

**ANTICIPATED JOINT
VENTURE BETWEEN
VODAFONE GROUP PLC
AND CK HUTCHISON
HOLDINGS LIMITED
CONCERNING VODAFONE
LIMITED AND HUTCHISON
3G UK LIMITED**

Remedies Working Paper

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The Competition and Markets Authority has excluded from this published version of the remedies working paper information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [X]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

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WORKING PAPER

1. REMEDIES WORKING PAPER

Introduction

- 1.1 On 13 September 2024, we published our provisional findings report on the anticipated joint venture between Vodafone Group Plc and CK Hutchinson Holdings Limited concerning Vodafone Limited (**VUK**) and Hutchinson 3G UK Limited (**3UK**) (the **Merger**) (the **Provisional Findings**). In this paper, VUK and 3UK are together referred to as **the Parties**. For statements relating to the future, the Parties' UK telecoms businesses are together referred to as the **Merged Entity**.
- 1.2 In our Provisional Findings, we provisionally concluded that the Merger may be expected to give rise to a substantial lessening of competition (**SLC**) in two markets. These are the supply of retail mobile telecommunications services to end customers, including both consumers and business customers in the UK (the **retail market**), and the supply of wholesale mobile telecommunications services in the UK (the **wholesale market**).
- 1.3 Should our provisional conclusions in our Provisional Findings be upheld in our final report, we are required to decide whether action should be taken to remedy, mitigate or prevent the SLCs or any adverse effect resulting from the SLCs, and whether such action should be taken by us or recommended for others.¹ In either case, we must state in our final report the action to be taken and what it is designed to address.² The statutory deadline for the publication of our final report is 7 December 2024.³
- 1.4 This Remedies Working Paper sets out our assessment of, and provisional decision on, the appropriate remedy to address the provisional SLCs and the resulting adverse effects identified in our Provisional Findings.
- 1.5 Our provisional decision on remedies is that there are two effective remedies that address our provisional SLCs and the resulting adverse effects. These are:
- (a) Prohibition of the Merger; and
 - (b) A network commitment (with some time limited protections in the retail and wholesale markets).

¹ [Section 36](#) of the Enterprise Act 2002 (the **Act**).

² [Sections 36](#) and [38](#) of the Act and [Mergers remedies guidance \(CMA87\)](#), December 2018, paragraph 3.2.

³ At the commencement of the inquiry, the statutory deadline was 18 September 2024. This was extended to 12 October 2024 under [section 39\(4\)](#) of the Act and subsequently extended to 7 December 2024 under [section 39\(3\)](#) of the Act.

- 1.6 We provisionally conclude that a network commitment (with some time limited protections in the retail and wholesale markets) would represent a less onerous solution and therefore be more proportionate than prohibition of the Merger (the only other effective remedy identified).
- 1.7 We invite comments on this Remedies Working Paper by no later than **5pm, Tuesday 12 November 2024**.
- 1.8 The rest of the paper is structured as follows:
- (a) Nature of the provisional SLCs and their adverse effects
 - (b) The Competition and Markets Authority's (**CMA**) remedies assessment framework
 - (c) Overview of remedy options considered
 - (d) Assessment of the effectiveness of remedy options
 - (i) Prohibition of the Merger
 - (ii) Network Commitment
 - (1) Time limited retail market protections
 - (2) Time limited wholesale market protections
 - (e) Provisional conclusion on effective remedies
 - (f) Assessment of proportionality
 - (i) Relevant customer benefits
 - (g) Provisional conclusion on proportionality
 - (h) Provisional decision on remedies
 - (i) Implementation considerations

Nature of the provisional SLCs

- 1.9 In our Provisional Findings, we provisionally found that the Merger may be expected to give rise to an SLC in two markets:
- (a) An SLC as a result of horizontal unilateral effects in the retail market. In particular, we provisionally found in relation to this theory of harm that the Merger would lead to price increases for mobile customers (or to equivalent reductions in data packages or service features). Any price increases would

potentially affect tens of millions of mobile customers, and we had particular concerns about the impact of the Merger on those customers least able to afford mobile services or who might have to pay more for improvements in service quality they do not value.

- (b) An SLC as a result of horizontal unilateral effects in the wholesale market. In particular, we provisionally found in relation to this theory of harm that the Merged Entity – and its competitors – may have less of an incentive to bid for wholesale business and/or may offer less competitive prices/terms to mobile virtual network operators (**MVNOs**). In particular, the Merger would reduce the number of mobile network operators (**MNOs**) from four to three, making it more difficult for independent MVNOs to secure attractive competitive terms which would reduce their ability to compete strongly in the retail market. We considered that this was important because many MVNOs price aggressively, often focusing on value segments of the retail market.

- 1.10 When announcing the Merger, the Parties made a number of claims about pro-competitive efficiencies and consumer benefits which they said would result from the Merger. For example, they said that from 'Day 1' (ie within the first 12 months from closing the Merger) millions of customers of VUK and 3UK would enjoy a better network experience with greater coverage and reliability at no extra cost. They also said that the combined business would invest GBP 11 billion in the UK over ten years to create one of Europe's most advanced 5G SA networks, and that the Merger would create a third mobile operator with scale, levelling the competitive playing field, and thereby increasing competition to the UK's two leading converged operators (BT Group plc (**BTEE**) and VMED O2 UK Limited (**VMO2**)).⁴
- 1.11 Part way through the phase 2 investigation, the Parties entered into an agreement with VMO2 (**Beacon 4.1**) which involves, among other things, the divestment of spectrum to VMO2 (conditional on CMA approval of the Merger). The Parties submitted that Beacon 4.1 would generate further Merger-specific efficiencies, in particular by making VMO2 a more effective competitor in the wholesale and retail markets.⁵
- 1.12 The Parties submitted that through the integration of and investment in the Parties' two networks and Beacon 4.1 the Merger would give rise to substantial rivalry enhancing efficiencies (**REEs**), which would offset any potential anti-competitive effects of the Merger. In the course of the merger review process, the Parties also supplied us with a number of economic models and submissions which they

⁴ [Press Release — Vodafone UK & Three UK](#), accessed by the CMA on 22 October 2024.

⁵ Parties' submission, The pro-competitive effects of the Vodafone/Three merger.

claimed quantified in different ways (for example in terms of quality and capacity improvements) the efficiencies that would result from the Merger.

- 1.13 The Parties' REEs claims rely in part on their 'joint business plan' (**JBP**) which incorporates the 'joint network plan' (**JNP**) for the Merged Entity. These set out the network integration and investment planned over the period up to FY34. We therefore carefully considered whether the Parties were able, and likely, to deliver this plan.
- 1.14 In our Provisional Findings, we provisionally concluded that the Merger is likely to result in some level of network quality improvements which are rivalry enhancing.⁶ However, we also provisionally concluded that the Parties – given their ability to pursue a range of commercial strategies, which may evolve over time in response to changing market circumstances – were not likely to deliver the full JBP.⁷ We also considered that the spectrum transfer to VMO2 agreed through Beacon 4.1 would provide a notable and rapid increase in network quality for VMO2's wholesale and retail customers which would further increase network quality competition.⁸ On the basis of the evidence and analysis at the date of our Provisional Findings, we provisionally concluded that the increased rivalry from those efficiencies which we found were likely to be realised was not sufficient to outweigh the adverse impacts identified in relation to the retail and wholesale markets.⁹
- 1.15 We also expressed some doubts whether the full JBP would – if delivered – offset the anti-competitive effects of the provisionally identified SLCs. We invited submissions from the Parties and third parties in this respect, but we did not need to provisionally conclude on that question in our Provisional Findings.¹⁰

CMA remedies assessment framework

- 1.16 Pursuant to [section 36\(2\)](#) of the Act, where the CMA decides that an anticipated merger may be expected to result in an SLC, the CMA must decide the following:
- (a) whether the CMA should itself take action under [section 41\(2\)](#) of the Act for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which may be expected to result from the SLC;
 - (b) whether the CMA should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which may be expected to result from the SLC; and

⁶ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 61.

⁷ CMA, [Provisional Findings Report](#), 13 September 2024, paragraphs 51 to 54.

⁸ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 62.

⁹ CMA, [Provisional Findings Report](#), 13 September 2024, paragraphs 63 to 81.

¹⁰ CMA, [Provisional Findings Report](#), 13 September 2024, paragraphs 69 and 81.

- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

1.17 The Act requires that the CMA, when considering remedies, shall ‘in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it’.¹¹

1.18 To fulfil this requirement, the CMA will seek remedies that are effective in addressing the SLC and any resulting adverse effects. The CMA considers that a remedy will only be effective (ie a comprehensive solution) if it fully remedies or prevents the SLC and its adverse effects (not just mitigates them). This approach, and the high duty imposed on the CMA by the statute, has been endorsed by the courts. In particular, the Court of Appeal has explained that, once the CMA has reached a conclusion on the SLC question, ‘then the action which it has to take must be such as to remedy or prevent the SLC concerned. It is not at that stage in the exercise concerned with weighing up probabilities against possibilities but rather with deciding what will ensure that no SLC either continues or occurs’.¹² The Competition Appeal Tribunal has also found that it is reasonable for the CMA to not favour a remedy for which it could not feel a ‘high degree of confidence of success’.¹³

1.19 Assessing the effectiveness of a remedy involves several distinct dimensions, including:¹⁴

- (a) **The impact on the SLC and its resulting adverse effects:** remedies need to address the SLC and its adverse effects.
- (b) **Appropriate duration and timing:** remedies need to address the SLC effectively throughout its expected duration.
- (c) **Practicality:** a practical remedy should be capable of effective implementation, monitoring and enforcement.
- (d) **Acceptable risk profile:** the effect of any remedy is always likely to be uncertain to some degree. In evaluating the effectiveness of remedies, the CMA will seek remedies that have a high degree of certainty of achieving their intended effect. Customers or suppliers of merger parties should not bear significant risks that remedies will not have the requisite impact on the SLC or its adverse effects.

1.20 Once the CMA has determined the remedies that are effective in addressing the SLC and its resulting adverse effects, the CMA will then consider the costs of those

¹¹ [Section 36\(3\)](#) of the Act.

¹² *Ryanair Holdings PLC v CMA* [2015] EWCA Civ 83, at [57]. See also *Ecolab Inc. v CMA* [2020] CAT 12, at [74-75].

¹³ *Ecolab Inc. v CMA* [2020] CAT 12, at [83].

¹⁴ [CMA87](#), paragraph 3.5.

remedies. The CMA may have regard, in accordance with the Act, to the effect of any remedial action on any relevant customer benefits (**RCBs**) arising from the merger.^{15,16} RCBs that will be forgone due to the implementation of a particular remedy may be considered as costs of that remedy by the CMA.¹⁷ In order to ensure that any remedy is proportionate (ie reasonable), it will then select the least costly and intrusive remedy, or package of remedies, that it considers to be effective. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.¹⁸ In the event that the CMA considers fully remedying or preventing an SLC and any adverse effects is not possible, or where no effective remedy would be proportionate, the CMA will consider whether it is nonetheless possible and proportionate to mitigate the SLC and its adverse effects.¹⁹

Overview of possible remedies

- 1.21 Remedies are conventionally classified by the CMA as either structural or behavioural:²⁰
- (a) Structural remedies, such as prohibition and divestiture, are generally one-off measures that seek to restore or maintain the competitive structure of the market by addressing the market participants and/or their shares of the market.
 - (b) Behavioural remedies are normally ongoing measures that are designed to regulate or constrain the behaviour of merger parties.
- 1.22 The choice of remedy will reflect the particular circumstances of each case. The CMA will seek to select remedies that will effectively address the SLC and its resulting adverse effects in the least costly way.²¹
- 1.23 The CMA generally prefers structural remedies, such as divestiture or prohibition, over behavioural remedies, because:²²
- (a) structural remedies are more likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry;

¹⁵ [Section 36\(4\)](#) of the Act.

¹⁶ [CMA87](#), paragraph 3.4.

¹⁷ [CMA87](#), paragraph 3.16.

¹⁸ [CMA87](#), paragraph 3.6.

¹⁹ [CMA87](#), paragraphs 3.11 and 3.12.

²⁰ [CMA87](#), paragraph 3.34.

²¹ [CMA87](#), paragraph 3.45.

²² [CMA87](#), paragraph 3.46.

- (b) behavioural remedies are less likely to have an effective impact on the SLC and its resulting adverse effects, and are more likely to create significant costly distortions in market outcomes; and
- (c) structural remedies rarely require monitoring and enforcement once implemented.

1.24 The CMA's guidance does however note that behavioural remedies can operate satisfactorily in limited circumstances, especially where the company operates in a regulated environment and where there are expert monitors. In general, one or more of the following conditions will normally apply in the limited circumstances where the CMA selects behavioural remedies as the primary source of remedial action in a merger investigation:²³

- (a) Structural remedies are not feasible, or the relevant costs of any feasible structural remedy far exceed the scale of the adverse effects of the SLC(s).
- (b) The SLC(s) are expected to have a relatively short duration (eg due to IP expiring).
- (c) RCBs are likely to be substantial compared with the adverse effects of the merger, and these benefits would be largely preserved by behavioural remedies but not by structural remedies.

1.25 In general, in the above circumstances, the CMA will prefer to use enabling measures that 'work with the grain of competition', and address an SLC by seeking to remove obstacles to competition or stimulating competition, rather than measures that control market outcomes, which restrict the adverse effects of an SLC rather than address the SLC itself.²⁴

1.26 For behavioural remedies to have the desired impact, it is essential that there are effective and adequately resourced arrangements in place for monitoring and enforcement.²⁵ The CMA guidance notes in this context that the likelihood of effective monitoring of a remedy will be significantly increased if it is possible to involve a sectoral regulator in the monitoring regime.²⁶

1.27 When assessing remedies, the CMA will also consider whether a combination of measures would be required to be as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it. We will evaluate the impact of any such combination of measures on the SLC or any resulting adverse effects.

²³ [CMA87](#), paragraph 3.48.

²⁴ [CMA87](#), paragraphs 3.49 and 7.12.

²⁵ [CMA87](#), paragraph 3.49.

²⁶ [CMA87](#), paragraph 7.6.

Possible remedy options set out in the Remedies Notice

- 1.28 In our notice of possible remedies (**Remedies Notice**), we identified – and invited views on – the following possible remedies:²⁷
- (a) Prohibition of the anticipated Merger;
 - (b) A partial divestiture remedy requiring the divestiture of, or access to, certain mobile network assets and spectrum to enhance the competitive capability of an existing MVNO or to facilitate a new provider to enter the market as an MNO and compete across all parameters of competition including network quality;
 - (c) An investment commitment to roll out the Parties' JNP;
 - (d) Potential protections for retail and wholesale customers that are time limited; and
 - (e) Behavioural measures aimed at the wholesale market.
- 1.29 We also invited submissions on any other practicable remedy that could be effective in comprehensively addressing the provisional SLCs.
- 1.30 In the Remedies Notice, we set out our initial view that prohibition of the anticipated Merger would prevent the provisional SLCs from arising in any relevant market. Our initial view was that prohibition would represent a comprehensive solution to all aspects of the SLCs we have provisionally found (and consequently any resulting adverse effects) and that the risks in terms of its effectiveness are very low.²⁸
- 1.31 Our initial view on a partial divestiture remedy, as set out in the Remedies Notice, was that whilst this could enable a fourth MNO to enter the UK, as evidenced by other telecommunications industry mergers in other jurisdictions, it may not be effective as it is not clear that a remedy-taker would be able to compete effectively to compensate for the loss of competition and the remedy presents a number of UK specific practical challenges given that the Parties do not own all the assets that make up their networks.²⁹
- 1.32 Our initial view on the Network Commitment, as set out in the Remedies Notice, was that it may have the potential to enhance competition in the relevant markets in a way that counteracts the anti-competitive effects we have provisionally found, making it an effective remedy in the longer term.³⁰ However, we noted that we had

²⁷ CMA, [Remedies Notice](#), 13 September 2024.

²⁸ CMA, [Remedies Notice](#), 13 September 2024, paragraph 22.

²⁹ CMA, [Remedies Notice](#), 13 September 2024, paragraph 23.

³⁰ CMA, [Remedies Notice](#), 13 September 2024, paragraph 32.

expressed some doubts in the Provisional Findings as to whether the implementation of the JBP/JNP in full would offset the anti-competitive effects we provisionally identified in the retail and wholesale markets.³¹

- 1.33 In addition, given our initial view that it may take some time for the rivalry enhancing effects of a Network Commitment to manifest, we noted that there may be a need to supplement a Network Commitment with some time-limited protections in relation to price and related terms, including data packages.³²
- 1.34 We did not express any views on the potential effectiveness or otherwise of time limited protections for retail customers or wholesale behavioural remedies.

Remedy proposals put to the CMA

- 1.35 In this section we outline the remedy proposals put to us by the Parties and any third party proposals not set out in the Remedies Notice. Non-confidential versions of these responses have been published on the case page.³³

The Parties' proposals

- 1.36 The Parties have, without prejudice to their position that no SLC will arise as a result of the Merger in any case, proposed a behavioural remedy package that they consider will ensure the creation of significant REEs that prevent any SLC provisionally identified in the retail and wholesale markets.³⁴ The package proposed by the Parties consists of:
- (a) a commitment that would deliver the key elements of the Merged Entity's Joint Network Plan (the **Network Commitment**);^{35,36}
 - (b) a short-term pricing commitment that would guarantee the availability of, maintain the terms and conditions of, and cap the prices of a range of the Parties' existing tariffs for three years (the **Retail Customer Protections**);^{37,38} and

³¹ CMA, [Remedies Notice](#), 13 September 2024, paragraph 33.

³² CMA, [Remedies Notice](#), 13 September 2024, paragraph 36.

³³ [Vodafone / CK Hutchison JV Merger inquiry](#)

³⁴ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 4.34.

³⁵ Parties' network commitment proposal.

³⁶ The Parties further developed this proposal in their response to the Remedies Notice on 27 September and in a letter to the CMA on [redacted] (Parties, Remedies letter to the Inquiry Group).

³⁷ Parties follow-up remedies submission.

³⁸ The Parties submitted that they disagree with the PFs that the Transaction gives rise to an SLC in the retail market (or any part of it). To the extent the CMA has any concerns regarding the retail market, the Parties' proposed Network Commitment (supported by the pro-competitive effects of the Beacon 4.1 agreements) presents a comprehensive solution. They strongly disagree with the notion that retail customers are not already adequately protected from price increases and service degradations during the initial years of network integration and roll-out under the Proposed Network Commitment. [Parties' response to the Remedies Notice](#), 27 September 2024, paragraphs 5.3 to 5.8.

- (c) a Wholesale Reference Offer, to provide MVNOs competitive access terms (protecting wholesale customers and their price sensitive end users) (the **Wholesale Reference Offer**).^{39,40}

1.37 Under the Network Commitment, the Parties offered to commit:⁴¹

- (a) to fully integrate the Parties' joint networks into a combined site grid of no fewer than [25,000-30,000] sites in the UK over an 8 year period;
- (b) to integrate a minimum number of sites in:
 - (i) rural areas, including a specified number of high-, mid-, and low-configuration sites; and
 - (ii) urban areas, including a specified number of high-, mid-, and low-configuration sites.
- (c) to fully deploy a prescribed amount of spectrum across specified frequency bands in high-, medium- and low-traffic areas, (each individually) in the UK;
- (d) to report to The Office of Communications (**Ofcom**) and a monitoring trustee; and
- (e) to measurement points in years 3, 5 and 8.

