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TELEFÓNICA'S RESPONSE TO THE CMA'S PROVISIONAL FINDINGS REPORT

JV Vodafone Group PLC and CK Hutchinson Holdings Limited

4 October 2024

Telefónica S.A. submission in response to the provisional findings concerning the anticipated Joint Venture between Vodafone Group PLC and CK Hutchinson Holdings Limited

1. Introductory remarks.

1.1. Telefónica S.A. ("T**elefónica**") welcomes the opportunity given by the CMA to share our views on the CMA´s Provisional Findings on the proposed merger between Vodafone Limited and Hutchinson UK limited ("**the Merger**"). With this submission, Telefónica, as a shareholder of Virgin Media O2 ("VMO2") would like to convey our firm belief that approving the proposed Merger, subject to the spectrum transfer to VMO2 and the agreed amendments to improve and secure the effectiveness of the Beacon network sharing agreement (**"the Beacon 4.1 Agreements"**), will unlock significant benefits to consumers and businesses in the UK, with real incentive and capability for VMO2 to continue investing in 5G network roll-out and deliver more innovative and quality services.

1.2. VMO2 will submit its own views from a telecom operator active in the UK mobile market, whereas Telefónica, as shareholder of VMO2, aims to share views as a long-term investor in the UK, keen to continue investing on a lasting basis as long as the markets are sustainable and attractive.

2. Scale will unlock the significant investment required to continue investing in network roll-out in the UK.

2.1. Scale is critical to foster the significant investment needed to fill the gap in innovation and 5G deployment in the UK. Largest investments are required for the access and deployment of network, where the economies of scale are local. UK telecom operators can only cope with these high investment needs if there is sufficient return on investments – this can only be achieved if there is enough scale in the form of additional customers on individual networks. Consolidated businesses will have the asset scale to make the substantial upfront investments needed to enhance the experience of consumers in the UK by providing better infrastructure (more effectively addressing infrastructure resilience), improved security, higher quality services, while potentially lowering costs. We note this is a theme raised by third parties on the relevance of scale to the UK telecoms industry as referenced in the CMA's Provisional Findings[1] and is a view that we echo.

[1] Provisional Findings, paragraphs 8.110-8.114.

2.2. We note these concerns are also shared in the European Union regarding the fragmentation on EU telecoms markets, which impedes the scale needed to deploy networks (fibre and 5G) widely due to lower per capita income and investment as compared to other regions. [2] Lower return on investment holds back investment in technological innovation. Telecom sector investment is essential to foster industrial competitiveness and the implementation of key technologies such as IoT, artificial intelligence or robotics.

2.3. We truly believe investment in the telecom sector in the UK is equally critical in relation to 5G roll-out and beyond. Sustainable market structures in the UK market would ensure that businesses are independent and reliable to attract the private investment equity required to meet roll-out goals. Without attractive business models investors, such as Telefónica in the UK, would be less encouraged to continue investing in the UK.

3. *Spectrum divestment to VMO2 and Beacon 4.1 Arrangements preserve VMO2´s ability to compete and will have a positive effect on investment and competition in the UK.*

3.1. We genuinely believe that the spectrum divestment to VMO2 and the Beacon 4.1 agreements are transformative and will allow VMO2 to be a stronger and more sustainable competitor increasing its ability to invest more efficiently and effectively. It will enhance VMO2's competitiveness and its ability to be a greater competitor in both the wholesale and retail mobile markets, and in turn enable the wider rollout of 5G networks more quickly. This is explained in more detail in VMO2's submission.

3.2. With regard to the spectrum divestment to VMO2, it will have a substantially positive effect on VMO2's network, enhancing their network competitiveness in the market. In turn it will enable the wider rollout of 5G networks more quickly and drive innovation, providing increased network capacity, latency and quality to consumers. As detailed in VMO2's response, it will increase VMO2´s network capacity, and significantly improve coverage, reducing congestion and providing higher average upload and download speeds, thereby increasing competition in the retail and wholesale markets. The grant of additional spectrum will increase the efficiency of VMO2's network investment. This in turn would support Telefonica in continuing

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[2] See Mario Dragui´s report on The Future of European Competitiveness , Enrico Letta´s high-level report, "Much more than a market: Speed, Security, Solidarity. Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens", and EC President von der Leyen's Mission Letter to new Competition Commissioner Teresa Ribera.

ongoing investments in the UK and making such investments more attractive for VMO2 shareholders.

