevant customer benefits.

### *Markets of insufficient importance*

92. In considering whether to apply the *de minimis* exception, the CMA will consider, in broad terms, whether the costs involved in a reference would be disproportionate to the size of the market concerned, taking into account also the likelihood that harm will arise, the magnitude of competition potentially lost, and the duration of such effects.<sup>50</sup>

### *'In principle' availability of undertakings in lieu*

93. The CMA's general policy, regardless of the size of the affected market, is not to apply the *de minimis* exception where clear-cut undertakings in lieu of a reference could, in principle, be offered by the parties to resolve the concerns identified.<sup>51</sup>
94. Clear-cut undertakings in lieu will not in principle be available if the competition concerns arising from the merger relate to such an integral part of the transaction that to remedy them via structural divestment would be tantamount to prohibiting the merger.<sup>52</sup>
95. In the present case, the competition concern relates to the removal of Vodafone Paging as the only other supplier of one-way WAP services in the UK. This concern could be addressed in a clear-cut way by the divestment of Vodafone Paging, which would be tantamount to prohibiting the Merger.

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<sup>50</sup> [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#) (OFT1122), December 2010, chapter 2. The [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#) were adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#), Annex D).

<sup>51</sup> [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraphs 2.2 and 2.18-27.

<sup>52</sup> [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraph 2.25.

96. Accordingly, the CMA does not consider that an 'in principle' clear-cut undertaking in lieu is available in this case.

#### *Relevant factors*

97. The CMA will consider the likely level of consumer harm by reference to a number of factors when deciding whether or not to apply the *de minimis* exception: the size of the market, the strength of the CMA's concerns that harm will occur as a result of the merger, the magnitude of competition that would be lost by the merger, and the likely durability of the merger's impact.<sup>53</sup> The CMA will also consider the wider implications of a *de minimis* decision.<sup>54</sup> Each is considered in turn below.

#### *Market size*

98. The total annual sales attributable to the supply of one-way WAP services are £[5-10] million. The market size is therefore within the CMA's margin of discretion for applying the *de minimis* exception. This is the case even though the CMA accepts Capita's submission that the market is in decline and therefore the current sales may overstate the future value of the market.

#### *Strength of CMA's concerns*

99. The CMA may attach weight to the strength of its belief that the merger will have an anti-competitive effect (ie whether its level of belief is on or nearer the 'is the case' (more likely than not) standard than the 'may be the case' standard).<sup>55</sup> The CMA's competition concerns with regard to the Merger are above the 'may be the case' standard.

#### *Magnitude of competition lost*

100. As explained in the competitive assessment, the Merger will reduce the number of suppliers of one-way WAP services in the UK from two to one.
101. Customers that provide critical services – including hospitals, the emergency services, and power stations – have stated that they do not consider alternative technologies as an appropriate substitute to WAP (in terms of coverage, reliability, security, and battery life). Consistent with this, Capita's

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<sup>53</sup> [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraph 2.28.

<sup>54</sup> [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraph 2.40-43.

<sup>55</sup> [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraph 2.33.

submissions refer to WAP services being relied upon 'as a back-up network in the event of crises such as natural disasters or terrorist attacks.'<sup>56</sup>

102. Because these customers cannot switch to alternatives to WAP services, they would face potentially significant price rises and quality degradation as a result of the Merger.

#### *Durability*

103. The CMA acknowledges that the WAP industry is in decline. Yet WAP continues to provide an important service to many customers. For these customers, the CMA has found that there are no suitable alternatives to WAP in the short- to medium-term.
104. The available evidence suggests that while Vodafone has considered closure of its paging network, it would be a more viable option for Vodafone to retain and invest in the network. Absent the Merger, Vodafone Paging would therefore continue to provide an alternative for many PageOne customers in the short- to medium-term.

#### *Replicability*

105. The CMA will be less likely to apply this discretion where it believes that the merger in question is one of a potentially large number of similar mergers that could be replicated across the sector in question.<sup>57</sup> Given that there are no other suppliers of one-way WAP services in the UK, the CMA believes that the likelihood of issues of replicability arising in this case is remote.

#### *Conclusion on the application of the de minimis exception*

106. In light of the considerations set out above, the CMA does not believe it appropriate to exercise its discretion not to make a reference on the grounds that the market or markets concerned are not of sufficient importance.

#### **Relevant customer benefits**

107. The CMA may take into account relevant customer benefits as a potential exception to the duty to refer. Under section 30(1) of the Act, the benefits must accrue to customers in the form of lower prices, higher quality or greater

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<sup>56</sup> [redacted]

<sup>57</sup> [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraphs 2.40.

choice of goods, or greater innovation. The claimed benefits must be merger specific, timely, likely, and sufficient.

108. For the CMA to consider exercising its discretion, the evidence in support of relevant customer benefits must be compelling. In other words, the parties must produce detailed and verifiable evidence of any anticipated price reductions or other benefits.<sup>58</sup>
109. Capita submitted that the Merger will keep prices as low as possible (due to economies of scale) and lead to greater innovation (due to PageOne having greater certainty about the future of its network). It also referred to the migration plan for Vodafone Paging customers to switch to PageOne.
110. The CMA, however, does not consider that this constitutes compelling, detailed, and verifiable evidence of relevant customer benefits. The CMA has found that the Merger may bring about potentially significant price rises and quality degradations for customers offering critical services.
111. The CMA does not believe that the claimed relevant customer benefits will outweigh this substantial lessening of competition.

## Decision

112. Consequently, the CMA believes 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.
113. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised<sup>59</sup> while the CMA is considering whether to accept undertakings<sup>60</sup> instead of making such a reference. The Parties have until 17 May 2017<sup>61</sup> to offer an undertaking to the CMA.<sup>62</sup>
114. The CMA will refer the Merger for a phase 2 investigation<sup>63</sup> if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides<sup>64</sup> by 24

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<sup>58</sup> *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance*, paragraph 4.9.

<sup>59</sup> Section 33(3)(b) of the Act.

<sup>60</sup> Section 73 of the Act.

<sup>61</sup> Section 73A(1) of the Act.

<sup>62</sup> Section 73(2) of the Act.

<sup>63</sup> Sections 33(1) and 34ZA(2) of the Act.

<sup>64</sup> Section 73A(2) of the Act.

May 2017 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

**Kate Collyer**  
**Deputy Chief Economic Adviser**  
**Competition and Markets Authority**  
**10 May 2017**

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<sup>i</sup> Capita subsequently clarified that it tried to win this Vodafone one-way WAP customer for its two-way WAP service.

<sup>ii</sup> Vodafone clarified that Vodafone's bid pricing, not price card, has been available on the Government's eMarketplace since July 2015.