

ME/6917/20

**ANTICIPATED ACQUISITION BY CELLNEX UK LIMITED OF PASSIVE
INFRASTRUCTURE ASSETS OF CK HUTCHISON NETWORKS EUROPE
INVESTMENTS S.À R.L. IN THE UK**

INITIAL SUBMISSION BY CK HUTCHISON

20 AUGUST 2021

CONFIDENTIALITY

This submission is confidential to CK Hutchison and contains confidential information to which Part IX of the Enterprise Act 2002 applies. The commercial interests of the CK Hutchison Group would be significantly harmed were its confidential information and data to be disclosed. The CMA is requested not to disclose any confidential information or data of the CK Hutchison Group to any third party without prior written consent from the CK Hutchison Group.

DEFINITIONS

Unless otherwise indicated, any defined terms and acronyms used in this response shall have the same meaning as those provided in the Merger Notice or the CMA's Phase 1 decision.

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**CK HUTCHISON'S INITIAL SUBMISSION IN RESPONSE TO THE SLC
DECISION**

1. INTRODUCTION AND EXECUTIVE SUMMARY

- 1.1 This initial submission is made by CK Hutchison in relation to the Competition and Markets Authority ("CMA")'s Phase 2 review of the anticipated acquisition by Cellnex UK Limited (together with Cellnex Telecom, S.A., "Cellnex") of the passive infrastructure assets of CK Hutchison Network Europe Investments S.à r.l. in the UK (together with Cellnex, the "Parties") ("**Proposed Transaction**"), as announced by the CMA on 27 July 2021.
- 1.2 The Proposed Transaction is strongly pro-competitive and reflects worldwide market trends, whereby MNOs are divesting their passive infrastructure assets, or outsourcing the management of those assets, to independent wireless infrastructure providers ("**WIPs**"). This process of vertical dis-integration is pro-competitive because it opens an otherwise captive internal tower network to new potential third party customers.
- 1.3 From CK Hutchison's perspective, the sale of its tower assets across Europe was motivated by the goal of achieving a more efficient capital allocation and to enhance its strategic focus on the provision of telecommunications activities. In the UK in particular, the proceeds from the Proposed Transaction will enable 3UK to focus on developing its mobile network, and facilitate the rollout of its 5G network, while benefitting from significant additional financial capacity to support future growth and investment in its network. 3UK is the smallest of the four MNOs in the UK and faces considerable challenges. [CONFIDENTIAL]. The Proposed Transaction will lead to significant consumer benefits in the UK mobile market, as it will enable 3UK to obtain the funds necessary to utilise its spectrum holdings, support the roll out of its 5G network more quickly and effectively than in the absence of the Proposed Transaction, and be a stronger competitor in the mobile market.
- 1.4 The CMA's Phase 1 decision dated 13 July 2021 ("**SLC Decision**") puts forward a novel and contrived potential theory of harm in relation to unilateral horizontal effects in the market(s) for the supply of access to developed macro sites and ancillary services to wireless communication providers at the national level that is not supported by the totality of the evidence. In reality:
 - 1.4.1 The Proposed Transaction will not lead to any loss of competition. 3UK's passive infrastructure does not compete directly with Cellnex and does not represent a significant source of potential macro sites for other customers either before the Proposed Transaction or in the counterfactual.

