

Contrary to CMA's provisional speculative view – the entry of a new 4th MNO – is the only effective remedy for the Vodafone / Three merger

Dear Mr. McIntosh,

Concerning the critical question on the remedies (structural divestitures vs. behavioural commitments) that can eliminate the long-term competition concerns in their entirety **Rewheel categorically disagrees with CMA's provisional speculative view.**

If we can raise one and only one point as a counterargument to CMA's inexplicable view that behavioural commitments rather than structural divestitures could be effective remedies for the proposed Vodafone / Three merger *“CMA stated in the Notice of possible remedies...With regards to a partial divestiture remedy, our initial view is that this remedy could enable a fourth MNO to enter the UK post-Merger and we therefore propose to explore this option further. However, our initial view is that it may not be effective...In the present case, our initial view is that there are case specific facts that suggest behavioural remedies could be appropriate.”* it will be the following;

Did anybody from CMA's investigation team or the panel of independent experts bothered to read CMA's view – that fully supported the European Commission's 2016 decision to prohibit the 4 to 3 Three / O2 merger in the UK – on what remedy was deemed to be the only effective remedy that could have remove the long-term competition concerns entirely from the proposed Three / O2 merger?

Alex Chisholm, the CMA Chief Executive, wrote a public letter¹² to the European Commission on the 11th of April 2016 – during the investigation of Hutchison's proposed acquisition of Telefonica O2 in the UK (4 to 3 mobile merger) – where he rejected outright all behavioural remedies as ineffective and categorically stated that the only effective remedy for the Three / O2 merger is the upfront entry of a new 4th MNO.



Commissioner Margrethe Vestager
European Commission
1049 Bruxelles/Brussels
BELGIQUE/BELGIE

Alex Chisholm
Chief Executive
Competition and Markets Authority
United Kingdom

11 April 2016

Dear Margrethe,

Case M.7612 Hutchison 3G UK / Telefonica UK

As you are aware, the Competition and Markets Authority (CMA) has serious concerns regarding the proposed merger between Hutchison 3G UK and Telefonica UK. We believe this merger would give rise to a significant impediment to effective competition in retail and wholesale mobile telecoms markets in the United Kingdom. This letter briefly sets out our concerns regarding the merger and proposed remedies, which have also been thoroughly detailed by the CMA in a number of formal submissions to the Commission's case team.

While I appreciate the considerable efforts made by the Commission to explore remedies with the merging parties that seek to eliminate the adverse effects identified, it is clear that the remedies offered fall well short of what would be required to meet the relevant legal standard, as detailed in our case submissions.

The proposed remedies are materially deficient as they will not lead to the creation of a fourth Mobile Network Operator (MNO) capable of competing effectively and in the long-term with the remaining three MNOs such that it would stem the loss of competition caused by the merger. In addition, they fail to address concerns arising from the presence of the merged entity in both the network sharing arrangements, including the greater risk of coordination that this brings.

The only appropriate remedy that would meet the criteria that the Commission is bound to apply (ie that the remedies eliminate the competition concerns in their entirety, are comprehensive, effective and capable of ready implementation) is the divestment – to an appropriate buyer approved by the Commission – of either the Three or O2 mobile network businesses, in entirety, or possibly allowing for limited 'carve-outs' from the divested business. The divestment would need to include the mobile network infrastructure and sufficient spectrum to ensure a commercially viable fourth MNO in the UK. Absent such structural remedies, the only option available to the Commission is prohibition.

The CMA urges the Commission to act to prevent the long-term damage to the UK mobile telecoms market, and therefore to the interests of UK consumers, that both of our authorities have predicted will result from this merger.

Yours sincerely

Alex Chisholm
Chief Executive

The CMA Chief Executive emphatically stated in 2016 *“The only appropriate remedy...that...eliminate the competition concerns in their entirety... is the creation of a fourth Mobile Network Operator (MNO) capable of competing effectively and in the long-term with the remaining three MNOs...Absent such structural remedies, the only option available to the Commission is prohibition.”*.

What changed? Why such change of heart from the CMA?

¹<https://www.gov.uk/government/publications/proposed-hutchison-telefonica-merger-cma-letter-to-european-commission>

²https://assets.publishing.service.gov.uk/media/5a816cebe5274a2e87dbd8f6/CMA_letter_to_Commissioner_Margrethe_Vestager.pdf

Is the proposed 4 to 3 Vodafone / Three mobile merger less anti-competitive than the 2016 proposed 4 to 3 Three / O2 mobile merger? No, it is not. The opposite is true. Given that Vodafone and Three are more close competitors than Three and O2 were back in 2016 and given that Vodafone and Three as the no.3 and no.4 MNOs respectively offer the lowest prices in the market today their combination would lead to higher market symmetry and give rise to more serious competition concerns compared to the 2016 proposed Three / O2 merger.

Surely, the question on whether behavioural commitments (investment commitments, time limited retail protections, pre-agreed wholesale access terms and MVNO network capacity ring-fencing) constitute an effective remedy in 4 to 3 mobile mergers should not depend on who is heading the CMA (Mr. Chisholm or Ms. Cardell) or on who is heading the European Commission Directorate for Competition (Mr. Almunia or Ms. Vestager).

Mr. Almunia approved the Austrian, Irish and German 4 to 3 mobile mergers with behavioural MVNO access remedies while Ms. Vestager ruled out behavioural commitments as ineffective and requested structural divestitures for the UK (fully supported by CMA), Italian and Spanish 4 to 3 mobile mergers.

Politics aside, the UK merger regulations requires that remedies must eliminate all (short- and long-term) competition concerns in their entirety and as CMA has categorically argued, structural divestitures (i.e., the entry of a new 4th MNO) is the only effective remedy that can eliminate the long-term competition concerns in 4 to 3 mobile mergers.

Rewheel 4 to 3 mobile merger assessment studies in Germany³, the UK⁴ and Italy⁵ have shown beyond any doubt that under no circumstances MVNOs can fully substitute the competitive pressure exerted by no.4 MNOs and remedy in their entirety the long-term competition concerns from 4 to 3 mobile mergers.

The only effective remedy⁶⁷ that can eliminate the competition concerns entirely from the 4 to 3 Vodafone / Three merger, as required by law, is the upfront entry of new 4th mobile network operator.

The upfront entry of a new 4th mobile network operator in the UK requires the divestiture of substantial low frequency (sub 1 GHz), mid-band (1800-2100 MHz) and high frequency 3.6 MHz TDD spectrum coupled together with site divestitures and/or site collocation agreement/s and time-limited future-proof national roaming agreement/s at competitive wholesale rates.

Helsinki, 25th September 2024

Sincerely,

Antonios Drossos

Managing Partner Rewheel

³https://research.rewheel.fi/insights/2015_may_premium_drillisch/





⁴https://research.rewheel.fi/downloads/Effectiveness_MVNO_wholesale_access_remedies_25012016_PUBLIC.pdf

⁵https://research.rewheel.fi/downloads/Hutchison_WIND_merger_Italy_remedies_01092016_PUBLIC.pdf

⁶https://research.rewheel.fi/downloads/T-Mobile_Tele2_4_to_3_mobile_merger_effective_remedies_REDACTED_PUBLIC.pdf

⁷https://research.rewheel.fi/downloads/1&1_Drillisch_4th_MNO_entry_Germany_PUBLIC_VERSION.pdf

Contrary to CMA’s provisional speculative view – the entry of a new 4th MNO – is the only effective remedy for the Vodafone / Three merger

	What CMA’s theoretical analysis and speculative views show?	Do market data & prior CMA views support CMA’s provisional view?
<p>Will the 4 to 3 Vodafone / Three merger lead to price increases and consumer harm?</p>	<p>The merger will result to 7-10% average price increases. The cost to UK consumers could reach 1.12 billion per year. Low-income consumers would be hit the hardest.</p> 	<p>Monthly prices in 3-MNO markets are 2-3x higher than in 4-MNO markets. The merger will lead to average substantial price increases of 26% to 51%. Low-income consumers will see their monthly bills double from 10 - 15 £ to 20 - 30 £.</p>
<p>Will the merger improve the capacity and quality of mobile networks in the UK?</p>	<p>CMA provisionally concluded that the merger is likely to result in some improvement in various network quality metrics, but less than the what Vodafone and Three have claimed.</p> 	<p>Contrary to CMA’s speculative view, market data from 3 vs. 4-MNO markets show that the merger will most likely NOT lead to higher network capacity & quality in the UK. Network quality, reliability and speed are NOT higher in more concentrated mobile markets. Mobile mergers do NOT lead to better networks, they only lead to higher prices.</p>
<p>Can behavioural remedies (investment commitments, retail price caps, MVNO capacity ring-fencing) eliminate the merger competition concerns in their entirety?</p>	<p>CMA provisionally concluded that there are case specific facts that suggest behavioural remedies could be appropriate.</p> 	<p>Contrary to CMA’s current speculative view, under NO circumstances behavioural remedies can eliminate the merger long-term competition concerns. The CMA Chief Executive, Alex Chisholm, rejected outright all behavioural remedies as ineffective during the 2016 investigation of the 4 to 3 Three / O2 merger in the UK.</p>
<p>What is the only effective remedy that can eliminate both the short- and long-term competition concerns from the Vodafone / Three merger as required by law?</p>	<p>CMA provisionally concluded with regards to a partial divestiture remedy, that this remedy could enable a fourth MNO to enter the UK post-merger and proposed to explore this option further. However, CMA inexplicably noted that its initial view is that the entry of a new 4th MNO may not be effective remedy.</p> 	<p>Contrary to CMA’s current speculative view – the entry of a new 4th MNO – is the only effective remedy for the Vodafone / Three merger. The CMA Chief Executive, Alex Chisholm, categorically stated in the open letter he wrote to the European Commission during the 2016 investigation of the 4 to 3 Three / O2 merger in the UK that “Absent of a new 4th MNO entry the only option available to the Commission is prohibition.”.</p>

Concerning the critical question on the remedies (structural divestitures vs. behavioural commitments) that can eliminate the long-term competition concerns in their entirety **Rewheel categorically disagrees with CMA's provisional speculative view.**

If we can raise one and only one point as a counterargument to CMA's inexplicable view that behavioural commitments rather than structural divestitures could be effective remedies for the proposed Vodafone / Three merger “*CMA stated in the Notice of possible remedies...With regards to a partial divestiture remedy, our initial view is that this remedy could enable a fourth MNO to enter the UK post-Merger and we therefore propose to explore this option further. However, our initial view is that it may not be effective...In the present case, our initial view is that there are case specific facts that suggest behavioural remedies could be appropriate.*” it will be the following;

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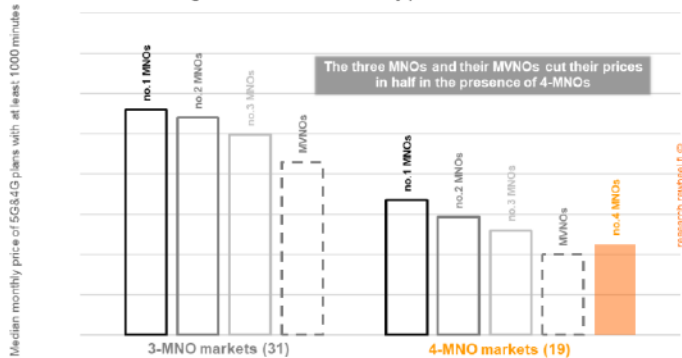
²https://assets.publishing.service.gov.uk/media/5a816cebe5274a2e87dbd8f6/CMA_letter_to_Commissioner_Margrethe_Vestager.pdf

MVNO prices are dependent on MNO prices which in turn are determined by the market structure: the number of MNOs (3 vs. 4) present in mobile markets

Consumers pay 2x higher monthly prices in 3-MNO vs. 4-MNO mobile markets for 2x fewer gigabytes, same download speeds and same network quality & reliability.

