

**CASE ME/7064/23**  
**Vodafone / CK Hutchison JV merger inquiry**  
*[X] response to CMA's Provisional Findings*

**1. INTRODUCTION AND EXECUTIVE SUMMARY**

- 1.1 This paper sets out the responses and observations from [X] to the CMA's Notice of possible remedies dated 13 September 2024 (the "**Remedies Notice**"), published in conjunction with the CMA's Provisional Findings Report dated 13 September 2024 (the "**Provisional Findings**") in relation to the anticipated joint venture (the "**Proposed JV**") between Vodafone Group plc (together with all companies forming part of the same group, "**Vodafone**") and CK Hutchison Holdings Limited (together with all companies forming part of the same group, "**Three**" and together with Vodafone the "**Parties**").
- 1.2 [X]
- 1.3 Absent suitable remedies or prohibition, the Proposed JV has critical consequences for [X]. [X] had clear commercial objectives for [X] and, in the absence of the Proposed JV, had a high level of confidence that, [X] – with Three and Vodafone bidding separately, against each of EE and O2.
- 1.4 In order to assist the CMA in its assessment of the Proposed JV, [X] has previously submitted the following to the CMA:
- 1.4.1 A submission dated 19 July 2024 setting out [X] response to the initial submissions made by the Parties to the CMA's decision to refer the Proposed JV under section 33 of the Enterprise Act 2002 ("**19 July Submission**"); and
- 1.4.2 A submission prepared by [X] dated 16 August 2024 analysing the Parties' [X] (the "[X] **Submission**").
- 1.5 This paper sets out [X] views on some of the proposals the CMA presents in the Remedies Notice, in order to remedy the substantial lessening of competition ("**SLC**") identified in the Provisional Findings in respect of both the supply of retail mobile telecommunications services to end customers (the "**retail market**") and the supply of wholesale mobile telecommunications services (the "**wholesale market**").
- 1.6 Given [X] role as an MVNO, this submission only covers the wholesale market SLC in detail, and [X] is not commenting specifically on the retail market SLC identified by the CMA. However, [X] agrees with the CMA's provisional finding that the Proposed JV would give rise to an SLC in both the wholesale and the retail market and submits that any remedies package should therefore include a requirement on the Parties to divest themselves of their retail fighting brands. In this regard, [X] notes that previous mergers involving MNOs in the UK have led to the shutting down of well-known MVNO brands, such as Plusnet, BT Mobile and Virgin Mobile. [X] considers there is a risk that the Parties' sub-brands, such as Voxi, Talkmobile and Smarty, may be discontinued once the Proposed JV is implemented, to the detriment of consumers. Divesting these assets to credible operators with sufficient scale and experience would help restore competition in the retail market.
- 1.7 Regardless of such a divestment, [X] submits that in order to address the SLC concern in the retail market the Parties must also address the SLC concern in the wholesale market. In particular:

- 1.7.1 While [X] is unable to comment specifically on the magnitude of the harm caused to UK consumers by the Proposed JV (estimated by the CMA as £328 million per year, but possibly as high as £1.123 billion per year),<sup>1</sup> [X] agrees that, absent remedies, it stands to reason that the Proposed JV is likely to result in further increased prices for UK mobile telecommunications services;
- 1.7.2 It also agrees with the CMA's suggestion that any increase in pricing, and the consequent fall in consumer welfare, will have a particularly significant impact on the consumers with the lowest disposable incomes and therefore on those least able to afford mobile services;<sup>2</sup>
- 1.7.3 In this regard, [X] further agrees with the CMA's suggestion that MVNOs tend to price aggressively and often focus on the value segment of the retail market.<sup>3</sup> MVNOs' mobile telecommunications services are particularly attractive alternatives to those consumers which are most at risk of experiencing adverse effects from the Proposed JV; and
- 1.7.4 As such, addressing the SLC at the wholesale market, by ensuring that MVNOs continue to have wholesale access to telecommunications services on suitable terms to continue to offer a wide range of alternatives to the MNOs' offerings (including value-oriented services), is a minimum requirement to maintain effective competition in the value segment of the retail market. This, in turn, will ensure that competitive pressure is applied by MVNOs to protect those customers with the lowest disposable income from the potential disproportionate consumer harm caused by the Proposed JV.
- 1.8 [X] supports a suitably incentivised ring-fencing of capacity as a remedy for the wholesale SLC and has some suggestions for the CMA's consideration on how this should work. To further strengthen this ring-fencing remedy, it should be imposed in conjunction with (1) a set of basic minimum commitments on the Proposed JV and (2) a requirement for the Parties to dispose of all of the Proposed JV's "fighting brands" (Smarty, Talkmobile and Voxi). [X]. This will significantly de-risk the Proposed JV and its effects on competition, and a capacity ring-fencing remedy has the additional benefit of being more similar in character to a structural remedy than a behavioural one.
- 1.9 [X] does not view an obligation on the Proposed JV to offer prescriptive pre-agreed wholesale access contracts, or an obligation to divest assets to enable a fourth MNO, as viable remedies.