- 1.4.2 The SLC Decision fails to recognise that the scope for additional co-location on the [CONFIDENTIAL] Unilateral Sites is and will continue to be limited irrespective of the Proposed Transaction and, in any event, [CONFIDENTIAL].
- 1.4.3 The SLC Decision ignores the reality that the anticipated demand for new macro sites by MNOs remains limited.
- 1.5 These points and the reality of the competitive conditions of the market will be developed further by the Parties in response to the Issues Statement.
- 1.6 The SLC Decision relies on erroneous assumptions which are unsupported by the evidence. The majority of the evidence relied upon by the CMA to reach its erroneous conclusions is speculative or of no probative value – in particular the heavy reliance on self-serving statements by competitors.
- 1.7 *First*, the CMA's concerns are entirely based on a novel and wholly speculative approach to the counterfactual – which forms the foundation of the CMA's finding of a realistic prospect of an SLC. The SLC Decision assumes that, in the absence of the Proposed Transaction, CK Hutchison would enter into a similar deal with an alternative acquirer. In fact, there is no credible evidence of this and, in the absence of this erroneous assumption, the CMA's entire potential theory of harm would lose its basis.
 - 1.7.1 If the Proposed Transaction is blocked by the CMA, the counterfactual would be that CK Hutchison would continue to own and operate the relevant passive infrastructure assets as at present.
 - 1.7.2 There is no evidence to suggest that, in the absence of the Proposed Transaction, CK Hutchison might try to sell the relevant passive infrastructure assets to another party, nor that it might succeed in doing so. The CMA's counterfactual (as set out in the SLC Decision) is therefore entirely speculative.
 - 1.7.3 In fact, there is significant evidence to the contrary: (i) there was no credible alternative offer for the relevant passive infrastructure assets at the time when CK Hutchison agreed to sell them to Cellnex; (ii) [CONFIDENTIAL]; and (iii) the fact that the vast majority of the relevant passive infrastructure assets are tied up in the MBNL JV for another 10 years prevents them from being divested.
 - 1.7.4 Even on the basis of the CMA's counterfactual, its potential theory of harm has no basis for multiple reasons (as discussed further below).
- 1.8 *Second*, the SLC Decision misinterprets the transaction documents to erroneously conclude that Cellnex will acquire the ability to influence BT/EE's ability to self-supply through MBNL prior to the dissolution of the MBNL JV, including as regards upgrades to existing sites to support the roll-out of its 5G network, which it cannot.
 - 1.8.1 The commercial reality of the arrangements is that Cellnex is obtaining an economic benefit from the MBNL Sites [CONFIDENTIAL]. These arrangements are designed to replicate the income Cellnex would have received

and the costs it would have borne had Cellnex owned (and provided 3UK with access to) the MBNL Sites from Completion. Contrary to the assertion in the SLC Decision, Cellnex is not acquiring the right to influence the commercial policy of the MBNL Sites prior to dissolution of the MBNL JV in 2031 (unless terminated earlier by agreement with BT/EE or under any of the relevant provisions of the MBNL JV Agreements), and would not be able to exercise any degree of influence to harm BT/EE (or any other tenant of the MBNL Sites).

- 1.8.2 Specifically, and in any event, Cellnex will not have the ability to affect BT/EE's ability to upgrade the MBNL Sites to 5G or to self-supply using the MBNL Sites. BT/EE has a considerable portfolio of unilateral sites and the best quality network and already [CONFIDENTIAL] to pursue unilateral rollouts. BT/EE (and 3UK) are likely to continue their independent strategies for 5G rollout, with Cellnex having no ability to influence this.
- 1.9 *Third*, the SLC Decision does not adequately account for the fact that the Proposed Transaction will have significant consumer benefits and will provide vital funds to support the £3 billion+ investment in the 5G network roll out of the smallest UK MNO. [CONFIDENTIAL].
- 1.10 *Fourth*, the SLC Decision fails to explain how customers could be harmed by the Proposed Transaction. Instead, the SLC Decision relies on an assessment which is aimed at protecting the interests of competitors. The SLC Decision fails to consider that no customer could conceivably be harmed by the Proposed Transaction, and does not point to any evidence of significant concerns having been expressed by customers. Furthermore, MNOs have significant countervailing buyer power and a clear capability to self-supply, in addition to having access to a number of strong, credible alternative WIPs.
- 1.11 In line with all of the above, the CMA's concerns (and its decision to open an in-depth Phase 2 investigation) are inconsistent with the decisions of other European antitrust authorities that have consistently cleared comparable transactions.
- 1.12 CK Hutchison agrees with the SLC Decision's conclusion that there was no realistic prospect of an SLC arising from input or customer foreclosure theories of harm, or from theories of harm founded in coordinated effects or increased buyer power in the purchase of leasehold land.¹
- 1.13 Given the above, there is no realistic prospect of the Proposed Transaction eliminating a significant potential competitor or of giving rise to an SLC.