1.38 The Parties proposed that the Network Commitment would be implemented by way of an Undertaking to the CMA under the Act and by inserting the obligations as conditions in the Merged Entity's spectrum licence(s).

1.39 The Parties submitted that the proposed Network Commitment would ensure the creation of significant REEs that prevent any SLC provisionally identified in the retail and wholesale markets.⁴²

1.40 For the Retail Customer Protections, the Parties offered:

- (a) a pricing cap commitment across a number of tariffs;
- (b) to maintain social tariffs;

³⁹ Parties follow-up remedies submission.

⁴⁰ The Parties submitted that they disagree with the provisional conclusion in the Provisional Findings that the Transaction gives rise to an SLC in the wholesale market. To the extent the CMA has any concerns regarding the wholesale market, the Parties' proposed Network Commitment (supported by the pro-competitive effects of the Beacon 4.1 agreements) presents a comprehensive solution. [Parties' response to the Remedies Notice](#), 27 September 2024, paragraphs 6.5 to 6.10.

⁴¹ Parties' network commitment proposal and [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 4.5. If the CMA were to accept the Network Commitment as an Undertaking from the Parties, the precise number of sites and spectrum configuration would be set out in that Undertaking.

⁴² [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 4.34.

(c) to exclude vulnerable customers in financial difficulty from mid-contract price rises;⁴³ and

(d) to maintain terms and conditions of all existing customers.⁴⁴

1.41 As part of the Wholesale Reference Offer the Parties proposed to:⁴⁵

(a) commit to provide access to MVNOs on the basis of pre-defined terms (subject to onboarding and capacity limits);

(b) agree for disputes to be resolved by an independent adjudicator; and

(c) make the offer available to MVNOs for three years.

1.42 Please refer to the sections of the Network Commitment remedy', 'The Parties' proposed Retail Customer Protections' and 'Overview of the Parties' Wholesale Reference Offer' below for further details on the Parties' proposals.

[REDACTED]

1.43 [REDACTED] submitted that [REDACTED] and credible wholesale host.⁴⁶

1.44 The proposal would see a remedy-taker [REDACTED].⁴⁷ [REDACTED] submitted that a remedy-taker would be strongly incentivised to become a wholesale supplier [REDACTED] it would have zero marginal cost on that excess capacity so would be highly incentivised to bid for other MVNOs with any spare capacity.⁴⁸

1.45 [REDACTED] submitted that it strongly believes that it is the strongest and most credible market participant able to take a [REDACTED] remedy and is well positioned to act as a remedy taker.⁴⁹ [REDACTED].⁵⁰

1.46 [REDACTED] submitted that we could deploy its proposed [REDACTED] remedy alongside other wholesale remedies, if we had concerns about protecting other MVNOs. For example, [REDACTED] submitted that a [REDACTED].⁵¹

⁴³ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 1.9 (i) – (iii).

⁴⁴ Parties Remedies letter to the Inquiry Group.

⁴⁵ Parties follow-up remedies submission.

⁴⁶ [REDACTED].

⁴⁷ [REDACTED].

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ [REDACTED].

⁵¹ [REDACTED].

[REDACTED]

- 1.47 [REDACTED] submitted that we should consider a remedy that allows a new MVNO to enter the market. To ensure the effectiveness of an MVNO remedy, [REDACTED] suggested the following measures:⁵²
- (a) We should mandate network access under transparent, fair, and non-discriminatory terms including wholesale pricing, service quality, and technical support comparable to those offered to other MNOs and MVNOs.
 - (b) A defined commitment period during which the Merged Entity must maintain the agreed terms of access to its network for the MVNO. This period should be long enough to allow the MVNO to establish a stable market presence and customer base.
- 1.48 [REDACTED] submitted that its ambition is to enter the telecommunications market as a UK wide MVNO.⁵³
- 1.49 Other remedy options put to us were set out in the Remedies Notice or are considered by us to be variants of remedies set out in the Remedies Notice.⁵⁴

The Parties' position on remedies

- 1.50 The Parties disagree with our provisional finding that the Merger may result in SLCs in the retail and wholesale mobile markets.⁵⁵ It is without prejudice to this position that the Parties have proposed potential remedies.

The Parties' proposed remedies

- 1.51 As outlined in paragraph 1.36 above, the Parties proposed a Network Commitment that would require the Merged Entity to deliver the JNP. The Parties submitted this would address the competition concerns outlined in the Provisional Findings in the retail and wholesale markets.
- 1.52 The Parties also submitted that the Merger will result in significant RCBs.⁵⁶ The Parties submitted that any remedies must be designed in such a way to preserve these RCBs.⁵⁷ The Parties submitted that a remedy that would undermine these significant benefits would be disproportionate in these circumstances.⁵⁸

⁵² [REDACTED] email [REDACTED].

⁵³ [REDACTED] experience to date is that market entry as an MVNO is significantly challenging, due to the barriers to entry arising from the refusal of access by existing market players.

⁵⁴ For example, [REDACTED], approached the CMA with an interest in being a remedy taker. We considered the proposal to be a partial divestitures remedy ([REDACTED] [response to the Remedies Notice](#)).

⁵⁵ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 1.1.

⁵⁶ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 1.5.

⁵⁷ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 2.1

⁵⁸ Parties' network commitment proposal.

- 1.53 The Parties submitted that the Merger is pro-competitive and that the Network Commitment addresses any concerns with regards to the likelihood of the Parties delivering the JNP. The Parties submitted that the Network Commitment can be characterised as ‘quasi-structural’ in effect.⁵⁹ The Parties further submitted that this structural effect on capacity is amplified by the Beacon 4.1 agreements and VMO2’s own increase in capacity.⁶⁰ The Parties consider that the Merger will:
- (a) Generate a significant uplift in the Merged Entity’s coverage and capacity, with the largest uplift realised in Year 1;
 - (b) Lower incremental costs of expanding capacity, incentivising the Merged Entity to provide lower prices and/or a better quality of service to retail and wholesale customers;
 - (c) Substantially improve the Merged Entity’s network quality, which will benefit the Merged Entity’s retail and wholesale customers;
 - (d) Increase the competitive pressure on VMO2 and BTEE to make better offers to wholesale and retail customers, in terms of prices and quality, and to invest in their networks, to stem the loss of customers to the Merged Entity; and
 - (e) Increase VMO2’s strength as a competitor by improving its network quality and reducing its cost of increasing capacity through Beacon 4.1, which will only be implemented if we approve the Merger.⁶¹
- 1.54 The Parties submitted that no other remedies are required in addition to the Network Commitment. The Parties also submitted that our position on time-limited protections is inconsistent with our provisional finding that the bulk of the REEs would be realised in the early years.⁶² However, without prejudice to their position, the Parties consider that the time-limited Wholesale Reference Offer and Retail Customer Protections offered would address any residual time-limited concerns the CMA may have (see paragraphs 1.40 and 1.41 above).⁶³

Parties’ position on other remedies set out in the Remedies Notice

- 1.55 As outlined above, in the Remedies Notice we set out some concerns with regards to a partial divestiture remedy (see paragraph 1.31). The Parties told us that they agreed with these concerns and considered that a partial divestment cannot be an

⁵⁹ [Parties’ response to the Remedies Notice](#), 27 September 2024, paragraph 4.42

⁶⁰ [Parties’ response to the Remedies Notice](#), 27 September 2024, paragraph 4.44

⁶¹ [Parties’ response to the Remedies Notice](#), 27 September 2024, paragraph 4.34 (i) – (v).

⁶² [Parties’ response to the Remedies Notice](#), 27 September 2024, paragraph 1.9.

⁶³ [Parties’ response to the Remedies Notice](#), 27 September 2024, paragraphs 5.33, 5.43, 6.10

effective remedy in addressing any residual SLC found by us in the retail or wholesale markets.

- 1.56 The Parties also stated that such a remedy is commercially unacceptable and would not be accepted under any circumstances, as it would undo the commercial logic of the Merger and undermine the Parties' ability to deliver the JNP and therefore the REEs and RCBs.⁶⁴
- 1.57 In the Remedies Notice, we invited views on whether it was possible to ring-fence capacity for MVNOs to encourage continued participation in the wholesale market. The Parties submitted that a ring-fencing remedy would lead to significant inefficiencies and eliminate or reduce the REEs and RCBs flowing from the Merger.⁶⁵

Remedy options not considered in this paper

- 1.58 The Act sets out extensive remedy powers of the CMA in a phase 2 remedies process.⁶⁶ In particular, the CMA is not limited to the remedies offered by the merger parties as in phase 1.⁶⁷
- 1.59 Where the merger parties or a third party propose remedy options for our consideration, our engagement on remedies with limited prospect of being effective can reduce our ability to focus on remedies that have a greater prospect of being effective. Therefore – in keeping with CMA guidance on remedies and in view of the statutory deadline for us to publish our final decision on any SLC and remedies – we have not conducted a detailed consideration of proposed remedies unless the Parties or third parties can demonstrate that their proposed remedy options will address effectively the provisional SLCs and the resulting adverse effects identified in the Provisional Findings.
- 1.60 A number of third parties – in response to the Remedies Notice – submitted that outcomes in other countries suggest behavioural remedies are ineffective and should not be considered further. Other third parties and the Parties also submitted comparative assessments of the potential remedies considered in this case with previous remedies accepted in other countries in the mobile telecommunications industry, in particular in the context of four-to-three MNO mergers.
- 1.61 The CMA's Merger Assessment Guidelines, reflecting the relevant case law, notes that the CMA's task in analysing mergers is context specific, and in particular: (i) each case turns on its own facts; and (ii) the characteristics of one market may be

⁶⁴ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 3.2.

⁶⁵ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 1.14

⁶⁶ [Section 84](#) and [Schedule 8](#) of the Act.

⁶⁷ [CMA87](#), paragraph 3.31.

very different from those of another.⁶⁸ We believe that differences in the characteristics of mobile markets (such as the conditions of competition, geography, demographic and regulatory environment) across countries limits the probative value of any analysis of the effects of remedies accepted in other countries.

1.62 We have therefore considered all submissions made to us concerning international comparisons, but overall have only placed limited evidential weight on such comparisons and have not ruled out any potential remedies solely based on international comparisons.

1.63 After due consideration of the range of remedies identified in the Remedies Notice, the Parties' response and third party submissions on remedies, we have decided not to take the following remedies forward in our assessment for the reasons set out below:

- (a) Partial divestiture remedies;
- (b) MVNO entrant or expansion remedies; and
- (c) Ring-fencing capacity remedies.

Partial divestiture remedies

1.64 We noted our concerns in the Remedies Notice regarding whether an MNO entrant remedy would lead to lasting, sustainable competition.⁶⁹ It is our provisional view that it is theoretically possible to enable another MNO to enter the UK through a partial divestiture remedy. Whilst there are country specific challenges, this remedy has been pursued in other jurisdictions.⁷⁰

1.65 To be comprehensive, the divestiture package would need to enable a suitable purchaser to compete effectively under separate ownership. However, a purchaser would likely only acquire a sub-set of the assets currently used by the Parties to compete in the relevant markets. This may lead to an MNO that is smaller than either of the Parties today. It is not clear that such an entity would be able to compete effectively in both the retail and wholesale markets where we have provisionally identified SLCs.

1.66 It would be difficult for us to assess the financial resilience or expected performance of the new MNO with any degree of accuracy given the new MNO

⁶⁸ *Ecolab Inc. v CMA* [2020] CAT 12, quoted at [CMA129](#), footnote 13.

⁶⁹ CMA, [Remedies Notice](#), 13 September 2024, paragraph 23.

⁷⁰ Most recently the European Commission approved the joint venture between Orange and MásMóvil in Spain subject to a package of remedies aimed at enabling the remedy taker, Digi, to build its own mobile network. M.10896 - Orange/ MásMóvil / JV.

would obtain access to a package of assets that have never before operated as a stand-alone business.

- 1.67 A partial divestiture remedy would unwind economies of scale, potentially undermining the remedy's effectiveness. As a result, the remedy would likely be reliant on the purchaser's attributes to address shortcomings of its design, increasing the purchaser risk.
- 1.68 The complexities of such a proposal, some of which are country specific, are numerous and the outcomes in other jurisdictions are not clear.⁷¹ Ofcom also noted that divestiture remedies in the mobile sector have been relatively unsuccessful in restoring a fourth operator and noted that regardless how much spectrum is divested, it remains difficult for the remedy taker to gain market share.⁷² One example of the challenges is that the Parties do not own all of the network infrastructure they use, often using neutral hosts (or tower companies) which build passive infrastructure (such as towers and masts). The Parties, and not the CMA, would therefore need to negotiate approval from these third party infrastructure providers to allow a new MNO to enter.
- 1.69 We therefore consider that due to the above risks and practical difficulties an MNO entrant remedy would be high risk in the UK and would not present a sufficient degree of certainty of achieving its intended effect, ie the entry of a new MNO that compensates for the loss of competition resulting from the Merger. We note that some respondents to the Remedies Notice support these concerns.⁷³ Furthermore, the Parties have expressly stated that they would not consider a partial divestiture remedy, stating that it is commercially unacceptable and would not be accepted under any circumstances.⁷⁴ On this basis, we are prioritising our analysis of other remedies.
- 1.70 Separately, [X] submitted that previous mergers involving MNOs in the UK have led to the shutting down of well-known brands such as Plusnet, BT Mobile and Virgin mobile and that there is a risk that the Parties' sub-brands may be discontinued if the Merger is implemented. [X] therefore considers that any remedies package should include a requirement on the Parties to divest their retail 'fighting brands' to help restore competition in the retail market.⁷⁵ We have not seen any evidence suggesting that the Merged Entity plans to exit the segment of the retail market where the Parties' sub-brands are active. We also consider that this would amount to a remedy that supports the expansion of an MVNO which as

⁷¹ In [X] has for instance noted various public criticisms of the effectiveness of the divestment of various assets to Dish Network as part of the remedy package put in place in the context of the T-Mobile / Sprint transaction in the United States.

⁷² Ofcom call note [X].

⁷³ BTEE [response to the Remedies Notice](#), 27 September 2024, paragraphs 2.8 - 2.14; Sky Mobile [response to the Remedies Notice](#), 27 September 2024, paragraph 27.

⁷⁴ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 3.2.

⁷⁵ [X] [response to the Remedies Notice](#), paragraph 1.6.

outlined below (see paragraph 1.72) we do not believe would address our SLCs. On this basis we have not considered this suggested remedy further.

MVNO entry and expansion remedies

- 1.71 Aside from a remedy involving an MVNO becoming an MNO through a partial divestiture,⁷⁶ in the Remedies Notice we did not propose any remedies that were aimed at encouraging MVNO entry or expansion into the retail market.⁷⁷ This is because, while MVNO entry or expansion would potentially be a desirable outcome at the retail level, it is not clear it would address the provisional SLC in the retail market and it would have no impact on our competition concerns in the wholesale market as these concerns relate to MVNOs' ability to secure competitive terms from MNOs.
- 1.72 In relation to the retail market, although we consider that the entry of further MVNOs and/or expansion of existing MVNOs might increase competition in the retail market, we consider it unlikely that this type of remedy would comprehensively address our retail concerns, as it would not compensate for the loss of an independent MNO. MVNOs cannot, to a large extent, compete on network quality. Overall, we consider that MVNOs do not offer the same competitive constraint as MNOs in the retail market.⁷⁸
- 1.73 [X] has suggested [X].⁷⁹ [X].⁸⁰
- 1.74 [X] stated that this remedy would help address the wholesale provisional SLC by creating a fourth potential wholesale competitor.⁸¹ [X].⁸²
- 1.75 We consider that [X]'s proposal would not address the wholesale SLC as we do not consider it likely that any entry by [X] into the wholesale market would exert a material competitive constraint as a fourth competitor. In particular, [X] suggested that if it was the remedy-taker [X].⁸³ [X]. Further we consider that [X]'s proposal could have material distortive effects on the wholesale market [X].
- 1.76 We acknowledge that [X]'s proposal could in principle increase the remedy taker's competitiveness in the retail market. [X].
- 1.77 If [X] was the remedy taker, we agree with [X] that the remedy would help improve [X]'s competitiveness in the retail market.

⁷⁶ CMA, [Remedies Notice](#), 13 September 2024, paragraph 21 (b).

⁷⁷ There are a number of small MVNOs in the market but the individual impact of each MVNO on the retail market is limited.

⁷⁸ See CMA, [Provisional Findings Report](#), 13 September 2024, paragraphs 8.261 to 8.264.

⁷⁹ [X] response to the Remedies Notice.

⁸⁰ [X] response to the Remedies Notice.

⁸¹ [X].

⁸² [X] and [X].

⁸³ [X] and [X].

- 1.78 However, it is not clear to us that any benefits from [X]'s increased competitiveness would be long-lasting as, whilst the Parties might accept such a remedy proposal as a cost of the Merger, the Merged Entity might not have incentives at the end of the remedy period to [X]. [X]. Further, Ofcom noted that [X].⁸⁴
- 1.79 Furthermore, even if [X]'s proposal were capable of addressing our concerns (which, for the reasons given above, we do not consider to be the case), [X] does not appear to be a suitable remedy taker:
- (a) [X],⁸⁵ [X].⁸⁶ [X].
- (b) [X].⁸⁷ [X].⁸⁸
- 1.80 As such, we do not consider that the remedy would address our competition concerns in the wholesale market or in the retail market.
- 1.81 For the above reasons, we do not explore further any MVNO entry and/or expansion remedies.

Ring-fenced capacity remedies

- 1.82 In the Remedies Notice we invited views on a remedy that seeks to ring-fence a proportion of the Parties' network capacity exclusively for wholesale customers.⁸⁹ We considered that at the conceptual level, reserving a defined proportion of the Merged Entity's capacity exclusively for MVNOs could add to the incentive of the Merged Entity to compete for MVNO customers. As MVNOs provide an important source of competition for more price-sensitive customers, it is possible that a ring-fencing remedy could also benefit competition in the retail market.⁹⁰
- 1.83 We also set out our initial view that there are likely to be a number of challenges and risks linked with capacity ring-fencing remedies that are associated with behavioural remedies including specification, distortion, circumvention as well as monitoring and enforcement risks that would need to be evaluated further.⁹¹
- 1.84 By design, a capacity ring-fencing remedy is an enabling behavioural remedy, as it seeks to create an incentive for the Parties to continue to compete in the wholesale market. As outlined above (paragraph 1.25), where we are considering

⁸⁴ Ofcom, submission.

⁸⁵ [X].

⁸⁶ [X] and [X] meeting note.

⁸⁷ [X]. [X] meeting note.

⁸⁸ [X] meeting note.

⁸⁹ CMA, [Remedies Notice](#), 13 September 2024, paragraphs 41-42.

⁹⁰ CMA, [Remedies Notice](#), 13 September 2024, paragraph 40.

