

Competition and Markets Authority  
The Cabot, 25 Cabot Square  
London  
E14 4QZ

May 2024

To Whom it May Concern,

**[REDACTED] Submission ref. Vodafone / CK Hutchison JV Merger Inquiry – Phase 2 Issues Paper**

[REDACTED] welcomes this opportunity to provide its views on the impact that this proposed merger could have on competition in the UK. We believe that having UK MNOs who are capable of making investments at a level that delivers high quality networks is of critical importance for both consumers and enterprises, as well as the overall economic performance of the UK.

In this document we set out two areas we believe the Competition and Markets Authority ('CMA') should analyse during its Phase 2 investigation to ensure this outcome is achieved in a pro-competitive manner, and note our willingness to actively engage with the CMA during this process.

This response builds upon our prior two submissions to the 'Preliminary Invitation to Comment' and 'Invitation to Comment', submitted as part of the CMA's Phase 1 process; with adaptation and addition where required to align with the CMA's Phase 1 decision<sup>1</sup> and Phase 2 issues paper<sup>2</sup>.

[REDACTED] provides shareable wireless infrastructure across the UK to all four mobile network operators ('MNOs') and other wireless network operators alongside a range of other products; for further information about [REDACTED] please see Appendix 1 at the end of this document.

Given this scope of operation we do not have any input to provide regarding the second of the theories of harm, namely, horizontal unilateral effects in the supply of wholesale mobile services in the UK.

The CMA has highlighted that the quality (i.e. coverage, capacity etc.) of mobile service received by customers will be a key consideration during its investigations<sup>3</sup>. In addition we note that this transaction will have a direct impact on physical wireless infrastructure competition, through which higher levels of economic welfare are achieved over the long term for society.

A major determinant of mobile service quality is the physical wireless infrastructure utilised. The CMA has recognised this in part via the third theory of harm detailed in its Phase 1 decision. We believe this is amplified via the vertical integration of the merger entity ('MergeCo') with Cornerstone which is the UK's largest Wholesale Infrastructure Provider.

## Terms and Definitions

In this document we use the following terms and definitions:

- **Radio Access Network ('RAN')** is the part of the overall network which connects individual devices belonging to end users to the network via a radio link, with the associated equipment installed on physical wireless infrastructure
- **Macro Points of Presence ('PoP')** a macro location where a MNOs licenced signal is radiated (e.g. RAN sharing counts as multiple PoPs), we estimate this at [REDACTED] for the whole of the UK (see Appendix 2)
- **Macro Site** a physical location (e.g. tower, rooftop, streetwork) which can host multiple PoPs, we estimate the size of this market with MNO presence on across the UK as [REDACTED] sites
- **Wholesale Infrastructure Provider ('WIP')** a provider of Sites to MNOs for installation of their PoPs which is owned in part or fully by non-MNO shareholders

<sup>1</sup> [https://assets.publishing.service.gov.uk/media/662ba2bffdcc9e7ab2252a7/Full\\_text\\_decision.pdf](https://assets.publishing.service.gov.uk/media/662ba2bffdcc9e7ab2252a7/Full_text_decision.pdf)

<sup>2</sup> [https://assets.publishing.service.gov.uk/media/663373de1834d96a0aa6cfd6/Issues\\_statement\\_pdfa1.pdf](https://assets.publishing.service.gov.uk/media/663373de1834d96a0aa6cfd6/Issues_statement_pdfa1.pdf)

<sup>3</sup> <https://www.gov.uk/government/news/cma-seeks-views-on-vodafone-merger-with-rival-network-three>

- **Cornerstone** a WIP owned by Vodafone, Vantage Towers, GLIL and VMO2 which is a preferred supplier to both VMO2 and Vodafone
- **Project Beacon ('Beacon')** which we understand is the arrangement covering the passive and active network sharing between VMO2 and Vodafone
- **MergeCo** the entity we understand that will be created post merger via the combination of Vodafone UK and CK Hutchinson UK
- **Mobile Broadband Networks Limited ('MBNL')** the joint venture company which facilitates predominantly passive sharing for EE and 3UK for the majority of their PoPs; both on EE and 3UK owned sites and other third party WIP sites [§<]

#### **Horizontal unilateral effects in the supply of retail mobile services to both consumers and businesses in the UK**

We note in the issues paper the CMA will assess *“the constraint remaining from alternative operators post-Merger and whether this constraint may be sufficient to prevent an SLC at the retail level”*. The creation of a non-nationwide retail MNO with physical network presence, focusing on urban/suburban areas where the majority of customer network usage occurs, has been utilised in a number of other international markets to address this issue.

Post-merger there will effectively be two cellular networks serving the UK. The MergeCo/VMO2 network which utilises RAN shared for the majority of its locations and the EE network. A fourth operator with its own urban/network would encourage greater network innovation and competition as well as providing additional retail and wholesale competition.