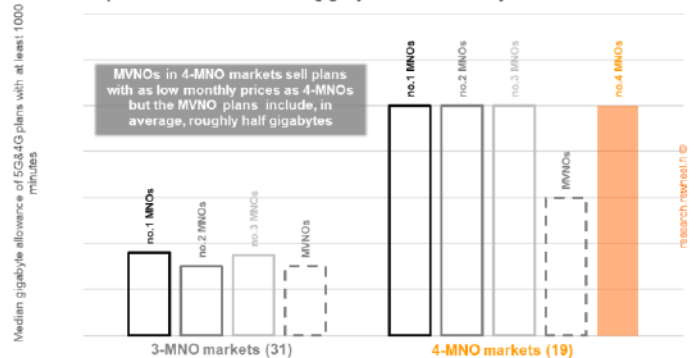
- In 3-MNO markets MNO and MVNO monthly prices are, in average, 2x higher than in 4-MNO markets while the gigabyte allowances sold by MNOs and MVNOs in 3-MNO markets are, in average, 2x smaller than in 4-MNO markets.
- The MNOs and their MVNOs cut their prices in half and double the gigabyte allowances in the presence of no.4 MNOs.
- In 4-MNO markets MVNOs match the monthly prices of no.4 MNOs but MVNO plans include in average, 2x fewer gigabytes at 2x slower download speeds.
- In the presence of no.4 MNOs incumbent MNO network capacity miraculously increases by 4-fold yielding a 4x drop in both their retail and wholesale (MVNO) gigabyte prices.
- All things considered, consumers pay 2x higher monthly prices in 3-MNO vs. 4-MNO mobile markets for 2x fewer gigabytes, same download speeds and same network quality & reliability.

Monthly prices of the three MNOs and of their MVNOs in 3-MNO markets are 2x higher than no.4 MNO monthly prices in 4-MNO markets...



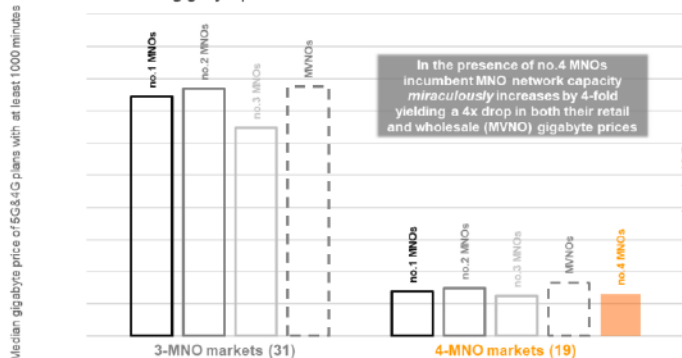
Mobile network operators and MVNOs from 50 EU & OECD markets. The bars depict the median value among all plans included in each group. For MNOs, plans from main and sub-brand/s are included.

... and on top of that, consumers in 3-MNO markets pay 2x higher monthly prices for less than half the gigabytes consumers buy in 4-MNO markets



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In 3-MNO markets the three MNOs and their MVNOs charge 4x higher gigabyte prices than no.4 MNOs in 4-MNO markets



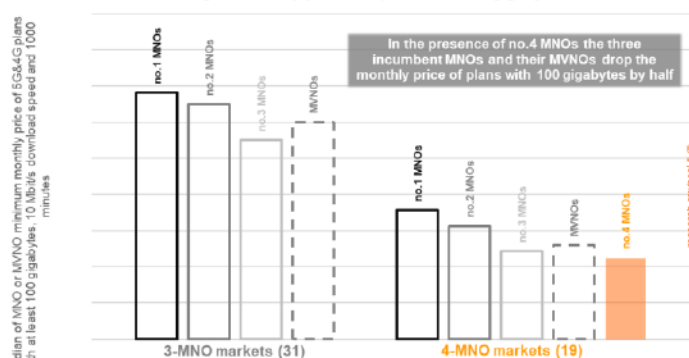
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In 3-MNO markets consumers pay 2x higher monthly fees for less than half the gigabytes...and still get the same speeds than in 4-MNO markets



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In 3-MNO markets the three MNOs and their MVNOs charge consumers 2x higher monthly prices for plans with 100 gigabytes



Mobile network operators and MVNOs from 50 EU & OECD markets. The bars depict the median value of the minimum monthly price for each MNO or MVNO included in each group. For MNOs, plans from main and sub-brand/s are included.

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1 Study context, structure & findings

Are MVNO prices competitive and can MVNOs or other behavioural commitments fully substitute the competitive pressure exerted by no.4 MNOs and remedy the competition concerns in their entirety in 4 to 3 mobile mergers?

MVNOs (Mobile Virtual Network Operators) are providers of 5G or 4G mobile data and voice services that do not hold spectrum licenses and do not own or operate radio network infrastructures like MNOs (Mobile Network Operators) but obtain bulk access to network services of MNOs through wholesale access agreements at wholesale rates or simply by retailing MNO services at discounted (e.g., retail minus) rates.

The competitiveness of MVNOs resurfaces periodically and becomes a focal point when competition authorities are presented with remedies for countervailing the established competition concerns (anti-competitive effects) in 4 to 3 mobile mergers.

Most recently, CMA, the UK's Competition and Markets Authority issued its provisional findings³ on the proposed Vodafone / Three 4 to 3 mobile merger in the UK.

CMA provisionally concluded that the “Merger could lead to tens of millions of mobile customers having to pay more.” and that the “Merger could improve the quality of mobile networks...CMA currently considers that these claims are overstated...but incentives to follow through on the investment once deal is complete are uncertain.”. CMA welcomed third party responses to its provisional findings and its notice of possible remedies to be considered in its final merger report.

The first part of this study, which is publicly available, forms Rewheel's response to CMA's Vodafone / Three merger provisional findings and its notice of possible remedies.

Rewheel analysis shows that indeed the proposed Vodafone / Three 4 to 3 mobile merger will most likely lead⁴ to substantial 26% to 51% monthly price increases in the UK mobile market but contrary to CMA's speculative view, Rewheel concludes that the merger will most likely NOT significantly improve⁵ the quality of mobile networks in the UK.

Concerning the critical question on the remedies (structural divestitures vs. behavioural commitments) that can eliminate the long-term competition concerns in their entirety **Rewheel categorically disagrees with CMA's provisional speculative view.**

If we can raise one and only one point as a counterargument to CMA's inexplicable view that behavioural commitments rather than structural divestitures could be effective remedies for the proposed Vodafone / Three merger “CMA stated in the *Notice of possible remedies...With regards to a partial divestiture remedy, our initial view is that this remedy could enable a fourth MNO to enter the UK post-Merger and we therefore propose to explore this option further. However, our initial view is that it may not be effective...In the present case, our initial view is that there are case specific facts that suggest behavioural remedies could be appropriate.*” it will be the following;

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³<https://www.gov.uk/government/news/cma-sets-out-provisional-view-on-vodafone-three-merger>

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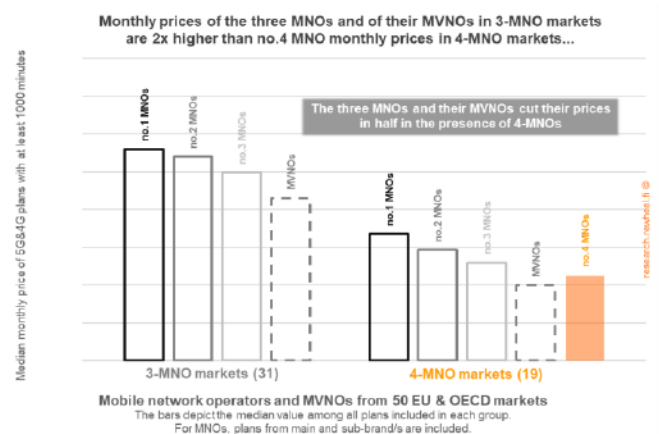
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The only effective remedy¹¹¹² that can eliminate the competition concerns entirely from the 4 to 3 Vodafone / Three merger, as required by law, is the upfront entry of new 4th mobile network operator.

The upfront entry of a new 4th mobile network operator in the UK requires the divestiture of substantial low frequency (sub 1 GHz), mid-band (1800-2100 MHz) and high frequency 3.6 MHz TDD spectrum coupled together with site divestitures and/or site collocation agreement/s and time-limited future-proof national roaming agreement/s at competitive wholesale rates.

The second part of this study, which is available to subscribers of Rewheel’s research PRO reports, presents an analysis that examines the dependency of MNO and MVNO prices upon MNO market position and market (3 vs. 4-MNOs) structure.

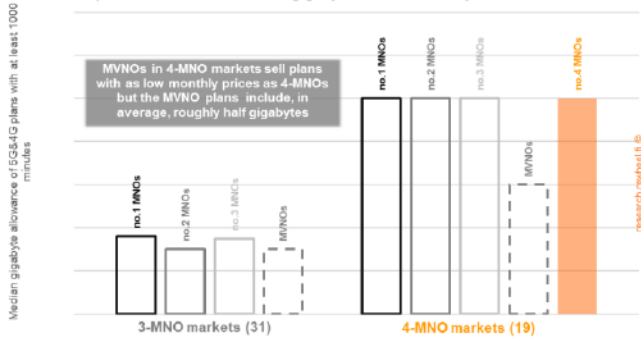
Our analysis shows that MVNO monthly prices and gigabyte allowances are dependent on MNO monthly prices and gigabytes allowances which in turn are determined by the market structure i.e., the number of MNOs (3 vs. 4) present in mobile markets.