⁹¹ CMA, [Remedies Notice](#), 13 September 2024, paragraph 43.

behavioural remedies, we typically have a preference for enabling measures that 'go with the grain of competition'.⁹²

- 1.85 Based on the representations received, we understand that this type of ring-fencing remedy could either be delivered through a contractual arrangement (ie a commercial reservation remedy) or through a technical segregation of capacity.
- 1.86 In response to the Remedies Notice, [redacted] submitted that it supported a ring-fencing remedy with suitable incentivisation to address the provisional SLC in the wholesale market.⁹³ [redacted] submitted that a capacity ring-fencing remedy could be implemented in the form of a commercial reservation combined with a penalty to incentivise the Merged Entity to enter into MVNO agreements.⁹⁴ [redacted] submitted that if the level of capacity reserved is determined appropriately, and penalty mechanisms are put in place to incentivise the Merged Entity to sell the capacity, it is unlikely the ring-fence capacity would lead to material volumes of capacity being unused.⁹⁵ [redacted] submitted that 'under a commercial reservation remedy, the Proposed JV's network can still be run as a single unit protecting any efficiency benefit'. As such we understand that under [redacted] proposal the Merged Entity's capacity would still be 'pooled', ie it would not be exclusively reserved for MVNOs.⁹⁶ [redacted] submitted that 'the Parties can still pool their capacity and the Proposed JV's network can be run as a single unit'⁹⁷ and that the Merged Entity would still be able to 'utilis[e] spare capacity from one part of its network in order to alleviate congestion on another part'.⁹⁸
- 1.87 Ofcom told us that it should in principle be possible to contractually ring fence capacity whilst allowing all access to the same speeds. For instance, the contract could specify that the MVNOs could access 'X' gigabytes (**GB**), and adjust 'X' as the total network capacity grows.⁹⁹ However, Ofcom has raised concerns that contractual capacity ring-fencing could lead to inefficiencies linked with the difficulties of planning how much capacity would need to be ringfenced.¹⁰⁰
- 1.88 Ofcom told us that it would be contractually difficult for the MNO to specify when and where that capacity can be used in a way that affords the MNO control over demand and congestion. While MVNO traffic remains only a small proportion of traffic, this does not materially reduce the MNO's control, but if MVNOs carry a significant proportion of overall traffic on the network, where and when that traffic is becomes more important to managing overall network quality. With its own retail

⁹² [CMA87](#), paragraph 3.49.

⁹³ [redacted] [response to the Remedies Notice](#), paragraph 1.8.

⁹⁴ [redacted] supplementary response to the Remedies Notice.

⁹⁵ [redacted] supplementary response to the Remedies Notice.

⁹⁶ [redacted] submission.

⁹⁷ [redacted] supplementary response to the Remedies Notice.

⁹⁸ [redacted] supplementary response to the Remedies Notice.

⁹⁹ Ofcom, submission.

¹⁰⁰ Ofcom call note.

customers, an MNO can set prices and other product characteristics in response to congestion.¹⁰¹

- 1.89 Ofcom also raised a risk of market distortions by artificially pushing retail prices down during the remedy period which could then affect MNOs' incentives to invest in their network.¹⁰²
- 1.90 We consider that contractual ring-fencing may be challenging to specify and difficult to monitor and to the extent the reserved capacity is not taken by MVNOs, we consider this would be an inefficient use of network capacity.
- 1.91 Overall, we therefore consider that the implementation of a ring-fencing remedy through a contractual arrangement could either have insufficient impact (because the proportion of capacity reserved for MVNOs is set too low to create the right incentives) or be distortive and in both cases it would not be an effective remedy.
- 1.92 Alternatively, a ring-fencing remedy could be delivered through a technical separation of a determined proportion of the Merged Entity's capacity. The Parties consider ring-fencing to be an inefficient use of capacity which would eliminate, or at the very least materially reduce, the efficiencies and benefits that the Parties claim will be realised as a result of the Merger.¹⁰³ Ofcom also told us that technical ringfencing would be inefficient, as it reduces the speeds available to both sets of customers (the MVNOs' and the MNOs') and overall reduces the capacity available (or more precisely, results in more congestion for any given level of total traffic).¹⁰⁴ Further the Parties estimated that such a technical implementation of a ring-fencing remedy (which would require the Merged Entity to have a 5G SA core to enable a network 'slice' to be ring-fenced) would not be technically feasible until at least three years after completion of the Merger.¹⁰⁵
- 1.93 Given the risks outlined above, we consider that a ring-fencing remedy (whether contractually or technically implemented) would not have a sufficient degree of certainty of achieving the intended effect on the provisional SLCs and their adverse effects. On that basis, we have not considered a ring-fencing capacity remedy further.

Remedies considered in this paper

- 1.94 Based on our initial views and responses from the Parties and third parties to the Remedies Notice, this paper focuses on the following remedy options:

¹⁰¹ Ofcom, submission.

¹⁰² Ofcom call note and Ofcom submission.

¹⁰³ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 3.25.

¹⁰⁴ Ofcom, submission.

¹⁰⁵ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraphs 7.16 - 7.18.

- (a) Prohibition of the Merger
- (b) The Network Commitment (the Parties' proposed remedy) supported by time limited protections:
 - (i) Wholesale Market Access Terms
 - (ii) Retail Market Customer Protections

1.95 In reaching a provisional view on effectiveness, we have taken account of all submissions we have received and the available evidence both in assessing how these remedies might be structured and in assessing their adequacy in addressing the SLCs.

1.96 Below we set out our assessment of, and provisional conclusions on, the effectiveness of each of the above remedy options.

Assessment of the effectiveness of prohibition of the Merger

1.97 In this section, we consider the effectiveness of a remedy prohibiting the Merger.

Remedy description

1.98 The Merger currently remains anticipated. Prohibition of the Merger would prevent completion and the SLCs would not arise. VUK and 3UK would continue to operate under separate ownership as independent competitors.

1.99 This remedy would be implemented by either accepting Final Undertakings under [section 82](#) of the Act or making a Final Order under [section 84](#) of the Act, prohibiting the Merger from completing and preventing the Parties from attempting to merge without the CMA's prior consent for a further period (normally ten years).

Parties' and third parties' views on effectiveness of Merger prohibition

1.100 The Parties submitted that prohibition of the Merger would have severe adverse effects on the development of competition in the retail and wholesale markets as the UK's mobile markets would remain trapped in a low investment, low competition equilibrium.¹⁰⁶ They submitted that prohibition would result in the loss of the REEs / RCBs generated by Merger, which represent billions of pounds in value to the UK.¹⁰⁷

¹⁰⁶ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 8.4.

¹⁰⁷ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 8.8.

1.101 Whilst a number of third parties expressed a preference for or against prohibition in response to the Remedies Notice, no third party raised concerns that prohibition would not preserve the Parties' pre-Merger competitive position in the retail and wholesale markets and therefore be ineffective.

Assessment of effectiveness of Merger prohibition

1.102 According to the CMA's Merger Remedies Guidance, full prohibition of an anticipated merger is an effective remedy as it necessarily maintains the competitive structure of a market that would have otherwise been changed by the merger.¹⁰⁸

1.103 In this case, where the Merger is anticipated, prohibition will have an immediate effect, preventing completion of the Merger and resulting in VUK and 3UK continuing to operate under separate ownership as independent competitors.

1.104 To the extent that we were to agree with the existence of RCBs, their elimination would not undermine the remedy's effectiveness. The proportionality of prohibition and assessment of RCBs is dealt with separately in paragraphs 1.578 and 1.555.

1.105 We therefore consider that prohibition of the Merger would prevent the provisional SLCs from arising in the relevant markets, with no material risks in terms of its effectiveness.

Provisional conclusion on the effectiveness of prohibition

1.106 On the basis set out above, we provisionally conclude that prohibition would represent an effective and comprehensive solution to the provisional SLCs and consequently prevent any resulting adverse effects.

1.107 Under a prohibition remedy, our consideration of the appropriate period during which the Parties would be prevented from attempting to merge is set out when we consider remedy implementation issues in paragraphs 1.609 to 1.610.

1.108 The proportionality of prohibition is addressed later in this paper when we consider the proportionality of effective remedies in paragraphs 1.578 to 1.582.

Assessment of the effectiveness of the Network Commitment and time limited protections

1.109 Prior to the Provisional Findings and in response to the Remedies Notice, the Parties offered a Network Commitment that would deliver the key elements of the

¹⁰⁸ [CMA87](#), paragraph 3.35.

Merged Entity's JNP/JBP (ie a behavioural commitment) that they submitted would address our provisional concerns with regards to retail and wholesale customers.

Application of CMA Merger Remedies Guidance

- 1.110 The CMA's Merger Remedies Guidance sets out that behavioural remedies are, due to their overall risk profile, unlikely to deal with an SLC and its adverse effects as comprehensively as structural remedies.¹⁰⁹ However, the Merger Remedies Guidance also says that '[b]ehavioural remedies can operate satisfactorily in limited circumstances, especially where the company operates in a regulated environment and where there are expert monitors'.¹¹⁰
- 1.111 As outlined in the Remedies Notice, there are case specific facts that suggest behavioural remedies could be appropriate in this case. In particular, mobile network operators in the UK are regulated by Ofcom, which may be able to play a role in the implementation, monitoring and enforcement of remedies, including behavioural remedies. Further, for the reasons set out below, we consider that at least some of the customer benefits claimed by the Parties could qualify as RCBs under the Act and would be preserved through a behavioural remedy.
- 1.112 When behavioural remedies are considered, we generally prefer to use enabling measures that 'work with the grain of competition', and address an SLC by seeking to remove obstacles to competition or stimulating competition, rather than measures that control market outcomes, which restrict the adverse effects of an SLC. The latter measures also tend to be onerous to operate and monitor, may create significant market distortions and do not address the causes of an SLC. Therefore, they are unlikely to be appropriate other than for a limited duration, unless there is no effective or practical alternative remedy.¹¹¹ Whilst behavioural, we consider that the Network Commitment is an enabling measure because it delivers a structural change to the UK's mobile networks, leaving market outcomes to be determined by the competitive process without further intervention.

Network Commitment remedy description

- 1.113 In this section we provide a description of the Parties' proposed Network Commitment including how this would be implemented before outlining the Parties' position as to how it addresses the SLCs identified in the Provisional Findings.
- 1.114 The Parties' Network Commitment proposal, as described by the Parties in their response to the Remedies Notice, is publicly available on the CMA's case page.¹¹²

¹⁰⁹ [CMA87](#), paragraph 3.5.

¹¹⁰ [CMA87](#), paragraph 3.48.

¹¹¹ [CMA87](#), paragraphs 3.49 and 7.12.

¹¹² [Parties' response to the Remedies Notice](#), 27 September 2024, section 4.

Overview of the Network Commitment remedy

- 1.115 The Parties proposed a Network Commitment remedy that they submit would deliver the key elements of the Merged Entity's JBP. The Parties believe this remedy to be appropriate, effective and proportionate in accordance with the CMA's Merger Remedies Guidance.¹¹³
- 1.116 The Parties claim this remedy would entail a legally binding commitment to deliver the key elements of the JBP, enabling the delivery of a national 'best-in-class' network and rivalry enhancing effects. The Parties submit that this would prevent the SLCs in the retail and wholesale markets.¹¹⁴
- 1.117 In particular, the Parties claim that the implementation of the JBP would enable both Parties to increase their competitiveness in the market and achieve the necessary scale to provide UK customers with a 'best-in-class' network while realising sustainable returns. This JBP would create a challenger for BTEE and VMO2, leading to further investments in the industry to maintain competitiveness. According to the Parties, the Network Commitment is necessary to create a high-investment equilibrium and deliver a better outcome in both the retail and wholesale markets.¹¹⁵ The following core aspects of the Network Commitment are described in more detail below:
- (a) The key obligations under the Network Commitment; and
 - (b) The Parties' proposed implementation process.

Obligations under the Network Commitment

- 1.118 There are two broad potential ways to measure the delivery of the JBP/JNP: these are input or output-based. An input-based approach would measure the delivery of the physical network (ie sites and spectrum deployed). An output-based approach would measure outcomes delivered to customers by way of coverage, speed, latency etc. [REDACTED], the Parties have proposed an input-based approach.
- 1.119 The Parties consider that the Network Commitment should be inputs-based, as this means that the metrics are clear and unequivocal. They are readily measurable, simple and easy to monitor in practice.¹¹⁶ The Parties submitted that outputs (such as speeds, coverage and capacity) are a function of two things: the number of sites and the spectrum deployed on them. Vodafone described the relationship between inputs and outputs as 'one-to-one'.¹¹⁷

¹¹³ Parties' network commitment proposal.

¹¹⁴ Parties' network commitment proposal.

¹¹⁵ Parties' network commitment proposal.

¹¹⁶ Parties' network commitment proposal.

¹¹⁷ Vodafone response hearing transcript.

1.120 Under the Network Commitment, the Parties would commit to create a combined network of no fewer than [25,000-30,000] nationwide sites (Figure 1.1). These sites would be divided across urban and rural areas, with a specified number of high-, mid-, and low-configuration sites in each area.¹¹⁸ Currently 3UK has [X] sites¹¹⁹ while VUK has [X]. Therefore, whilst the Network Commitment would result in an overall reduction in aggregate site numbers, the combined site portfolio would be denser and because spectrum holdings can be deployed at all sites, the Merged Entity's network would deliver greater capacity than the combined capacity of the two individual networks.¹²⁰

¹¹⁸ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 4.5.

¹¹⁹ CK Hutchison response to the CMA's s109 notice.

¹²⁰ Vodafone response to the CMA's s109 notice.

Figure 1.1: Annual Cumulative JNP Volume Target

	Annual Cumulative JNP Volume Target (No. of Sites)							
FY	Urban areas			Rural areas ¹			YoY Total	Total Cumulative
	High-config sites	Mid-config sites	Low-config sites	High-config sites	Mid-config sites	Low-config sites		
Y1	[REDACTED]							
Y2								
Y3								
Y4								
Y5								
Y6								
Y7								
Y8								

Notes: [1]

[REDACTED]

Source: [Parties' response to the Remedies Notice](#), 27 September 2024.

Figure 1.2: Spectrum configuration

RAN Spectrum Configuration post-VMO2 divestment			
Target configuration	Frequency bands (MHz)	Spectrum holding (MHz) (anticipated)	Sub-totals (subject to commitment)
High			
Mid		[X]	
Low			

Notes: [1]

[2] [X]

Source: [Parties' response to the Remedies Notice](#), 27 September 2024.

- 1.121 As the tables above outline, the Network Commitment would require the deployment of a prescribed amount of spectrum across a specified number of sites in rural and urban areas.
- 1.122 The Network Commitment would apply throughout an 8-year period, enabling the Parties to complete the network integration. After this period, the Parties submitted the positive effects on competition would be sustained in both the retail and wholesale markets benefiting UK consumers.¹²¹

¹²¹ Parties' network commitment proposal.

- 1.123 The Parties would report to Ofcom and a monitoring trustee, and maintain the Connected Nations reporting which they submit three times a year.¹²²
- 1.124 A monitoring trustee fully funded by the Parties would report to Ofcom and to the CMA under the Act.¹²³
- 1.125 The Parties originally proposed that the delivery of the Network Commitment would be measured against formal deployment commitments at years 4 and 8.¹²⁴ Following the Response Hearing, the Parties amended the formal commitment dates to three different points in time: the end of years 3, 5 and 8. The Parties submitted that the first milestone at the end of Year 3 would be appropriate as [X]% of the overall network rollout and [X]% of C-band site upgrades would have completed by this point.¹²⁵

The Parties' proposed implementation process

- 1.126 The Network Commitment would be implemented through both an Undertaking to the CMA under the Act and the imposition of amended conditions in the Merged Entity's spectrum licence(s).¹²⁶ Ofcom would be responsible for monitoring the compliance with these conditions.¹²⁷
- 1.127 The Parties submitted that the Network Commitment takes into account Ofcom's feedback that the Network Commitment could be formalised as a variation of the Merged Entity's spectrum licence(s).¹²⁸
- 1.128 The spectrum licence variation would occur under Section 1 of the Wireless Telegraphy Act 2006 (**WTA06**).¹²⁹ The Parties envisage that the Network Commitment would also be reflected in a Final Undertaking to the CMA under section 82 of the Act. As part of the Undertaking, the Parties would commit to request that Ofcom amend the Merged Entity's spectrum licence(s) to incorporate the Network Commitment and to meet specific targets which become enforceable terms of the licence.¹³⁰
- 1.129 The Parties support the spectrum licence variation as would formalise Ofcom's involvement in the monitoring of the Network Commitment, and unlock its statutory powers under the WTA06.¹³¹ As the Network Commitment would be part of the

¹²² Parties' network commitment proposal.

¹²³ Parties' network commitment proposal.

¹²⁴ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 4.5.

¹²⁵ Parties, Remedies Letter to Inquiry Group.

¹²⁶ Parties' network commitment proposal.

¹²⁷ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 4.16.

¹²⁸ Parties' network commitment proposal.

¹²⁹ Section 9 and 10 of WTA06 provide Ofcom with powers to grant wireless telegraphy licences and to revoke or vary them. Parties' network commitment proposal.

¹³⁰ Parties' network commitment proposal.

¹³¹ Parties' network commitment proposal.

conditions of the Merged Entity's spectrum licence(s), Ofcom would monitor compliance with these conditions.¹³²

- 1.130 In addition to formally measuring compliance with the Network Commitment (at Years 3, 5 and 8¹³³), the Parties would also regularly report on the progress of the rollout to the monitoring trustee and Ofcom. Ofcom's Connected Nations reports could be leveraged for this purpose. The frequency and timing would be set out in an Undertaking.¹³⁴ More specifically, reports would include:
- (a) location of the site – which could be verified by visiting the site;
 - (b) physical site characteristics, including its height and orientation – which could be verified by visiting the site;
 - (c) number of sectors – which could be verified by visiting the site (as this is visible); and
 - (d) spectrum deployment of each sector – which could be verified by a third party, using a spectrum analyser (for example, Ofcom has a spectrum enforcement team that measures spectrum with a spectrum analyser).¹³⁵
- 1.131 The Parties currently have two tools as information sources for the number of sites deployed and live. These are the Site Planning Tool and Inventory Management Tool. An independent auditor would be able to review data from these tools to verify the accuracy of the data.¹³⁶
- 1.132 The monitoring trustee, in consultation with Ofcom would state whether the Merged Entity has met the commitment targets at the end of Years 3, 5 and 8 in its report to the CMA. In case the commitments are not met, the Merged Entity would have a period of time to meet the targets (a cure period). During this time, the Merged Entity would have to submit monthly reports to Ofcom and the monitoring trustee to report on its progress. If, after the cure period, the Merged Entity does not meet its commitment, the monitoring trustee would inform the CMA of Ofcom's further remedial recommendations.¹³⁷
- 1.133 Following the Response Hearing, the Parties amended the above proposal to a cure period of 6 months in case they fail to deliver 90% of their rural or urban site targets at the end of Years 3, 5 and 8.¹³⁸

¹³² [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 4.16.

¹³³ Parties, Remedies Letter to Inquiry Group.

¹³⁴ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 4.17.

¹³⁵ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 4.17.