3.3. With respect to the Beacon 4.1 Agreements, Telefonica agrees that they remove any potential concerns over the Beacon network sharing arrangements which may have arisen from network asymmetry caused by the Merger, where Vodafone would have less incentives to continue performing the network sharing arrangements as it has done so far. In particular, the spectrum divestment to VMO2 is transformative, significantly enhancing VMO2's competitiveness by securing that VMO2 remains an effective competitor in the market. The amendments in Beacon 4.1 Agreements will enable this to continue and crucially, also support VMO2 in meeting the demands of deploying 5G networks through faster and more efficient network rollout. This significant investment challenge requires the certainty for investors that it can be overcome. Otherwise, there are no incentives for investors to continue investing and giving funds in the UK.

3.4. As referred in the previous paragraph, the Beacon 4.1 Agreements will ensure that the MergeCo will remain incentivised to ensure the proper functioning of the Beacon network sharing arrangements post-Merger, including through detailed deterrent mechanisms and financial penalties, as well as safeguards to network performance, coverage and customer experience during the integration period (and beyond). This will ensure that both the MergeCo and VMO2 have the incentives to continue delivering innovative and quality services in the mobile retail whereas an effective competition is guaranteed.

3.5. In the wholesale mobile market, Beacon 4.1 Agreements and the increased network capacity will strengthen VMO2's wholesale competitiveness by making VMO2 a more attractive and effective partner for Sky and Tesco Mobile and other future wholesale customers. By increasing VMO2's network capacity, there will be wider benefits in network quality, improving customer experience for Sky Mobile and Tesco Mobile´s customers (over 8 million mobile subscribers). Moreover, the additional spectrum will enable higher download speeds and improve overall customer experience also for Sky Mobile and Tesco Mobile customers in the retail market. The improvements to the network capacity and quality will enhance their ability to compete in turn.

3.6. Overall, we are fully convinced that both the spectrum divestment and Beacon 4.1 Arrangements will support VMO2 in achieving scale and get sufficient investment returns that will allow VMO2 to continue investing and delivering great benefits to the UK society as a whole. This in turn would support Telefónica in continuing ongoing investments in the UK in a reliable and predictable way.

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4. Behavioural remedies are appropriate to address the competition concerns arisen as a result of the Merger, especially those focused on network investment commitments. Conversely, we strongly oppose to divestiture remedies aimed at creating artificial competition in an already very competitive market.

4.1. We welcome the CMA's openness to the possibility of clearing the transaction based on behavioural remedies and believe they are an appropriate way to address the CMA's competition concerns arisen as a result of the Merger, whereas preserving the substantial rivalry-enhancing efficiencies and relevant customer benefits arising from the Merger.

4.2. We certainly believe that divestiture remedies aimed at creating artificial and asymmetric competition and forcing new market entrants in already very competitive markets, as it is the UK mobile market, puts at odds the sustainability of the market and MNOs' capability to remain competitive. Remedies cannot be imposed to undermine the synergies created as a result of the transaction and, in no circumstances, can cause a disproportionate harm to the competitive process.

4.3. Conversely, whilst Telefonica remains of the view that the Beacon 4.1 Agreements enable greater competition in both the wholesale and retail markets such that no remedies are necessary, the acceptance of behavioural remedies based on network investment commitments (Investment Commitment), which seems to be feasible for the merging parties to implement to ensure the delivery of their joint business plan[3], is for Telefónica the best and most sensible path to solve the potential competition concerns perceived by the CMA. The Investment Commitment provides a remedy that could encourage wider investment not only for the merging parties, but also for VMO2.

[3] According to Vodafone and Three UK' s response to the Notice of Possible Remedies, Section 4, paragraphs 4.1-4.58