⁸https://research.rewheel.fi/insights/2015_may_premium_drillisch/
⁹https://research.rewheel.fi/downloads/Effectiveness_MVNO_wholesale_access_remedies_25012016_PUBLIC.pdf
¹⁰https://research.rewheel.fi/downloads/Hutchison_WIND_merger_Italy_remedies_01092016_PUBLIC.pdf

¹¹https://research.rewheel.fi/downloads/IT-Mobile_Tele2_4_to_3_mobile_merger_effective_remedies_REDACTED_PUBLIC.pdf
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2 Rewheel’s response to CMA’s provisional findings and notice of possible remedies

CMA invited interested parties to respond to its provisional merger review findings and its notice of possible remedies. Section 2 below, which is publicly available, forms Rewheel’s detailed response to CMA’s Vodafone / Three merger provisional findings and its notice of possible remedies. We have complimented our detailed response presented herein with an open letter that criticizes CMA’s provisional speculative view that behavioural commitments could be an effective remedy to the Vodafone / Three merger.

Our response is structured in four sub-sections.

In sub-section 2.1 we present market data that support CMA’s provisional finding that the merger could lead to higher prices for tens of millions of mobile customers in the UK. In sub-section 2.2 we present market data (actual network quality, reliability and speed measurements from 3-MNO and 4-MNO markets) that **DO not support CMA’s provisional finding that the 4 to 3 Vodafone / Three merger could improve the quality of mobile networks in the UK.**

In sub-sections 2.3 and 2.4 we present the view of the European Commission Directorate for Competition, the prior categorical view of CMA – as laid-out by CMA in 2016 during the investigation of the 4 to 3 merger between Three and Telefonica O2 – and as well Rewheel’s unreserved view that contradicts CMA’s provisional speculative view that stated *“In the present case, our initial view is that there are case specific facts that suggest behavioural remedies could be appropriate.”*.

2.1 Market data supports CMA's view that the Vodafone / Three merger will most likely lead to higher prices

The Competition and Markets Authority (CMA) has provisionally concluded that the anticipated joint venture between Vodafone Group plc (Vodafone) and CK Hutchison Holdings Limited (CK Hutchison) that will combine their UK telecoms businesses, respectively Vodafone Limited (VUK) and Hutchison 3G UK Limited (3UK) (the Merger) may be expected to result in a substantial lessening of competition (SLC) in two markets in the UK. These are the supply of retail mobile telecommunications services to end customers, including both consumers and business customers (the retail market), and the supply of wholesale mobile telecommunications services (the wholesale market).

CMA stated in its summary of provisional findings¹³ that *“With regards to the retail market, we have provisionally concluded that the Merger would lead to price increases for tens of millions of mobile customers, or see customers get a reduced service such as smaller data packages in their contracts. It would create the largest retail mobile operator by revenue in the UK and the second largest in terms of customers.”*

Regarding the likely price increases that the merger will give rise to CMA stated *“Our quantitative economic analyses consistently show that the Merger is likely to have a material upwards impact on retail prices. Our analysis of the Gross Upwards Pricing Pressure Index (GUPPI) suggests significant pricing pressure of between 5-10% and 10-20% for 3UK and between 0-5% and 5-10% for VUK. Our merger simulation predicts that the Merged Entity's prices would rise by 7.0% for 3UK and 3.8% for VUK on average. This, along with predicted price rises from the other retail providers, would lead to a harm to UK customers which is equivalent to at least £328 million per year, though our sensitivity analysis suggests that this could be as high as £1.1 billion...We note that this uses relatively short-term margins and so may underestimate the impact of the Merger. Our sensitivity analysis suggests that using a longer-term margin would result in price increases of 10% on average for the Merged Entity and the cost to UK consumers could be up to GBP 1.123 billion a year (in 2023 GBP's).”*

CMA further noted that *“This analysis does not account for the loss of competition arising from the Merger on the wholesale market. Faced with less competitive wholesale terms, MVNOs would be less able to compete in the retail market, particularly in the low-cost segment where they tend to operate. This would lead to greater price increases than already outlined from the direct loss of retail competition resulting from the Merger.”*

and that *“We also note that our estimates are broadly consistent with the results of a recent European Commission study on the effects of market concentration on retail mobile pricing across European Union member countries (which at the time included the UK), which found a strong and significant positive relationship between market concentration and prices.”*

CMA summarized the findings of the 2024 European Commission study¹⁴ of mobile prices and market concentration – the higher the mobile market concentration the higher the mobile prices – on its provisional findings report¹⁵ *“A recent price-concentration study by Lear et al. (2024) commissioned by the European Commission for its ‘Protecting competition in a changing world’ report found ‘a strong and significant positive relationship between market concentration and prices’. The study covered 29 countries (23 EU countries as well as Canada, USA, Japan, South Korea, Australia and New Zealand) from 2009-2019. In particular, it estimated that ‘one additional MNO is associated with a reduction in average revenues per user (ARPU) by 7%. The impact is mostly driven by EU countries, in which one additional MNO is associated with a 9% reduction in ARPU.’”*

Over a span of 12 years, Rewheel has consistently observed statistically significant uniformly positive linear correlations with very high confidence intervals (99.5% and higher) between mobile monthly prices and mobile market concentration. Rewheel established the causal relationship between mobile market concentration – number of MNOs present and as well concentration measured by the Herfindahl–Hirschman Index (HHI) – and mobile prices in a ground breaking study that was released¹⁶ 12 years ago, in 2012.

¹³https://assets.publishing.service.gov.uk/media/66e3ca8a0d913026165c3df4/Summary_of_provisional_findings.pdf

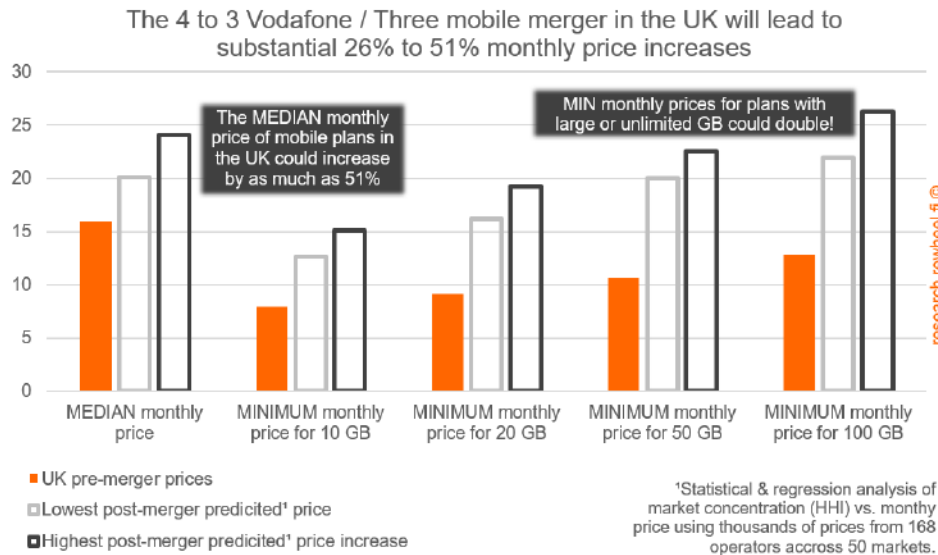
¹⁴https://competition-policy.ec.europa.eu/document/download/9dd03f5d-0df0-4372-b971-3019b86624fe_en?filename=KD0924494enn_Protecting_competition_in_a_changing_world_staff_report_2024.pdf

¹⁵https://assets.publishing.service.gov.uk/media/66e82b18c069f68b7681bb6b/Provisional_findings_report.pdf

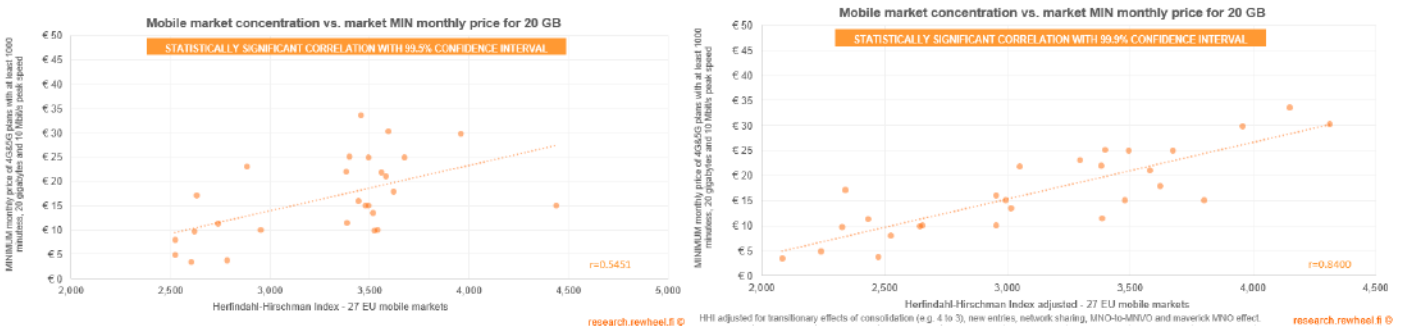
¹⁶https://research.rewheel.fi/downloads/Rewheel_EU27_smartphone_tariff_competitiveness_report_December_2012_HIGHLIGHTS.pdf

In February 2024, in a study¹⁷ titled ‘*The 4 to 3 Vodafone / Three mobile merger in the UK will lead to substantial 26% to 51% monthly price increases*’ we re-examined, by performing statistical and regression analysis, the dependency of mobile prices upon competition related factors with the dual aim of re-validating the findings of our previous studies¹⁸ – mobile prices are significantly higher in markets with higher concentration – and predicting the price increases from the 4 to 3 Vodafone / Three UK mobile merger.

Our regression analysis showed that the 4 to 3 Vodafone / Three mobile merger in the UK will lead to substantial 26% to 51% monthly price increases if the merger is approved without the upfront creation of a new 4th mobile network operator. As seen in the chart below, consumers in the UK could see their monthly bills rise by 26% to 51% in average. Those that subscribe to mobile plans with large or unlimited data could see their monthly cost double after the expiration of their current contracts.



