

VODAFONE UK/THREE UK**VMO2 RESPONSE TO THE CMA REMEDIES NOTICE**

27 September 2024

1 EXECUTIVE SUMMARY

- 1.1 Virgin Media O2 (“**VMO2**”) welcomes the opportunity to comment on the CMA’s notice of possible remedies (“**Remedies Notice**”)¹ regarding the proposed merger between Vodafone Limited (“**VUK**”) and Hutchison 3G UK Limited (“**3UK**”) (the “**Merger**”). For the reasons set out in its responses to the Remedies Notice and Provisional Findings,² VMO2 considers that permitting the Merger subject to the spectrum divestment and amended Beacon network sharing arrangements (the “**Beacon 4.1 Agreements**”)³ will deliver the best outcome for UK consumers and businesses.
- 1.2 The investment demands facing mobile network operators are without parallel. Having built nationwide 2G and 3G networks, the industry invested billions building out 4G networks within the last decade, which revolutionised the way people use their mobile phones. Operators are now in the process of making further billion pound investments to roll-out 5G networks as part of a drive to ensure nationwide 5G coverage, a key policy objective of both the previous Conservative and new Labour Governments. At the same time, demand for data is rising exponentially and customers continue to demand reliable services which offer excellent value for money. The need for investment shows no sign of slowing, with the development of 6G technology already on the horizon.⁴
- 1.3 The Merger and Beacon 4.1 Agreements provide a credible path forward for the Parties and VMO2 to meet these investment challenges in relation to 5G and beyond. The Beacon 4.1 Agreements provide a structural measure which will rebalance the Beacon network sharing arrangements, significantly enhancing VMO2’s competitiveness. The spectrum transfer will enable VMO2 to materially increase capacity, coverage, reduce congestion, and provide higher average upload and download speeds, thereby increasing competition in the retail and wholesale markets. VMO2 welcomes the CMA’s recognition of the rivalry enhancing efficiencies (“**REEs**”) which will result,⁵ but considers that the CMA may not yet have appreciated the full extent of these benefits. VMO2 will address this further in its response to the Provisional Findings.

¹ See CMA, “Anticipated Joint Venture between Vodafone Group PLC and CK Hutchison Holdings Limited Concerning Vodafone Limited and Hutchison 3G UK Limited, Notice of possible remedies under Rule 12 of the CMA’s rules of procedure for merger, market and special reference groups”, 13 September 2024 (link available [here](#)) (“**Remedies Notice**”). Defined terms are as set out in the Remedies Notice unless specified otherwise.

² See CMA, “Anticipated Joint Venture between Vodafone Group PLC and CK Hutchison Holdings Limited Concerning Vodafone Limited and Hutchison 3G UK Limited, Provisional Findings Report, ME/7064/23”, 13 September 2024 (link available [here](#)) (“**Provisional Findings**”).

³ See Provisional Findings, paragraph 5.92.

⁴ See Letter from VMO2 to CMA, 1 August 2024.

⁵ See Provisional Findings, paragraph 14.198.

- 1.4 To the extent that the CMA has residual concerns regarding the implementation of the Parties' investment plans, as set out in the Joint Business Plan ("JBP") and Joint Network Plan ("JNP"), VMO2 considers that these can be addressed by behavioural commitments from the Parties. Behavioural remedies are appropriate in this case given the regulated nature of the telecoms sector. As the UK telecoms sector has been subject to regulation for 40 years, Ofcom benefits from extensive sector knowledge and is well placed to assist the CMA in specifying, monitoring and enforcing the proposed commitments. The Parties have agreed to a substantial divestment of spectrum assets as part of the Beacon 4.1 Agreements. A package of behavioural remedies, in addition to this structural remedy, is capable of fully preserving the substantial REEs and relevant customer benefits ("RCBs") arising from the Merger and Beacon 4.1 Agreements.
- 1.5 VMO2 looks forward to continuing to engage with the CMA on this important inquiry.