¹³⁶ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 4.17.

¹³⁷ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 4.26.

¹³⁸ Parties, Remedies Letter to Inquiry Group.

- 1.134 In addition to the cure period, the Parties proposed a number of guardrails¹³⁹ that would allow for the Parties to fail to meet the Network Commitment due to unforeseen events.¹⁴⁰ The Parties later revised the list of unforeseen events to mandatory regulatory interventions and a ‘reasonably scoped “force majeure” clause’.¹⁴¹
- 1.135 The Parties submitted that the Merged Entity would have very strong incentives to comply with the Network Commitment, as failure to do so would result in a breach of the Merged Entity’s spectrum licence(s).¹⁴² Furthermore, a consequence of Ofcom’s civil enforcement powers is that the sanctions for breach of a spectrum licence would be very significant and incentivise the entity to ensure compliance with the Network Commitment in full.¹⁴³ The Parties noted in this respect that Ofcom’s civil enforcement powers are administrative in nature – it does not need court approval to bring enforcement action.¹⁴⁴
- 1.136 In particular, the Parties noted that if the Merged Entity did not comply with the Network Commitment incorporated in the spectrum licence(s), Ofcom could enforce compliance by:
- (a) Issuing a contravention notice (at first instance, which allows the contravening party a period of time to comply with the notice) (section 39 of the WTA06);
 - (b) Opening a regulatory investigation in relation to the contravention of the licence – this can result in Ofcom issuing a financial penalty of up to 10% of relevant annual gross revenue (sections 42 and 43(2A) of the WTA06);
 - (c) Bringing civil proceedings against the contravening party including seeking injunctions or specific performance (section 108 of the WTA06);
 - (d) Revoking or varying the Merged Entity’s spectrum licence(s) (paragraph 7 of Schedule 1 of the WTA06); and
 - (e) Criminal prosecution for unauthorised use of wireless telegraphy apparatus under section 35 of the WTA06, which can be punishable by up to two years’ imprisonment and a fine.¹⁴⁵
- 1.137 Furthermore, the Parties noted that Ofcom has information gathering powers under the Communications Act 2003 (**CA03**) and the WTA06. Ofcom can impose

¹³⁹ eg, acts of God, such as fire, flood, earthquake, pandemics or other natural disasters; terrorist events, riots, insurrections, war, strikes or national emergencies; significant changes in political, legal, fiscal or regulatory conditions and/or significant supply chain disruptions.

¹⁴⁰ [Parties’ response to the Remedies Notice](#), 27 September 2024, paragraph 4.19.

¹⁴¹ Parties’ follow-up remedies submission.

¹⁴² Parties’ network commitment proposal.

¹⁴³ Parties’ network commitment proposal.

¹⁴⁴ [Parties’ response to the Remedies Notice](#), 27 September 2024, paragraph 4.22.

¹⁴⁵ Parties’ network commitment proposal.

financial penalties in case of contravention of the requirements of an information request.¹⁴⁶

- 1.138 The Parties also noted that the CMA has enforcement powers for Final Undertakings and Orders.¹⁴⁷
- 1.139 The Parties submitted that Ofcom would need the discretion to make minor updates to the relevant targets if any significant technological changes arise. The Parties state that this would ensure the Network Commitment would be specified in a way that could take into account unanticipated circumstances.¹⁴⁸

Ofcom's views

- 1.140 Ofcom has provided views on whether the Network Commitment, if implemented, would result in the improvements in network performance claimed by the Parties. These are considered in more detail below in our assessment of the effectiveness of the Network Commitment in addressing the SLC and its resulting adverse effects. In addition, Ofcom has also commented on the practicalities of the Parties' proposal, which are considered here.
- 1.141 Ofcom told us that input-based requirements have significant advantages relative to output-based requirements. While the ultimate benefit to customers depends on what outputs are achieved, Ofcom told us that there would be considerable difficulty defining the precise outputs that should be achieved, and that this would have implications for the resources required to monitor compliance, and Ofcom's ability to enforce those requirements.¹⁴⁹
- 1.142 Ofcom told us that measuring signal strength (output) at every location would not be practical. Ofcom would be reliant on the predictions from the MNOs, with a limited amount of calibration through drive surveys. Even this limited amount of calibration would have a significant cost of several hundred thousand pounds over the commitment period.¹⁵⁰
- 1.143 Ofcom told us that the high standard deviation of the measurement error (between predicted signal strength and that measured on drive surveys) means that any measurement programme would need to be substantial in order to support enforcement, and even so, still afford a degree of leniency against the intended consumer outcomes for the reasons set out below in relation to unintended consequences.¹⁵¹

¹⁴⁶ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 4.23.

¹⁴⁷ Parties' network commitment proposal.

¹⁴⁸ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 4.48.

¹⁴⁹ Ofcom response to the CMA's request for information (RFI).

¹⁵⁰ Ofcom, submission.

¹⁵¹ Ofcom, submission.

- 1.144 Ofcom told us that the focus on predicted signal strengths may also have unintended consequences.¹⁵²
- (a) First, the MNOs may have an incentive to avoid developing more accurate prediction tools that might otherwise help focus network developments on improving customers' experience. Any more accurate predictions might identify more localised areas of weaker signal and make it more costly to achieve the licence obligation.
 - (b) Second, the MNOs have an incentive to develop their prediction tools that focus on meeting the licence obligation within the known calibration parameters, rather than supporting improving customers' experience. Ofcom's calibration focusses on the mean signal strength and mean error of differences between predicted and measured signal strength, allowing a certain tolerance. In principle, that provides the MNOs with some leeway to develop their models in a way that, whilst remaining within the calibration limits overall, adds predicted signal strength in areas needed to meet the obligation whilst reducing predicted signal strength in other areas.
 - (c) Third, setting the power output is an important lever in optimising the performance of the network. Increasing the power output will in general increase coverage at any given signal strength, but it might actually worsen the consumer experience by also increasing signal interference and reducing the ability of the resulting connection to support a good service for the customer.
- 1.145 Ofcom told us that it does not believe it is practical to measure the outputs of average speeds and latency given, firstly, the (very large) scale of the measurement programme that would be needed across locations and time of day to provide evidence sufficient to enforce an obligation and second, the potential for monitoring coverage outputs to be distortive and risk creating an incentive for the Merged Entity to focus on 'passing the test' (rather than) developing models in a way that will allow it to better predict customer experience and respond where it falls short. Any monitoring would be reliant upon predictions from the Merged Entity, with the likely costs of even limited measurement and the scope for any monitoring programme distorting incentives away from improving the consumer experience both even greater than is the case for coverage monitoring.¹⁵³
- 1.146 Ofcom told us that the key inputs that would need to be specified are the number of sites and the spectrum deployed on those sites. It also told us that the specification should consider the risk that the Merged Entity may seek to retain fewer sites in rural areas, and therefore that the specification should separately

¹⁵² Ofcom, submission.

¹⁵³ Ofcom, submission.

identify sites and spectrum in areas that broadly map to urban and to rural areas.¹⁵⁴

- 1.147 Ofcom told us it does not consider output measures to be necessary and that the inputs of sites and spectrum are strongly linked to the outcomes of customer experience in terms of network quality.¹⁵⁵
- 1.148 Ofcom expects the benefits of the Network Commitment to be long-lasting rather than temporary.¹⁵⁶ Ofcom told us that although consumers' use of mobile services and demand for mobile data have both changed substantially over the past 10 years, the underlying physical infrastructure (mobile sites) has remained far more constant, with many of the sites that were used 10 years ago still in use today, and the number of sites used by each MNO having only increased by a small percentage each year.¹⁵⁷
- 1.149 Ofcom does not consider that it would be appropriate to provide for a cure period and noted that it would simply delay the point at which the obligation becomes binding. Ofcom considers that its current approach to enforcement allows sufficient scope to consider mitigating circumstances that have resulted in a failure to meet an obligation.¹⁵⁸ Ofcom considers its existing enforcement mechanisms allow it to take account of circumstances in the round, including any action parties have taken to mitigate any failure to meet obligations, in a way that preserves incentives on parties to meet both the letter and intent of obligations.¹⁵⁹
- 1.150 In terms of circumvention risk, Ofcom also noted that we may wish to consider the following:¹⁶⁰
- (a) Whether the Parties be allowed to deploy new spectrum, such as the 26 GHz spectrum, to achieve the spectrum quantity commitments.
 - (b) Whether all sites should have each of 700 MHz, 800 MHz, 900 MHz and 1,400 MHz spectrum bands deployed.
 - (c) The risk that the Parties use (cheaper) microcells to achieve the site numbers commitment.
 - (d) The risk that the Parties meet the commitment through sites and spectrum deployed using state funding such as with the SRN total not spots.

¹⁵⁴ Ofcom response to the CMA's RFI.

¹⁵⁵ Ofcom, submission

¹⁵⁶ Ofcom call note.

¹⁵⁷ Ofcom response to the CMA's RFI.

¹⁵⁸ As set out in [Ofcom's approach to enforcement](#), '[Ofcom] take[s] enforcement action for the benefit of citizens and consumers to: promote and/or protect competition; prevent consumer harm and enforce consumer protection law; and encourage compliance'.

¹⁵⁹ Ofcom response to the CMA's RFI.

¹⁶⁰ Ofcom response to the CMA's RFI.

Third Party views

- 1.151 Third parties submitted views on the Network Commitment remedy proposal.
- 1.152 BTEE does not believe that the Network Commitment would directly address the SLCs even if it was fully delivered.¹⁶¹ BTEE considers that either the remedy would be too simple to be effective or, if sufficiently designed, would be too complex to be monitored and enforced.¹⁶² In order to reduce the scope for circumvention, a complete range of input metrics related to network development and detailed output metrics would need to be included in the Network Commitment, but even then BTEE considers scope for circumvention and disputes would remain.¹⁶³ BTEE also considers that the specification and circumvention risks inherent in the Network Commitment would be reinforced by technological changes.¹⁶⁴ Furthermore, intensive monitoring would require Ofcom and/or the CMA to incur additional material costs and investments.¹⁶⁵
- 1.153 Even if the Network Commitment was implemented (which BTEE considers is highly unlikely), BTEE submitted that the effectiveness of the commitment would be dependent on it leading to a competitive response from BTEE and VMO2.¹⁶⁶ BTEE's ability and incentives to increase investment would be limited due to the Merged Entity's ability and incentive to use excess capacity to harm BTEE along with the ability and incentive to frustrate BTEE's ability to upgrade MBNL sites.¹⁶⁷ BTEE submitted that the Merged Entity would have a substantial capacity advantage over its rivals, and therefore the incentive to use capacity to engage in strategic conduct to the detriment of long-term incentives to invest.¹⁶⁸
- 1.154 VMO2 submitted that the Network Commitment would be reinforced by Beacon 4.1.¹⁶⁹ The Beacon 4.1 Agreements provide a structural measure which will significantly increase VMO2's competitiveness and thereby increase competition in the retail and wholesale markets.¹⁷⁰ VMO2 submitted that the Network Commitment could be implemented through an Undertaking and an amendment of the spectrum licence terms.¹⁷¹ VMO2 does not envisage circumvention or monitoring risks because of the nature of the data monitored. The involvement of Ofcom and its enforcement power under the WTA06 would rule out any information asymmetry concerns.¹⁷²

¹⁶¹ BTEE [response to the Remedies Notice](#), 27 September 2024, paragraph 1.14.

¹⁶² BTEE [response to the Remedies Notice](#), 27 September 2024, paragraph 3.12.

¹⁶³ BTEE [response to the Remedies Notice](#), 27 September 2024 paragraphs 3.29-30.

¹⁶⁴ BTEE [response to the Remedies Notice](#), 27 September 2024 paragraphs 3.20-22.

¹⁶⁵ BTEE [response to the Remedies Notice](#), 27 September 2024 paragraphs 3.21 – 3.34.

¹⁶⁶ BTEE [response to the Remedies Notice](#), 27 September 2024 paragraph 3.15.

¹⁶⁷ BTEE [response to the Remedies Notice](#), 27 September 2024 paragraph 3.16.

¹⁶⁸ BTEE [response to the Remedies Notice](#), 27 September 2024 paragraph 6.2.

¹⁶⁹ VMO2 [response to the Remedies Notice](#), 27 September 2024, paragraph 2.10.

¹⁷⁰ VMO2 [response to the Remedies Notice](#), 27 September 2024, paragraph 1.3.

¹⁷¹ VMO2 [response to the Remedies Notice](#), 27 September 2024, paragraph 3.3.

¹⁷² VMO2 [response to the Remedies Notice](#), 27 September 2024, paragraph 3.5.

- 1.155 [X] submitted that it is broadly supportive of a commitment that guarantees an enhanced network. However, [X] believes the Network Commitment should be overseen by an investment committee with appropriate oversight, rather than incorporated into the Merged Entity's spectrum licence, and this would help ensure deployment in a timely manner. [X] also supports the use of input metrics as performance targets as output metrics would be too complex to collect.¹⁷³
- 1.156 Community Fibre submitted that the Network Commitment could be an effective remedy along with capacity-based wholesale protections.¹⁷⁴ It submitted that the Network Commitment should focus on coverage, elimination and prevention of congestion, availability of capacity for continued usage and growth for both retail and wholesale customers of the Merged Entity and for additional wholesale providers.¹⁷⁵ Targets should be measured and monitored by experts and qualified monitors.¹⁷⁶
- 1.157 Enders Analysis submitted that it would be important to strike a balance addressing the concern about fulfilment of the network strategy by the Parties and allowing the Parties to respond to shifting demand, competitive and technological developments.¹⁷⁷ Network spend commitments should be expressed in broad terms with specific technical metrics which are deemed instrumental in achieving consumer outcomes and mitigate potential pricing impacts.¹⁷⁸
- 1.158 [X]¹⁷⁹ and [X]¹⁸⁰ submitted that a Network Commitment must be supplemented by additional remedies to address the provisional SLCs. Honest Mobile submitted that a Network Commitment should be subject to independent monitoring by Ofcom.¹⁸¹
- 1.159 [X] submitted that for delivery, the Parties should provide a roadmap of their plan for the next eight years and a half yearly update with key statistics and KPIs on the progress which can be easily understood and monitored.¹⁸²
- 1.160 One third party told us that monitoring and enforcing a technology outcome for ten years would be complex, problematic and resource intensive. However, if the commitment was instead based on GBP 11 billion investment over ten years, then monitoring and enforcement would be simple. Moreover, Parties would have the incentive to spend their money wisely.¹⁸³

¹⁷³ [X] [response to the Remedies Notice](#), 26 September 2024, page 1.

¹⁷⁴ Community Fibre [response to the Remedies Notice](#), 27 September 2024, page 1.

¹⁷⁵ Community Fibre [response to the Remedies Notice](#), 27 September 2024, page 1.

¹⁷⁶ Community Fibre [response to the Remedies Notice](#), 27 September 2024, page 1.

¹⁷⁷ Enders Analysis [response to the Remedies Notice](#), 27 September 2024, page 1.

¹⁷⁸ Enders Analysis [response to the Remedies Notice](#), 27 September 2024, page 1.

¹⁷⁹ [X] [response to the Remedies Notice](#), 26 September 2024, page 3.

¹⁸⁰ [X] [response to the Remedies Notice](#), 27 September 2024, page 2.

¹⁸¹ Honest Mobile [response to the Remedies Notice](#), 27 September 2024, page 2.

¹⁸² [X] response to the CMA's RFI.

¹⁸³ Professor Stephen Temple [response to the Remedies Notice](#), 17 September 2024, page 1.

Our assessment of the Network Commitment (behavioural framework)

Framework for assessing Network Commitment

1.161 Behavioural remedies seek to change aspects of business conduct from what may be expected, based on businesses' incentives and resources. In addition to the framework outlined above at paragraph 1.16 to 1.20 (which includes assessing the extent to which the remedy addresses the SLC, the duration and timing of the remedy, and its practicality), the design of behavioural remedies seeks to avoid four particular forms of risk to enable these measures to be as effective as possible:¹⁸⁴

- (a) **Specification risks:** these risks arise if the form of conduct required to address the SLC or its adverse effects cannot be specified with sufficient clarity to provide an effective basis for monitoring and compliance.
- (b) **Circumvention risk:** as behavioural remedies generally do not deal with the source of an SLC, it is possible that other adverse forms of behaviour may arise if particular forms of behaviour are restricted.
- (c) **Distortion risks:** these are risks that behavioural remedies may create market distortions that reduce the effectiveness of these measures and/or increase their effective costs.
- (d) **Monitoring and enforcement risks:** for behavioural remedies to have the desired impact, it is essential that there are effective and adequately resourced arrangements in place for monitoring and enforcement, so that there is a powerful threat that non-compliance will be detected, and that action will be taken to enforce compliance where this is necessary.¹⁸⁵ Even clearly specified remedies may be subject to significant risks of ineffective monitoring and enforcement. This may be due to a variety of causes, such as the volume and complexity of information required to monitor compliance; limitations in monitoring resources; asymmetry of information between the monitoring agency and the business concerned; and the long timescale of enforcement relative to an evolving market.

1.162 The rest of this section outlines our assessment of the effectiveness of the Network Commitment using the framework outlined above taking the above behavioural risks into consideration.

¹⁸⁴ [CMA87](#), paragraph 7.4.

¹⁸⁵ [CMA87](#), paragraph 7.5.

Impact on the SLC and resulting adverse effects

Background context and relationship with Provisional findings

- 1.163 In our Provisional Findings, we noted the Parties' claims that the Merger would give rise to REEs relating to network capacity and quality. We noted that the principal evidential base for the Parties' REE claims was the JBP. Part way through the phase 2 investigation, the Parties also entered into an agreement with VMO2 (Beacon 4.1) which involves, among other things, the divestment of spectrum to VMO2 (conditional on CMA approval for the Merger). The Parties claimed Beacon 4.1 would generate further REEs, in particular by making VMO2 a more effective competitor in the wholesale and retail markets.
- 1.164 We then considered in detail whether the Merger gave rise to REEs which could act as a countervailing factor that may prevent any SLC arising from the Merger, applying our established framework. In our assessment of REEs in our Provisional Findings, we considered whether the Parties had the economic incentive to deliver the full extent of the JBP. We provisionally concluded that the Parties were not likely to have the incentive to deliver the full JBP, and therefore the quantum of any REEs was likely to be less than claimed by the Parties.¹⁸⁶
- 1.165 We provisionally concluded that the increased rivalry from those efficiencies which were likely to be realised (absent any remedial intervention by the CMA) were not sufficient to offset the adverse competitive impacts identified in relation to the retail market and wholesale markets.¹⁸⁷ In light of this provisional finding, we did not need to further consider whether the full JBP, if delivered by the Parties, would be sufficient to offset the adverse effects on competition provisionally identified in the retail and wholesale markets (although we expressed some doubts in that respect and invited further submissions).¹⁸⁸
- 1.166 We now consider whether the Network Commitment remedy, which is intended to ensure delivery of the full JBP, would be effective in remedying the provisional SLCs identified and their resulting adverse effects.

How the Parties consider the Network Commitment addresses the provisional SLC

- 1.167 The Parties consider that the Network Commitment will prevent any SLC in the retail and wholesale markets and incentivise the Merged Entity and its competitors to compete harder.¹⁸⁹ The Parties state that this is because the commitment would:

¹⁸⁶ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 14.189.