The post-merger predicted prices increases, summarized in the bar chart above, are the outcome of statistical and regression analysis on thousands of monthly prices from 168 operators in 50 European and OECD countries. Our February 2024 analysis re-affirmed the statistically significant dependency – 99.5% confidence interval – of mobile monthly prices upon mobile market concentration. The analysis showed that mobile monthly prices are substantial higher in mobile markets with higher concentration such as in markets where fewer (3 versus 4) mobile network operators are present.



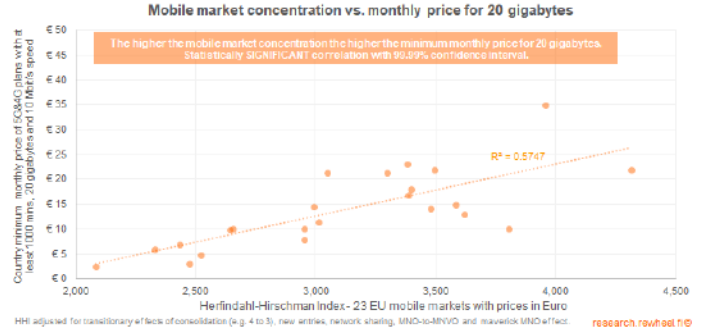
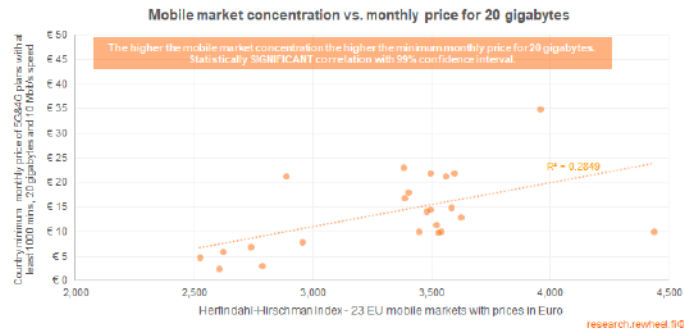
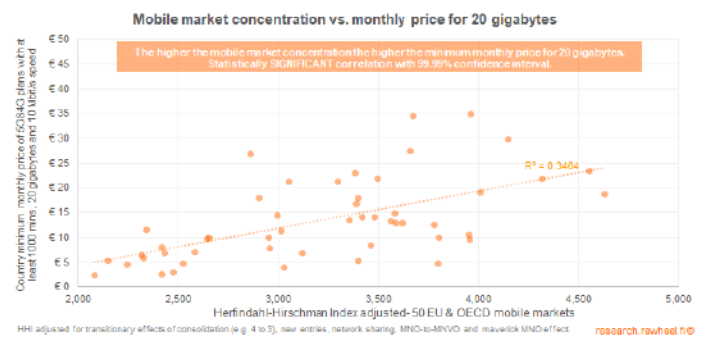
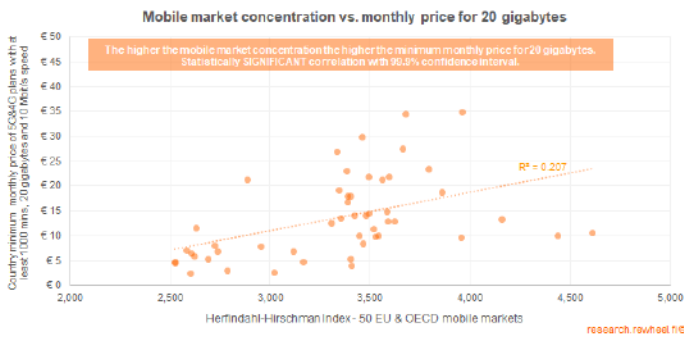
Most recently, in September 2024, in a study¹⁹ titled ‘*Network performance and speed are NOT higher in more concentrated mobile markets. Mobile mergers do NOT lead to better networks, they only lead to higher prices.*’ we re-examined using Rewheel’s latest mobile prices data set²⁰ from 1H2024, the dependency of mobile prices upon mobile market concentration.

¹⁷https://research.rewheel.fi/downloads/Predicted_price_increases_Vodafone_Hutchison_4_to_3_UK_mobile_merger_PUBLIC_VERSION.pdf

¹⁸https://research.rewheel.fi/downloads/Mobile_prices_2_to_5_times_lower_in_markets_with_4_MNOs_PUBLIC_VERSION.pdf

¹⁹https://research.rewheel.fi/downloads/Mobile_network_quality_reliability_speed_NOT_higher_concentrated_markets_PUBLIC_VERSION.pdf

²⁰https://research.rewheel.fi/downloads/The_state_of_mobile_and_broadband_pricing_1H2024_PUBLIC_REDACTED_VERSION.pdf



Once again, after observing statistically significant uniformly positive linear correlations with very high confidence intervals between mobile monthly prices and mobile market concentration we concluded that mobile monthly prices are higher in more concentrated mobile markets and hence an increase in mobile market concentration due to consolidation (e.g., 4 to 3 mobile mergers) will most likely lead to higher monthly prices.

The confidence intervals of the statistically significant correlations of mobile monthly prices and mobile market concentration are higher – the relationship between the variables strengthened – with the 1H2024 mobile prices data set compare to the 1H2023 mobile price data set.

As we explained in our February 2024 study²¹ ‘*The 4 to 3 Vodafone / Three mobile merger in the UK will lead to substantial 26% to 51% monthly price increases*’ we have tested the dependency of mobile prices upon competition related factors over a span of 12 years using monthly prices for the most popular plans that consumers bought. In the early years of 4G most consumers in EU subscribed to plans that included few (1 to 10) gigabytes. Today most consumers subscribe to plans that include much larger data volumes (10 to 100 or unlimited gigabytes).

We have tested the dependency of mobile prices upon competition related factors in three groups of countries. Across all 50 European & OECD mobile markets where we have been tracking prices annually or bi-annually for twelve years, across the 27 EU countries that share a common regulatory framework and across the 19 to 23 EU countries that share both a common regulatory framework and a common currency (Euro). We have tested the dependency of mobile prices upon market concentration using both the Herfindahl-Hirschman Index and a Herfindahl-Hirschman Index adjusted to account for transitional effects of consolidation (e.g. 4 to 3 mergers), new entries, network sharing, MNO-to-MNVO transitions and maverick MNO effect.

We have tested the dependency of mobile prices while the subscriber shares of the ~170 operators across the 50 mobile markets have been changing, while the prices have been changing (prices fell faster before the introduction of 5G, 5G slowed down the price decline), while gigabyte allowances that consumers bought have been getting larger and while the exchange rates for non-Euro countries have been fluctuating (we have also tested the dependency using PPP prices).

And despite all those changes we consistently observed statistically significant uniformly positive linear correlations with very high confidence intervals between mobile prices and mobile market concentration. **Market concentration has a statistically significant causal effect on mobile prices. The higher the mobile market concentration (HHI) the higher the mobile monthly prices.**

²¹https://research.rewheel.fi/downloads/Predicted_price_increases_Vodafone_Hutchison_4_to_3_UK_mobile_merger_PUBLIC_VERSION.pdf

Our extensive analysis of the dependency of mobile prices upon mobile market concentration coupled with our detailed documentation of the actual post-merger price increases in markets (e.g., Austria²² and Germany²³) where the European Commission, under the helm of Vice President Joaquin Almunia, approved 4 to 3 mobile mergers with behavioural (MVNO based) ineffective remedies lead us to confidently conclude that the 4 to 3 Vodafone / Three mobile merger in the UK will lead to substantial monthly price increases if the merger is approved without the upfront creation of a new 4th mobile network operator. Consumers in the UK could see their monthly bills rise by 26% to 51% in average. Those that subscribe to mobile plans with large or unlimited data could see their monthly cost double (from around 10 - 15 £ to around 20 - 30 £) after the expiration of their current contracts.

The 4 to 3 Vodafone / Three mobile merger if approved by CMA without the upfront entry of a new 4th mobile network operator – the only effective remedy – will cause significant financial harm to millions of low-income vulnerable consumers across the UK.

²²https://research.rewheel.fi/insights/2014_sept_premium_austria/

²³https://research.rewheel.fi/downloads/Germany_least_competitive_EU28_MVNO_ineffective_remedies_29022016_PUBLIC.pdf

2.2 Contrary to CMA's speculative view the merger will most likely NOT lead to higher network capacity & quality in the UK

CMA stated in its summary of provisional findings²⁴ that *“We have provisionally found that the Merger, by integrating the VUK and 3UK networks, could improve the quality of mobile networks and bring forward the deployment of next generation 5G networks and services, as claimed by VUK and 3UK. But we currently consider that these claims are overstated, and that the Merged Entity would not necessarily have the incentive to follow through on its proposed investment programme after the Merger. Most consumers also told us that they would not be willing to pay more for better quality. We therefore have significant concerns about the impact of the Merger on the large number of consumers who might have to pay more for improvements in network quality they do not value.”*

CMA concluded that *“We have therefore provisionally found that while some pro-competitive efficiencies are likely, these are not sufficient to offset the adverse effects of the Merger.”*

Regarding the claims of improved network quality CMA from the proposed merger CMA stated *“Many (but not all) of the Parties’ claimed efficiencies relate to what they described as ‘transformational’ increases in network quality that they said would result from the integration of their individual networks (and related investments), which they claimed would accelerate the deployment of 5G SA across the UK. The Parties said there would be significant improvements across a range of the different technical dimensions of network quality. The Parties said that without the Merger, they would remain ‘sub-scale’ compared to the two other UK mobile networks, and therefore unable to invest sufficiently to allow them to compete with them on network quality.”* and *“We agree that these improvements (if delivered) have the potential to enhance network quality. We therefore carefully considered, firstly, what network quality was likely to result without the Merger, and in particular whether there was evidence that supported the Parties’ claims that they are currently ‘sub-scale’. We have provisionally found that absent the Merger, both of the Parties’ standalone networks are likely to deliver higher network quality than they have claimed. We have reviewed the current business plans of both of VUK and 3UK, which show that they expect to continue to make network investments to improve customer experience. We also challenge the Parties’ claim that they are unable to effectively compete on a standalone basis so as to deliver good outcomes for UK customers.”*.

Regarding the likely decommissioning of mobile sites post-merger, i.e., reduction of the total number of mobile sites that Vodafone and Three operate today versus the mobile sites that the merged operator will operate after the merger, CMA stated *“In particular, we consider that the Parties may have the commercial incentive to retain a lower number of sites than claimed in the JNP given the cost savings that can be realised through site decommissioning. This commercial incentive may be particularly strong in low and mid traffic areas, where the impact on network congestion of the site decommissioning may be less, and Ofcom has raised concerns with us in this respect.”*.

