Balanced Economy Project submission to responses to CMA's provisional findings and its notice of possible remedies on Vodafone / Three merger

Sept 27, 2024

1. Introduction

1.1 The Balanced Economy Project welcomes the opportunity to submit responses for the CMA to consider, in response to its provisional findings and notice on possible remedies on the Vodafone / Three merger. Our response focuses on the harms this merger would bring; foremost on consumers, particularly vulnerable ones.

1.1 The Balanced Economy Project's purpose is to hold powerful corporations to account, and reclaim the ability of present and future generations to continually restructure our economies by collectively constraining corporate power. We support legal and public policy frameworks that regulate business activities to ensure that they do not undermine human rights and the public interest.

1.2 This submission provides evidence that a Vodafone / Three merger would lead to higher prices, disproportionately hitting vulnerable consumers, with no positive effect on investment or network quality, and less competition. We show why mooted behavioural remedies will not address the harms that we, and for that matter the CMA, and others, have identified. **We recommend that CMA learn from repeated failures of four-to-three telcos mergers in other markets, and block this merger.**

2. Consumer prices

2.1 The Balanced Economy Project's calculations, based on extensive international research, conservatively forecast that a merger, removing the lowest-cost operator (Three) from the market, will lead to a doubling of prices for the lowest-cost mobile packages, a 15 percent average rise in mobile prices, and at the very least £2 billion in annual costs to UK consumers and businesses, hurting international business competitiveness but without any countervailing benefits to non-shareholders. We estimate that **the cheapest prices (used by lowest-income consumers) for SIM-only plans will double to £6-£12 a month or £72- £144 a year, just for mobile services** (Annex 2)**.**

2.2 **Over half of Three customers would struggle or be unable to pay their mobile bill if prices rise by £6-10 a month or more**, according to Unite polling (Annex 1). This is roughly the same as the minimum amount by which this merger is expected to increase prices for the lowest-cost plans. Low-income and vulnerable consumers will be disproportionately harmed by this merger; despite CMA assurances to make markets work well for vulnerable consumers. For example, the CMA's Annual Plan for 2024 to 2025 states:

> "We will have particular regard to consumers who need help the most. . . The CMA has consistently taken action to support consumers and help contain cost of living pressures in areas of essential spend. . . . We have redoubled our efforts to tackle the cost of living."

As this submission and Annexes show, alowing this merger would violate key stated CMA priorities.

2.3 This merger, if approved, would remove at least £2bn a year from UK consumers and businesses and transfer much or most of this to non-resident shareholders.

Vodafone's biggest shareholders are listed as e& (based in Abu Dhabi;) the US-based firms Blackrock, Liberty Global and Morgan Stanley; and Norway's Norges bank, together holding nearly 30 percent. Three is fully owned by Cayman-registered and Hong Kong-based CK Hutchison. These firms' major "British" competitor EE, which would also gain from the reduction in competition from this merger, is owned by BT (ex British Telecom) whose biggest shareholders are Altice UK S.à r.l. (owned by a French-Israeli billionaire;) T-Mobile holdings (owned by Germany's Deutsche Telekom) and the US asset manager Blackrock. These facts complement official data showing that 58 percent of the UK stock market is owned by non-residents. This merger would therefore both exacerbate a pattern of structural inequality in the UK, while at the same time remove resources from the economy, making the UK economy poorer overall, with no countervailing benefits beyond shareholders.

So this merger would contradict a CMA duty to promote growth in the UK economy.

3. Behavioural remedies will not mitigate harms or be in the public interest

3.1 The CMA's Notice of Possible Remedies in September recogised extensive international research showing the harms that such a merger would cause, but state "there are case specific facts that suggest behavioural remedies could be appropriate", thus opening the door to a prospect that has never worked as a telecoms merger remedy, and which the CMA would never have accepted before.[i]

3.2 **Behavioural remedies would be a departure from long-standing past practice and international best practice, and we also suggest they would be inconsistent with CMA guidelines.** The CMA's guidelines on merger remedies state (Section 7) that behavioral remedies are only to be used where i) structural remedies (ie forced separation) are not feasible; ii) where the competition problem is expected to have a short duration, and iii) behavioral remedies would preserve consumer benefits that would be largely removed by structural measures. None of these apply: on iii) the consistent finding is that a merger would lead to consumer harm via higher prices with no improvement in investment or quality.