¹⁸⁷ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 15.3.

¹⁸⁸ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 14.247.

¹⁸⁹ Parties' network commitment proposal.

- (a) Enhance the coverage and capacity of the Merged Entity, incentivising it to make attractive retail and wholesale offers to fill the new available capacity. This would be particularly relevant in the competition for MVNOs;
- (b) Decrease the Merged Entity's incremental costs of expanding capacity, leading to lower prices and better quality;
- (c) Improve the Merged Entity's network quality; and
- (d) Increase competition and competitive pressure on VMO2 and BTEE to provide better wholesale and retail offers.¹⁹⁰

1.168 The Parties submitted that this removes any prospect of an SLC arising as a result of horizontal unilateral effects in the retail and wholesale markets by incentivising competition.¹⁹¹

1.169 The Parties submitted that the CMA's Merger Remedies Guidance acknowledges behavioural remedies can be effective in regulated environments where there are expert monitors, and the Merged Entity would operate in a regulated environment.¹⁹² The Parties also submitted that the Network Commitment differs from the 'pure' behavioural remedy discussed in the CMA guidance. It would guarantee an irreversible structural change in network capacity and quality and a permanent shift in incentives for players in the market.¹⁹³

1.170 The Parties submitted that the other two MNOs in the market, VMO2 and BTEE, can be expected to respond with stronger retail and wholesale offers to compete successfully with the Merged Entity. The Parties submitted that this is further enhanced by Beacon 4.1, which provides VMO2 with additional spectrum and access to sites and facilitates investment in network quality and capacity, leading to increased network competition.¹⁹⁴

Previous provisional conclusions on the potential impact on rivalry of the JBP

1.171 We have set out already in this paper the wider legal and analytical framework in which the CMA considers the effectiveness of potential remedies and remedies packages as a whole. This includes assessing the impact of those remedies on the provisional SLCs identified and resulting adverse effects. We have considered the impact of the Network Commitment on rivalry.¹⁹⁵ The objective is to ensure

¹⁹⁰ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 4.34.

¹⁹¹ Parties' network commitment proposal.

¹⁹² Parties' network commitment proposal.

¹⁹³ Parties' network commitment proposal.

¹⁹⁴ Parties' network commitment proposal.

¹⁹⁵ [CMA87](#), paragraph 3.5(a).

that competition following the implementation of a remedy is at least *as effective as pre-merger competition*.¹⁹⁶

- 1.172 Whilst there are differences in the analytical framework for assessing the effectiveness of a remedy and potential rivalry-enhancing efficiencies, we consider that a number of aspects of our Provisional Findings are relevant to the current question of the impact of the Network Commitment on rivalry in both the retail and wholesale markets and therefore its effectiveness as a remedy. In particular, we note that in our Provisional Findings we accepted that in principle (i.e. without considering the likelihood of the JBP actually being implemented) the Merger could be rivalry enhancing in both the wholesale and retail markets, for several reasons.¹⁹⁷
- 1.173 First, there is evidence that quality is an important parameter of competition in the mobile industry. Therefore, improving network quality (through having a denser network comprising more sites and deploying more spectrum than each firm in the counterfactual) in a way that affects customer experience (eg coverage, reliability, speed) could in principle make the Merged Entity a stronger rival for its competitors. Second, while there are costs involved in deploying spectrum, combining the Parties' networks could enable more spectrum to be deployed at each site and therefore reduce the longer-term unit cost of expanding capacity. Given that mobile operators need to increase capacity to meet growing demand, this reduction in the unit cost of capacity could represent a reduction in long-term incremental cost. This could potentially give the Merged Entity – all else being equal – an incentive to provide a better quality of service and/or lower prices.
- 1.174 We also provisionally found that key quality improvements implemented by the Merged Entity would in turn likely elicit a competitive response (for example, by way of further network investment) from BTEE and VMO2 to also improve their respective network quality. In particular, we identified evidence that suggested [redacted] considers that if the Merged Entity were to challenge [redacted].¹⁹⁸ Based on the evidence that we reviewed, we provisionally concluded that [redacted] would consider [redacted].¹⁹⁹
- 1.175 We also noted that on a number of measures and according to competitor views, VMO2 has the lowest network quality of the UK MNOs. We therefore provisionally concluded that the additional spectrum acquired by VMO2 through Beacon 4.1 would provide a notable and rapid increase in network quality for its wholesale and retail customers which would further increase network quality competition.²⁰⁰

¹⁹⁶ CMA87, paragraph 3.30.

¹⁹⁷ CMA, [Provisional Findings Report](#), 13 September 2024, paragraphs 14.16-14.17.

¹⁹⁸ CMA, [Provisional Findings Report Appendices](#), 13 September 2024, paragraph C.49.

¹⁹⁹ CMA, [Provisional Findings Report Appendices](#), 13 September 2024, paragraph C.49.

²⁰⁰ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 62.

1.176 We consider the likely impact of this in more detail, with regards to the key competitive parameters in each of the retail and wholesale markets below having regard to additional evidence that we have gathered since our Provisional Findings were published.

Key competitive parameters for retail customers

1.177 In our Provisional Findings, we sought to understand the factors that matter to UK customers when purchasing mobile telecommunications services. We provisionally found that price and quality are the most important competitive parameters, with price the more important parameter of the two. Customers require a minimum level of quality, and network quality related parameters play an important role in customer decisions, but we provisionally found they are less important than price.²⁰¹ For example, we noted that most consumers told us in our survey that they would not be willing to pay more for better quality (with 76% unwilling to pay for faster speed, and 59% unwilling to pay for more reliability).²⁰²

1.178 However, at the same time, customers also told us that they would react strongly to a deterioration in network quality: 60% of 3UK customers and 65% of VUK customers were quality-marginal (ie they would switch if the network they were using was 'a bit less reliable').²⁰³ We also found in our econometric analysis some willingness to pay for aspects of network quality and in particular for additional 4G download speed.²⁰⁴

1.179 Finally, we recognised the possibility that customer attitudes may evolve as the mobile industry develops,²⁰⁵ ie it was possible that a different valuation of price and quality parameters may result over time. We noted that Ofcom had concluded that it expects the quality of mobile services to become 'more important as customers' dependence on mobile services grows and their needs evolve'.²⁰⁶ In particular, Ofcom (and third parties) expect demand for mobile data to grow to meet changing customer needs, as greater use is made of data-hungry services (eg streaming, video calling, virtual and augmented reality) meaning that significant investments in mobile networks will be required to increase capacity and provide the network quality needed to meet customers' future connectivity needs.²⁰⁷

²⁰¹ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 33.

²⁰² CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 8.26.

²⁰³ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 8.27.

²⁰⁴ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 8.45.

²⁰⁵ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 34.

²⁰⁶ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 8.57.

²⁰⁷ CMA, [Provisional Findings Report](#), 13 September 2024, paragraphs 5.9 and 5.13.

Likely impact of the Network Commitment on pricing in the retail market

- 1.180 Given the importance of price to customers, we sought to quantify the likely impact of the Merger on pricing using a range of economic techniques. However, we also noted that it is difficult to estimate the impact of a merger on retail pricing with precision in this industry for a range of reasons. We therefore considered our economic estimates in the round, rather than as a single definitive source of evidence about the likely impact of the Merger.²⁰⁸ This is in line with our guidance, which makes clear that the CMA is not required to separately assess the expected impact of a merger on each parameter of competition in order to identify an SLC.²⁰⁹ In addition, we expressly recognised that for methodological reasons, these economic techniques held quality fixed²¹⁰ (ie they, by design, did not seek to assess the impact of any potential network quality improvements on overall consumer welfare, which we considered separately).
- 1.181 Since our Provisional Findings, the Parties have suggested a correction to how we have classified one part of the underlying econometric data used in our merger simulation. Following further review, we have updated our approach and used an amended version of the data in our merger simulation. Our analysis continues to predict (in the absence of REEs) price rises for the Parties and material harm for UK consumers, albeit on a smaller scale compared to the numbers reported in the Provisional Findings. In particular, the merger simulation predicts that the Merged Entity would raise the prices of 3UK's tariffs by 5.5% on average and VUK's tariffs by 2.6%.²¹¹ This would result in a 1.4% decrease in consumer welfare, implying an annual cost of approximately GBP 216 million to UK consumers.²¹² We consider these estimates to be a lower bound on the possible price and harm effects resulting from the Merger, as the merger simulation does not account for example for the impact on the wholesale market.²¹³
- 1.182 We also noted in our Provisional Findings that the Parties submitted that an increase in network capacity would result in a reduction in the incremental cost of capacity that will result in downwards pricing pressure. On the basis that we did consider some increase in the network capacity of the Merged Entity was likely to result in the early years post-Merger, we considered the evidence as to whether any reduction in incremental cost of capacity is likely to be passed through to the benefit of retail customers. Our view, at that point, was that based on the approach

²⁰⁸ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 42.

²⁰⁹ [CMA129](#), paragraph 2.22.

²¹⁰ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 8.302(a).

²¹¹ In our Provisional Findings these figures were 7.0% and 3.8%, respectively.

²¹² In our Provisional Findings, consumer welfare was predicted to fall by around 1.5% with the corresponding annual consumer harm figure of GBP 328 million per year.

²¹³ In our Provisional Findings the CMA completed a sensitivity analysis to understand the impact of different assumptions on the estimated harm resulting from the Merger. We have updated this analysis. Results suggest that if the market power pre-merger is higher than in the CMA's econometric model (eg more in line with the market power implied by contribution margins) the harm would be over 80% higher than the GBP 216 million estimate, even without accounting for the effect of the Merger on the wholesale market.

to pricing evident from the Parties' internal documents, there was no clear link between incremental costs of capacity and the Parties' retail market pricing decisions (and we did not find the Parties' economic modelling of this robust or persuasive). As such, we did not find that reductions in incremental cost of capacity were likely to be passed through to their retail customers.²¹⁴

- 1.183 We noted the complexity of pricing decisions, and in particular provisionally concluded that prices, traffic, congestion and churn do not have simple relationships, and the overall revenue impacts differ depending on the degree of each impact.²¹⁵ Conversely, we identified strong evidence that the Parties' retail prices are set relative to competitors. Therefore, we provisionally considered that the Merged Entity having a lower cost of capacity than the Parties, on a standalone basis, would not likely result in the reduction of retail prices that could be set off against our estimates of the adverse effects from the loss of competition identified.²¹⁶ We also provisionally concluded that we expected that the loss of competition at both wholesale and retail levels would reduce the rate of pass through of any efficiencies to customers at the retail level.²¹⁷
- 1.184 With reference to the question we are currently considering – ie whether the Network Commitment, in delivering the full JBP, would be effective in remedying the provisional SLCs identified and their resulting adverse effects – we make several observations about these aspects of our Provisional Findings. Firstly, as outlined above, the quantitative analysis we outlined in our Provisional Findings suggested upwards pricing pressure in nominal terms. We note that this does not discount the possibility that even if higher nominal prices were to result, rivalry-enhancing customer welfare benefits from higher quality could exceed customer losses from higher prices (ie quality-adjusted prices could fall even if nominal (ie unadjusted) prices increase).
- 1.185 Secondly, as noted, our provisional findings on this point were based on the approach to retail pricing evident in the Parties' internal documents. We recognise the possibility that these documents, which reflect retail pricing decisions in the ordinary course of business, may not fully capture the likely impact of significant increases in network capacity that result over the course of a long-term programme of work such as that secured through the Network Commitment. As set out already in this paper, the significant network capacity improvements brought by the JBP, even on the Parties' own estimates, are only fully achieved over an eight-year term, albeit that there are some capacity improvements even in the early years. In light of our provisional conclusion that it was not likely that the full JBP would be implemented over the long-term, our Provisional Findings

²¹⁴ CMA, [Provisional Findings Report](#), 13 September 2024, paragraphs 14.213-14.214.

²¹⁵ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 14.214.

²¹⁶ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 14.214.

²¹⁷ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 14.153.

necessarily did not conclude on the potential impact of long-term capacity improvements.

- 1.186 We have therefore engaged further with Ofcom in order to assess the extent of the network capacity improvements likely to result from the full implementation of the JBP in the long-term, given its specialist mobile network expertise. As described in further detail below, Ofcom observe that analysis of the total spectrum deployed across all sites in 2024 and under the 2032 JBP (based on the latest site information provided to them by the Parties) provides a first order indication of the relative capacity uplift in rural and urban areas from full implementation of the JBP. The analysis indicates a relative uplift in capacity compared to the sum of both Parties' sites and spectrum in 2024 of at least x[~~20~~] in rural areas and of at least of x[~~15~~] in urban areas.²¹⁸
- 1.187 We note that the Merged Entity's increase in capacity (compared to the counterfactual) would be accompanied by Beacon 4.1 increasing VMO2's network capacity both as a result of the additional spectrum VMO2 acquires ([~~20~~]) and the additional sites it would be able to access. We would expect that this increase in the capacity of two MNOs would lead to downward pressure on prices as they would have the incentive to fill that capacity by making more attractive offers to customers, and BTEE would likely respond by increasing the attractiveness of its own offers.
- 1.188 However, in light of the evidence we described in our Provisional Findings about the way that retail pricing decisions are made in the ordinary course of business and the (immediate) upwards pricing pressure resulting from the loss of competition, we consider that there may be different pricing impacts on the retail market from the Merger (assuming the Network Commitment is implemented as a remedy) over the short and long term. In particular, we consider that the impact of the longer-term market network capacity increases from the implementation of the Network Commitment, in conjunction with Beacon 4.1, will take time to manifest. Therefore, in the short-term the reduction in competition will put upward pressure on prices, but, in the longer term, the increase in capacity in the market, and the related reduction in incremental costs, is likely to have the opposite effect. We consider the implications of this finding for our effectiveness of the Network Commitment remedy in more detail below.

Likely impact of the Network Commitment on network quality in the retail market

- 1.189 As noted above, we provisionally found that network quality is one of the two most important competitive parameters for customers and is likely to increase in importance in the future.²¹⁹ In this regard, we noted evidence of material increases

²¹⁸ Ofcom, response to the CMA's 1 October 2024 letter.

²¹⁹ CMA, [Provisional Findings Report](#), 13 September 2024, paragraphs 34 and 8.57.

in the patterns of mobile usage over time. We noted that mobile services play an integral role in the daily lives of consumers and businesses in the UK and that in the last decade, there has been a significant shift towards the use of mobile devices in UK consumers' everyday lives, with mobile internet access becoming an essential service.²²⁰

- 1.190 In particular, we noted that 97% of UK adults are estimated to have a mobile phone, and 92% a smartphone.²²¹ Average monthly data volumes per mobile data user grew to 9.9 GB per month in 2023 from 2.6 GB in 2017.²²² We also noted that Ofcom expects demand for mobile data to continue to grow to meet changing customer needs. We noted that compared to 4G, 5G technology is capable of providing faster speeds, greater capacity and very fast response times. These features mean that 5G will allow many more users and devices to access fast internet connections and a large amount of data at the same time.²²³
- 1.191 We noted that 5G in its most advanced form (ie 5G SA) also has the potential to enable various 'smart' applications, for example in e-healthcare, smart cities, connected vehicles, and automated technologies. However, most of these new applications are still under development in terms of technology and business cases, and MNOs and other market participants have said that the case for deploying 5G SA is challenging due to the uncertainty over the extent to which they can make a return on their investment.²²⁴ We recognised that operating a mobile network involves high fixed costs and Ofcom anticipates that significant investment in mobile networks will be required to deploy the capacity needed to carry more mobile traffic, as well as in new technologies, including 5G SA.²²⁵
- 1.192 There are multiple dimensions of network quality including coverage, speed, latency, consistency and reliability. In order to assess the likely impact of the Merger on network quality, in our Provisional Findings we first carefully considered 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' and thus not able to provide the networks and levels of quality that customers will require in the future.
- 1.193 We provisionally found that absent the Merger, both of the Parties' standalone networks are likely to deliver improvements in network quality (and customer experience) as compared to current performance, based on our review of the current business plans of both of VUK and 3UK.²²⁶ We also challenged the Parties' claim that they are unable to effectively compete on a standalone basis so

²²⁰ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 13.

²²¹ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 13.

²²² CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 13.

²²³ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 14.

²²⁴ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 15.

²²⁵ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 14.

²²⁶ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 8.189.

as to deliver good outcomes for UK customers, based on our analysis of current outcomes in the retail market.²²⁷ In particular, we found that 3UK – supported by CK Hutchison and the proceeds of the Cellnex Transaction – had made significant efforts to grow its business by way of increased investment in its network, brand [redacted] over the course of FY20- FY22.²²⁸ Following this, it has achieved growth in a number of areas (particularly in its Business and Fixed Wireless Access (**FWA**) offering).²²⁹

- 1.194 However, we also found evidence from 3UK’s internal documents that it [redacted], and it has been [redacted], partly exacerbated by [redacted].²³⁰ We found that third party documents also recognise 3UK’s challenges of relative size and scale,²³¹ and some suggest an expectation that its investment activity and momentum may be limited by this (and therefore its capex constraints).²³² Since publication of our Provisional Findings, Ofcom has confirmed its view to us that – in the context of MNOs’ current relative financial performance – it considers 3UK to be subject to greater capital constraints than VUK.²³³ Ofcom submitted that while it recognises that 3UK has shown itself to be innovative in finding ways to generate additional revenues, it considers that this may not be long lived (as a result of competitors’ response and a continued ‘scarcity’ of capex). Ofcom submitted that it considers it likely that – absent the Merger – 3UK may curtail investment, with the result that it is likely to be a less strong competitor in future.²³⁴
- 1.195 Similar considerations were raised by a number of third parties, whose views we summarised in Chapter 8 of our Provisional Findings, with some emphasising the importance of considering ‘infrastructure competition’, and that – relative to the situation without the Merger – the Merger is likely to result in an improvement in the level of investment in network infrastructure.²³⁵ As set out in our Provisional Findings, we also note that some third parties expressed alternative perspectives, and some also expressed the view that a reduction in competition (ie by reducing the number of competitors) may dampen incentives to invest in network quality.²³⁶
- 1.196 We continue to believe that – absent the Merger – 3UK would likely continue competing in broadly the same way it does now, including on price and network quality, given that we have also found that its shareholder is likely to be incentivised to continue supporting it. However, we consider that there is likely to

²²⁷ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 8.188.

²²⁸ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 8.131 and CMA, [Provisional Findings Report Appendices](#), 13 September 2024, paragraph C.7.

²²⁹ CMA, [Provisional Findings Report](#), 13 September 2024, paragraphs 8.118 – 8.122

²³⁰ CMA, [Provisional Findings Report](#), 13 September 2024, paragraphs 8.116 (a) and CMA, [Provisional Findings Report Appendices](#), 13 September 2024, paragraph C.7.

²³¹ CMA, [Provisional Findings Report Appendices](#), 13 September 2024, [redacted].

²³² CMA, [Provisional Findings Report Appendices](#), 13 September 2024, [redacted].

²³³ Ofcom, response to the CMA’s 1 October 2024 letter.

²³⁴ Ofcom, response to the CMA’s 1 October 2024 letter.