## **2. PROHIBITION**

- 2.1 As the CMA notes in the Remedies Notice,<sup>4</sup> prohibiting the Proposed JV would prevent the provisional SLCs (at both the retail and wholesale markets) from arising. As such, prohibition is by its very nature a comprehensive and effective solution to all aspects of the SLC and would restore competition to the level observable prior to the Proposed JV.
- 2.2 It is important to reiterate that [X] emphatically agrees with the CMA's provisional conclusion that the Proposed JV gives rise to an SLC in the wholesale market and that it would give rise to significant harm to [X] as well as other MVNOs in the UK (and consequently also to UK consumers). In addition, [X] strongly agrees with the Provisional Findings that the Proposed

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<sup>1</sup> Provisional Findings, paragraph 14.207.

<sup>2</sup> Provisional Findings, paragraph 14.211.

<sup>3</sup> Provisional Findings, paragraphs 4 and 8.251.

<sup>4</sup> Remedies Notice, paragraph 22.

JV would lead to an SLC in the retail market harming consumers further. It is imperative, therefore, that such SLCs are addressed. One way of doing so would be to prohibit the Proposed JV.

- 2.3 However, while the CMA is under a statutory duty to have "*regard to the need to achieve as comprehensive solution as is reasonable and practicable to the substantial lessening of competition*",<sup>5</sup> [X] is also mindful of the CMA's published practice stating that it will "*select the least costly and intrusive remedy that it considers to be effective*".<sup>6</sup>
- 2.4 [X].<sup>7</sup> As such, [X] is unable to comment on the scope and/or achievability of the claimed efficiencies of the Proposed JV. However, assuming that *at least some efficiencies* are capable of arising as a result of the Proposed JV, a prohibition decision from the CMA would invariably prevent *any* such efficiencies from materialising (which is not necessarily the case for other remedies). [X] preferred remedy, described in the following paragraph, could be imposed without prejudicing the Parties' ability to realise efficiencies including those related to having a denser network and more spectrum to deploy at each location.
- 2.5 Against this background, [X] views an obligation on the Proposed JV to ring-fence a sufficiently large capacity for MVNOs, combined with appropriate measures to ensure that such capacity is provided to MVNOs, as less intrusive than a prohibition. In addition it is equally capable of addressing both the concern relating to supply of wholesale inputs to MVNOs and the concerns relating to competition in the retail market with respect to lower disposable income customers.
- 2.6 However, it is important to reiterate [X] view that the Proposed JV will give rise to real and very significant SLC concerns. As such, if remedies stopping short of a prohibition of the Proposed JV cannot be implemented, or the proposed remedies are unable to fully restore the pre-merger level of competition, [X] view is that the CMA should block the Proposed JV. This is particularly important in light of the fact that the CMA has only identified two potential remedies for addressing the SLC in the wholesale market (*viz* wholesale access terms and capacity ring-fencing), and its provisional view is that both are "*likely to present a number of challenges and risks [...] including specification, distortion, circumvention as well as monitoring and enforcement risks*".<sup>8</sup> If such challenges cannot be overcome, the only remaining manner to satisfactorily address the wholesale SLC would be to prohibit the Proposed JV.