#### *Creation of a 4<sup>th</sup> Non-Nationwide MNO*

If overall service revenue was apportioned by geography then sites in urban and suburban areas would provide significantly more favourable economics compared to rural ones. With rural sites often being described by the UK MNOs as [§<].

As a result it is highly likely that urban and suburban environments are economically capable of supporting four physical network operators and associated service level differentiation and innovation. Urban/suburban only operators would need to be supported by roaming and/or RAN sharing arrangements for nationwide coverage. We note this approach of a spectrum owning non-nationwide network is becoming more common internationally, for example:

- Digi in Spain<sup>4</sup>
- 1&1 in Germany
- Dish in the USA
- Rakuten in Japan

Please see Appendix 3 for further details of these deployments.

The overall share of mobile spectrum held by MergeCo post-merger is for Ofcom and the CMA to determine. However if divestment is an outcome, as illustrated above, this provides opportunity for recreation of a fourth network provider. [§<].

>> **The CMA should [§<].**

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<sup>4</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_24\\_928](https://ec.europa.eu/commission/presscorner/detail/en/IP_24_928)

### *Ensuring Improved Network Quality Post Merger*

We note in the CMA's issues paper the intent to consider "how consumers would likely respond to price and/or quality changes". Mobile connectivity is a significant driver of economic growth, social equality and innovation. [§]. Any merger should result in the improvement of mobile services for consumers and enterprises across the UK via network enhancement, notably the RAN element in term of both performance and resilience.

We welcome the parties ('MergeCo') public commitment to a RAN comprised of 26,000 macro<sup>5</sup> PoPs. This appears to be consistent with this requirement to improve network quality for the two respective customer bases. [§]. See Appendix 2 for further details.

[§].

>> **The CMA should [§].**

### **Participation in both MNO network sharing arrangements.**

We note the CMA's Phase 1 decision and Phase 2 issues paper focus on a theory of harm regarding information sharing as result of the merged party having presence in both the active and passive Beacon sharing arrangement, and the MBNL passive sharing arrangement. We note this could result in [§].

### *Addressing Changes in the UK's Physical Infrastructure Access Market*

Customer interests are protected when there is open and fair competition throughout the supply chain. Physical wireless infrastructure (e.g. towers, rooftops, streetworks, small cell locations etc.) is a key component of a mobile network. It is therefore crucial MNO choices regarding physical wireless infrastructure are made in a fair and transparent manner with the aim of delivering the maximum benefit to end customers and ensuring innovation via competitive tension.

#### i. Cornerstone is now the UK's largest WIP

Since the CMA last investigated the UK WIP market (i.e. the Cellnex / CK Hutchison UK inquiry during 2022<sup>6</sup>) the ownership of Cornerstone has changed significantly. Around 40%<sup>7</sup> of its shares are now held by non-MNOs as opposed to 0% prior to November 2022; see Appendix 4 for further details.

As a result Cornerstone is now a participant in the WIP market as defined by the CMA, alongside Cellnex, Wireless Infrastructure Group and other independent providers. Indeed Cornerstone is now the largest UK WIP, by virtue of a reported estate of over 20,000<sup>8</sup> sites and holding an [§] market share of MNO PoPs based on our estimates; see Appendix 2 for further details.

Cornerstone's non-MNO shareholders will [§] (i.e. Cornerstone is now a fully commercial WIP).

#### ii. The merger will significantly increase Cornerstone's MNO PoP market share

Vantage Towers investor relations documentation states Cornerstone is "a preferred supplier for new sites to both Vodafone and TEF UK"<sup>9</sup>. In addition we understand the MergeCo network will [§].

As a result the merger and resultant network consolidation will increase Cornerstone's share of MNO PoPs to [§], to the detriment of other WIPs; see Appendix 2 for further details.

#### iii. Vertical integration risks sub optimal outcomes for customers

[§].

>> **The CMA should [§].**

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<sup>5</sup> <https://www.lightreading.com/5g/three-cto-on-vodafone-merger-spectrum-asymmetry-is-good->

<sup>6</sup> [Cellnex / CK Hutchison UK towers merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/cellnex-ck-hutchison-uk-towers-merger-inquiry)

<sup>7</sup> As of today it stands at c.40% comprised of 16.7% by GLIL and c.23% by KKR/Others via their holding in Vantage towers, upon completion of the transaction between Vodafone Group and KKR this will increase to c.26% and hence c.43% of shares will be held by non MNOs

<sup>8</sup> <https://www.cornerstone.network/about-us/overview>

<sup>9</sup> <https://www.vantagetowers.com/sites/tower-co-v2/files/media/cornerstone-presentation.pdf>

## **Concluding Remarks**

As noted at the start of this submission we believe that having UK MNOs who are capable of making investments at a level that delivers high quality networks is of critical importance for both consumers and enterprises as well as the overall economic performance of the UK.

However as demonstrated within this document the merger has significant implications for the physical wireless infrastructure market, which is a key determinant of the mobile service received by customers. As a result the CMA needs to fully assess these impacts [8<].