²³⁵ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 8.112.

²³⁶ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 8.112.

be a marked difference between (i) the levels of investment and network quality performance that 3UK (and, to a lesser extent, VUK) would deliver absent the Merger and (ii) that proposed under the JBP and Network Commitment.

- 1.197 As outlined in our Provisional Findings, we therefore continue to consider 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 the Parties.²³⁷ In particular, we recognised that even absent the full implementation of the JBP, a combination of deployment of additional spectrum through sharing of the Parties' combined holdings (in relation to 1,800 MHz spectrum), multi-operator core network arrangement (**MOCN**) and some degree of site densification relative to either Party's standalone networks was likely to result in some improvement in various network quality metrics in ways that affect customer experience.²³⁸
- 1.198 Firstly, we provisionally found that MOCN and spectrum sharing would have some impact on network capacity and congestion. In particular, we provisionally found that MOCN would help address congestion in areas where VUK is congested but 3UK is not, and vice versa, and deployment of VUK's 1,800 MHz spectrum on 3UK sites would help alleviate congestion on 3UK's 4G network.
- 1.199 Secondly, we provisionally found that over time integration of the networks and the deployment of spectrum through that process would increase network capacity, further reducing congestion.
- 1.200 Thirdly, we provisionally found that the Merger would potentially improve coverage reliability, particularly in rural (but populated) areas and in buildings as a result of the greater number of combined sites. We noted that even in areas where there is technically mobile network coverage the distance from the site and obstacles such as buildings, trees and hills can affect the quality of the signal that the customer experiences. We also provisionally noted, however, that the benefits of MOCN on reliability will reduce over time as the combined grid is rationalised. We noted that the impact of densification (ie the number of sites) in the longer term would depend on how many sites the Merged Entity retained, and we provisionally concluded that the Merged Entity may have incentives to reduce the number of planned sites post-Merger, particularly in low to mid traffic areas.
- 1.201 Fourthly, we provisionally found that MOCN (and subsequently network integration – depending on the number of sites retained) would lead to some increase in geographic coverage (ie the removal of 'not-spots' where there was no network coverage), given the existing and future projected coverage of the Parties'

²³⁷ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 8.113.

²³⁸ CMA, [Provisional Findings Report](#), 13 September 2024, paragraphs 55 to 60.

standalone networks. However, we also noted this was likely to be in areas where there is limited use of mobile connectivity.

- 1.202 Finally, we noted the Parties' claim that the Merger would lead to a significant improvement in network latency and average speeds relative to the standalone scenarios. We provisionally concluded that given the Parties' forecasts suggest that their standalone networks will deliver high speeds and low latency by reference to current measures of high performance, the value to customers of some of these technical improvements (especially speed and latency) was likely to depend to a significant extent on the emergence and adoption of new applications (and the full implementation of the JBP).
- 1.203 As with our provisional findings on price, it was not necessary for us to consider in our Provisional Findings the likely impact of the full JBP on network quality, and in particular the deployment of 5G SA in the UK, in light of our provisional conclusion that the Merged Entity was unlikely to implement the JBP in full. By contrast, for the reasons set out below we now provisionally consider that through a remedy which ensures the full JBP is delivered for UK customers, there is potential for a significant increase in mobile network quality over the long term.
- 1.204 As noted above, in order to assess the extent of any network quality improvements likely to result from the full implementation of the JBP, we have engaged closely with Ofcom, given its specialist mobile network expertise. We asked Ofcom for its view on the overall impact that the Merger would have on the Parties' network quality and VMO2's network quality (assuming Beacon 4.1 and delivery of the full JBP).
- 1.205 Ofcom told us that the integration of the standalone networks envisaged in the JBP is a unique opportunity to deliver a significant improvement in the quality of the Parties' networks which is otherwise unlikely to be delivered by the market and is unlikely to be delivered subsequently if sites were decommissioned in the short term beyond the quantities envisaged in the JBP. Ofcom told us that the three (primary) areas of quality improvement would be from greater coverage reliability, reduced congestion and greater availability of C-band spectrum coverage,²³⁹ but that the improvements in coverage reliability were likely to be more valuable to customers than the increase in speeds and reduction in congestion. Cumulatively, these benefits would be significant for customers.
- 1.206 In particular, Ofcom told us that the use of VUK's 1,800MHz spectrum on 3UK sites and the use of MOCN would alleviate congestion and improve coverage reliability in the first year. Ofcom also noted that densification (over the longer term) would improve coverage reliability on the Merged Entity's networks. This densification, alongside the deployment of spectrum, would (also) provide a

²³⁹ Ofcom, response to the CMA's 1 October 2024 letter.

significant increase in capacity, and in combination with the Merged Entity's lower incremental cost of capacity would therefore result in lower levels of network congestion. Densification alongside widespread deployment of C-band in urban areas would (also) provide a broad footprint of C-band coverage that would enable high bandwidth applications.²⁴⁰

- 1.207 With regards to network capacity and congestion, as noted above at paragraph 1.186, Ofcom's analysis of the total spectrum deployed across all sites in 2024 and under the 2032 JBP (based on the latest site information provided to Ofcom by the Parties) provides a first order indication of the relative capacity uplift in rural and urban areas if the full JBP was implemented (through densification of sites and deployment of additional spectrum). The analysis indicates a relative uplift in capacity in rural areas of at least x[%] compared with a relative uplift in urban areas of at least x[%]. Ofcom told us that it does not hold the data that would allow an assessment of the extent to which this uplift would alleviate congestion in the long run. However, it noted that the analysis does indicate that the JBP will provide a broadly similar level of capacity uplift in both rural and urban areas and thereby support similar levels of traffic growth. Ofcom expects that in rural areas this capacity uplift would result in congestion being alleviated to a significant extent, and also noted that its analysis indicates that the JBP has targeted capacity in the most urban parts of the UK where the demand for data is greatest.²⁴¹
- 1.208 With regards to network coverage, Ofcom observed different benefits (through reduced patchiness of coverage and increased reliability of coverage) likely to materialise across each of low and medium traffic areas, urban areas and indoors. Ofcom also told us that in its view, reliability of coverage is (overall) an important dimension of competition. In low and medium traffic areas, Ofcom told us that the densification provided by the JBP would deliver a significant improvement (in coverage quality). Ofcom noted it had undertaken analysis of the inter-site distances of the sites the Parties intend to retain and decommission, which suggests that a large proportion of the sites to be decommissioned in low and mid traffic areas provide little or no unique coverage, whereas the large majority of the retained (3UK) sites provide some unique coverage. Ofcom noted that it is (therefore) likely that in these areas, all other things being equal, the greater the additional unique coverage a site provides, the greater the value it provides to customers and to the Parties. Ofcom submitted that it is reasonable to believe that customers in these areas (and to some extent all customers) would value the improved network quality, and that these improvements in reliability not only increase the proportion of attempts to use mobile that will be successful, but may

²⁴⁰ Ofcom, response to the CMA's 1 October 2024 letter.

²⁴¹ Ofcom, response to the CMA's 1 October 2024 letter.

also unlock latent demand from those who choose to not attempt to use mobile in areas where it is (currently) unreliable.²⁴²

1.209 In urban areas and indoors, Ofcom told us that under the JBP the densification in urban areas along with the deployment of C-band spectrum on these sites will provide: firstly, a contiguous outdoors coverage layer in many cases and secondly better indoor coverage with the high-capacity high-bandwidth and low-latency capabilities of 5G SA. It noted that absent the densification, coverage with these capabilities would likely be more patchy. Ofcom also noted that, given the limited evidence of customer willingness to pay a premium for services that rely on these 5G SA capabilities it is unlikely that MNOs would invest in densification (envisaged in the JBP) solely to address this potential market opportunity unless and until evidence of demand emerged. However, Ofcom also told us it would expect MNOs to deploy C-band spectrum across many of their sites in urban areas using 5G SA, albeit on less dense site networks than envisaged in the JBP and delivering a more patchy coverage with less in-building coverage.²⁴³

1.210 With regards to network speed, Ofcom told us that the maximum speed that can be provided in a sector is directly a function of the amount of spectrum deployed.²⁴⁴ That maximum speed is then shared between customers using the service simultaneously. The speed available to customers is (therefore) a function of the spectrum deployed and the extent to which the available (spectrum) capacity must be shared between users simultaneously;²⁴⁵ ie the average / median speed is a function of the spectrum available and the level of congestion.²⁴⁶ The JBP envisages a [✂] increase in the spectrum deployed and a reduction in congestion (ie an increase in capacity relative to demand), which, all other things equal, would also lead to fewer customers using the available capacity simultaneously (as the higher speeds means each user is connected to the network for less time for any given task).²⁴⁷ This would result in a large increase in the average speed that consumers would experience.²⁴⁸ Ofcom also noted that median speeds are (currently) likely to be lower in low traffic areas as only a limited amount of spectrum will be deployed on each sector in these areas.²⁴⁹ In that respect, the JNP will deliver a notable improvement in network quality in terms of speed in low traffic / rural areas, as a result of more spectrum being deployed and densification.²⁵⁰

²⁴² Ofcom, response to the CMA's 1 October 2024 letter.

²⁴³ Ofcom, response to the CMA's 1 October 2024 letter.

²⁴⁴ Ofcom, response to the CMA's 1 October 2024 letter.

²⁴⁵ Ofcom, response to the CMA's 1 October 2024 letter.

²⁴⁶ Ofcom, response to the CMA's 1 October 2024 letter.

²⁴⁷ Ofcom, response to the CMA's 1 October 2024 letter.

²⁴⁸ Ofcom, response to the CMA's 1 October 2024 letter.

²⁴⁹ Ofcom, response to the CMA's 1 October 2024 letter.

²⁵⁰ Ofcom, response to the CMA's 1 October 2024 letter.

1.211 With regards to network latency, Ofcom told us that the Parties' forecasts of latency suggest that the JBP would deliver latency far better than is achieved by today's networks and at an average that is more than necessary to support most services used today. Ofcom noted however, that it had no way to assess the reliability of the Parties' forecasts of latency.²⁵¹

1.212 As set out above in our analysis of the impact of the Network Commitment on price, we recognise that the full impact of the Network Commitment on network quality will take time to materialise. However, we consider that there will also be relatively immediate quality benefits which will materialise for customers in the short term (albeit not, as was set out in our provisional findings, sufficient quality benefits to offset the adverse effects on competition in the relevant markets and prevent an SLC from arising). We consider the implications of this finding for the effectiveness of the Network Commitment remedy in more detail below.

Provisional conclusion on the impact of the Network Commitment on the Retail SLC

1.213 Based on the evidence above, we consider that the Network Commitment will, in time, lead to significant and long-lasting quality improvements in a way that positively affects customer experience. Although certain network quality attributes promised by the JBP may exceed current user requirements in some cases, we recognise Ofcom's view that the JBP represents a unique opportunity to bring forward the delivery of the higher network quality ahead of evidence of demand,²⁵² and consider it is reasonable to expect, based on evidence of increasing customer demands over time, that user expectations of network quality are likely to increase over time.

1.214 We also consider that the Network Commitment will, in time, increase network capacity and lead to a lower incremental cost of adding further capacity compared to the Parties' expected positions in the counterfactual. We consider that these changes would in turn elicit a competitive response (for example by way of further network investment, lower pricing or improved customer service) from BTEE and VMO2 compared to the counterfactual. As such, we consider that the Network Commitment is an enabling measure that 'work[s] with the grain of competition' to address an SLC.²⁵³ We consider the Network Commitment does this by stimulating competition through achieving, once fully implemented, the significant and long-lasting quality and capacity improvements we have identified.

1.215 In addition, we consider that Beacon 4.1 (which is conditional upon completion of the Merger) will also lead to further material network quality improvements and an

²⁵¹ Ofcom, response to the CMA's 1 October 2024 letter.

²⁵² Ofcom, response to the CMA's 23 July 2024 letter.

²⁵³ [CMA87](#), paragraphs 3.49 and 7.12.

increase in capacity (and lower future costs of capacity) for VMO2, making it a stronger competitor. Ofcom told us that the Merger (assuming Beacon 4.1 and delivery of the full JNP) would, [REDACTED]. Ofcom said that this was for a number of reasons. Firstly, [REDACTED]. Secondly, [REDACTED]. Finally, [REDACTED].²⁵⁴

1.216 However, we recognise that it will take 8 years to implement the Network Commitment in full and the [REDACTED] pursuant to Beacon 4.1 and that the impact on the price and quality parameters of competition over time are complex. For example, as noted above, we consider that there may be different effects on retail prices following the Merger (with the Network Commitment) over the short and long term. We recognised in our Provisional Findings that investment in mobile networks requires a long-term perspective, particularly with regard to the proposed integration of two of the four mobile networks in the UK, as is the case here.²⁵⁵ In particular, we consider that the market impact of the longer-term network capacity increases that result from the implementation of the Network Commitment, in conjunction with Beacon 4.1, will take time to manifest, during which time competition conditions will evolve as will the incentives facing the Merged Entity and its competitors in respect of key parameters of competition, including pricing and network/service quality. If the Merger were to proceed only subject to the implementation of the Network Commitment, the provisional SLCs identified would therefore not be comprehensively addressed as adverse effects would arise before the rivalry-enhancing effects of Beacon 4.1 and the Network Commitment fully materialise. As such, the SLC would not be fully addressed throughout its expected duration solely through the Network Commitment.²⁵⁶

1.217 In these circumstances, our remedies guidance notes that, in addition to so-called ‘enabling measures’ like the Network Commitment that work relatively slowly in addressing an SLC, measures that control market outcomes (such as price caps) may be needed to supplement enabling measures for a limited period to provide protection to customers from the adverse effects of an SLC.²⁵⁷ In light of the CMA’s obligation to ensure that any SLC identified is remedied to a ‘high degree of certainty’, and its obligation to achieve a solution to the SLC which is as comprehensive as is reasonably practicable,²⁵⁸ we therefore consider that the Network Commitment alone would not be an effective remedy and that supporting measures are required to ensure the overall remedies package is effective.

1.218 In respect of the Network Commitment, whilst we recognise that the ‘Day 1’ benefits would be implemented shortly after closing, the capacity and quality improvements resulting from network integration would be realised progressively over time. By Year 3 of the Network Commitment, nearly [REDACTED]% of the Merged

²⁵⁴ Ofcom, response to the CMA’s 1 October 2024 letter.

²⁵⁵ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 14.196.

²⁵⁶ [CMA 87](#), paragraph 3.5(b).

²⁵⁷ [CMA 87](#) paragraph 3.50.

²⁵⁸ [Section 36\(3\)](#) of the Act.

Entity's sites will have been fully integrated with the Merged Entity's spectrum deployed across specified frequency bands. At this stage, significant improvements in the Merged Entity's coverage, reliability and capacity will have been delivered and we would also expect to see competitive responses from BTEE and VMO2. The effects of Beacon 4.1 on VMO2's quality and capacity will also take effect over time as [✂].

- 1.219 We therefore consider that the supporting measures should apply for a limited period of at least three years to provide protection to customers from the adverse effects of the provisional SLC in the early years of the Network Commitment and Beacon 4.1. implementation, when the rivalry enhancing effects of both are likely to be less strong. These measures would be released only once agreed progress is made by the Parties towards implementation of the Network Commitment over time and are discussed in further detail below in subsequent sections of this paper.
- 1.220 We also note, as we did in our Provisional Findings, the link between the retail and wholesale market SLCs. Wholesale competition, which ensures MVNOs can access competitive terms from MNOs, is important in relation to the retail market because many MVNOs price aggressively, often focusing on value segments of the retail market.²⁵⁹ We discuss the impact of the Network Commitment on the wholesale SLC in further detail below. An effective remedy in relation to the wholesale SLC would provide a further protection for the competitive rivalry which exists in the retail market, supporting the effectiveness of the overall remedy in relation to the retail market, by ensuring an effective role on an ongoing basis for MVNOs in this market, particularly in relation to price.
- 1.221 Overall, we provisionally consider that, subject to appropriate design and an acceptable risk profile, the Network Commitment would address the SLC we provisionally identified in the retail market in the longer term by delivering a market structure that is at least as competitive as the current market structure. We provisionally consider, however, that it would need to be accompanied by short term protections during the initial years of network integration to address the SLC in the short term. We consider these in more detail below.

Key competitive parameters for wholesale customers

- 1.222 As we did in considering the retail market, we sought to understand the key factors that matter to MVNO customers when choosing an MNO, to assess how the Merger (through its impact on competition) would affect the commercial terms that they would be able to obtain and, in turn, their offering to retail customers. We found that both price and network quality are important to MVNOs, although there may be some differences between MVNOs in the relative importance that they

²⁵⁹ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 4.

attach to each, particularly depending on their own competitive positioning in the retail market.²⁶⁰

Likely impact of the Network Commitment on pricing in the wholesale market

- 1.223 In analysing the overall impact of the Merger, we first considered the likely impact absent any REEs. We noted that the wholesale market would be highly concentrated post-Merger with at most only three options for MVNOs. We provisionally concluded that (before considering any potential REEs) the Merged Entity would have a reduced incentive to compete for MVNO opportunities than the Parties individually because the Merger would lead to the removal of the competitive constraint which the Parties currently exert on each other.²⁶¹
- 1.224 We also considered that there may be an indirect effect resulting from the fact that the Merged Entity would have an expanded presence in the supply of retail mobile services, which may mean it has less of an incentive to bid for wholesale business. If the Merged Entity were to act on these incentives by bidding less or offering less competitive terms, its rivals would experience an increase in demand for their services. We provisionally concluded this increase in demand may also provide rivals with incentives to compete less aggressively.²⁶²
- 1.225 Against these provisional findings, we then carefully considered the impact of those REEs which we considered were likely to result from the Merger. With regards to wholesale pricing, we noted that the Parties submitted that an increase in network capacity would result in a reduction in the incremental cost of capacity that would result in downwards pricing pressure.²⁶³ On the basis that we did consider some increase in the network capacity of the Merged Entity was likely to result in the early years post-Merger (even though we provisionally concluded the full JBP was not likely to be implemented), we considered the evidence as to whether any reduction in incremental cost of capacity was likely to be passed through to wholesale customers.
- 1.226 We recognised that there was some evidence that any additional cost of capacity resulting from an MVNO contract was taken into account in bidding, along with a range of other factors. However, while this evidence indicated additional costs of capacity were taken into account, it did not indicate the effect this had on the price ultimately agreed with MVNO customers.²⁶⁴ We provisionally concluded that even accounting for the likely REEs we considered would result from the Merger, overall pricing terms offered to MVNOs were likely to be less competitive.²⁶⁵

²⁶⁰ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 70.

²⁶¹ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 76-77.

²⁶² CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 77.

²⁶³ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 14.241.

²⁶⁴ CMA, [Provisional Findings Report](#), 13 September 2024, paragraphs 14.145 and 14.243.

²⁶⁵ CMA, [Provisional Findings Report](#), 13 September 2024, paragraphs 78 and 14.238.