### 3. **DIVESTITURE TO CREATE A FOURTH MNO**

- 3.1 The Remedies Notice discusses the possibility of addressing the SLCs provisionally identified by the CMA through a partial divestiture remedy, requiring the Parties to divest themselves of (or grant access to) certain mobile network assets and spectrum. The CMA's provisional view<sup>9</sup> is that while such a remedy could enable a fourth MNO to enter the UK, such a remedy would not be effective.<sup>10</sup> [X] shares the CMA's view in this regard.
- 3.2 A key argument presented by the Parties in favour of the Proposed JV is that, individually, both Vodafone and Three lack the necessary scale in order to compete effectively in the UK market. The Parties further claim that the increased scale brought about by the Proposed JV is necessary

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<sup>5</sup> Enterprise Act 2002, paragraph 36(3).

<sup>6</sup> CMA Merger remedies Guidance (CMA87) (December 2018) (the "**Remedies Guidance**"), paragraph 3.4.

<sup>7</sup> [X].

<sup>8</sup> Remedies Notice, paragraph 43.

<sup>9</sup> As per Remedies Notice, paragraph 23.

<sup>10</sup> Remedies Notice, paragraph 22 and 23.

in order to "address the investment challenge posed by the need to deploy 5G standalone [...] and address explosive growth in data traffic".<sup>11</sup>

- 3.3 The Parties claim that the Proposed JV will enable them to make significant investments under the joint business plan and the joint network plan (together, the "**JV Plan**") in order to improve their network. In particular, [X] understands that the JV Plan sets out the Parties' integration and investment plans until financial year 2034, over which period the Parties anticipate investing £11 billion in the UK and creating one of Europe's most advanced 5G standalone networks. In other words, even starting from the position of a combined entity consisting of the *entirety* of Vodafone's and Three's UK assets, the Parties suggest that very significant further investments would be required in order to effectively compete in the UK (quoting £11 billion in the JV Plan).
- 3.4 Against this backdrop, [X] submits a fourth MNO, using only a sub-set of the Parties' assets, may find it exceedingly difficult (and, in reality, likely impossible) to replicate the necessary investment required to enter into and effectively compete on the UK market (including matching the proposed investment in the JV Plan). There is also residual uncertainty around whether the entry of a fourth MNO, without a track-record of acting as an MNO in the UK telecommunications market, will address the SLC at the wholesale level. Further, a new MNO is much more likely (at least compared to established MNOs) to focus on building out its own retail offering at least in the short-to-medium term, as opposed to hosting MVNOs on the network, which would reduce its effectiveness at addressing the wholesale SLC.
- 3.5 While [X] does not view an asset divestment to support a fourth MNO as a suitable remedy, it does support the CMA requiring the Proposed JV to divest itself of the three retail fighting brands that the Parties currently operate to help restore competition in the retail market and ensure that such brands are not shut down (as has happened in previous mergers – see paragraph 1.6). Such a divestment (alongside a suitably designed MVNO capacity ring-fencing obligation to maintain the competitiveness of the divested brand) would still allow the Proposed JV to realize any efficiencies from combining Vodafone and Three's sites and spectrum.

#### 4. **PRE-AGREED WHOLESALE ACCESS TERMS**

- 4.1 The Remedies Notice also discusses a requirement on the Proposed JV to offer pre-agreed non-discriminatory wholesale access terms (including pricing) to MVNOs, subject to reasonable limits. [X] current view is that a package of pre-agreed access terms is unlikely to adequately address the wholesale SLC identified by the CMA and will lead to adverse outcomes for consumers.
- 4.2 The CMA has identified a particular risk in the Remedies Guidance, where it notes that costs of remedies may arise in the form of distortions in market outcomes and that such costs are particularly likely where behavioural remedies "*intervene directly in market outcomes, especially over a long period of time*".<sup>12</sup> In particular, the Remedies Guidance notes that:

*"Certain types of behavioural remedy, such as price caps, supply commitments and service level undertakings, control or restrict the outcomes of business processes. These remedies aim to control the adverse effects expected from a merger rather than addressing the source of the SLC. This type of remedy may not only be complex to implement and monitor, but may also create significant market distortions."* (paragraph 3.43)

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<sup>11</sup> Provisional Findings, paragraph 5(b) and (c).