2. THE SLC DECISION ERRS ON THE COUNTERFACTUAL

The SLC Decision is based on an erroneous factual and legal assessment

- 2.1 Although the CMA's Merger Assessment Guidelines make clear that the CMA must have evidence of a "realistic prospect" of any alternative counterfactual, the SLC

¹ SLC Decision, paragraph 209.

Decision does not set out any evidence capable of substantiating its conclusions. In reality, there is no credible evidence before the CMA of a realistic prospect that CK Hutchison could have sold the UK Transaction Sites to an alternative purchaser.

2.2 The counterfactual must be assessed in the light of the relevant factual situation that would apply if the Proposed Transaction does not proceed. Importantly, those facts include that all of CK Hutchison's passive telecommunications assets in Europe have now been sold and could not form part of any other hypothetical transaction. The SLC Decision did not take proper account of this important aspect of the factual background and, instead, wrongly assessed the counterfactual "*at the time the merger was agreed*".² The SLC Decision's findings relating to an alternative purchaser were accordingly based on the incorrect premise that the alternative purchaser "*would have had the option to acquire the same set of sites that Cellnex acquired (ie including both the Transaction Sites and other sites forming part of the European transactions) or a subset of those sites, such as the Transaction Sites.*"³ This was a significant legal and factual error in the assessment made in the SLC Decision.

2.3 The counterfactual can therefore only be assessed in relation to any transaction relating to the UK alone. As to this:

2.3.1 The SLC Decision does not contain any evidence that any alternative purchaser would have been interested in any transaction involving only CK Hutchison's rights in its UK passive infrastructure.

2.3.2 The SLC Decision has not taken proper account of the highly unusual factual situation applicable to the UK, which raised significantly different commercial and legal implications compared with the sale of CK Hutchison's assets elsewhere in Europe. These include:

(a) The majority of 3UK's passive infrastructure is within the MBNL JV, the terms of which preclude any sale or transfer of any interest in the underlying assets or even disclosure of the underlying agreements for the next ten years, until after the MBNL JV is terminated (at the end of 2031 unless terminated earlier by agreement with BT/EE or under any of the relevant provisions of the MBNL JV Agreements). Although the CMA was aware of the existence of these agreements and their terms, the significant practical implications for any hypothetical alternative transaction were not taken into account in the SLC Decision. In reality, [CONFIDENTIAL] unique transaction structure in the light of the larger pan-European/UK transaction and the broader commercial relationship between them, [CONFIDENTIAL].

(b) The transaction in respect of the Unilateral Sites relates largely to a programme of "streetworks" to densify 3UK's network which is in process. These streetworks are designed solely with 3UK's network

² SLC Decision, paragraph 101.

³ SLC Decision, paragraph 105.

needs in mind and are being constructed as monopolies to host the equipment of a single tenant (3UK). Currently, only a small number of sites have been constructed and, in practice, there is very limited scope for any potential purchaser to increase their value since the scope for additional tenants without significant further investment is likely to be marginal. This makes the Unilateral Sites inherently less attractive to alternative purchasers than the towers that CK Hutchison has sold to Cellnex outside of the UK.

(c) [CONFIDENTIAL].