- 1.227 As outlined above in relation to retail prices, we did not consider the likely impact of the full implementation of the JBP on the Merged Entity's wholesale pricing, because it was not necessary to do so in light of the provisional conclusion that full implementation was not likely. By contrast, we observe that through a remedy that ensures full implementation, a materially larger increase in the network capacity of the Merged Entity is likely to result. We consider that this would lead to lower cost of capacity which would be likely to result in downwards pricing pressure relative to the situation that would result absent this increase in network capacity, particularly in light of the evidence we identified that suggested that the cost of network capacity is to an extent already taken into account by the Parties in their standalone MVNO pricing decisions, even in the short term.
- 1.228 We would again note that these downward pricing pressures on the broader market in the long term from the Merged Entity's lower cost of capacity are likely to be augmented by the increase in network capacity likely to result from the [redacted] transfer of spectrum from the Parties to VMO2 ([redacted]).

Likely impact of the Network Commitment on network quality in the wholesale market

- 1.229 We set out in detail above in relation to the retail market the likely network quality improvements which we consider are likely to result, in time, from the full implementation of the Network Commitment remedy. We provisionally concluded that through a remedy which seeks to ensure the full JBP is delivered, there is potential for a significant increase in mobile network quality for UK customers over the long term.
- 1.230 We consider that these network quality improvements are also relevant for MVNO customers and would have a rivalry-enhancing effect on the level of competition that exists between the remaining MNOs on network quality. The impact of this would be augmented by the additional spectrum acquired by VMO2 through Beacon 4.1, which we provisionally concluded in the Provisional Findings would provide a notable and rapid increase in network quality for its wholesale customers which would further increase network quality competition.²⁶⁶

Provisional conclusion on the impact of the Network Commitment on the Wholesale SLC

- 1.231 In our Remedies Notice, we set out our initial view that a Network Commitment is likely to have a greater impact on competition in the retail market than the wholesale market, and that as such, there may be a need to supplement a Network Commitment with some additional measures targeted at the wholesale

²⁶⁶ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 62.

market.²⁶⁷ As outlined above, we recognised 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.²⁶⁸ We also noted that the other two MNOs do not necessarily compete in all wholesale bidding opportunities, even where invited.²⁶⁹

- 1.232 We consider that while the Merger will reduce the number of MNO options for MVNOs from four to three, the Network Commitment will, in time and once fully implemented and along with Beacon 4.1, increase the ability and incentive of both the Merged Entity and VMO2 to compete for wholesale opportunities for several reasons.
- 1.233 First, we consider that the Network Commitment will lead to significant and long-lasting network quality improvements in a way that improves the competitiveness of the Merged Entity's offer to MVNOs relative to its remaining MNO competitors.
- 1.234 Secondly, we also consider that the Network Commitment will, in time, increase network capacity and lead to a lower incremental cost of adding further capacity compared to the Parties' expected positions in the counterfactual which may be reflected in increased competitiveness of the pricing terms offered to MVNOs. We note in this regard our provisional conclusions in the Provisional Findings that there was some evidence that any additional cost of capacity resulting from an MVNO contract was taken into account in bidding decisions,²⁷⁰ and the different (i.e. longer-term) nature of pricing decisions at the wholesale level compared to the retail level.
- 1.235 Thirdly, we consider that the network quality and capacity improvements that result from Beacon 4.1. (which is conditional on the Merger) will directly strengthen VMO2's ability and incentive to compete effectively in the wholesale market compared to the situation absent the Merger. In our Provisional Findings, we observed that (currently) VMO2 [REDACTED].²⁷¹ We noted in particular that VMO2 participates to a lesser extent than the other MNOs in MVNO opportunities; was aware of [REDACTED] opportunities than all other MNOs; and was selective when participating in MVNO opportunities, [REDACTED].²⁷²
- 1.236 We noted that VMO2 itself told us that it [REDACTED].²⁷³ By contrast, we consider that by virtue of its increased spectrum holdings and therefore network capacity, post-

²⁶⁷ CMA, [Remedies Notice](#), 13 September 2024, paragraph 37.

²⁶⁸ CMA, [Remedies Notice](#), 13 September 2024, paragraph 37.

²⁶⁹ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 75.

²⁷⁰ CMA, [Provisional Findings Report](#), 13 September 2024, paragraphs 14.145 and 14.243.

²⁷¹ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 9.179(d).

²⁷² CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 9.57(f).

²⁷³ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 9.226(f).

Merger VMO2 will have a stronger incentive to both more frequently bid for wholesale contracts and to price competitively when it does so.

- 1.237 In our Provisional Findings we also noted that on a number of measures and according to competitor views, VMO2 has the lowest network quality of the UK MNOs.²⁷⁴ We noted that VMO2 considers itself weaker in terms of [X]. This is due to [X]. VMO2's [X].²⁷⁵
- 1.238 We therefore provisionally concluded in our Provisional Findings that the additional spectrum acquired by VMO2 through Beacon 4.1 would provide a notable and rapid increase in network quality for its wholesale customers which would further increase network quality competition.²⁷⁶ We remain of that view, particularly in light of the additional evidence from Ofcom in relation to [X] we set out above. We consider in particular that VMO2's increased network quality may lead to it being invited to more MVNO opportunities and to it being more competitive in those tenders in which it participates.
- 1.239 However, as with our provisional conclusions in relation to the retail market, we again recognise the 8-year duration for full implementation of the Network Commitment and the [X] pursuant to Beacon 4.1. We consider that there may, therefore, again be different impacts on the wholesale market from the Merger (with the Network Commitment as a remedy) over the short and long term. In particular, we consider that the market impact of the longer-term market network capacity increases that result from the implementation of the Network Commitment, in conjunction with Beacon 4.1, will take time to manifest. If the Merger were to proceed only subject to the implementation of the Network Commitment, the provisional SLCs identified would therefore not be comprehensively addressed as adverse effects would remain before the rivalry-enhancing effects of Beacon 4.1 and the Network Commitment fully materialise. This would mean that the SLC would not be fully addressed throughout its expected duration.²⁷⁷
- 1.240 In these circumstances, as noted at paragraph 1.217 above, we therefore consider that the Network Commitment alone would not be an effective remedy and that supporting measures for the wholesale market are required to ensure the overall remedies package is effective.
- 1.241 Overall, we provisionally consider that, subject to appropriate design and an acceptable risk profile, the Network Commitment would address the SLC we provisionally identified in the wholesale market in the longer term by delivering a market structure that is at least as competitive as the current market structure. We

²⁷⁴ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 40.

²⁷⁵ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 9.226(b).

²⁷⁶ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 62.

²⁷⁷ [CMA 87](#), paragraph 3.5(b).

provisionally consider, however, that it would need to be accompanied by short term protections during the initial years of network integration to address the SLC in the short term. We consider these in more detail below.

Duration and timing

- 1.242 As behavioural remedies are designed to have ongoing effects on business conduct throughout the period they are in force, the duration of these measures is a material consideration.²⁷⁸
- 1.243 In this Merger, the SLCs provisionally identified are not time limited. This means that to comprehensively address the provisional SLCs, any behavioural remedy would need to have a lasting impact on competition in the relevant markets.
- 1.244 In the previous section we provisionally concluded that the Network Commitment would, in time and once fully implemented, address our provisional SLCs; however, the provisional SLCs would not be fully addressed throughout their expected duration solely through the Network Commitment.²⁷⁹
- 1.245 The Parties submitted that their proposal has some similarities with a structural remedy (see paragraph 1.21a) as it comes to an end after 8 years and leaves a lasting impact on the relevant markets.
- 1.246 Whilst the Parties' Network Commitment would fall away after 8 years with a substantial change to the UK's network infrastructure as a result, whether these changes lead to lasting improvements in network quality is a separate question. For example, if the Parties were to rationalise their network in 8 years' time, unwinding the benefits of the remedy, the remedy would not have a lasting effect in the market, potentially undermining its long term effectiveness.
- 1.247 We consider that the Network Commitment will have a lasting impact beyond 8 years for a number of reasons:
- (a) Firstly, we observe that it is rare for MNOs to remove or reduce coverage or capacity by decommissioning sites that they have invested in. We recognise that the Parties may decommission some sites post 8 years, but the Parties will have invested significant sums of money deploying technology on these sites which will disincentivise them from decommissioning them. If sites were decommissioned, we would expect this to be in areas where there is limited demand. It is also possible that the Parties would add further sites beyond the Network Commitment. Overall, we do not consider that there would be a material reduction in aggregate site numbers, thus substantially all of the

²⁷⁸ [CMA 87](#), paragraph 7.10.

²⁷⁹ [CMA 87](#), paragraph 3.5(b).

combined network after implementation of the JNP network is likely to endure beyond the 8 years.

- (b) In a similar vein, we anticipate the competitive pressure from rival MNOs and the expectations from customers, who will have come to expect a certain level of quality, will reduce the Parties' ability and incentive to scale back the network once the Network Commitment is delivered.
- (c) In addition, the network will support future technologies like 6G. Absent the Network Commitment, the footprint of each Party delivering future technologies would be significantly smaller, thus the benefit of the Network Commitment will endure into the future. We consider that it is likely that because of the competitive responses from the other MNOs, the Parties will have an incentive to maintain substantially all of the sites which form part of their combined network after implementation of the JNP.

1.248 The Network Commitment aligns to the CMA's preference for using enabling measures that 'work with the grain of competition', which address an SLC by seeking to remove obstacles to competition or stimulating competition, rather than measures that control market outcomes, which restrict the adverse effects of an SLC rather than address the SLC itself.²⁸⁰ The Network Commitment creates a long-lasting shift in network quality that would drive competition so that ultimately the overall level of competition in the relevant markets is at least as strong as it is now.

1.249 We also considered whether any future events may undermine the effectiveness of the Network Commitment. In the Provisional Findings, we said we could not be confident that it was likely that the Parties would implement the full JNP because potential market changes may force the Parties to reconsider the plan.

1.250 Our view is that mobile markets are dynamic but they are subject to significant changes in some areas, such as customer usage, and slower change in other areas. For example, the basic components of delivering mobile services (ie the deployment of active radio equipment on passive infrastructure sites) has changed little in the last decade.

1.251 Ofcom identified a number of potential future market developments which could arise over the next 5-10 years in a recent discussion paper.²⁸¹ In particular, Ofcom considered the following:

- (a) the future deployment of private networks;

²⁸⁰ [CMA87](#), paragraphs 3.49 and 7.12.

²⁸¹ [Conclusions: Ofcom's future approach to mobile markets](#), Annex A3, accessed by the CMA on 23 October 2024.

- (b) changes to infrastructure sharing; and
- (c) Apple and Google providing a platform on which customers can choose their mobile provider.

- 1.252 Should these developments materialise, they could have a significant impact on the industry over time. However, at this stage they are quite speculative and what impact they may have on the market and the Network Commitment remains to be seen. The impact may not necessarily be negative for MNOs. They could reduce the commercial returns available to MNOs, but they could also spur new opportunities. The potential for these developments has therefore not affected our provisional view.
- 1.253 The Network Commitment is an infrastructure remedy. Given the limited changes to the basic components of mobile networks over many years and no evidence to indicate this will change, our provisional decision is that the Network Commitment, which is aligned to the Parties' JNP, should remain appropriate for the 8 years of its duration.
- 1.254 Ofcom also considers that the 8 year duration of the Network Commitment should be sufficient to sustain improved network quality and Ofcom does not consider that it would be appropriate to seek a longer period of commitment.²⁸²
- 1.255 Based on the above we provisionally consider that the 8 year duration is appropriate and the remedy would have lasting benefits that would continue into the future.

Practicality

Monitoring and enforcement risks

- 1.256 A remedy may be considered ineffective if monitoring and enforcement is not feasible or if it could be costly and intrusive. This risk is exacerbated where the form of remedy is complex.
- 1.257 The CMA will retain an ongoing responsibility for the monitoring and enforcement of any behavioural remedies it puts in place.²⁸³
- 1.258 The Parties consider that to monitor the Network Commitment, using data they will hold, they could report on:
- (a) the number of sites integrated in the network and site level details; and

²⁸² Ofcom response to the CMA's RFI.

²⁸³ [CMA87](#) paragraph 4.71 and [Section 92](#) of the Act.

(b) the amount of spectrum deployed on those sites at specified frequencies.²⁸⁴

Ofcom's monitoring role

- 1.259 As noted already, the Parties' proposal is that the Network Commitment be incorporated as conditions in their spectrum licence(s) to be overseen by Ofcom.
- 1.260 The Parties have proposed that Ofcom would be supported by a monitoring trustee, paid for by the Parties, who would confirm the Parties have met the formal commitment targets at the end of Years 3, 5 and 8 in a report to Ofcom and to the CMA. We are satisfied with reporting at Years 3, 5 and 8, although we are considering the option for an earlier measurement point at the end of Year 1 to ensure the Parties' claimed 'Day 1' benefits are delivered.
- 1.261 We provisionally consider that it would be appropriate for Ofcom to take on a monitoring role through incorporating the Network Commitment obligations as licence conditions. Ofcom has confirmed that it is willing to perform this role. We also provisionally consider that it is essential the Parties appoint and pay for a monitoring trustee, who will provide significant support to Ofcom and the CMA. We consider that the Parties should not only provide the relevant data to the monitoring trustee, but the monitoring trustee should conduct an audit of the systems producing the data to verify its accuracy.
- 1.262 We consider that the monitoring trustee should also report to Ofcom and to the CMA in the intervening years so that the Parties can put in place recovery plans if, in advance of a formal commitment year, it looks like they may miss their targets. Ofcom, in its role as the sectoral regulator, already works very closely with the MNOs. Ofcom also supports further reporting between Years 3, 5 and 8 and stated that it would expect to be able to monitor the Parties' performance more frequently through reporting similar to that provided by MNOs for the Connected Nations reports.²⁸⁵ Our provisional views on reporting frequency are set out in the Implementation considerations section.
- 1.263 Ofcom has formal information gathering powers and, consistent with its standard approach, would expect that any data provided by the Merged Entity in relation to the Network Commitment would be provided to Ofcom under these formal powers. This would mean that the Parties would have an obligation to provide timely and accurate data to Ofcom.²⁸⁶ As part of its Connected Nations Reports,²⁸⁷ Ofcom told us that 'each of the four national mobile network operators (MNOs), including

²⁸⁴ Parties' network commitment proposal.

²⁸⁵ Ofcom response to the CMA's RFI.

²⁸⁶ Ofcom response to the CMA's RFI.

²⁸⁷ For further details see [Connected Nations and infrastructure reports - Ofcom](#).

the parties, provide mobile coverage data and data on network inputs on a regular basis'.²⁸⁸

- 1.264 Ofcom has also provided us with preliminary estimates of the costs associated with monitoring the metrics envisaged in the Parties' Network Commitment proposal (ie, number of sites and spectrum deployed).²⁸⁹ Ofcom noted that it already undertakes similar monitoring analysis on mobile deployment as part of its existing functions and expects that the additional cost to monitor the Network Commitment metrics would be likely to be marginal. Ofcom expects this additional monitoring to require around 2 FTE for 3 months at a cost of approximately GBP [redacted] for each cycle of review.²⁹⁰
- 1.265 Based on the above, our current view is that the Network Commitment is capable of being monitored appropriately in a sufficiently cost-effective manner if it can be incorporated into the Parties' spectrum licence(s).

The licence variation process

- 1.266 Ofcom has the general power to grant wireless telegraphy licences and to revoke or vary such licences.²⁹¹ Ofcom has a number of duties it must have regard to while carrying out its functions. Sections 3,²⁹² 4²⁹³ and 7 of the CA03 set out some of Ofcom's general duties, including under Section 7 of the CA03 the duty to carry out and publish an impact assessment of the likely impact of implementing a proposal which would be likely to have a significant impact on businesses or the general public, or when there is a major change in Ofcom's activities. Ofcom may

²⁸⁸ Ofcom response to the CMA's RFI.

²⁸⁹ These estimates are based on a conservative, desk-based exercise. The precise quantum of any costs would depend on the actual metrics in any Network Commitment ultimately imposed. Ofcom noted that the more granular and prescriptive the remedy or compliance regime, the greater the time needed to ensure the licensee is compliant, with a greater associated cost.

²⁹⁰ Ofcom's response to the CMA's RFI.

²⁹¹ Sections 9 and 10 of the WTA06.

²⁹² Section 3 of the CA03 sets out Ofcom's general duties. Under s.3(1) it is the principal duty of Ofcom in carrying out its functions:(1) to further the interests of citizens in relation to communications matters; and (2) to further the interests of consumers in relevant markets, where appropriate by promoting competition. In doing so, Ofcom is required to secure, amongst other things (s.3(2)): (1) the optimal use for wireless telegraphy of the electro-magnetic spectrum; and (2) the availability throughout the UK of a wide range of services. In performing its duties, Ofcom must have regard to, amongst others, the following matters: (1) the desirability of promoting competition: s.3(4)(b)); (2) the desirability of encouraging investment and innovation: s.3(4)(d); (3) the desirability of encouraging availability and use of high-speed data transfer services throughout the UK: s.3(4)(e); (4) the different needs and interests, so far as the use of the electro-magnetic spectrum for wireless telegraphy is concerned, of all persons who may wish to make use of it: s.3(4)(f)); and (5) the different interests of persons in different parts of the UK: s.3(4)(l)). In performing its duties, Ofcom is required under s.3(3) CA03 to have regard in all cases to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and to any other principles appearing to Ofcom to represent the best regulatory practice.

²⁹³ In carrying out Ofcom's spectrum management functions, section 4 CA03 requires Ofcom to act in accordance with the following requirements: a) to promote competition in the provision of electronic communications networks and electronic communications services; b) to promote the interests of all members of the public in the United Kingdom; c) to act in a manner which, so far as practicable, is technology neutral; d) to encourage, to the extent Ofcom considers it appropriate, the provision of network access and service interoperability for the purpose set out in s.4(8); e) to encourage such compliance with certain international standards as is necessary for the purposes set out in s.4(9); and f) to promote connectivity and access to very high capacity networks by members of the public and businesses in the United Kingdom.

alternatively decide that it is unnecessary to carry out an impact assessment, in which case it must publish a statement setting out its reasoning for this decision.²⁹⁴

1.267 Ofcom has additional duties that are engaged when Ofcom is carrying out its spectrum functions.²⁹⁵ In particular, Schedule 1 to the WTA06 sets out a process for the variation of wireless telegraphy licences.²⁹⁶ Where a variation is proposed by the licensee, Ofcom is under no obligation to consult with them on the proposal to vary the licence(s).²⁹⁷ There are examples, however, where Ofcom has undertaken a consultation even though the variation was proposed by the licensee.²⁹⁸

1.268 Without prejudice to Ofcom's discretion concerning the necessary procedural steps to fulfil its duties and without prejudice to the ultimate outcome of any request from the Parties for a licence variation, [REDACTED].²⁹⁹ [REDACTED].

1.269 Focusing on the spectrum licence(s) variation process, we do not consider the variation process in itself materially affects the risk profile associated with this proposed remedy. It is our current view that the Parties can start the process for seeking a licence variation prior to the Merger completing and, subject to the need for Ofcom to undertake the necessary procedural steps to fulfil its duties, it is possible that Ofcom could be able to give its consent prior to the Merger completing.

1.270 [REDACTED].

[REDACTED]

1.271 [REDACTED].

1.272 [REDACTED].

1.273 [REDACTED].