3.3 Preserving competition via a minimum 4 MNOs is tried and tested as effective in preserving consumer benefits, while behavioural remedies are untested, speculative, and have a poor international record and reputation. The tried and tested way to achieve efficient inter-connections and avoid duplication is through well regulated joint ventures, network- and spectrum-sharing, inter-operability, and access regulations. Mergers are wholly unnecessary.

3.4 Regulators internationally tend to accept the extensive research that telecoms markets need a minimum four MNOs to keep prices low and investment healthy. To ensure seamless interconnections and avoid duplication, mergers are unnecessary: spectrum-sharing, access regulations and other tried and tested approaches work. Blocking four-to-three MNO mergers (or creating a new and viable fourth MNO to keep the market open) is by far the most effective and preferred approach.

3.5 The option proposed by the CMA: let the merger proceed, with behavioural remedies, investment commitments including support for MVNOs[ii] – essentially, promises to play nice, which must then be monitored and enforced by agencies in a permanent bureaucratic game of whack-a-mole, requiring constant intervention by Ofcom – and which even if perfectly enforced in the long term would not stop prices rising significantly. **Such behavioural remedies in telecoms are, experts say, "notoriously difficult to enforce" and will fail to mitigate the extensive damage a merger would inflict especially on the poorest sections of UK society.**

3.6 **Securing effective "investment commitments" is almost unheard of in telecoms mergers, and near-impossible to design or future-proof given steady evolution in technology and costs, and shifts in the business and political environments**. Even if commitments were perfectly designed at the outset, shifting conditions mean the commitments may rapidly become too weak (leading to a share-price boom for the MNOs and harm to consumers and the UK business environment) or too strong (leading to destabilisation of the market and a collapse in investment.) This would amount to gambling with critical UK infrastructure, and would thus contradict multiple duties of the CMA.

3.7 **Given the harms set out here and by others and recognised by the CMA, this is no time for the CMA to experiment with untested actions , where the overwhelming balance of probability is of extensive harm. The CMA should block the Vodafone / Three merger.**

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Annexes

This section contains:

- **Annex 1**

  The international evidence from telecoms markets, mergers and consolidation

- **Annex 2**

  Balanced Economy Project calculations of price rises, based on the international evidence.

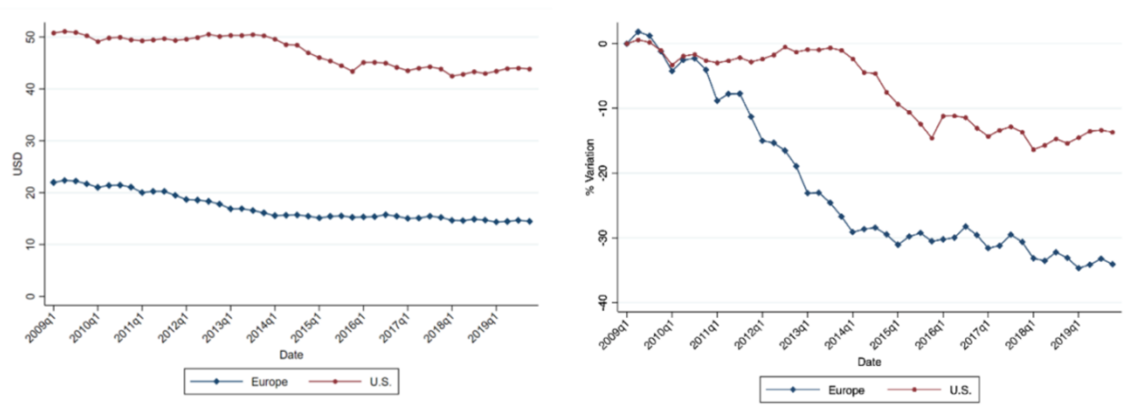
ANNEX 1 – INTERNATIONAL EVIDENCE

The Balanced Economy Project in June 2023 published and sent to the CMA an analysis containing (in Section 2) summaries of around 15 peer-reviewed academic studies, commercial reports, and other international evidence about telecoms consolidation. This section (A1-A6) adds new evidence published since then.

A1: European Commission, 2024

This in-depth study by the European Commission[iii], drawing on its own research, research by the OECD, and research by a consortium led by Lear, found:

- "higher concentration levels appear to be associated with higher prices" adding that prices in the EU were "more than 50 percent lower" in Europe than than in the US, whose telecoms markets are far more concentrated.