2 THE BEACON 4.1 AGREEMENTS ADDRESS THE CMA'S CONCERNS

The Beacon 4.1 Agreements are a structural remedy

- 2.1 The Beacon 4.1 Agreements provide for a divestment of spectrum assets that is certain, permanent and to a party that will deploy them quickly. As a structural remedy, the Beacon 4.1 Agreements will address the provisional SLCs identified by the CMA, ensuring enhanced competition in the retail market from VMO2 and the two largest MVNOs, Sky Mobile and Tesco Mobile, as well as in the wholesale market. VMO2 welcomes the fact that the CMA has taken account of the Beacon 4.1 Agreements in its merger assessment, but urges the CMA to fully consider both the capacity *and* quality improvements that will flow from the agreements.
- 2.2 The spectrum transfer will have a transformative effect on VMO2's network, allowing it to increase capacity rapidly, as the spectrum can be deployed [⌘] on VMO2's existing network. Given VMO2's limited spectrum per subscriber, the spectrum transfer will also significantly improve its network quality by improving coverage, reducing congestion and providing higher average upload and download speeds.⁶ The spectrum transfer is permanent and will have a lasting, positive effect on competition in the UK mobile market, enhancing VMO2's ability and incentive to compete in the retail and wholesale markets.

The Beacon 4.1 Agreements will provide timely benefits to retail and wholesale customers

- 2.3 At the *retail* level, the Beacon 4.1 Agreements will significantly enhance competition in three ways. First, the spectrum transfer, 5G deployment and joint site upgrade plan (Consolidated Work Packages) under the Beacon 4.1 Agreements will enable VMO2 to rapidly increase the capacity of its network.⁷ VMO2 will also have access to additional 3UK sites to further expand its capacity. VMO2 will have a strong incentive to compete aggressively in the retail market to win customers in order to fill its expanded capacity. The rapid increase in network capacity will also benefit Tesco

⁶ See Provisional Findings, paragraph 62.

⁷ As the CMA has recognised, network capacity is dependent on the amount of spectrum an operator can deploy. See Provisional Findings, paragraphs 5.67-5.68.

Mobile and Sky Mobile, mitigating any risk that customers may face increased prices or reduced service as a result of the Merger. Unlike a traditional horizontal merger which *removes* capacity from the market, in this case the Merged Entity will also be making significant network investments to *increase* capacity post-Merger. In a market with rapidly expanding network capacity, it is not realistic that operators will be able to increase prices to consumers as the CMA has suggested.

- 2.4 Second, by increasing VMO2's network capacity, the arrangements will translate directly into improved network quality and customer experience. [REDACTED]. The spectrum transfer will mean that post-Merger customers experience significantly higher download speeds on the VMO2 network and improved customer experience. The increase in network capacity will also enable VMO2 to offer improved customer propositions, such as [REDACTED].⁸ Again, in a market with rapidly expanding network capacity, it is not realistic that operators will reduce the data allowances they offer consumers as the CMA has suggested.
- 2.5 Third, improvements to VMO2's network capacity and quality due to the Beacon 4.1 Agreements will also [REDACTED] benefit Sky Mobile and Tesco Mobile, thereby enhancing their ability to compete. For example, [REDACTED].⁹ [REDACTED].¹⁰ [REDACTED].¹¹
- 2.6 Moreover, at the *wholesale* level the significant increase in network capacity and quality due to the Beacon 4.1 Agreements will make VMO2 an even more effective partner for VMO2's existing and prospective wholesale customers. As the CMA is aware, [REDACTED], VMO2 has already lost a number of MVNOs, including Lycamobile. The Beacon 4.1 Agreements will address this structural weakness in VMO2's wholesale competitiveness leading to three strong MNOs vying for MVNO business. VMO2 will have a strong incentive to compete aggressively in the wholesale market to win customers in order to fill its expanded capacity.

Implementation of the Beacon 4.1 Agreements is certain

- 2.7 UK consumers and businesses will experience the benefits of the Beacon 4.1 Agreements promptly and without any undue delay. All of the essential elements of the revised Beacon arrangement have already been agreed between the parties. Under the Beacon 4.1 Agreements, the Merged Entity will remain incentivized to ensure the proper functioning of the Beacon arrangements post-Merger including through [REDACTED].
- 2.8 VMO2 has concrete plans to make use of the newly acquired spectrum, [REDACTED].¹² VMO2 has agreed provisions to incentivise the Merged Entity to release the agreed spectrum as quickly and efficiently as possible, including [REDACTED]. [REDACTED].
- 2.9 Once the spectrum is transferred, VMO2 has strong financial and strategic incentives to ensure that all newly acquired spectrum is put to use on its sites as soon as possible, to obtain a return on the significant investment made. Moreover, the Consolidated Work Packages provide a concrete roll-out plan ([REDACTED]), and both VMO2 and the Merged

⁸ See Letter from VMO2 to CMA, 1 August 2024.