Regarding the claims of enhanced network capacity from the merger CMA stated *“We have also carefully considered the Parties’ quantitative modelling of the claimed network capacity and quality impacts of the Merger (which include the claim of a market-wide welfare gain of £1.8 billion per year). 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.”*.

CMA summarized its findings with regards to the claims of improved network quality from the merger by stating *“However, we do currently consider that the Parties have the ability to, and are likely to, deliver some of the claimed network improvements efficiencies. In particular, we consider that based on the evidence we have seen thus far, the Merged Entity would have the incentive (and ability) to deliver the so-called ‘Day 1’ benefits of a combination of multi-operator core network arrangement (MOCN), and deployment of additional spectrum through sharing of the Parties’ combined holdings (for example in relation to 1,800 MHz spectrum). In addition, we also consider that some degree of site densification relative to either Party’s standalone networks is likely, particularly given the inevitability of network integration, although it is not possible to quantify precisely the likely extent (for example in terms of the Merged Entity’s site numbers or the level of spectrum deployed).”*

CMA concluded by stating *“The combination of these factors is likely to result in some improvement in various network quality metrics in ways that affect consumer experience, but less than the Parties have claimed.”*.

²⁴https://assets.publishing.service.gov.uk/media/66e3ca8a0d913026165c3df4/Summary_of_provisional_findings.pdf

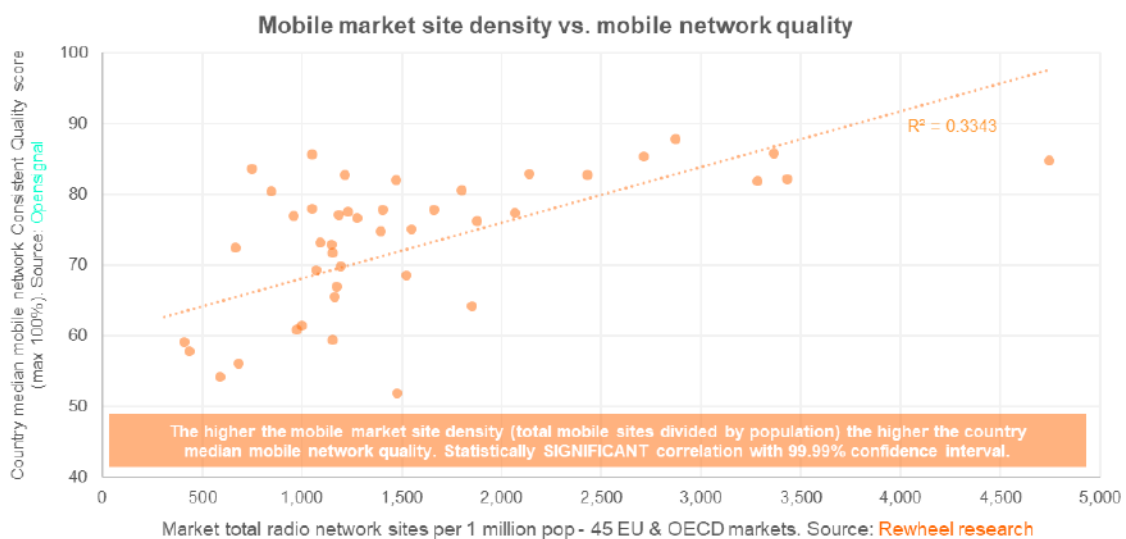
Rewheel’s view is that CMA, in its assessment of network quality improvement claims from the merger, correctly identified the key factors that determine network capacity and quality; (a) the total site number and (b) the amount of spectrum deployed per site.

Unless the merged entity provides hard commitments on the number of sites operated per year, precise site locations, the amount of spectrum deployed in each site with details regarding carrier configurations, carrier aggregations, antenna solutions, modulations, etc. any comparison between the merged entity network capacity and quality with the projected stand-alone Vodafone or Three network capacity and quality is NOT science but science fiction.

One thing is certain. After the merger the total number of sites in the UK mobile market will most likely decrease compare to the counterfactual i.e., Vodafone and Three continue as independent MNOs in a 4-MNO UK market. Hence, it is more likely than not, that there will be fewer mobile sites in total in the UK mobile market if the 4 to 3 Vodafone / Three merger is approved without the upfront creation of a new 4th MNO. And fewer mobile sites will almost certainly result in a reduction – not an increase as claimed by Vodafone and Three – in the UK’s mobile market total network capacity and in the overall mobile network quality.

The median gigabyte price across 4-MNO markets during the 1H2024 – an indirect measured of mobile network capacity that is made available to the end-users – was 5x lower than the median gigabyte prices across 3-MNO markets (0.14 € in 4-MNO markets versus 0.75 € in 3-MNO markets). The median gigabyte price in the 4-MNO UK mobile market was 0.31 € during the 1H2024. For more details see Rewheel’s April 2024 study²⁵ titled “*The state of mobile and broadband pricing – 1H2024*”. **Is CMA prepared to regulate with a retail cap the post-merger gigabyte price in the UK mobile market to match the competitive level (0.06 €) of the Italian mobile market which entails a retail price ~5 £ for 5G plans with unlimited minutes & SMS and 100 gigabytes? In Denmark the no.4 MNO Hutchison and as well other MNOs sell 5G plans (with unlimited minutes & SMS) that include 1 or 2 terabytes (1 000 or 2 000 gigabytes) whereas the gigabyte unit price is as low as 0.01 €. Is 0.01€ more appropriate level than 0.06€ for a post-merger gigabyte retail cap in the UK?**

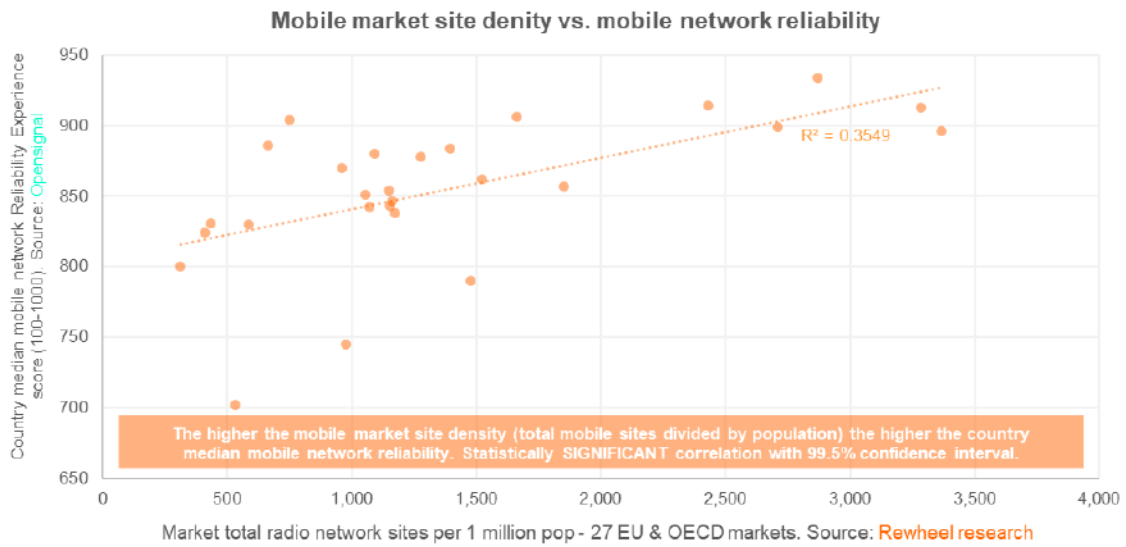
As seen in the scatter plots below that present the dependency of the country median mobile network Consistent Quality and Reliability Experience scores (measured by Opensignal²⁶) upon the mobile market site density (market total radio network sites per 1 million population) – reported by Rewheel in its December 2023 study²⁷ titled “*Wireless market and operator competitiveness – 2023*” – there is a positive statistically significant relationship with 99.99% and 99.5% confidence interval respectively between the variables. **The higher the mobile market site density (market total sites divided by population) the higher the country median mobile network quality and reliability.**



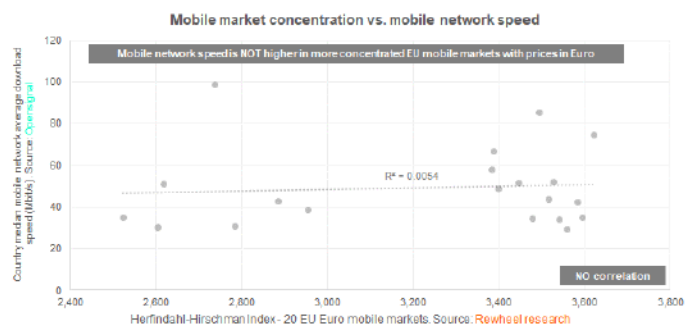
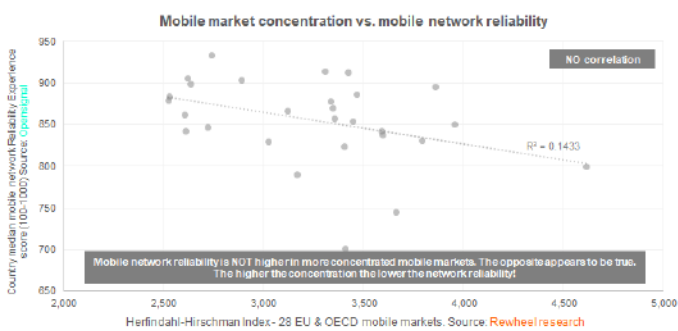
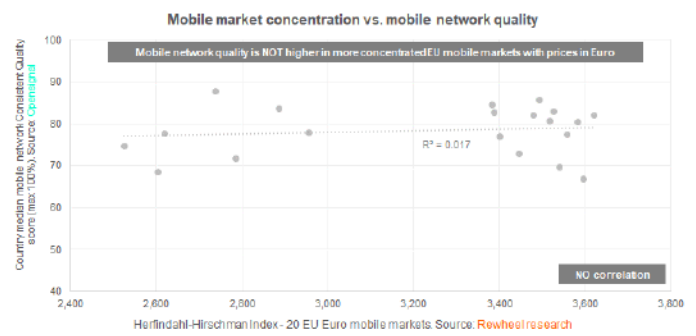
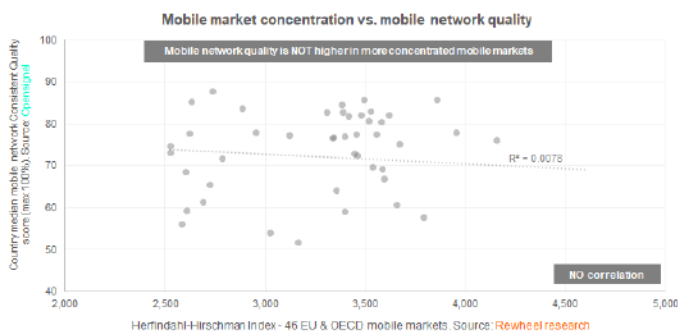
²⁵https://research.rewheel.fi/downloads/The_state_of_mobile_and_broadband_pricing_1H2024_PUBLIC_REDACTED_VERSION.pdf