Source: Lear et al, 2024

The main study was the foundation for telecoms analysis in the better-known Sept 2024 [“Draghi report” on “Europe’s Competitiveness,”] and it also found:

- A “strong and significant positive relationship between market concentration and prices” where one fewer MNO in EU countries increases Average Revenue Per User (ARPU) by 10%[iv]. ARPU in the US, with a more concentrated market, was double that in the EU.

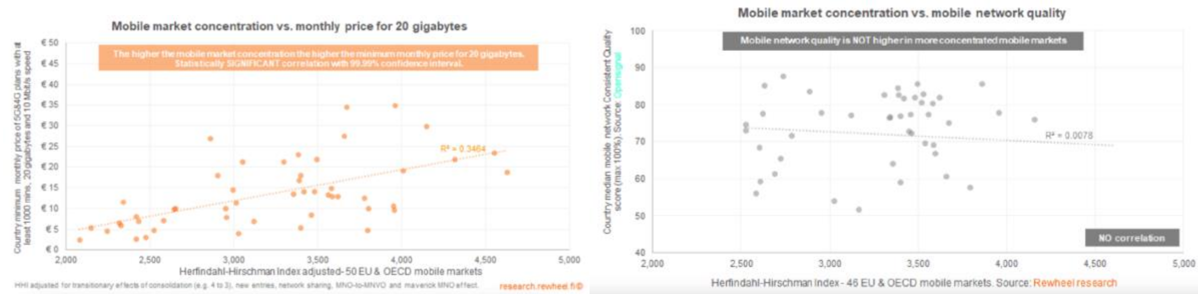
- “a relationship of concentration levels with investment in networks relevant to user experience could not be reliably discerned”

- The role of MVNOs “seems to be negligible for explaining price differences.. . . close to zero.”

A2: Rewheel, on prices and investment rates, 2024

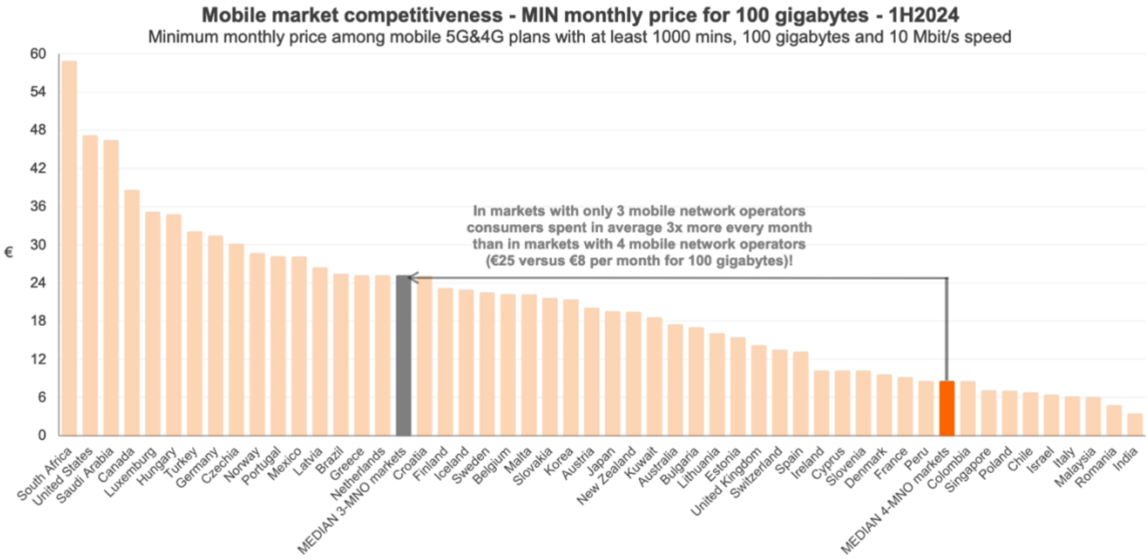
The Finnish private research firm Rewheel has produced a number studies looking at mobile telecoms markets. In its latest report (September 2024) and in line with earlier reports it concludes that:

”Mobile mergers do NOT lead to better networks, they only lead to higher prices.” They do not improve investment[v], quality, reliability or speed; and minimum prices are “2-3x higher.”



Source: Rewheel, 2024

In an earlier report in April looking at OECD countries they showed this evidence of minimum prices and the difference between 4-MNO and 3-MNO markets: €8 vs €25.



A3: Unite the union, 2023-4

Unite's polling of 1,000 Three customers revealed that a merger, through higher prices,would inflict particular harm on lower-income groups. (Three was chosen for polling, as the lowest-cost provider.) A merger:

> "would not only exacerbate the ongoing cost-of-living crisis for consumers, but would also deepen existing structural inequalities, particularly for certain key demographics such low income, female and ethnic minority consumers."