The SLC Decision relies on incorrect and unsubstantiated assumptions

- 2.4 The SLC Decision is furthermore based on a number of incorrect assumptions which cannot be supported by the evidence.
- 2.5 *First*, the CMA alleges that the promising nature of the negotiations with Cellnex was the main reason for the lack of alternative additional bids.⁴ However, CK Hutchison had no interest in limiting the number of credible bidders for its European tower assets. On the contrary, its interest was in attracting the attention of as many credible bidders for the assets as possible to maximise the potential sale proceeds. Potential purchasers were on notice for 15 months from 1 August 2019 (the publication of the 2019 interim results announcing the reorganisation) until 12 November 2020 (the announcement of the agreement with Cellnex), and had ample time to digest the information, consider a proposal and approach CK Hutchison.
- 2.6 Moreover, the SLC Decision mistakenly conflates two separate issues in CK Hutchison's previous submissions. The public announcements made by CK Hutchison provided sufficient information to allow potential purchasers to make their interest in a transaction for all of CK Hutchison's European tower assets known to CK Hutchison well before completion of the reorganisation (as was the case for both [CONFIDENTIAL] and Cellnex). This is not inconsistent with CK Hutchison's position, and the evidence, that no third party made any offer for, or would have had sufficient understanding to evaluate, a UK-only transaction relating predominantly to assets within the MBNL JV. The SLC Decision has overlooked the important point that it is only the UK passive infrastructure that could hypothetically form part of any transaction in the counterfactual.
- 2.7 *Second*, the SLC Decision states that the Unilateral Sites would be attractive to many companies already active or intending to become active in the UK market.⁵ However, for the reasons discussed above at paragraph 2.3.2, it is not realistic that CK Hutchison would sell only the Unilateral Sites to an alternative purchaser in the counterfactual.
- 2.8 *Third*, without any substantiation, the CMA states that plausible alternative purchasers would have the ability and incentive to increase third-party co-location compared with

⁴ SLC Decision, paragraph 99.

⁵ SLC Decision, paragraph 100.

Cellnex.⁶ This conclusion is inconsistent with the evidence (a) [CONFIDENTIAL]; (b) [CONFIDENTIAL]; and (c) [CONFIDENTIAL]. Furthermore, the "streetworks" monopoles are being constructed for 3UK's network needs and would require significant investment and planning consent for any future co-location. The claim made by the CMA that alternative purchasers could "*decide to replace 3UK on the sites if a different customer were to appear attractive*"⁷ is incorrect and entirely unrealistic, and appears to be based on a deeply flawed understanding of the telecoms and passive infrastructure sectors.

2.8.1 An alternative purchaser would not have the right simply to "replace" 3UK on sites for a different customer because any alternative purchaser would be equally bound by the terms of a long term master services agreement with 3UK in order to guarantee access for 3UK, on essentially the same terms as the MSA to be entered into by 3UK and Cellnex. CK Hutchison would never enter into a transaction which entailed a material risk of 3UK being unable to use its towers (which provide critical support for its own network and have been designed with its network requirements in mind). Indeed, CK Hutchison's position in this regard is commercially reasonable and in line with what would be expected of any other MNO. In disposing of its own sites, an MNO will inevitably look to secure long term access to a site in order to avoid a situation where it could lose access and disrupt its coverage / capacity, thereby impacting its customers downstream. As such, it is entirely counter-intuitive that such an outcome could possibly be considered "more" competitive given the adverse consequences for 3UK's mobile network and its customers.

2.8.2 Moreover, even if a WIP had a theoretical right to replace, the CMA's assertion is unrealistic given the market dynamics. If there were to be a competing customer for a particular site but no capacity to co-locate, it is not generally realistic for a WIP to replace its MNO anchor tenant. There are significant costs to moving active equipment to a different site and disruption to the MNO's downstream customers would be inevitable. If a WIP attempted such a strategy, it would not be attractive to any of the MNO customers and would swiftly cease to be able to attract customers. Instead, an MNO typically leaves a site when it has its own reason to move. It is therefore not realistic that a sale to a WIP (other than Cellnex) would allow for greater use of the Transfer Sites and Unilateral Sites by MNOs other than 3UK and non-MNO customers.

2.9 *Fourth*, the CMA is incorrect to allege that [CONFIDENTIAL].⁸

The evidence relied on to support the SLC Decision's findings on the alternative counterfactual is anecdotal and not directly relevant

2.10 The SLC Decision discussed three sources of alleged "evidence": (i) public statements made with regard to CK Hutchison's internal restructuring; (ii) the Parties' internal

⁶ SLC Decision, paragraph 106.

⁷ Decision, paragraph 107.