²⁶<https://www.opensignal.com/>

²⁷https://research.rewheel.fi/downloads/Germany_least_competitive_EU28_MVNO_ineffective_remedies_29022016_PUBLIC.pdf



Moreover, as we established in our September 2024 study²⁸ titled “*Network performance and speed are NOT higher in more concentrated mobile markets. Mobile mergers do NOT lead to better networks, they only lead to higher prices.*” contrary to the claims that the consolidators and their consultants have been making during 4 to 3 mobile mergers – see latest dubious claims made by Compass Lexecon²⁹ in relation to Vodafone’s and Three’s 4 to 3 mobile merger in the UK and Rewheel’s rebut here³⁰ – mobile network performance (Consistent Quality and Reliability Experience) and average download speed, source OpenSignal³¹, are NOT higher in more concentrated mobile markets where monthly prices are 2-3x higher. Mobile mergers do NOT lead to better networks, they only lead to higher prices and consumer harm.



²⁸https://research.rewheel.fi/downloads/Mobile_network_quality_reliability_speed_NOT_higher_concentrated_markets_PUBLIC_VERSION.pdf

²⁹<https://static1.squarespace.com/static/5f9288b7ef71962ed2eac3c3/656da7b27453d563a5a31a18/1701685174561/Four-to-three-mobile-mergers+meta+paper+%28Compass+Lexecon%29+-+November+2023.pdf>

³⁰https://research.rewheel.fi/downloads/Predicted_price_increases_Vodafone_Hutchison_4_to_3_UK_mobile_merger_PUBLIC_VERSION.pdf

³¹<https://www.opensignal.com/>

The actual market data presented herein complemented by data presented in Rewheel’s September 2024 study that has already been submitted as an input to CMA’s Phase II investigation contradict the theoretical analysis and mostly speculative findings that led CMA to conclude that “...the Vodafone / Three merger is likely to result in some improvement in various network quality metrics in ways that affect consumer experience, but less than the Parties have claimed”.

Actual market data from 50 EU & OECD mobile markets strongly support the notion that the 4 to 3 mobile merger between Vodafone and Three – which will significantly increase concentration in the UK mobile market – will most likely neither lead to an increase in total mobile network capacity nor will it improve the overall quality and reliability of mobile networks in the UK.

2.3 Contrary to CMA's view behavioural remedies can NOT eliminate the merger long-term competition concerns

CMA laid out two types of possible remedy options on which views were sought on its Notice of possible remedies³² that was published together with its provisional findings document³³.

Structural remedy options comprising of (a) prohibition of the merger and (b) A partial divestiture remedy requiring the divestiture of or access to certain mobile network assets and spectrum (from either VUK or 3UK) in the UK.

Behaviour remedy options comprising of (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.

CMA stated that *“Our initial view is therefore that an Investment Commitment may not by itself comprehensively address the SLCs provisionally identified in the Retail and Wholesale Markets. We are considering whether additional measures could supplement the Investment Commitment in order to achieve a comprehensive solution. It may also take some time for the rivalry enhancing effects of an Investment Commitment to manifest. As such, there may be a need to supplement an Investment Commitment with some time-limited protections in relation to price and related terms, including data packages (see the section below on potential time-limited customer protections in the Retail Market). With regards to the Wholesale Market, we have provisionally found that the Merger would reduce the number of MNOs from four to three, making it more difficult for independent MVNOs to secure competitive terms, restricting their ability to offer the best deals to retail customers. Our initial view is that an Investment Commitment is likely to have a greater impact on competition in the Retail Market than the Wholesale Market. As such, there may be a need to supplement an Investment Commitment with some additional measures targeted at the Wholesale Market (see the below section on potential Wholesale Market remedies).”*

Regarding Time-limited Retail Market customer protections CMA stated *“Such protections might encompass, for example, allowing the Parties’ existing customers to ‘roll over’ their existing contract terms - price, data allowance etc - for a pre-defined period. Included within this, or separately, there could also be a commitment by the Parties to protect social tariff terms and conditions. They might be accompanied by promotion to encourage uptake amongst those consumers who are eligible.”*

Regarding Wholesale market remedies CMA stated *“We have identified two possible Wholesale Market remedies, which are: (a) Wholesale access terms – This could involve pre-agreed nondiscriminatory wholesale terms, including prices, being made available to MVNOs, subject to a reasonable limit (number of MVNOs or network capacity utilisation). (b) Capacity ring-fencing – This could entail ring-fencing a proportion of the Merged Entity’s network capacity exclusively for MVNOs.”*

CMA provisional concluded that *“In the present case, our initial view is that there are case specific facts that suggest behavioural remedies could be appropriate.”*

We are perplexed by CMA's provisional view that this package of behavioural remedies, or any package to that respect, could be an appropriate remedy for the Vodafone / Three merger. Firstly, the package of behavioural remedies bluntly contradicts the UK's Merger Remedies³⁴ guidance that states *“The question for the CMA is whether the remedy proposed would act in a clear-cut manner to remove all competition concerns meeting the test for reference caused by the merger.”*

CMA did not provide details on how this package of behavioural commitments (investment commitments, time limited retail protections and wholesale market remedies in particular pre-agreed wholesale access terms or MVNO network capacity ring-fencing) will comprehensively eliminate the long-term competition concerns in their entirety?

³²https://assets.publishing.service.gov.uk/media/66e3ca4cbfc2fdc9641316e0/Notice_of_possible_remedies.pdf

³³https://assets.publishing.service.gov.uk/media/66e3ca8a0d913026165c3df4/Summary_of_provisional_findings.pdf

³⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/764372/Merger_remedies_guidance.pdf

The European Commission when it prohibited³⁵ Hutchison's proposed acquisition of Telefonica O2 in 2016 – fully supported by CMA – unambiguously stated³⁶ that *"The Commission, based on the results of the market investigation and the analysis of the internal documents of the Parties, considers that non-MNOs are unable to meaningfully constrain the competitive behaviour of MNOs on the retail market for mobile telecommunications services today. Moreover, as shown in Section 8.3.1, the Transaction would limit the non-MNOs' ability to compete on the retail market even more."*

This view was fully shared by the CMA which noted in its Phase II submission to the Commission that: "The greater the magnitude of the loss of competition at the MNO level resulting from a merger, the less sufficient the limited constraint from MVNOs is to mitigate this loss. In the present case the CMA considers that the existence of even a relatively large number of MVNOs in the UK telecoms market is therefore insufficient to address the significant loss of an important MNO competitor the serious impact of which is compounded by additional concerns caused by the network sharing arrangements and the impact on the wholesale mobile market."

Commission's assessment

Introduction: competitive position of non-MNOs in the United Kingdom market

- (969) The Commission, based on the results of the market investigation and the analysis of the internal documents of the Parties, considers that non-MNOs are unable to meaningfully constrain the competitive behaviour of MNOs on the retail market for mobile telecommunications services today. Moreover, as shown in Section 8.3.1, the Transaction would limit the non-MNOs' ability to compete on the retail market even more. This view is shared by the CMA which noted in its Phase II submission to the Commission that: *"The greater the magnitude of the loss of competition at the MNO*

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*level resulting from a merger, the less sufficient the limited constraint from MVNOs is to mitigate this loss. In the present case the CMA considers that the existence of even a relatively large number of MVNOs in the UK telecoms market is therefore insufficient to address the significant loss of an important MNO competitor the serious impact of which is compounded by additional concerns caused by the network sharing arrangements and the impact on the wholesale mobile market."*⁸⁵⁴

Now it is important to note that Vodafone and Three, as the no.3 and no.4 MNOs respectively, are more close competitors than Three and O2 were back in 2016 as no.4 and no.2 MNOs respectively. Given that Three and Vodafone are the MNOs that offer the lowest prices in the UK mobile market today the Vodafone / Three merger will give rise to higher symmetry, higher prices and more consumer harm than the 2016 Three / O2 merger that was prohibited by the European Commission with the full support of CMA.

After having its first and second commitment packages rejected by the Commission during the 2016 investigation of its proposed acquisition of O2 in the UK, Hutchison submitted its third commitment package comprising of (a) capacity ring-fencing for MVNOs (Tesco Mobile and Virgin Media), (b) capacity ring-fencing for a potential new 4th MNO, (c) network sharing commitment and (d) wholesale market commitment. The capacity ring-fencing commitment made by Hutchison for the MVNOs and as well for a potential new 4th MNO was a share of the combined Three / O2 network throughput in Gbit/s.

³⁵https://ec.europa.eu/commission/presscorner/detail/en/IP_16_1704

³⁶https://ec.europa.eu/competition/mergers/cases/decisions/m7612_6555_3.pdf

The European Commission stated after assessing Hutchison's third commitment package that *"...the Commission considers that the Third Commitments can be seen as an improvement in some respects but they still do not eliminate entirely the competition concerns identified in this case and would not be comprehensive and effective from all points of view."*

9.6. Commission's assessment of the Third Commitments

(2914) In light of the circumstances of the present case and for the reasons set out in Sections 9.6.1 to 9.6.6, and in light of paragraphs 13, 14 16 and 17 of the Remedies Notice referred to in section 9.1, the Commission considers that the Third Commitments can be seen as an improvement in some respects but they still do not

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eliminate entirely the competition concerns identified in this case and would not be comprehensive and effective from all points of view.²³⁸⁴

In rejecting Hutchison's third commitment package The European Commission cited the supporting views from six national competition authorities, including those of CMA UK. The Commission stated *"The Commission received comments on the Third Commitments from the national competition authorities of Austria [ID5975], Germany [ID5990], Ireland [ID5944], Italy [ID6030], the Netherlands [ID6014] and the United Kingdom [ID5979]. All six competition authorities expressed negative views on the Third Commitments."*

²³⁸⁴ The Commission received comments on the Third Commitments from the national competition authorities of Austria [ID5975], Germany [ID5990], Ireland [ID5944], Italy [ID6030], the Netherlands [ID6014] and the United Kingdom [ID5979]. All six competition authorities expressed negative views on the Third Commitments.