More than half of Three customers would struggle or be unable to pay their mobile phone bill if prices rose by £6-10 a month or higher, the survey found; price, not speed or coverage, is what drives Three customers' choices. Given that the merger would disproportionately hit (mostly lower-income) Three customers hardest, by £6-12 a month, this would inflict grave harm.

Unite also issued a separate report highlighting national security concerns, given that CK Group, the parent of Three which is subject to Hong Kong's draconian National Security Law, would then have access to 27 million UK mobile subscribers. Another report by Unite forecast that the merger could lead to the loss of 1,000-1,600 job losses between the two companies.

A4: European Competitive Telecommunications Association (ECTA), 2024

ECTA, an association of alternative telecommunications companies, notes in their report that "diversity of market players, whether large or small, is paramount to encourage innovation and investment [and] to guarantee Europe's global competitiveness." It found:

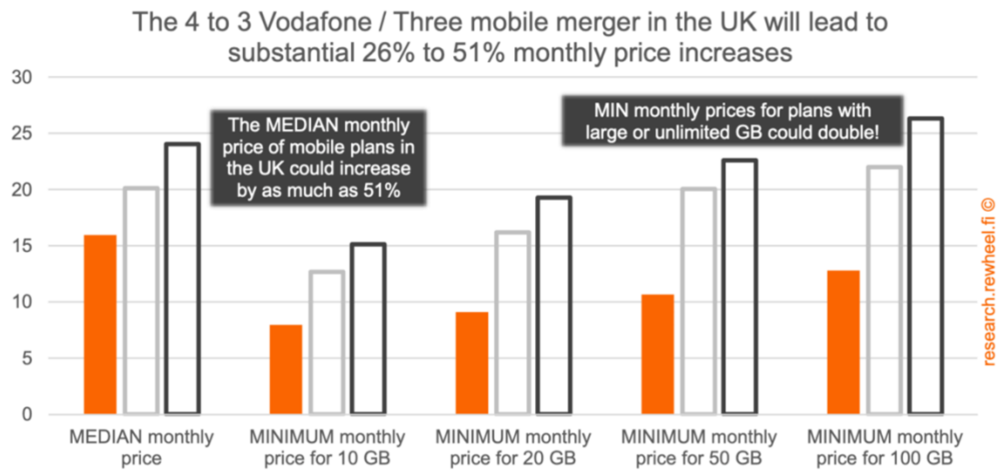
- US and European average capex was 13 percent of revenue in 2012 in each country; but by 2021 average European capex rose to 16 percent of revenue, while in the US, with its far less competitive markets, it fell to below 12 percent. Telco profitability, however, was higher in the US than in the EU.

- Focusing on fibre to the home (FttH) or 5G, it finds that alternative operators tend to "systematically re-invest proportionally far more of their revenues than the incumbents."

A5: Compass Lexecon, and rebuttal, 2024.

Compass Lexecon and Frontier Economics are consultancy firms commissioned by the merging parties to write a pro-merger report. Unsurprisingly, they found very different results from the mainstream and peer-reviewed academic evidence.

A rebuttal to Compass Lexecon is available here, revealing selective use of evidence and more;[vi] that rebuttal estimated the Vodafone-Three merger would boost median UK mobile prices by 26-51 percent, and minimum mobile prices would double.



The CMA has also expressed complete skepticism about the merging parties' models and said it would give them zero weight.[vii]

A6: Class Action Suit: the T-Mobile / Sprint merger in the US (2022)

In this class action suit, evidence is presented of how the merging parties promised wonderful efficiencies and benefits to consumers if this merger from four to three MNOs were allowed to go ahead, and how an MVNO entrant called DISH would provide effective competition.

After the merger went ahead, despite expert testimony anticipating $9 billion in consumer harm from the marger, none of the MNOs' promises materialised (indeed, one report called it “one of the worst merger-enforcement mistakes in decades”) and after the merger announcement, the CEO of Deutsche Telekom (representing T-Mobile) boasted “It’s harvest time.” And harvest, they did.

These six studies complement the nearly 15 studies that the Balanced Economy Project summarised in its June 2023 report on the Vodafone-Three merger (see the endnote[viii].)