⁸ Response to Issues Letter on counterfactual, paragraph 4.2.

documents and analysts' reports; and (iii) third party reports.⁹ This evidence shows that CK Hutchison did not have any credible alternatives to commercialise its passive telecommunications infrastructure and only received a credible offer from Cellnex.

- 2.11 *First*, the SLC Decision wrongly assumes that public statements made by CK Hutchison in the context of its internal restructuring in 2019 – indicating that it "*continues to actively explore options to maximise the value to the Group of this important business*" – provide proof of a more competitive counterfactual.¹⁰ In fact, these announcements demonstrate that there is no credible alternative purchaser since no other credible offers were made to CK Hutchison following these announcements.
- 2.12 *Second*, the SLC Decision incorrectly considers that CK Hutchison's internal documents indicate that [CONFIDENTIAL].¹¹ [CONFIDENTIAL]¹² [CONFIDENTIAL].
- 2.13 *Third*, the SLC Decision refers to analyst reports that allegedly suggest that there is a general understanding about the MBNL JV structure in the public domain which would be sufficient for alternative purchasers to understand a hypothetical alternative transaction involving 3UK's passive infrastructure.¹³ In fact, the key details of the joint venture, including the way in which assets are held, the nature of the shareholders' rights and how assets will be divided upon dissolution are all highly confidential and cannot be publicly disclosed. Third parties are not aware of this information and analysts are equally not in a position to disclose it. In any event, the analyst reports referred to do not provide any relevant evidence relating to any alternative purchaser's ability or intention to enter into a transaction with CK Hutchison. In particular, the SLC Decision relies on an analyst report by Barclays released *after* the announcement of the Proposed Transaction and providing a high-level overview of the Proposed Transaction.¹⁴ By referring to "*the fact that many of the MBNL sites are not owned by MBNL*" and that "*many are already owned by Cellnex – via the Arqiva acquisition*", this report proves that analysts – even after the announcement of the Proposed Transaction – do not understand that MBNL does not 'own' *any* of the sites.
- 2.14 In the light of the above, the statements from third parties which are referred to in the SLC Decision cannot have any meaningful evidential weight attached to them. No third party was in a position to make any informed comment about a hypothetical transaction involving 3UK's passive infrastructure as no third party was aware of key information which would be essential to evaluate any such proposal. Furthermore, the third-party statements referred to in the SLC Decision do not appear to have been assessed critically. On the basis of paragraph 97(b) of the SLC Decision, it is not clear whether any third party has stated that it (i) would have been prepared to acquire all the Transaction Sites (including an economic benefit in relation to the MBNL Sites) or only the Unilateral Sites; (ii) would have had the available funds to meet CK Hutchison's

⁹ SLC Decision, paragraph 89.

¹⁰ SLC Decision, paragraph 90.

¹¹ SLC Decision, paragraphs 91-94.

¹² SLC Decision, paragraph 93.

¹³ Decision, paragraph 96.

¹⁴ Decision, paragraph 96 and footnote 75.

financial expectations given the need to fund 3UK's 5G rollout; and (iii) had any relevant track record or expertise in similar transactions.

- 2.15 Currently, details of the relevant third-party statements have not been disclosed to CK Hutchison. CK Hutchison reserves the right to respond further on this issue when further and better particulars of the relevant statements have been made available.
- 2.16 In summary, the SLC Decision does not provide any evidence – far less any evidence of a "realistic prospect" – of any alternative viable transaction available to CK Hutchison in respect of the UK tower assets. The CMA therefore has no basis to conclude that, in a counterfactual scenario, there would have been stronger competition between Cellnex and the Transaction Sites as compared to the prevailing conditions of competition.
- 2.17 The Parties intend to provide further evidence in this regard in future submissions.