<sup>12</sup> Remedies Guidance, paragraph 3.10.

- 4.3 Commenting specifically on remedies which restrict a merged entity's ability to engage in selective discounting or price discrimination, the Remedy Guidance notes that they could generate significant distortion risk by adversely affecting the competitive dynamics of a market if maintained in the long term.<sup>13</sup>
- 4.4 In this regard, in order to be effective at addressing the SLC caused by the Proposed JV, a pre-agreed wholesale access terms remedy would need to include prescriptive parameters around network quality and (importantly) price, at a bare minimum. However, in [X] view, these are among the most important features considered by MVNOs when negotiating access to wholesale mobile services (as also noted by the CMA in the Provisional Findings),<sup>14</sup> and so the remedy risks effectively "fixing" a significant part of the competition between MVNOs. [X] submits that this would give rise to precisely the type of issues commonly associated with remedies that control market outcomes as identified in the Remedies Guidance.
- 4.5 In addition, [X] considers that the above difficulties are only further exacerbated in the context of a constantly evolving dynamic market. It would not be sufficient to simply set the terms of wholesale access for a significant period, as offers that may be competitive today may quickly become uncompetitive over time. In this context, any regulatory access would need to be reviewed at least once a year, to ensure that there is a level playing field between MVNOs and MNOs. This is precisely the reason why [X] works hard to ensure that [X].
- 4.6 Finally, while [X] does not support a prescriptive and comprehensive set of terms for wholesale access, it would support a high-level but binding commitment on the part of the Parties to abide by certain minimum obligations alongside a capacity ring-fencing agreement which [X] sets out below. [X] envisages that such minimum obligations could involve the following:
- 4.6.1 An obligation on part of the Proposed JV to make new features or technology (e.g. 5G) available to the MVNOs on its network for their customers at the same time as such features or technology are made available to the MNO's own retail customers;
- 4.6.2 A requirement that the Proposed JV negotiates in good faith to agree a reasonable price indexation mechanism taking account of the ability of the MVNO to offer competitive products and services to retail customers over time. This would ensure that the price paid by the MVNO for wholesale access takes due account of retail pricing and efficiency developments in the particular market / segment targeted by the particular MVNO's proposition(s), allowing the MVNO to continue to compete. Absent such mechanisms, there is nothing to prevent the Proposed JV from favouring its own fighting brands with the latest cost efficiencies and capacity developments, such that over time they obtain better access than its MVNO customers with which it is competing. Over time, this would result in MVNOs becoming less competitive and therefore being unable to compete effectively with fighting brands of the Proposed JV (likely to be primarily the Three brand post-Proposed JV); and
- 4.6.3 A prohibition on the Proposed JV from discriminating between its own retail customers and the MVNO customers on its network in terms of the level of service and network quality received (e.g. speed of connections and reliability / coverage).

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<sup>13</sup> *Ibid*, paragraph 7.30,

<sup>14</sup> Provisional Findings, paragraph 9.22.

Adherence to such requirements should be subject to on-going monitoring requirements (as further discussed below).

- 4.7 Such minimum terms would allow MVNOs free to compete vigorously with both MNOs, as well as other MVNOs, on the main parameters of competition in the market (e.g. pricing and customer service solutions), while at the same time protecting the MVNOs from anti-competitive attempts by the Parties to discriminate against MVNO customers and/or favour their own retail customers.