⁹ See [REDACTED].

¹⁰ See [REDACTED].

¹¹ See [REDACTED].

¹² See Provisional Findings, paragraph 14.198.

Entity are committed – and, indeed, financially incentivised – to roll out in accordance with the agreed plan. The Beacon 4.1 arrangements provide a process for VMO2 to [X] join additional 3UK sites.¹³ There are strong financial incentives on the Merged Entity to ensure that such sites can be accessed by VMO2, together with obligations on the Merged Entity.¹⁴

The Beacon 4.1 Agreements reinforce the behavioural remedies proposed by the CMA

- 2.10 As VMO2 considers that the CMA has not yet appreciated the full extent of the benefits flowing from the Beacon 4.1 Agreements, VMO2 will address this further in its response to the Provisional Findings. But in any event, the Beacon 4.1 Agreements should also be taken into account in assessing the effectiveness of the behavioural remedies set out in the Remedies Notice. For example, in addition to an Investment Commitment provided as an undertaking to the CMA and incorporated as a condition of the Merged Entity’s spectrum licence, the Parties will also face potential financial penalties if they fail to deliver the Consolidated Works Packages specified in the Beacon 4.1 Agreements. The Beacon 4.1 Agreements will, therefore, strongly reinforce the Investment Commitment proposed by the CMA.

3 BEHAVIOURAL REMEDIES

- 3.1 VMO2 is supportive in principle of the package of behavioural remedies set out in the Remedies Notice, but would welcome further information on the remedies proposed by the Parties.

The Investment Commitment will provide additional certainty

- 3.2 VMO2 agrees with the CMA’s finding that the Beacon 4.1 Agreements are consistent with enabling the delivery of the JBP.¹⁵ VMO2 also agrees that the efficiencies in the JBP could not be brought about by other means.¹⁶ As the CMA has suggested, any residual concerns that the Parties may achieve a level of integration and delivery less than the full JBP can be addressed by an Investment Commitment from the Parties to deliver the network investments set out in the JBP and JNP within a specified time period.¹⁷
- 3.3 VMO2 considers that the Investment Commitment can be implemented by way of undertaking and a condition incorporated into the Merged Entity’s spectrum licence through a variation of that licence for Ofcom to monitor and enforce.¹⁸ Ofcom has extensive experience of setting, monitoring and enforcing coverage obligations in spectrum licences, including the Shared Rural Network (“SRN”) and VMO2’s indoor data coverage obligation in 800 MHz 4G spectrum licence.¹⁹ These conditions have been both effective in delivering the objectives set by Ofcom and proportionate.

¹³ See [X].

¹⁴ [X].

¹⁵ See Provisional Findings, paragraph 14.107.

¹⁶ See Provisional Findings, paragraph 14.156.

¹⁷ See Remedies Notice, paragraph 30.

¹⁸ See Remedies Notice, paragraph 30.

¹⁹ See, for example, Ofcom, “*Mobile Coverage Obligations*” (link available [here](#)).

Furthermore, Ofcom has the powers to make changes to licences, at the request of the licensee, so there is no legal impediment to executing such a remedy.²⁰

- 3.4 There are a limited number of output measures which are key to ensuring that the benefits of the JBP and JNP are delivered to customers, namely 5G coverage and high-band 5G coverage. Ofcom has a well-developed methodology for drafting such conditions, avoiding specification risks.²¹ Based on Ofcom's practice to date, coverage measures appear best-suited to ensuring that retail and wholesale customers receive the benefits of the planned investments, but there may also be input measures which are reasonable and proportionate.
- 3.5 As mobile network operators regularly provide 5G coverage information to Ofcom, circumvention and monitoring risks do not arise.²² The information required to monitor the remedies under discussion is not significantly different, in terms of both volume and complexity, to that provided by operators on an ongoing basis in connection with other regulatory conditions. The involvement of Ofcom in the monitoring process rules out concerns in terms of information asymmetries and lack of adequate resources and sector knowledge.²³ As a further safeguard, there are also third-party providers, such as Umlaut, Ookla and Opensignal which provide independent analysis of network roll-out and quality.
- 3.6 In addition to the CMA's powers to enforce undertakings under the Enterprise Act 2002 (the "Act"), Ofcom has extensive enforcement powers under the Wireless Telegraphy Act 2006. These include the power to impose fines of up to 10 per cent of gross revenue.²⁴ As Ofcom's Penalty Guidelines and enforcement practice demonstrates, Ofcom will set fines so as to incentivise the relevant party to bring itself into compliance.²⁵ Ofcom has stated that the level of the penalty should ensure that senior management "*recognise that it is not more profitable for it to break the law and pay the consequences, than to comply in the first place*".²⁶

