

Competition and Markets Authority
The Cabot, 25 Cabot Square
London
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Thursday, 26th September 2024

To Whom it May Concern,

Confidential: [§<] Submission ref. Vodafone / CK Hutchison JV Merger Inquiry – Potential Remedies

[§<] welcomes this opportunity to provide its input regarding the potential remedies papers that the CMA published on 13/09/2024.

[§<] 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 [§<] please see Appendix 1 at the end of this document.

We note that the CMA has proposed remedies within both the retail and wholesale markets, we do not have any input regarding the latter and only comment on two of the proposed remedies for the former; namely assurance of improved network quality and a new entrant.

Ensuring Network Quality

As per our previous submissions [§<] is supportive of an outcome which guarantees an enhanced network comprised of 26k macro Points of Presence ('PoP'). We believe this programme would be best assured via establishment of an investment committee with appropriate oversight and levers to ensure deployment in a timely manner. In addition the CMA may wish to consider empowering this organisation to offer incentives (e.g. relief from other remedies) for early deployment than forecast.

We do not believe that incorporating 'programme achievement' into spectrum licences would work as licences (i) in some cases contain coverage targets which are % based; including PoP numbers in such licences risks introducing conflict (ii) are typically either perpetual or long term and hence will continue to exist once the programme has completed (iii) are frequency specific and not all frequencies will be deployed across all PoPs (iv) enforcement is largely currently limited to a binary revocation which does not allow for corrective action to be enforced.

Regarding how this commitment is best expressed we believe an input measurement (i.e. number of macro sites with confirmed minimum level of spectrum deployment by groups/# PoPs) would be the best methodology. [§<].

Immediately post-merger the business will have c.34k macro PoPs (c.18k Vodafone + 16k 3UK). We assume there will be a programme of network consolidation to achieve the 26k consolidated macro PoP network. The programme will require clear KPIs and associated timescales for deployment of the full 'Joint Network Plan'. There will need to be ongoing oversight to guarantee the 26k macro-PoPs is a long term 'floor' i.e. no further network consolidation beyond the 26k macro PoP and associated performance occurs level unless equivalent new PoPs are deployed to offset this.

Whilst output measures (i.e. network performance) are attractive given their alignment to end user experience the determination of methodology and complexity of collection means there may be significant reasons why they are not practical. In addition user behaviour will change over time and there is a risk of a continually moving target which prohibits the parties from making a definitive investment plan, which in contrast would be possible with input measures. Geographic coverage targets are feasible, Ofcom reports coverage for each operator so is well placed to ensure coverage commitments are met.

Performance targets could be assured via input measures by requiring the MergeCo network to commit to minimum spectrum deployment targets on each site to ensure provision of high quality coverage and service to end users.

[8<] Stands Ready to Support a New Entrant

In our prior submissions we provided details of how an 'urban only' fourth player, utilising roaming and/or network sharing arrangements for economic nationwide coverage, is now a situation found in a number of countries.

We note the CMA's reservations regarding the viability of a new entrant and whether there is interest within the UK market or international operators. It is not for [8<] for determine this, however we continue to note the favourable economics for network ownership based mobile provision in urban areas; where the majority of data consumption and inferred revenue occurs across a relatively low volume of sites. As compared to the high volume of sites required to achieve nationwide rural coverage.

If achievement of a new entrant is selected as a remedy the CMA would need to allow sufficient time for an interested party to register interest and fully evaluate the opportunity. Full details of spectrum availability, rollout commitments & wholesale pricing guarantees for national coverage are needed. We also note that a new entrant would not need to compete on the same scale as current MNOs to act as competitive constraint.

If a new entrant was to be an outcome of the merger [8<] has the capability to host its equipment across our portfolio of existing [8<] infrastructure. This would enable the new entrant to benefit from the improved economics of infrastructure sharing and significantly reduced cost of entry via leveraging existing investments.

Next Steps

[8<] is open to further engagement with the CMA during the remainder of its enquiry and we remain at your disposal to clarify any points or answer any questions you may have at this time.

Yours faithfully,

[8<]

Appendix 1: Overview [8<]

[8<]