## 5. CAPACITY RING-FENCING

### General observations

- 5.1 [X] preferred option for addressing the wholesale SLC identified in the Provisional Findings would be to impose an obligation on the Parties to ring-fence a sufficient proportion of the Proposed JV's network capacity exclusively for MVNOs without setting pre-agreed access terms for that capacity. Such a capacity remedy would have the following important two characteristics.
- 5.1.1 First, the minimum capacity obligation would need to be at a level (in terms of percentage of capacity) equal to the current total capacity dedicated to MVNO's access across Vodafone and Three in order to restore static competition. However, to be able to restore dynamic competition, [X] view is that the level of capacity should be set above this minimal level: it is [X] experience that the Proposed JV is likely to have an incentive to shut down some of its MNO fighting brands. To restore competition, the level of capacity reserved should therefore include at least some proportion of the Proposed JV's fighting brands' current capacity. In addition, to ensure competition remains dynamic, MVNO's will need to have the ability to increase their market share from today, without being constrained through capacity. Providing headroom above the current capacity level provided to MVNO's would solve both of these issues; and
- 5.1.2 Second, in order to fully incentivise the Proposed JV to utilise and sell the reserved capacity, there must be some form of material penalty for any capacity left unsold. Absent such a penalty, the Proposed JV will always have an incentive to simply choose not to sell some proportion of the reserved capacity, thus raising the price of the remaining MVNO capacity, whilst also increasing the price and the Proposed JV's profits in the retail market.
- 5.2 A capacity ring-fencing remedy with these characteristics would enable one or more MVNOs to have access to a guaranteed pool of capacity of the Proposed JV but, importantly, each MVNO would remain responsible for negotiating its own terms of such wholesale access. This would ensure that competition between MVNOs on the Proposed JV's network can be maintained, and thereby minimise inadvertent market distortions created by the remedy. An MVNO will have its own differentiated strategy and, [X], is likely to negotiate for contract terms that are specifically tailored to its particular strategy.
- 5.3 The remedy would ensure that MVNOs continue to have access to a critical input (i.e. wholesale access) while leaving room for continued competition, including between MVNOs on the same network, to innovate and invest to improve their wholesale access terms and retail offerings on the retail market. This aligns with the CMA's preference for using "*enabling measures that work with the grain of competition*", **such as access remedies**, and *measures that remove*

obstacles to competition, rather than measures that control market outcomes, such as price caps".<sup>15</sup>

5.4 [§<] notes that the CMA has expressed provisional concerns that a capacity ring-fence remedy would present a number of challenges which the CMA intends to evaluate further. [§<] welcomes the opportunity to discuss further with the CMA but, in the meantime, notes that the European Commission (the "**Commission**") has imposed similar remedies previously:

5.4.1 **Liberty Global / BASE Belgium:** the remedies package involved a requirement on the merged entity to provide MVNO wholesale access to the BASE network in order to enable the purchaser to provide electronic communications services to end-users in Belgium. The arrangement also included an obligation on BASE to offer timely access (against reasonable and market conforming pricing) to any future mobile technologies, maintain certain service quality levels as well as a right for the purchaser to request an assessment of compliance with such service quality obligations by an independent third party;<sup>16</sup>

5.4.2 **Telefónica Deutschland/ E-Plus:** the Commission accepted a remedy package which involved, *inter alia*, an obligation on Telefónica to enter into an agreement with up to three (but at least one) MVNO to sell a total of 20% of the total capacity (for each of data, voice and SMS) of the combined network. The package also included a requirement to offer a further 10% of the capacity on the same terms;<sup>17</sup>

5.4.3 **Hutchison 3G UK / Telefonica Ireland:** the merging parties committed to conclude capacity agreements with two MVNOs for a total of 30% of the network capacity (one upfront capacity agreement and one to be agreed at a later stage – including by a divestiture trustee if necessary);<sup>18</sup> and

5.4.4 **Hutchison 3G Austria / Orange Austria:** the remedy package accepted by the Commission included a commitment on Hutchison 3G Austria to provide, on agreed terms, wholesale access to its network for up to 30% of its capacity to up to 16 MVNOs in the coming 10 years.<sup>19</sup>

5.5 It should be noted, however, that none of the remedies imposed in the above Commission cases involved a penalty in the event the relevant MNO failed to adhere to the capacity ring-fencing remedy. [§<] submits that the above remedies have not been particularly effective at restoring competition, and that a penalty mechanism is required in order to help address this concern.