ANNEX 2: PRICE RISES: BALANCED ECONOMY PROJECT CALCULATIONS

We use the range of evidence in Section 1 (including that referenced in our June 2023 study) to create a base case for how much this merger would likely raise prices by. We do this by creating a price range for the current monthly cost of mobile packages, especially minimum priced packages, then multiplying by an expected percentage change (again, a range) to create an expected cost increase.

The metrics of mobile pricing are complex to portray, because not only are there four MNOs, and many more MVNOs, but each offers a range of different products or services and price points, ranging from sim-only plans to ones with phones included; to mobile contracts bundled with broadband and television and fixed-line phones, to monthly plans with small, medium, large or unlimited data limits, call time limits, and so on. There also exist estimates for average mobile prices, for median mobile prices, and minimum prices, both for small data limits and for large data limits. We focus largely on SIM-only pricing. Table 1 provides an overview of the relevant evidence.

Table 1: the impact of mobile mergers on prices

Price rise from concentration %. →	Average	Median	Minimum price 10, 20 GB	Minimum price large (100) GB	Notes
European Commission 2024	10	-	-	-	Effect on ARPU of one fewer MNO in EU. P126.
Rewheel, Sept 2024	-	60	150	160	Min monthly price rise for large packages (100GB-unlimited data.) Based on table comparing minimum prices for different packages in 50 EU + OECD countries.
Rewheel April 2024	-	-	-	200	EU/OECD countries, at least 1000 mins, 100 gigabytes and 10 Mbit/s speed. “In markets with only 3 mobile network operators consumers spent in average 3x more every

					month than in markets with 4 mobile network operators (€25 versus €8 per month for 100 gigabytes)"
Rewheel Feb 2024	-	26-51	59-111	71-105	Vodafone-3: Median monthly price rise of mobile prices in the UK. "Consumers in the UK could see their monthly bills rise by 26% to 51% in average" Based on regression analysis of HHI levels.
Rewheel, 2020	-	100	-		4g and 5g plans with at leats 1,000 minutes. "the MEDIAN monthly price in 4-MNO markets was nearly 2x lower than in 3-MNO markets . . . the MEDIAN gigabyte price in 4-MNO markets was 4x lower than in 3-MNO markets."
Genakos, Valletti, Verboven	16	-	-	-	A 4 to 3 merger "would increase the bill of end users by 16.3% on average."
Ofcom CEO, 2016	11-25	-	-	-	"Our findings show that average prices are around 10-20 per cent lower in markets with four operators and a disruptive player than in those with only three established networks." (Mathematically, the converse of 10-20% lower is 11-25% higher.)

Estimates of the effect of the merger on minimum prices

The effect of the merger on minimum prices are crucially important, for two reasons. First, users of minimum-price contracts are disproportionately lower-income people, so minimum price rises have heaviest impact on those least able to bear them, exacerbating geographical, economic and other inequalities. Second, minimum prices set by 'maverick' low-cost operators like Three provide an important anchor for the rest of the market: if these low prices are removed this cascades into higher prices in other parts of the market.

The cheapest monthly prices for SIM-only mobile plans with small monthly data allowances were £6/month (for 5GB), and £12/month (for large 100GB to unlimited data.) [ix]

The tables above show two estimates of the percentage price effects of a 4-to-3 merger on minimum prices: 59-150 percent higher for small-data packages, and 71-200 percent higher for large data packages (ie up to a trebling of price). We choose 100 percent (**ie a doubling of minimum prices**) as our baseline for minimum monthly prices of small and large SIM-only data packages.

We therefore expect this merger would boost minimum monthly prices from £6 to £12 per month for small data packages, and from £12 to £24 a month for large ones.

Thus **minimum prices for SIM-only plans would likely rise by at least £6 - 12 a month, or £72-144 a year[x].**

This is in the context of Unite's recent polling research, which found that over half of Three customers would struggle or be unable to pay their mobile phone bill if prices rose by £6 -10 a month, or £72-120 a year.

As also noted, there would be other price rises beyond these Sim-only mobile plans.

Estimated of the effects of the merger on average and median prices

Table 1 and Section 2 show research findings of *average* price increases from telecoms mergers range from 10-25 percent. Our own estimates based on one study are for a rise of 38 percent.[xi] Conservatively, we take 15 percent as our base case for the *average* price rise.

The range for expected *median* price rises are 26 – 100 percent: we use 50 percent.

Ofcom reports that mobile telephony services generated £3.5 billion in retail revenues in Q4 2023, for an annual rate of £14 billion.

