



RESPONSE OF SKY UK LIMITED TO THE CMA'S ISSUES STATEMENT DATED 21 JANUARY 2021 RE: THE ANTICIPATED JOINT VENTURE BETWEEN LIBERTY GLOBAL PLC AND TELEFONICA S.A.

This is the response of Sky UK Limited ("Sky") to the CMA's Issues Statement dated 21 January 2021 ("**Issues Statement**") in relation to its review of the anticipated joint venture between Liberty Global plc and Telefonica S.A. Defined terms used in this response are as defined in the Issues Statement.

EXECUTIVE SUMMARY

The Issues Statement sets out two vertical effects theories of harm that the CMA is currently planning to investigate in its review of the Proposed Merger.

Sky agrees that the CMA's first theory of harm (*input foreclosure in the supply of wholesale mobile services to MVNOs*) is relevant to the CMA's review of the Proposed Merger. Sky has already raised its concerns and explained why the Merged Entity would have both the ability and incentive to engage in input foreclosure in relation to Sky Mobile, an MVNO on the O2 network. Sky's concerns in relation to input foreclosure are real (not merely theoretical), as demonstrated by the fact that Sky has already expended significant amounts of time and resource in order to try and protect its position with regard to Sky Mobile, in light of the Proposed Merger.

Sky has no comments on the CMA's second theory of harm (*input foreclosure in supply of wholesale leased lines to MNOs*). Furthermore, Sky has no additional relevant issues to raise at this stage.

INPUT FORECLOSURE IN THE SUPPLY OF WHOLESALE MOBILE SERVICES TO MVNOS

Sky agrees that this is a relevant theory of harm

Sky agrees that the CMA's first vertical effects theory of harm is relevant to the CMA's review of the Proposed Merger.

Sky has previously set out its concerns in relation to input foreclosure in the supply of wholesale mobile services to Sky Mobile in detail in [REDACTED]

In summary, Sky is concerned that the Proposed Merger will: [REDACTED]

[REDACTED] have a significant adverse impact on competition by harming Sky Mobile. For the following reasons, Sky considers that post-merger the Merged Entity will have both the incentive and ability to engage in input foreclosure:

- *Incentive* - O2's incentives to provide wholesale mobile services on favourable terms [REDACTED] will materially reduce as the Merged Entity pursues increased uptake of fixed/mobile bundles benefitting from its converged and vertically integrated operations. According to the Parties' own public statements, fixed/mobile convergence is a key rationale for the Proposed Merger at a time when interest in such services in the UK is increasing [REDACTED]; and

- *Ability* - the Merged Entity will have the ability to degrade Sky's mobile service. Pre-Merger, Sky considers that O2 is a willing partner that is incentivised to secure distribution to Sky's fixed customer base and to resolve any commercial differences. Post-Merger, the change in O2's incentives means it is uncertain to remain a willing partner and would have less incentive to resolve any commercial differences. [REDACTED]

[REDACTED] it is impossible to provide contractually for all commercial circumstances or market developments over a long-term deal [REDACTED]

Sky therefore agrees that input foreclosure in the supply of wholesale mobile services to MVNOs is a relevant theory of harm in the context of the Proposed Merger.

Sky's concerns are real, not merely theoretical

As a result of its concerns regarding the Proposed Merger, Sky has acted in order to protect Sky Mobile post-Merger [REDACTED]

[REDACTED] required Sky to expend a significant amount of time and resources. Sky would not have engaged in (or been able to justify the resource [REDACTED] [REDACTED] particularly in light of the Covid-19 pandemic) if its concerns were merely theoretical. Sky's concerns are real and pose a real threat to Sky Mobile if Sky is unable to protect its position.

For the reasons stated above, Sky considers that the CMA must carefully consider input foreclosure in the supply of wholesale mobile services to MVNOs when reaching its decision on whether the Proposed Transaction may be expected to result in a SLC.

INPUT FORECLOSURE IN SUPPLY OF WHOLESALE LEASED LINES TO MNOS

Sky has no comments on the CMA's second vertical effects theory of harm.

ADDITIONAL RELEVANT ISSUES

Sky has no additional relevant issues to raise at this stage.

FEBRUARY 2021