3. THE SLC DECISION FUNDAMENTALLY MISCHARACTERISES CELLNEX'S RIGHTS AND ABILITIES IN RELATION TO THE MBNL SITES

Cellnex will have no ability to adversely affect BT/EE or any other tenant of the MBNL Sites

- 3.1 The SLC Decision exaggerates the extent of Cellnex's rights under the transaction agreements. In reality, Cellnex [CONFIDENTIAL] will not be able to impact the competitive behaviour of the MBNL JV or BT/EE. The [CONFIDENTIAL] contains only limited rights for Cellnex to protect it against certain of the risks it is exposed to under the economic benefit arrangements in respect of the MBNL Sites that underline the [CONFIDENTIAL]:
 - 3.1.1 [CONFIDENTIAL]
 - 3.1.2 [CONFIDENTIAL]; and
 - 3.1.3 [CONFIDENTIAL].
- 3.2 These rights will not give Cellnex material influence over MBNL or the MBNL Sites nor allow Cellnex to impact the competitive behaviour of MBNL prior to its dissolution.
- 3.3 Furthermore, the SLC Decision has disregarded a key element of the [CONFIDENTIAL] which significantly further limits the extent of Cellnex' (limited) rights, since the agreement expressly provides that 3UK Holdings cannot be required to act in any way which could lead to a breach by 3UK of its obligations under the MBNL JV Agreements. In particular:
 - 3.3.1 [CONFIDENTIAL].
 - 3.3.2 [CONFIDENTIAL].
 - 3.3.3 [CONFIDENTIAL].

3.3.4 [CONFIDENTIAL].

3.3.5 [CONFIDENTIAL].

BT/EE's ability to upgrade its network cannot be affected by the Proposed Transaction

3.4 The SLC Decision puts forward a theory of harm that Cellnex "*could, by way of non-exhaustive example, impact BT/EE's ability to upgrade the MBNL Sites to 5G, with the result that in post-Merger negotiations with Cellnex on upgrading new or existing sites to 5G, or moving to an existing site that is already 5G enabled, BT/EE's ability to credibly threaten the use of self-supply would be adversely affected, weakening its bargaining position against Cellnex in those scenarios.*"¹⁵ This theory of harm is entirely incorrect.

3.5 [CONFIDENTIAL].

3.6 [CONFIDENTIAL] has resulted in BT, the largest UK MNO, achieving a faster rollout of new technology with consequent benefits to its network reputation and competitive positioning, particularly as against 3UK. The fact that 3UK is not in a position to use any aspect of the MBNL JV Agreements to affect BT/EE's network competitiveness is illustrated by the fact that BT/EE enjoys the best network reputation in the UK, while 3UK has consistently ranked as a poorer quality network.

3.7 The theory of harm that BT/EE could be negatively impacted by the Proposed Transaction is, in those circumstances, entirely fanciful. BT/EE has its own considerable portfolio of unilateral sites, and has access to a large property portfolio. BT/EE is likely to continue its independent network strategy and develop its 5G network largely independently, with Cellnex having no ability to influence this. [CONFIDENTIAL], neither 3UK nor Cellnex could be in any position to affect BT/EE's ability to do so.

4. THE PROPOSED TRANSACTION WILL HAVE SIGNIFICANT CONSUMER BENEFITS

The Proposed Transaction is essential to support critical investment in 3UK's 5G network

4.1 The sale by CK Hutchison of its tower assets across Europe was motivated by the goal of achieving a more efficient capital allocation and enhance its strategic focus on the provision of telecommunications activities.

4.2 In the UK in particular, the proceeds from the Proposed Transaction will enable 3UK to focus on developing its mobile network, and facilitate the rollout of its 5G network, while benefitting from significant additional financial capacity to support future growth

¹⁵ SLC Decision, paragraph 167.