A conservative average 15 percent price increase due to the merger would thus represent **a transfer of some £2.1 billion from UK consumers to the (significantly or mostly non-resident shareholders of these companies)** each year**,** just for mobile – and without accompanying benefits in investment levels or quality.

For a total UK population of 67 million people, monthly retail revenues were worth approximately £17 per capita, or nearly £210 a year, so a 15 percent increase would be worth £30 per person per year. When compared to the expected £72-144 cost increases for the lowest-cost packages, it is clear that this merger will categorically increase inequality, while also inflation and economy-wide business costs.

Other prices

The merger would also in all likelihood increase other prices such as of broadband, as this graph from Ofcom suggests.

Figure 17: Average monthly in-contract and out-of-contract spend for standalone and bundled fixed broadband customers, by type of service: Q2 2022

Source: Pricing trends for Communications Services in the UK, Ofcom, Dec 1, 2022, p29

This is for illustration purposes only: assessing the merger's impacts on these bundles are outside the scope of this study. We merely include this to underline the point that our calculations cover only a portion of the likely wider damage a merger would cause.

END

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[i] The longstanding position of the CMA (and of many other telecoms regulators) has been that the market needs a minimum four MNOs to keep prices low and investment healthy. Four to three mergers should either be blocked or, failing that, at least to create a new and viable fourth MNO to keep the market open. For example, CMA Chief Executive Alex Chisholm warned in 2016 of the then-proposed Hutchison/ Telefonica O2 four-to-three MNO merger that it would create "a significant impediment to effective competition in retail and wholesale mobile telecoms markets in the UK" and that no remedy, bar the creation of a new viable fourth MNO, could address the concerns. Letter from CMA Chief Executive Alex Chisholm to European Commissioner Margrethe Vestager, 11 April, 2016 (Case M.7612 Hutchison 3G UK / Telefonica UK).

[ii] As the Notice of Possible Remedies states: "we have identified the following potential behavioural (or quasi- behavioural) remedies: (a) a network investment commitment (Investment Commitment); (b) time limited retail protections; and (c) Wholesale Market remedies, in particular, pre-agreed wholesale access terms or MVNO network capacity ring-fencing."

[iii] Protecting competition in a changing world Evidence on the evolution of competition in the EU during the past 25 years, European Commission, July 2024.

[iv] The report states on p126: "[in] EU countries. . . one additional MNO is associated with a 9% reduction in ARPU." The mathematical converse of this is that one fewer MNO means a 10% increase in ARPU.

[v] Investment per capita rates are usually misleading because incumbents in more concentrated markets are likely to use less spectrum capacity than in more competitive ones; if this were factored in it would make consolidation even less attractive from a public interest perspective.

[vi] For example, they use a metric called "average revenue per gigabyte," – which is mathematically

guaranteed to fall given that gigabyte usage is rising fast. They highly selectively quoted two pieces of Rewheel research, and yet as Drossos put it, "They criticise our studies, and they haven't even read them, I did not licence the studies to Vodafone, Compass Lexecon or three. How can you criticise a study without having read it?" The Drossos quotes are via email.

[vii] CMA provisional findings on the proposed merger, Sept 13, 2024. "We have a number of serious concerns about the robustness and predictive value of these models, and therefore we do not put any weight on these models or their claims."

[viii] Report: Why the proposed Vodafone - Three merger will harm Britain, Balanced Economy Project with Prof. Tommaso Valletti, June 14, 2023.

[ix] The lowest-cost packages were available from idmobile, an MVNO that piggy-backs on Three. https://www.idmobile.co.uk/sim-only-deals

[x] Drossos of Rewheel added via email: "If the merger were to turn the UK an average 3-MNO market . . . low income consumers (e.g. minimum wage £10.42 per hour working part-time) could face up to £227 annual price hike (£128.79 from mobile, £98.15 from broadband)." We exclude these from our estimates.

[xi] We take the data from Rewheel to estimate the effect of a change from an HHI of 2,770 (in the current market) to 3,300 (if the Vodafone-Three merger went ahead.) The average price increase in the six graphs at the top of this report, for that 2,770-3,300 rise in HHI, was 38%. We conservatively **round this down to 30%.** Reading from top left to bottom right, visual estimations showed a move from HHI 2770 to 3300 resulting in a price increase of i) 32%; ii) 40%; iii) 31%, iv) 47%, v) 31%; vi) 50%. The simple average of these numbers is 38%. Conservatively, we round this down to 30%. (Average prices of monthly plans across countries are lower than in the UK because the sample includes a large number of lower-income countries.)