²³⁸⁵ Form RM dated 6 April 2016, paragraphs 84, 85.

²³⁸⁶ Form RM dated 6 April 2016, paragraphs 86 to 88.

²³⁸⁷ Form RM dated 6 April 2016, paragraphs 89, 90.

²³⁸⁸ Form RM dated 6 April 2016, paragraphs 91 to 105.

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Beside CMA, the national competition authorities of Austria, Ireland and Germany expressed their views that behavioural commitments which include capacity ring-fencing for MVNOs and/or for a potential new 4th MNO could NOT be construed as an effective remedy for the 4 to 3 Three / O2 proposed mobile merger. The national competition authorities of Austria, Ireland and Germany, by 2016, had already real post-merger market experience of the ineffectiveness³⁷³⁸³⁹⁴⁰ of the behavioural so called "capacity MVNO-based" remedies that were used by the European Commission, under the helm of Joaquin Almunia, to unlawfully approve the 4 to 3 mobile mergers in Austria in 2012⁴¹, Ireland in 2014⁴² and Germany in 2014⁴³.

³⁷https://research.rewheel.fi/insights/2015_jan_premium_austria/

³⁸https://research.rewheel.fi/insights/2015_may_premium_austria/

³⁹https://research.rewheel.fi/insights/2015_may_premium_drillisch/

⁴⁰https://research.rewheel.fi/insights/2016_feb_premium_denmark_germany/

⁴¹https://ec.europa.eu/commission/presscorner/detail/en/IP_12_1361

⁴²https://ec.europa.eu/commission/presscorner/detail/en/IP_14_607

⁴³https://ec.europa.eu/commission/presscorner/detail/en/IP_14_771

As Rewheel has shown in its January 2016 study⁴⁴ titled “*Effectiveness of MVNO wholesale access remedies*” under no circumstances MVNOs can fully substitute the competitive pressure exerted by no.4 MNOs and remedy the anti-competitive long-term effects of 4 to 3 mobile mergers.

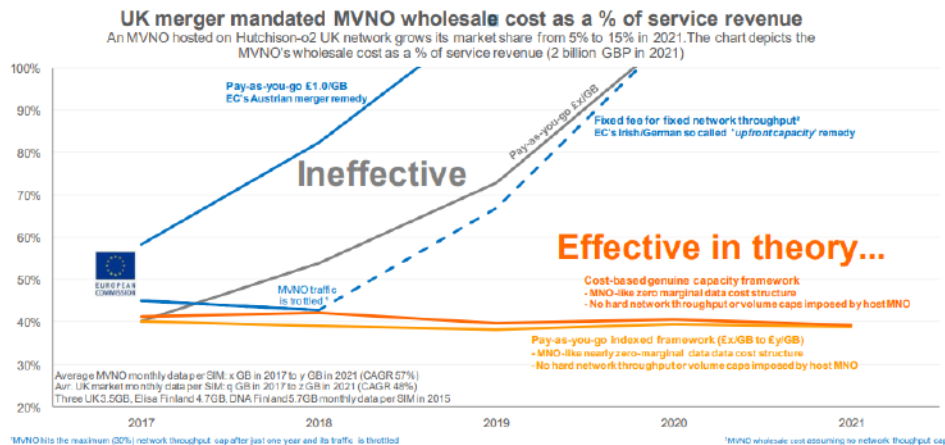
Mobile network throughput (Gbit/s) ≠ Mobile network capacity

Effectiveness of MVNO wholesale access remedies

Comprehensive analysis of commercial and merger mandated MVNO wholesale access frameworks and assessment of their efficacy in restoring effective competition in 4 to 3 mobile mergers

- Case study: The 4 to 3 mobile UK merger in the UK – Hutchison’s acquisition of o2
- Are there any effective remedies that could remove the competition concerns entirely and restore effective competition in the UK mobile market?
- Should Commissioner Vestager block the Hutchison o2 merger in the UK?

Rewheel / Digital Fuel Monitor premium report, 25th January 2016



So, what according to CMA will be an effective capacity ring-fencing level that will remove the long-term competition concerns entirely? Should the capacity ring-fencing guarantee that post-merger MVNOs can profitably offer plans with gigabyte prices that match the 1H2024 UK median gigabyte price of 0.31 € or should the capacity ring-fencing guarantee that post-merger MVNOs can profitably offer plans with the 2H2024 iD Mobile (MVNO on Three’s network) median gigabyte prices of 0.125 £ (80 gigabytes for 10 £), 0.08 £ (150 gigabytes for 12 £) or 0.047 £ (300 gigabytes for 14 £)?

Pay Monthly Phones SIM Only Deals Upgrades Shop Help & Support Log in

Minutes	Unlimited	24 months Plan length	80GB Data	£5.00 for the first 6 months then £10.00 Per month	Choose this plan
Minutes	Unlimited	24 months Plan length	150GB Data	£6.00 for the first 6 months then £12.00 Per month	Choose this plan
Minutes	Unlimited	24 months Plan length	300GB Data	£14.00 Per month	Choose this plan

⁴⁴https://research.rewheel.fi/downloads/Effectiveness_MVNO_wholesale_access_remedies_25012016_PUBLIC.pdf

And what about in 3-, 5- or 10-years post-merger? What should the capacity ring-fencing guaranteed price should be? Should it be 0.01 € (10 € per 1 000 gigabytes) or should it be 0.001€ (10 € for 10 000 gigabytes) or 0.0001€ (10 € for 100 000 gigabytes)?

If CMA wishes we could provide to the merger investigation team free access to our 2016 study that comprehensively explains why under no circumstances can MVNOs substitute the competition intensity exerted by no.4 MNOs that enjoy near-zero marginal cost bases. Unless of course the host MNOs are willing to provide the MVNOs unrestricted access (no wholesale throughput, speed, volume or any other caps and no retail restrictions on MVNO offers) to what is considered today practically unlimited capacity at a fixed price. Such access shall enable MVNOs to be profitable by selling in the near-term (1 to 3 years post-merger) full speed 5G plans with unlimited minutes & SMS and at least 1 000 gigabytes (1 terabyte) for as little as 10 € per month.

In the long-term (more than 3 years) nobody can predict if the mobile network marginal costs will enable MNOs and consequently MVNOs that have unrestricted access to MNO capacity to sell plans for 10 € per month that include 10 000 gigabytes (10 terabytes), 100 000 gigabytes (100 terabytes) or 1 000 000 gigabytes (1 petabyte).

2.4 Contrary to CMA's speculative view – the entry of a new 4th MNO – is the only effective remedy for the Vodafone / Three merger

Concerning the critical question on the remedies (structural divestitures vs. behavioural commitments) that can eliminate the long-term competition concerns in their entirety **Rewheel categorically disagrees with CMA's provisional speculative view.**

If we can raise one and only one point as a counterargument to CMA's inexplicable view that behavioural commitments rather than structural divestitures could be effective remedies for the proposed Vodafone / Three merger *“CMA stated in the Notice of possible remedies...With regards to a partial divestiture remedy, our initial view is that this remedy could enable a fourth MNO to enter the UK post-Merger and we therefore propose to explore this option further. However, our initial view is that it may not be effective...In the present case, our initial view is that there are case specific facts that suggest behavioural remedies could be appropriate.”* it will be the following:

Did anybody from CMA's investigation team or the panel of independent experts bothered to read CMA's view – that fully supported the European Commission's 2016 decision to prohibit the 4 to 3 Three / O2 merger in the UK – on what remedy was deemed to be the only effective remedy that could have remove the long-term competition concerns entirely from the proposed Three / O2 merger?

Alex Chisholm, the CMA Chief Executive, wrote a public letter⁴⁵⁴⁶ to the European Commission on the 11th of April 2016 – during the investigation of Hutchison's proposed acquisition of Telefonica O2 in the UK (4 to 3 mobile merger) – where he rejected outright all behavioural remedies as ineffective and categorically stated that the only effective remedy for the Three / O2 merger is the upfront entry of a new 4th MNO.



Commissioner Margrethe Vestager
European Commission
1049 Bruxelles/Brussels
BELGIQUE/BELGIE

Alex Chisholm
Chief Executive
Competition and Markets Authority
United Kingdom

11 April 2016

Dear Margrethe,

Case M.7612 Hutchison 3G UK / Telefonica UK

As you are aware, the Competition and Markets Authority (CMA) has serious concerns regarding the proposed merger between Hutchison 3G UK and Telefonica UK. We believe this merger would give rise to a significant impediment to effective competition in retail and wholesale mobile telecoms markets in the United Kingdom. This letter briefly sets out our concerns regarding the merger and proposed remedies, which have also been thoroughly detailed by the CMA in a number of formal submissions to the Commission's case team.

While I appreciate the considerable efforts made by the Commission to explore remedies with the merging parties that seek to eliminate the adverse effects identified, it is clear that the remedies offered fall well short of what would be required to meet the relevant legal standard, as detailed in our case submissions.

The proposed remedies are materially deficient as they will not lead to the creation of a fourth Mobile Network Operator (MNO) capable of competing effectively and in the long-term with the remaining three MNOs such that it would stem the loss of competition caused by the merger. In addition, they fail to address concerns arising from the presence of the merged entity in both the network sharing arrangements, including the greater risk of coordination that this brings.

The only appropriate remedy that would meet the criteria that the Commission is bound to apply (ie that the remedies eliminate the competition concerns in their entirety, are comprehensive, effective and capable of ready implementation) is the divestment – to an appropriate buyer approved by the Commission – of either the Three or O2 mobile network businesses, in entirety, or possibly allowing for limited 'carve-outs' from the divested business. The divestment would need to include the mobile network infrastructure and sufficient spectrum to ensure a commercially viable fourth MNO in the UK. Absent such structural remedies, the only option available to the Commission is prohibition.

The CMA urges the Commission to act to prevent the long-term damage to the UK mobile telecoms market, and therefore to the interests of UK consumers, that both of our authorities have predicted will result from this merger.

Yours sincerely

Alex Chisholm
Chief Executive

The CMA Chief Executive emphatically stated in 2016 *“The only appropriate remedy...that...eliminate the competition concerns in their entirety... is the creation of a fourth Mobile Network Operator (MNO) capable of competing effectively and in the long-term with the remaining three MNOs...Absent such structural remedies, the only option available to the Commission is prohibition.”*.