5.6 The CMA may wish to consider requiring that agreements for the ring-fenced capacity are entered into with one or more MVNOs prior to the remedy being accepted and prior to completion of the Proposed JV. Alternatively, drawing on the approach accepted by the Commission in Case M.6992 - *Hutchison 3G UK / Telefonica Ireland*, it may require one (or more) agreements for MVNO wholesale access to be entered into prior to completion, and impose a separate obligation on the Proposed JV to enter into further wholesale access agreements with additional MVNOs within a set period following completion (with a mechanism for involving the monitoring trustee in the event that the Proposed JV fails to enter into such subsequent access agreements within the prescribed time).

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<sup>15</sup> Remedies Guidance, paragraph 3.49.

<sup>16</sup> Case M.7637 - *Liberty Global / BASE Belgium*.

<sup>17</sup> Case M.7018 - *Telefónica Deutschland/ E-Plus*.

<sup>18</sup> Case M.6992 - *Hutchison 3G UK / Telefonica Ireland*.

<sup>19</sup> Case M.6497 - *Hutchison 3G Austria / Orange Austria*.

Importance of addressing all aspects of the wholesale SLC

- 5.7 It is important to note that the CMA's wholesale SLC is centred around the possibility that the Proposed JV bids for fewer (or no) MVNO opportunities, but also that it may bid on less competitive terms.
- 5.8 It is important, therefore, that any remedy addresses both of these aspects of the SLC concern. In this regard, the obligation on the Proposed JV to reserve a proportion of capacity on its network for wholesale access should also include some form of substantial and sufficient financial penalty for the Parties, charged on the basis of an amount proportional to the average unutilised reserved capacity over a suitably long period. Using a sufficiently long period will ensure that the Proposed JV will continue to have an incentive to enter into MVNO agreements but is not penalised unduly if an MVNO chooses another option.
- 5.9 [X] views the imposition of a financial penalty on the Parties in these circumstances, as critical for the remedy to succeed (to incentivise the Parties to ensure that the reserved capacity is being made available to and utilised by MVNOs). Absent such penalties, the Parties will always have an economic incentive to leave some proportion of the reserved capacity unutilised in order to increase the scarcity of capacity and increase its price. As set out in the [X] Submission, this not only increases the price of capacity to MVNO's, but also reduces competition downstream, allowing the Parties to charge higher profits.
- 5.10 While a penalty is the simplest means of ensuring compliance, [X] is conscious that this may also, to some extent, be addressed by the CMA insisting on the Parties entering into upfront arrangements with regards to wholesale access, and so would welcome the opportunity to discuss with the CMA how best to avoid circumvention efforts by the Parties.
- 5.11 In addition to the capacity ring-fencing, [X] considers that the CMA should impose a set of minimum commitments on the Parties to ensure that the Proposed JV does not offer wholesale access on deliberately and unduly unattractive or restrictive terms (as discussed in paragraph 4.6, above). Importantly, such minimum terms will not dictate market outcomes or suppress the ability of MVNOs on the network of the Proposed JV to compete with each other.
- 5.12 The commitment should run indefinitely, and with a minimum term of 10 years, until such time that the market circumstances has changed such that the removal of the remedy would no longer restrict competition. Were [X].<sup>20</sup>
- 5.13 [X] views a vibrant MVNO market as a critical component in ensuring a competitive telecommunications market in the UK, where consumers of such services are given access to a number of different alternatives (at different price-points) to suit their particular needs and preferences. As such, [X] preliminary view is that the CMA may wish to consider imposing an obligation on the Proposed JV to make ring-fenced capacity available to a certain minimum number of MVNOs. If so, the number should be set at a level that takes into account the need to accommodate brand divestments that the CMA may require at the retail level of the market.
- 5.14 The MVNO should be able to terminate and go to tender at will (giving minimum amount of notice), in order to ensure that there is no risk of the MVNO being constrained to continue with a contract that may restrict its ability to compete over time.