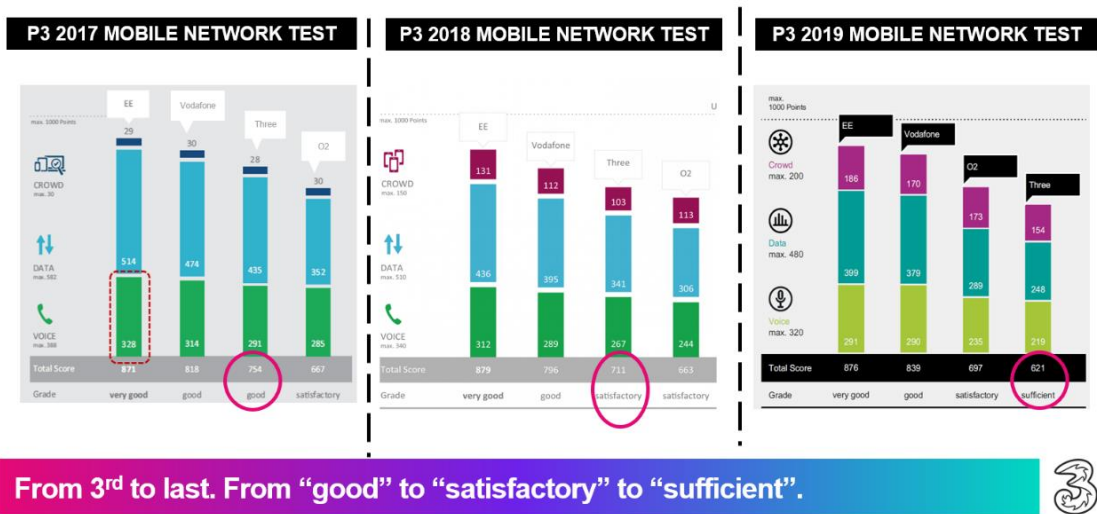
and investment in its network. Given the transaction rationale, the Proposed Transaction is expected to achieve significant benefits for consumers.

4.3 3UK is the smallest of the four MNOs in the UK and its network has suffered from significant congestion. Key challenges faced by 3UK include the following:

4.3.1 As shown in **Figure 1**, 3UK's network ranked last in Umlaut's 2019 mobile network test, declining from third place and a rating of "good" in 2017 to "satisfactory" in 2018 and then only "sufficient" in 2019.

Figure 1: 3UK's declining mobile ranking

Network: impact of underinvestment.



Source: Umlaut's 2019 mobile network test

4.3.2 3UK had the lowest mobile customer satisfaction of the 10 providers listed in Ofcom's 2020 Comparing Service Quality Report.¹⁶

4.3.3 [CONFIDENTIAL].

4.3.4 [CONFIDENTIAL].

4.4 [CONFIDENTIAL].

4.5 However, [CONFIDENTIAL] there are significant constraints on 3UK's capacity to finance the required £3bn+ investment for 5G:

4.5.1 As the smallest MNO, 3UK's smaller cashflows limit capex to a fraction of its rivals.

¹⁶ See page 3 of Ofcom's 2020 Comparing Service Quality Report, available at: https://www.ofcom.org.uk/data/assets/pdf_file/0014/201434/comparing-service-quality-2019.pdf

4.5.2 3UK is facing earnings pressures and increased costs due to (i) the Huawei restrictions; (ii) regulatory changes to Annual Licence Fees ([CONFIDENTIAL] per cent increase in operating costs); (iii) pricing regulation suppressing margins; (iv) increased technology costs; (v) continuous investment in spectrum; and (vi) market competition.

4.5.3 [CONFIDENTIAL].

Figure 2: [CONFIDENTIAL]

4.6 [CONFIDENTIAL].

4.7 The UK Government's 2019 Statement of Strategic Priorities for telecommunications makes clear that "*the UK Government wants the UK to be a world leader in 5G, and for the majority of the population to have 5G coverage by 2027*". It further recognises that this will require "*significant investment by mobile network operators*".¹⁷ The Proposed Transaction is essential for CK Hutchison and 3UK to fund the 5G roll-out in the most cost-efficient and timely way possible. [CONFIDENTIAL].

5. CONCLUSION

5.1 In summary, the SLC Decision is based on an incorrect and unrealistic assessment of the counterfactual, incorrect assessment of conditions of competition, fanciful concerns relating to BT/EE and ignores the significant consumer benefits that the Proposed Transaction will support. In reality, there is no realistic prospect of the Proposed Transaction giving rise to an SLC.

Freshfields Bruckhaus Deringer LLP

20 August 2021

¹⁷ [CONFIDENTIAL].