Time-limited protections for retail customers

- 3.7 As set out above, the Merger together with the Beacon 4.1 Agreements will ensure that competition continues to be effective in the Retail Market. However, to the extent that the CMA considers that time-limited protections are required to ensure that retail customers are appropriately protected during the initial years of network integration and rollout under any Investment Commitment, VMO2 considers that this could be

²⁰ See Wireless Telegraphy Act 2006, Schedule 1(8), as also stated on the face of the relevant licences.

²¹ See, for example, Vodafone licence no. 0249664, Condition 8 (2020 Coverage Obligations) (link available [here](#)).

²² See, for example, Ofcom, "Mobile Coverage Obligations" (link available [here](#)) and "Connected Nations and infrastructure reports" (link available [here](#)).

²³ This is also consistent with the CMA's past practice of accepting behavioural remedies in regulated sectors. See, e.g., Bauer Media Group merger inquiry (2020), First Rail/West Coast (2019), Abellio East Midlands/East Midlands (2019), FirstGroup/South Western (2017) and Arqiva / National Grid Wireless (2008).

²⁴ See Wireless Telegraphy Act 2006, Section 43.

²⁵ See Ofcom, "Penalty Guidelines", updated on 16 March 2023 (link available [here](#)).

²⁶ See Ofcom, "Confirmation Decision served on Telefónica UK Limited by the Office of Communications (Ofcom) for contravention of General Condition C3.2 and previous General Condition 11.1", 12 February 2021, paragraph 4.99 (link available [here](#)) and "Confirmation Decision under section 96C of the Communications Act 2003, finding contraventions of General Conditions C1.3 to C1.7 by BT", 9 July 2024, paragraph 5.121 (link available [here](#)).

achieved by an undertaking by the Parties to protect social terms and tariffs for mobile customers.²⁷

- 3.8 Ofcom encourages MNOs to offer social tariffs and actively monitors their availability.²⁸ As such, specification, monitoring and enforcement risks can be addressed. VMO2 also agrees that this could be accompanied by an obligation on the Merged Entity to engage in promotional activities (e.g., texts and advertising on traditional and social media) to encourage uptake amongst those consumers who are eligible. In terms of duration, VMO2 considers that the remedy should be limited to the integration period (e.g., [X] years, [X]).

Time-limited wholesale remedies

- 3.9 As set out above, the Merger together with the Beacon 4.1 Agreements will automatically deliver substantial, structural benefits to the largest MVNOs, Tesco Mobile and Sky Mobile, which both have long-term agreements with VMO2. Furthermore, VMO2 will have a strong incentive to compete aggressively in the wholesale market to win new customers in order to fill its expanded capacity. As MVNOs will be protected by the provisions in their multi-year agreements, VMO2 does not consider that additional protections are required to ensure that wholesale customers are further protected during the initial years of network integration and rollout under any Investment Commitment.
- 3.10 Should the CMA consider that wholesale remedies are required (e.g., for wholesale customers with agreements expiring shortly), VMO2 looks forward to providing additional comments on this remedy as more detail becomes available. As an initial comment, VMO2 notes that a remedy which “ring-fences” spectrum for exclusive use by MVNOs carries the risk that scarce spectrum resources lie unused, which would be economically inefficient. In terms of duration, VMO2 considers that the remedy should be limited to the integration period.

4 STRUCTURAL REMEDIES

- 4.1 The Remedies Notice also sets out two structural remedies: prohibition of the Merger; or a partial divestment remedy comprising the divestiture of, or access to, certain mobile network assets and spectrum (from either VUK or 3UK) in the UK, alongside potentially a national roaming agreement and on-going support from the Merged Entity. Neither proposal would be proportionate or effective in delivering benefits to UK consumers and businesses.

Prohibition would be disproportionate and destroy rivalry enhancing efficiencies and customer benefits

- 4.2 VMO2 considers that prohibition of the Merger would be disproportionate and highly costly. Prohibition would result in the loss of substantial REEs and benefits to UK consumers and businesses. As the aim of the UK merger control regime is to protect

²⁷ See Remedies Notice, paragraph 39.