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<sup>20</sup> This would broadly align with the length of some of the commitments previously accepted by the Commission – see, for example, Case M.6497 - *Hutchison 3G Austria / Orange Austria* where the obligation to provide wholesale access ran for 10 years as well as Case M.6992 - *Hutchison 3G UK / Telefonica Ireland* where Three agreed to make available capacity to an upfront MVNO for a period of five year but where the MVNO, at the end of the five year period, had the option of extend the period of the capacity agreement for a further five years (10 years in total).



## 6. MONITORING AND ENFORCEMENT OF BEHAVIOURAL REMEDIES

- 6.1 [§<] proposal is significantly less intrusive than a behavioural remedy, but may still require some element of compliance monitoring. [§<] provisional view is that a monitoring trustee (to be paid for by the Parties) would be an appropriate way to ensure that the Proposed JV is subject to adequate compliance monitoring and the duration of the appointment of the monitoring trustee should mirror the duration of the remedies. The mandate of such mandatory trustee would need to be carefully considered, and depend on the ultimate form of the capacity ring-fence remedy imposed by the CMA, but would need to include provisions regarding:
- 6.1.1 Regular reporting obligations on the Proposed JV to the monitoring trustee;
  - 6.1.2 A broad mandate for the monitoring trustee to request information from the Proposed JV and the Parties which it deems necessary to ensure compliance;
  - 6.1.3 An obligation on the monitoring trustee to prepare regular general reports on the compliance to the CMA and/or Ofcom;
  - 6.1.4 Obligation on the monitoring trustee to immediately inform the CMA and/or Ofcom in the event the monitoring trustee becomes aware of a breach of the remedy by the Proposed JV; and
  - 6.1.5 Obligation on the monitoring trustee to supervise any dispute resolution mechanism forming part of the remedy package, and a right to make submission in connection with any such proceedings.
- 6.2 The appointment of a monitoring trustee is a well-established method of ensuring appropriate compliance monitoring where the remedy package includes a capacity ring-fencing obligation. By way of example, the remedies accepted by the Commission in each of the cases referred to in paragraph 5.4, above, included the appointment of a monitoring trustee to oversee compliance with the remedy.
- 6.3 The remedy must also include suitable dispute resolution provisions, both in circumstances where the Proposed JV and MVNOs disagree on whether capacity is being offered to MVNOs in accordance with the terms of the capacity ring-fencing remedy, as well as where an MVNO alleges that the Proposed JV is not abiding by the high-level obligations (e.g. not to degrade the speed and reliability of MVNO users on its network as compared to its own retail customers).
- 6.4 In this regard, [§<] recognises the unique role of Ofcom as the sector regulator, with significant industry and technical expertise, and envisages that any dispute resolution mechanisms may beneficially include a role for Ofcom. For example, a dispute resolution mechanism may involve the following stages (a) an initial obligation on the Proposed JV and the relevant MVNO to seek to resolve the dispute internally, (b) requirements to escalate any unresolved dispute for consideration at senior management level of the MVNO and Proposed JV, (c) appointment by the parties of an independent expert panel (each party appointing one expert, and those two experts appointing the third) in order to decide any issues that remain unresolved following consideration at senior management level and (d) either an appeal-type right to Ofcom from the decision of the expert panel, or a right for both Ofcom and the monitoring trustee to partake in the expert determination process and make submissions in respect of the same but where the decision of the expert panel remains final.

7. **EFFECTIVE IMPLEMENTATION PROCESS OF RCBs**

- 7.1 [X]. As such, [X] is not in a position to comment specifically on whether such efficiencies are realistic and/or achievable in the timescale suggested by the Parties.
- 7.2 However, for completeness, [X] does not view any material risk that the remedies package proposed in this paper would undermine or restrict the Parties' ability to realise the claimed efficiencies allegedly stemming from the Proposed JV (including, for example, efficiencies from combining Vodafone and Three's sites, spectrum and customer bases which would support improved mobile connectivity, and lead to accelerated 5G roll-out and fixed wireless access).