What changed? Why such change of heart from the CMA?

⁴⁵<https://www.gov.uk/government/publications/proposed-hutchisontelefonica-merger-cma-letter-to-european-commission>

⁴⁶https://assets.publishing.service.gov.uk/media/5a816cebe5274a2e87dbd8f6/CMA_letter_to_Commissioner_Margrethe_Vestager.pdf

Is the proposed 4 to 3 Vodafone / Three mobile merger less anti-competitive than the 2016 proposed 4 to 3 Three / O2 mobile merger? No, it is not. The opposite is true. Given that Vodafone and Three are more close competitors than Three and O2 were back in 2016 and given that Vodafone and Three as the no.3 and no.4 MNOs respectively offer the lowest prices in the market today their combination would lead to higher market symmetry and give rise to more serious competition concerns compared to the 2016 proposed Three / O2 merger.

Surely, the question on whether behavioural commitments (investment commitments, time limited retail protections, pre-agreed wholesale access terms and MVNO network capacity ring-fencing) constitute an effective remedy in 4 to 3 mobile mergers should not depend on who is heading the CMA (Mr. Chisholm or Ms. Cardell) or on who is heading the European Commission Directorate for Competition (Mr. Almunia or Ms. Vestager).

Mr. Almunia approved the Austrian, Irish and German 4 to 3 mobile mergers with behavioural MVNO access remedies while Ms. Vestager ruled out behavioural commitments as ineffective and requested structural divestitures for the UK (fully supported by CMA), Italian and Spanish 4 to 3 mobile mergers.

Politics aside, the UK merger regulations requires that remedies must eliminate all (short- and long-term) competition concerns in their entirety and as CMA has categorically argued, structural divestitures (i.e., the entry of a new 4th MNO) is the only effective remedy that can eliminate the long-term competition concerns in 4 to 3 mobile mergers.

Rewheel 4 to 3 mobile merger assessment studies in Germany⁴⁷, the UK⁴⁸ and Italy⁴⁹ have shown beyond any doubt that under no circumstances MVNOs can fully substitute the competitive pressure exerted by no.4 MNOs and remedy in their entirety the long-term competition concerns from 4 to 3 mobile mergers.

The only effective remedy^{50,51} that can eliminate the competition concerns entirely from the 4 to 3 Vodafone / Three merger, as required by law, is the upfront entry of new 4th mobile network operator.

The upfront entry of a new 4th mobile network operator in the UK requires the divestiture of substantial low frequency (sub 1 GHz), mid-band (1800-2100 MHz) and high frequency 3.6 MHz TDD spectrum coupled together with site divestitures and/or site collocation agreement/s and time-limited future-proof national roaming agreement/s at competitive wholesale rates.

⁴⁷https://research.rewheel.fi/insights/2015_may_premium_drillisch/

⁴⁸https://research.rewheel.fi/downloads/Effectiveness_MVNO_wholesale_access_remedies_25012016_PUBLIC.pdf

⁴⁹https://research.rewheel.fi/downloads/Hutchison_WIND_merger_Italy_remedies_01092016_PUBLIC.pdf

⁵⁰https://research.rewheel.fi/downloads/T-Mobile_Tele2_4_to_3_mobile_merger_effective_remedies_REDACTED_PUBLIC.pdf

⁵¹https://research.rewheel.fi/downloads/1&1_Drillisch_4th_MNO_entry_Germany_PUBLIC_VERSION.pdf

3 MVNO prices are dependent on MNO prices which in turn are determined by the no. of MNOs (3 vs. 4)

The second part of this study, which is available to subscribers of Rewheel's research PRO reports, presents an analysis that examines the dependency of MNO and MVNO prices upon MNO market position and market (3 vs. 4-MNOs) structure.

Commissioner Margrethe Vestager
European Commission
1049 Bruxelles/Brussels
BELGIQUE/BELGIE

Alex Chisholm
Chief Executive
Competition and Markets Authority
United Kingdom

11 April 2016

Dear Margrethe,

Case M.7612 Hutchison 3G UK / Telefonica UK

As you are aware, the Competition and Markets Authority (CMA) has serious concerns regarding the proposed merger between Hutchison 3G UK and Telefonica UK. We believe this merger would give rise to a significant impediment to effective competition in retail and wholesale mobile telecoms markets in the United Kingdom. This letter briefly sets out our concerns regarding the merger and proposed remedies, which have also been thoroughly detailed by the CMA in a number of formal submissions to the Commission's case team.

First however, I would like to praise the level of co-operation between our two authorities – and indeed with Ofcom – which has been a notable feature of this case. From the outset there have been timely, productive and meaningful interactions, and these have assisted the investigation by helping to ensure that the Commission's analysis of the case reflects fully the specificities of the UK market situation.

There is no doubt that this is a multifaceted case, in a complex and concentrated market, with a number of interested stakeholders, and important UK-specific characteristics such as the two pairs of network sharing arrangements. In our view the EC case team has negotiated these complexities with skill, producing a statement of objections in February which was a very well-reasoned and thorough assessment of the concerns and which we, as well as Ofcom, were able to support. The EC statement of objections clearly detailed how this merger is likely to lead to increased prices and/or a reduction in the quality offered to UK consumers as a result of significant harm to competition in the UK mobile telecoms market.

While I appreciate the considerable efforts made by the Commission to explore remedies with the merging parties that seek to eliminate the adverse effects identified, it is clear that the remedies offered fall well short of what would be required to meet the relevant legal standard, as detailed in our case submissions.

The proposed remedies are materially deficient as they will not lead to the creation of a fourth Mobile Network Operator (MNO) capable of competing effectively and in the long-term with the remaining three MNOs such that it would stem the loss of competition caused by the merger. In addition, they fail to address concerns arising from the presence of the merged entity in both the network sharing arrangements, including the greater risk of coordination that this brings.

The only appropriate remedy that would meet the criteria that the Commission is bound to apply (ie that the remedies eliminate the competition concerns in their entirety, are comprehensive, effective and capable of ready implementation) is the divestment – to an appropriate buyer approved by the Commission – of either the Three or O2 mobile network businesses, in entirety, or possibly allowing for limited ‘carve-outs’ from the divested business. The divestment would need to include the mobile network infrastructure and sufficient spectrum to ensure a commercially viable fourth MNO in the UK. Absent such structural remedies, the only option available to the Commission is prohibition.

The CMA urges the Commission to act to prevent the long-term damage to the UK mobile telecoms market, and therefore to the interests of UK consumers, that both of our authorities have predicted will result from this merger.

Yours sincerely

Alex Chisholm
Chief Executive

Prediction: CMA, after an intricate negotiation process, will approve the Vodafone / Three harmful merger with ineffective behavioural remedies

Dear Mr. McIntosh,

Please see below Rewheel's third and final submission to CMA's call for responses to its provisional merger view.

CMA expressed the provisional view that behavioural commitments rather than structural divestitures could be effective remedies for the proposed Vodafone / Three merger. In particular CMA stated "With regards to a partial divestiture remedy, our initial view is that this remedy could enable a fourth MNO to enter the UK post-Merger and we therefore propose to explore this option further. However, our initial view is that it may not be effective...In the present case, our initial view is that there are case specific facts that suggest behavioural remedies could be appropriate."

Below, based on my 14-year experience from over ten 4-to-3 mobile merger reviews in Europe, Australia and the United States, I make two predictions;

- on how the remedies negotiation process between Vodafone / Three and CMA will unfold
- and on the content of the behavioural commitments – **ineffective remedies** – that CMA will most likely accept by the end of this process

On the 29th of September Vodafone / Three, delighted from the fact that CMA's provisional view left the door wide open to behavioural remedies, seized the initiative by complementing the two remedies it had already tabled (an Ofcom-enforceable £11bn network investment programme and the network sharing agreement and proposed spectrum sale to VMO2) with two more behavioural remedies: a retail commitment to maintain tariffs at £10 or below for two years from the completion of the merger for value-focused customers on the SMARTY brand and a wholesale commitment to provide a reference offer that encourages MVNOs with less than 2.5 million customers to access its additional network capacity.

CMA will most likely reject this first package of commitments.

Vodafone / Three will make a second commitments package. In the second commitment package Vodafone / Three will strengthen the enforceability of the network investment programme, extend the price range and time validity of the proposed retail caps, improve the terms of the MVNO reference offer and add to the list of behavioural remedies a commitment to provide *capacity ring-fenced* wholesale access to a large domestic MVNO. This so-called *capacity-MVNO* will be labelled as 'the new 4th operator'. Sky Mobile, being the least threatening competitor to the three remaining MNOs, will most likely be selected to become the large MVNO suitor.

CMA will probably reject the second commitments package.

CMA will demand that Vodafone / Three commitments package must be reinforced with MVNO future technology access (6G, 7G) guarantees, harder capacity guarantees (throughput Gbit/s rather than volume) given to the large MVNO and possibly an option for the large MVNO to acquire up-front or in the near future a small amount of non-essential spectrum.

Vodafone / Three will then submit a third and final commitments package. **CMA will most likely accept the third commitments package and approve the Vodafone / Three merger.**

This intricate negotiation process has been choreographed and performed many times in the past 14 years.

The behavioural commitments package that CMA will most likely accept was outright rejected¹² by the CMA Chief Executive back in 2016 during the investigation of the 4 to 3 Hutchison / Telefonica UK merger. Behavioural commitments packages that included all or parts of the commitments described above were labelled ineffective and rejected by the European Commission in the Danish, UK, Italian and Spanish 4 to 3 mobile mergers.

¹<https://www.gov.uk/government/publications/proposed-hutchisontelefonica-merger-cma-letter-to-european-commission>

²https://assets.publishing.service.gov.uk/media/5a816cebe5274a2e87dbd8f6/CMA_letter_to_Commissioner_Margrethe_Vestager.pdf

I hope CMA proves my prediction wrong by rejecting behavioural remedies as ineffective and demanding structural divestitures. Absent of a new 4th MNO entry, the only option available to CMA as categorically stated by Alex Chisholm (CMA's Chief Executive) back in 2016, is prohibition of the merger.

This document supplements Rewheel's earlier response to CMA's provisional merger views. I trust that CMA will act transparently and publish all Rewheel submissions, including this letter, on the Vodafone / Three merger page.

Helsinki, 3rd October 2024

Sincerely,

Antonios Drossos

Managing Partner Rewheel