²⁸ See Ofcom, “Social tariffs: Cheaper broadband and phone packages” (link available [here](#)).

UK consumers and businesses, a remedy which destroys substantial REEs and RCBs cannot be simplistically considered “*effective*”.

- 4.3 Indeed, it is clear from the Act that the CMA cannot only narrowly focus on the *prevention* of SLCs. The CMA is under a statutory duty to decide whether action should be taken for the purpose of “*remedying, mitigating or preventing*” the SLC.²⁹ Thus, the language of the statute does not require full prevention of any SLC identified, and instead recognises that mitigation may be sufficient. These requirements are also qualified to the effect that the CMA “*shall have regard*” to achieving as comprehensive solution to the SLC and any adverse effects arising as is “*reasonable and practicable*”.³⁰ The obligation to “*have regard to*” a condition or requirement is not an obligation to fulfil that requirement. Any such consideration is of a solution which is both reasonable and practicable.
- 4.4 In carrying out its assessment the CMA has consistently recognised that any remedy must be proportionate. That means that the remedy: (i) must be effective to achieve the legitimate aim in question (*appropriate*); (ii) must be no more onerous than is required to achieve that aim (*necessary*), (iii) must be the least onerous, if there is a choice of equally effective measures (*minimal*); and (iv) in any event must not produce adverse effects which are disproportionate to the aim pursued. As such, in cases where there is more than one potential remedy which is effective to either remedy, mitigate or prevent the SLCs, the CMA should choose the remedy which is the least costly and intrusive.
- 4.5 Against this background, there is no basis for the CMA to apply its usual two-step approach to evaluating remedies, namely, first considering effectiveness on a narrow basis and only then considering proportionality. Instead, the CMA must evaluate *in the round* whether a remedy (prohibition) which *prevents* the provisional SLCs but destroys REEs and RCBs is less proportionate than a remedy (Beacon 4.1 together with behavioural commitments) which *remedies, mitigates or prevents* the provisional SLCs and delivers REEs and RCBs. The answer is clear: prohibition would be disproportionate, would not deliver the best outcome for customers and would be inconsistent with the wording and spirit of the Act.

Partial divestiture would be uncertain and ineffective

- 4.6 The Remedies Notice also identifies a partial divestiture as a potential structural remedy to enable a fourth MNO to enter the UK post-Merger. A partial divestiture would involve the divestment or access to certain mobile network assets and spectrum (from either VUK or 3UK) to an existing MVNO or new entrant. Such a remedy would likely also require a national roaming agreement and ongoing support from the Merged Entity at a minimum.³¹ The CMA correctly notes that there are a number of concerns with the effectiveness of a partial divestiture in this case.³²
- 4.7 In evaluating the need for a partial divestiture, it is important to recognise that the Beacon 4.1 Agreements provide for a divestment of spectrum assets that is certain, permanent and to a party that will deploy them quickly. As a structural remedy, the

²⁹ See Act, Section 36(2).

³⁰ See Act, Section 36(3).

³¹ See Remedies Notice, paragraph 21(b).

³² See Remedies Notice, paragraph 23.

Beacon 4.1 Agreements protect the two largest MVNOs, Sky Mobile and Tesco Mobile, with some 8 million customers between them, while enhancing competition in the wholesale market. By increasing VMO2's network investments, capacity and quality, as well as those of the Parties, the Beacon 4.1 Agreements will ensure that the retail and wholesale markets remain competitive post-Merger. It is, therefore, a better structural remedy than could be achieved by a partial divestment to any other potential non-MNO remedy-taker, which would take years to be an effective competitor in either wholesale or retail, if ever.