## **Next Steps**

[8<] is willing to actively engage and collaborate with the CMA during its Phase 2 inquiry; we remain at your disposal to clarify any points and discuss any questions or queries you may have at this time.

Yours faithfully,

[8<]

## Appendix 1: Overview of [⌘]

[⌘]

## Appendix 2: UK MNO Points of Presence

[8]

## Appendix 3: International Examples of 'Urban Only' MNOs

### Spain: Digi

- Overview: Orange & MásMóvil have reached an agreement to transfer assets to Digi, an MVNO in Spain, to create a stronger, viable fourth player in the market following European Commission concerns that a *“proposed joint venture may reduce competition in the retail supply of mobile”*
- Future PoPs to be Deployed: TBC
- Proposed Coverage Obligation: TBC
- Proposed Roaming Partner(s): Orange/ MásMóvil via a capacity based national roaming agreement
- Proposed Spectrum Holding: 2 x 10 MHz within the 1.8 GHz band, 2 x 10 MHz within the 2.1 GHz band and 20 MHz within the 3.6 GHz band

### Germany: 1&1

- PoPs Deployed to Date: c.1,207; noting an original target of 1,000 PoPs by the end of 2022 was missed
- Future PoPs to be Deployed: From 2024 onwards c.3,000 PoPs per year to be deployed
- Coverage Obligation: 50% of households with 5G by 2030
- Roaming Partner: Vodafone from October 2024, currently Telefónica
- Spectrum Held: 2x10 MHz within the 2 GHz band and 50 MHz within the 3.6 GHz band; noting 1&1 will lease 2 GHz band spectrum from Telefonica until its own 2 GHz holding becomes usable in 2026

### USA: Dish

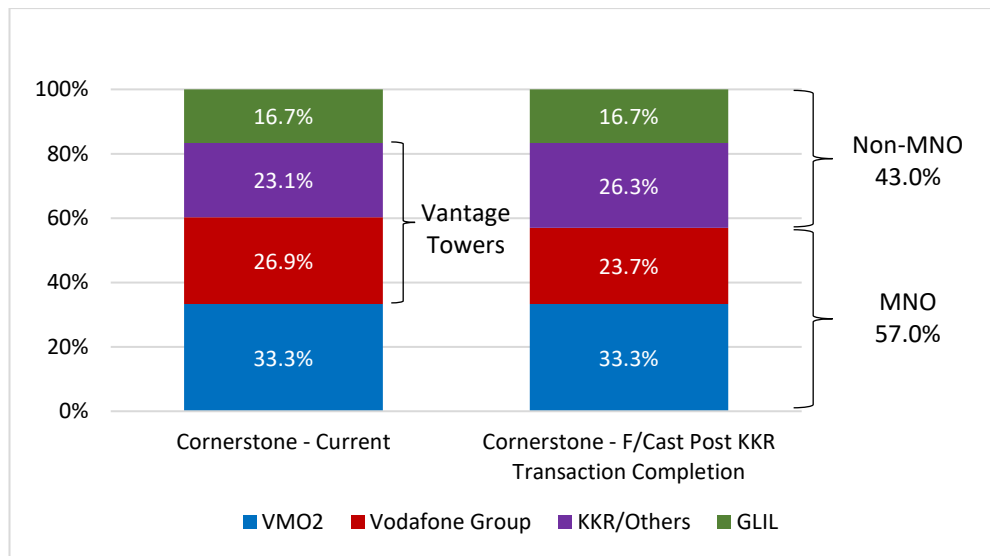
- PoPs Deployed to Date: DISH's 5G Open RAN network covered over 70% of the population via c.15,000 PoPs by mid-2023, with a forecast that it will achieve 75% by mid-2025 via deployment of a further c.15,000 PoPs
- Future Coverage Obligation: 75% of population with 5G by end of June 2025
- *Roaming Partner(s)*: Network services agreement and a master network service agreement with AT&T and T-Mobile
- Spectrum Held: Holdings within the 600 MHz, 1.7 GHz, 3.4 GHz and 3.7 GHz bands

### Japan: Rakuten

- PoPs Deployed to Date: 60,300, equating to c.98.8% population coverage
- Roaming Partner(s): KDDI
- Spectrum Held: 20 MHz within the 1.7 GHz band, 2x3 MHz in the 700 MHz band and 3.8-3.9 GHz

## Appendix 4: Cornerstone Shareholding

### Graphical Representation



#### Notes:

- Vodafone Group and KKR/Other stakes are held in Cornerstone via their ownership of Vantage Towers
- Vodafone Group and KKR investments vehicle in Vantage Towers is Oak Holdings GmbH
- Oak Holdings GmbH is currently seeking to buy out the other minority interests in Vantage Towers
- They are also seeking to achieve an end state 50%/50% split of Oak Holdings between Vodafone Group/KKR
- Outcome illustrated for Cornerstone above is an estimated end state Vantage Towers ownership comprised of Vodafone Group (47.5%), KKR (47.5%) and Others (5%)