- 4.8 VMO2 considers that a partial divestiture to a new entrant is not required to address the provisional SLCs, but in any event agrees that it would not be an effective remedy. First, if it were to affect the amount of spectrum transferred to VMO2 under the Spectrum Transfer Agreement (“STA”), a partial divestiture would exacerbate the provisional SLCs while destroying the REEs and RCBs associated with the Merger. Second, even if considered as an additional remedy alongside the Beacon 4.1 Agreements, a partial divestiture would suffer from a number of clear shortcomings, given the highly uncertain and complex nature of the proposed arrangements.
- 4.9 ***Impact on Beacon 4.1, REEs and RCBs.*** Any change to the spectrum transferred under the STA would cause considerable harm to VMO2's ability to compete with and constrain the Merged Entity. As the CMA has recognised, the STA is a fundamental element of the Beacon 4.1 Agreements.³³ As there is no potential remedy-taker which would be able to quickly deploy the “divested” spectrum, the “new MNO” would be dependent on the Merged Entity through a national roaming agreement for many years and potentially on a permanent basis. The spectrum “earmarked” for the “new MNO” would therefore remain with the Merged Entity, leading to a major misalignment of holdings between VMO2 and the Merged Entity, and therefore to a disrupted Beacon. [⌘]. This would dramatically worsen the severity of the SLCs provisionally identified by the CMA, while destroying the efficiencies and benefits associated with the Merger. Such a proposal should be rejected by the CMA.
- 4.10 ***Impact on SLC.*** Even if considered as an additional remedy alongside the Beacon 4.1 Agreements, a partial divestiture would suffer from a number of clear shortcomings. A partial divestiture would not be equally effective to foster competition compared to the Beacon 4.1 Agreements. As noted by the CMA, the remedy-taker would likely only acquire a sub-set of the assets currently used by the Parties to compete in the relevant markets.³⁴ This would lead to an MNO that is smaller than either of the Parties, without its own independent network and a long-term, potentially permanent, dependence on the Merged Entity. Moreover, it would be inefficient to deploy spectrum onto a sub-set of assets, leading to higher costs for the remedy taker. It is unclear that such an entity would compensate for the loss of competition due to the Merger. At the wholesale level, it is unlikely that a remedy-taker would be an effective competitor. This is because the remedy-taker would either be unable to wholesale; or, in any event, a remedy-taker receiving a limited amount of spectrum would lack any credible wholesale ability in the UK.

³³ See Provisional Findings, paragraph 10.50.

³⁴ See Remedies Notice, paragraph 23(a).

- 4.11 ***Appropriate duration and timing.*** The Beacon 4.1 Agreements will act more quickly in addressing residual competitive concerns and are therefore more effective than a partial divestiture (see Section 2 above). Conversely, the benefits of a new entrant will be much slower and are more uncertain. Any remedy-taker would have to negotiate a set of complex bespoke agreements from scratch (including a national roaming agreement, asset and spectrum transfer agreements, network deployment agreements, site agreements). If a remedy-taker is an existing MVNO not on either Parties' network, the company would have to transition their customers to the Merged Entity's network at the end of their existing hosting agreement with an MNO. Depending on the term of the existing agreement, this may take many years. Where a remedy-taker acquires spectrum, it would take many years to acquire the necessary sites, expertise, equipment and agreements and to deploy such spectrum even across a small part of the country.
- 4.12 ***Practicality.*** VMO2 and the Parties have invested significant time in negotiating the Beacon 4.1 Agreements, which are fully considered and all parties have confidence that they will be implemented in practice. As the first Beacon agreements were negotiated in 2009 and have stood the test of time, there is a substantial track-record of successful network sharing between the parties, which provides the CMA with confidence that the Beacon 4.1 arrangements will work. In contrast, a partial divestiture would require the Parties and the remedy-taker to start negotiations from scratch. Without an existing commercial arrangement and track-record of working together, there would be much higher specification risk for the CMA (particularly, as the remedy-taker will not be well-placed to anticipate all of the issues which they will face). In addition, as the CMA has noted it would be difficult for the CMA to assess the financial resilience or expected performance of the new MNO with any degree of accuracy given the new MNO would obtain access to a package of assets that has never before operated as a stand-alone business.³⁵
- 4.13 ***Acceptable risk profile.*** The Beacon 4.1 Agreements provide certainty regarding implementation, given the safeguards which have been negotiated by the parties.³⁶ A partial divestiture raises a significant number of risks. As noted by the CMA, the Parties do not own all of the assets that make up their own networks. Indeed, there are third parties who control access to sites and the Parties are both part of separate network sharing agreements with the two other MNOs, which significantly increases the complexity of the remedy.³⁷ As a partial divestiture would unwind economies of scale, it is unclear what the incentives the Merged Entity would have to implement the remedy.³⁸

³⁵ See Remedies Notice, paragraph 23(b).

³⁶ See, for example, Provisional Findings, paragraphs 10.76-10.80.

³⁷ See Remedies Notice, paragraph 23(d).

³⁸ See Remedies Notice, paragraph 23(c).