1.274 [REDACTED].

²⁹⁴ Section 7(3)(b) of the CA03.

²⁹⁵ These are set out in section 3 of the WTA06 which explains that Ofcom has a duty to have regard in particular to: (1) the extent to which the spectrum is available for use, or further use, for wireless telegraphy; (2) the demand for use of that spectrum for wireless telegraphy; and (3) the demand that is likely to arise in future for such use. Ofcom also has a duty to have regard, in particular, to the desirability of promoting: (1) the efficient management and use of the spectrum for wireless telegraphy; (2) the economic and other benefits that may arise from the use of wireless telegraphy; (3) the development of innovative services; and (4) competition in the provision of electronic communications services.

²⁹⁶ Generally, Ofcom is required to take the following steps (paras 6 and 7 of Schedule 1): (1) notify the licensee of the reasons for the proposed variation (para 6a); (2) specify a period of at least 30 days in which the licensee may make representations about the proposal (para 7(3)(b)); (3) decide whether or not to vary the licence within one month of the end of that period (para 7(10)); and (4) give the licensee a notification of its decision (para 7(10)).

²⁹⁷ Paragraph 7(12) of Schedule 1 to the WTA06 sets out that the formal requirements in Paragraph 7 do not apply when the licensee has requested the proposed variation.

²⁹⁸ See eg the recent [consultation](#) in relation to the optimal use of 3.9 GHz spectrum.

²⁹⁹ Ofcom, email to the CMA .

1.275 [✂].

1.276 [✂].

Enforcement

- 1.277 Weak enforcement may reduce the incentives on the Parties to comply with the Network Commitment. Weak enforcement can materialise in a number of ways – for example, if the data required to confirm compliance is complex or potentially subjective, it may make taking enforcement action particularly challenging.
- 1.278 In this case, subject to an appropriate audit plan for a monitoring trustee to verify the data in whichever years the Parties commit to deliver against, we consider that the data required to confirm compliance with the remedy is clear and binary, allowing for breaches to be readily identified and consequently supporting clear enforcement action if considered appropriate. Ofcom told us that measuring progress should be straightforward.³⁰⁰ MNOs already provide similar data for Ofcom’s Connected Nations reports and the Parties could provide data in a similar way.³⁰¹ Ofcom therefore already undertakes similar analysis as part of its broader ongoing programme of work and told us that it would not expect that the additional effort required to monitor the Network Commitment metrics would impose significant costs on Ofcom.³⁰²
- 1.279 Subject to the proposed Network Commitment being incorporated into the Merged Entity’s spectrum licence(s), the Parties would be accountable separately to Ofcom through the licencing condition and to the CMA through the Undertaking given under section 82 of the Act. Ofcom noted to us that, subject to the Network Commitment being incorporated into the Merged Entity’s spectrum licence(s), it would not have concerns about enforcing compliance,³⁰³ and that the CMA’s role under an Undertaking would not be expected to have to come into play.³⁰⁴
- 1.280 Ofcom has an overarching role to manage the use of spectrum by ensuring anyone who uses spectrum complies with rules relating to its use.³⁰⁵ These rules include those contained in spectrum licence(s) issued by Ofcom. Ofcom has enforcement powers and could therefore take enforcement action if the Parties did not comply with the terms of their spectrum licence(s). See paragraphs 1.626 to 1.627 and 1.287 to 1.288 for details of Ofcom’s enforcement powers.
- 1.281 The Parties submitted that they would have strong incentives to comply with the Network Commitment as failure to do so would result in a breach of the Merged

³⁰⁰ Ofcom response to the CMA’s RFI.

³⁰¹ Ofcom response to the CMA’s RFI.

³⁰² Ofcom response to the CMA’s RFI.

³⁰³ Ofcom call note.

³⁰⁴ Ofcom call note.

³⁰⁵ Ofcom, [‘Our approach to spectrum compliance and enforcement’](#), published 27 February 2024.

Entity's spectrum licence(s).³⁰⁶ Furthermore, a consequence of Ofcom's civil enforcement powers is that the sanctions for breach of a spectrum licence would be very significant and incentivise the Merged Entity to ensure compliance with the Network Commitment in full.³⁰⁷

- 1.282 BTEE submitted that it is not aware of any past precedent to rely on in relation to WTA06 licence fines. BTEE submitted that to adequately incentivise compliance, there would need to be a realistic prospect that any breach would be sanctioned by Ofcom withdrawing licences to operate a material proportion of the Merged Entity's total spectrum holdings. However, BTEE submitted it is very unlikely that the possibility of revocation would be seen by the Merged Entity as a realistic prospect and therefore have any incentive effect.³⁰⁸
- 1.283 We note BTEE's concerns, but we also note that compliance amongst the MNOs with regulatory requirements appears high. For example, recent Shared Rural Network (**SRN**) commitments have seen all four MNOs deliver improvements in mobile coverage and boost connectivity across the UK despite challenges, including a pandemic.³⁰⁹ This suggests to the CMA that all MNOs take compliance seriously.³¹⁰
- 1.284 Ofcom's approach to regulatory enforcement is set out on its website.³¹¹ This includes its approach to the enforcement of licences issued under the WTA06. If Ofcom finds against a licence holder after opening a formal investigation, it will issue a provisional decision under section 42(1)(c) of the WTA06. It will also identify the steps it believes the licensee should take to comply with the relevant term or condition(s) and remedy the consequences of the contravention(s). Ofcom has discretion over whether to include a provisional penalty in the provisional decision but will generally do so where it is minded to impose a financial penalty.
- 1.285 The factors that Ofcom takes into consideration when setting penalties are set out in its penalty guidelines.³¹² By virtue of section 392(6) of the CA03, Ofcom must have regard to the penalty guidelines in force at the time when setting the amount of any penalty.

³⁰⁶ Parties' network commitment proposal.

³⁰⁷ Parties' network commitment proposal.

³⁰⁸ BTEE [response to the Remedies Notice](#), 27 September 2024, paragraphs 3.36 to 3.39

³⁰⁹ [Policy paper Shared Rural Network \(SRN\) progress update - September 2024](#), 12 September 2024, accessed by the CMA on 23 October 2024.

³¹⁰ Three UK was two months late in meeting its UK-wide 88% geographic obligation and its required threshold for Scotland (72%). See [Shared Rural Network Coverage-Assessing the mobile network operators' compliance with their geographic coverage obligations](#), accessed by the CMA on 25 October 2024.

³¹¹ Ofcom, [Regulatory Enforcement Guidelines for investigations, 12 December 2022](#), accessed by the CMA on 23 October 2024.

³¹² Ofcom [Penalty guidelines, 14 September 2017](#), accessed by the CMA on 23 October 2024.

- 1.286 In addition to the incorporation of a Network Commitment in the Merged Entity's spectrum licence(s), the Parties are also proposing that the Network Commitment would be offered as an Undertaking under section 82 of the Act to the CMA.
- 1.287 Where the CMA decides that a merger has resulted or may be expected to result in an SLC, it has a statutory duty to remedy the anticompetitive effects of that merger by taking such remedial action under section 82 of the Act (power to accept Final Undertakings) or section 84 of the Act (power to impose a Final Order) as it considers to be reasonable and practicable.³¹³
- 1.288 In such cases, the CMA has a statutory period of 12 weeks to accept Final Undertakings or make a Final Order.³¹⁴ The statutory deadline for the publication of the CMA's final report in this case is 7 December 2024. As a result, the 12-week period for acceptance of Final Undertakings or making of a Final Order by the CMA could run to 1 March 2025.
- 1.289 Under the Act, compliance with a Final Undertaking or Final Order may be enforced by civil proceedings brought by the CMA for an injunction or for an interdict or for any other appropriate relief or remedy.³¹⁵ The Digital Markets Competition and Consumers Act 2024 (**DMCCA 2024**) expands the enforcement powers available to the CMA in relation to Final Undertakings and Final Orders.³¹⁶ This includes the ability to impose financial penalties in respect of a failure to comply with a Undertaking or Order without reasonable excuse. The Government has stated that it aims to commence the part of the DMCCA 2024 containing these new penalty powers in December 2024 or January 2025.³¹⁷ The Government has said that it intends to make the commencement order giving effect to these new powers at least 28 days before the commencement date.
- 1.290 Depending on how and when the Government commences these new penalty powers, it is possible that they will apply to any Undertaking accepted or Order made by the CMA within the 12-week statutory period following its final report in this case.
- 1.291 Finally, the Parties have proposed a cure period (see paragraph 1.136) and what they describe as limited 'guard rails' (see paragraph 1.137) which in our view simply soften the Network Commitment – either absolving the Parties from their obligations altogether, or delaying the time by which sites need to be upgraded – and as such are inappropriate.

³¹³ [Section 41](#) of the Act.

³¹⁴ [Section 41A](#) of the Act. This period may be extended by no more than 6 weeks where the CMA considers that there are special reasons for doing so.

³¹⁵ [Section 94](#) of the Act.

³¹⁶ New sections 94AA and 94AB of the Act introduced by section 143 and schedule 11, paragraph 11 of the DMCCA2024.

³¹⁷ [Statement, Implementation of the Digital Markets, Competition and consumers Act](#), 9 September 2024, accessed by the CMA on 23 October 2024.

- 1.292 Although, we understand the Parties' rationale, and also consider that there may be legitimate reasons for failing to comply with a commitment that are outside of the Parties' control, we consider that Ofcom's penalty guidelines and discretion regarding the application of its spectrum licensing enforcement powers should provide sufficient protection if such a scenario occurs. Ofcom told us it does not consider it necessary to include specific guardrails given the broad discretion within Ofcom's enforcement framework.³¹⁸ We also note that the CMA would also have discretion when deciding whether to take any enforcement action in respect to any breaches of the Undertakings with respect to the Network Commitment.
- 1.293 Our initial view is therefore that a combination of the CMA's and Ofcom's enforcement powers under their respective statutory frameworks is sufficient to ensure compliance. Based on the above, we consider that there are appropriate monitoring and enforcement powers for the Network Commitment to be effective.
- 1.294 Although, as noted above at paragraph 1.62, we consider the probative value of any analysis of the effects of remedies accepted in other countries to be limited and we do not place material weight on international comparisons, we note for completeness that the T-Mobile/Sprint transaction in the United States was approved by the Federal Communications Commission subject to an investment commitment nationwide which shares some similarities with the Network Commitment. The transaction was also conditional on other remedies but concerning the investment commitment part of the remedy package specifically, we note that the Federal Communications Commission published in January 2024 T-Mobile's third annual progress report which stated that T-Mobile met its 3-year targets.³¹⁹

Acceptable risk profile

- 1.295 To be considered an effective remedy, we require a high degree of certainty of it achieving its intended effect. As set out at paragraph 1.111 above, given the behavioural nature of the Network Commitment, we examine the specification, circumvention and distortion risks associated with the Network Commitment.

Specification risks

- 1.296 Specification risks arise if the form of conduct required to address the SLC or its adverse effects cannot be specified with sufficient clarity to provide an effective basis for monitoring and compliance. The intended operation of the measure

³¹⁸ Ofcom, submission.

³¹⁹ FCC, [Third Annual Progress Report on T-Mobile's 5G Network Deployment](#), accessed by the CMA on 27 October 2024.

needs to be clear to the persons to whom it is directed and other relevant parties, so it is apparent what conduct constitutes compliance and what does not.³²⁰

- 1.297 Our assessment identified specification risks with respect of the Network Commitment; however, our provisional view is that these specification risks can be overcome as we outline below.
- 1.298 We consider that the Parties' proposed Network Commitment is simple in its design, there being only two key elements, measured formally at specific years, that go to specificity – these are (see paragraph 1.133 for further details):
- (a) The number and location of sites on which spectrum is to be deployed; and
 - (b) The spectrum to be deployed at each of the sites.
- 1.299 The Network Commitment specifies a total number of sites to be included in the joint grid, reflecting the JBP. These are divided into urban and rural areas using the definitions used by Ofcom in the preparation of its Connected Nations reports and set out in the Connected Nations Methodology document published on the Ofcom website. Sites within the urban and rural areas are split into high, medium and low configuration (x-ref table) with specific frequency bands and amounts of spectrum that must be deployed for each configuration.
- 1.300 The Parties originally proposed to commit to a number of sites within high, medium and low traffic areas. As outlined in the Provisional Findings, we had concerns that the Parties may not be incentivised to deliver the full JNP in rural areas. Ofcom submitted that a commitment based on urban/rural area definitions, with a combination of high-, mid-, and low- spectrum configurations in each area, may better align with the separate concerns we have identified for urban and rural areas.³²¹ We are satisfied with this specification.
- 1.301 The Parties propose that the Network Commitment is measured formally at years 3, 5 and 8 with reports by a monitoring trustee every four months to monitor progress in intervening years. We consider that regular monitoring is required to ensure that the Parties are on track and progressing as anticipated to deliver in full the Network Commitment by Year 8 (as noted above, we provisionally concluded that the Network Commitment would, in time and once fully implemented, address our provisional SLCs but that we have some time limited residual concerns). Our current view is that the Parties' proposed dates are suitable, with the exception of the early year or 'Day 1' benefits, which are a key feature of the Parties' submissions. We are considering the option for a Year 1 commitment to be added to the obligation, though we wish to further discuss the precise commitment at Year 1 to ensure day-1 benefits are delivered. We recognise that post-Merger

³²⁰ [CMA87](#), paragraph 7.4.

³²¹ Ofcom response to the CMA's RFI

there are often integration challenges so are open to considering the precise specification of the Year 1 commitment.

- 1.302 In addition, we are conscious that having only four commitment points over 8 years means that stakeholders and the market may not become aware of any failure to deliver the JNP until significantly after the fact. We therefore consider that annual public reporting should be required by the Parties. This will not form part of the licence but a separate commitment by the Parties to publish annually progress against the commitment including key output metrics such as, for example, coverage, capacity and speed. The precise details of what the disclosure will entail would be set out in an Undertaking that we anticipate a monitoring trustee would have a role in overseeing.
- 1.303 The Parties' proposal is an input-based commitment, rather than output-based one which would measure the quality of the network performance. Ofcom told us that 'outputs (coverage; speed/capacity and/or; congestion experienced by the end user) have not been well defined in quantifiable terms and could require a complex compliance measurement'.³²²
- 1.304 As the purpose of the remedy is to achieve significant quality improvements, we considered whether a remedy that is based on inputs would deliver the expected quality improvements in all material respects. The network improvements would be very location specific, but most customers can be expected to see improvements. Whilst not supporting the specific KPIs claimed by the Parties, Ofcom told us that 'we consider that appropriately specified inputs would be expected to achieve desired output improvements'.³²³
- 1.305 Some third parties suggested that at the very least we needed to include coverage as part of the Network Commitment.³²⁴ Ofcom told us that it does not view coverage as a reliable metric to measure output, noting that coverage figures are driven by model statistics, meaning there is a large standard deviation between predicted and measured figures.³²⁵
- 1.306 On the basis of the above, we consider it appropriate that the licence variation includes only input measures. However, we agree with a number of third parties that there is value in the output measures. In particular, the impact of the Network Commitment forms a key part of our assessment of its effectiveness. We therefore consider that the requirement to publish an annual report on progress and network performance - to be audited by a monitoring trustee - should include output measures, assessed against expectations. The precise details of what this annual

³²² Ofcom response to the CMA's RFI

³²³ Ofcom response to the CMA's RFI

³²⁴ VMO2 [response to Remedies Notice](#), 27 September 2024, paragraph 3.4 – 3.5; BTEE [response to Remedies Notice](#), 27 September 2024, paragraph 3.30; [REDACTED], call note

³²⁵ Ofcom call note

disclosure will cover would be set out in the Undertakings and would include the expectations the Merged Entity will be assessed against. This would allow stakeholders, including customers, to understand ahead of formal licence reporting, whether the Parties are delivering against their claims.

- 1.307 We further considered whether the Network Commitment would need to specify other elements in addition to sites and spectrum to be deployed to achieve the desired outcome in network improvements, for example back-haul technology and infrastructure. All other things being equal, we understand that the key determinants of network quality are the number of sites, the number of cells/equipment deployed at the site and the spectrum deployed on them. Ofcom told us that ‘the key inputs that would need to be specified are the number of sites and the spectrum deployed on those sites’.³²⁶
- 1.308 On the basis of the above, and subject to appropriate commitments as to the types of technology deployed on each site, we consider that the commitment appropriately focuses on number of sites and spectrum deployment. We also provisionally consider that an input-based commitment is the most appropriate and practical specification for the remedy.
- 1.309 We have, however, identified a number of circumvention risks (see Circumvention risks below) that we consider can be mitigated through specification of the Network Commitment:
- (a) The proposal should not allow for a cure period, as this would only delay when formal commitments become effective (see paragraph 1.320a)).
 - (b) The Parties should make a formal rural sites commitment to ensure that rural areas benefit from the Network Commitment (see paragraph 1.320b)).
 - (c) The Network Commitment should be met with the current spectrum bands owned by the Parties (see paragraph 1.320c)).
 - (d) All sites must have each of 700 MHz, 800 MHz, 900 MHz and 1,400 MHz spectrum bands deployed. The CMA would liaise with Ofcom to allow some flexibility to substitute spectrum bands, at Ofcom’s discretion, where it is not possible to deploy certain configurations at individual sites.
 - (e) The site numbers commitment must prevent less superior or cheaper technology being deployed (see paragraph 1.320d)).
- 1.310 As outlined above (see paragraph 1.137), the Parties have proposed that the Commitment specification will include ‘guardrails’ to allow for unanticipated circumstances under which the Parties would not be deemed to have failed to

³²⁶ Ofcom response to the CMA’s RFI

have met the Network Commitment.³²⁷ We consider it inappropriate to include such provisions, which could be subjective in nature. In terms of specification, we consider that it is best left to Ofcom's discretion as to when there are reasonable circumstances for the Parties not meeting a formal commitment in the spectrum licence. This is appropriate as Ofcom will be exercising its discretion in a number of areas, such as for example the impact of technology on the licence obligation.

- 1.311 Our provisional conclusion is that the Network Commitment can be appropriately specified, and we have set out a number of areas above which we would expect to be included in the specification.

Circumvention risks

- 1.312 Circumvention risks arise as a consequence of behavioural remedies generally not dealing with the source of an SLC.

- 1.313 In our assessment, we have identified a number of circumvention risks in consultation with Ofcom, that could impact the effectiveness and risk profile of the Network Commitment. These are:

- (a) **Cure period** – As outlined above, the Parties proposed a 12 month cure period (see paragraph 1.136), in the event the parties fail to meet their formal commitments at years 4 and 8,³²⁸ which they later revised to a cure period of 6 months in case they fail to deliver 90% of their rural or urban site targets at the end of years 3, 5 and 8.³²⁹ Our view is that all this would do is delay the date at which the commitments become binding. We would expect monitoring to be occurring regularly between the binding commitments that would establish if the Parties appear likely to miss these binding commitments and for this to lead the Parties to immediately put in place pre-emptive remedial plans. If the Network Commitment is included in the Merged Entity's licence, Ofcom would have the ability to exercise discretion when deciding if enforcement action is necessary and, if so, what enforcement action is appropriate.³³⁰ We consider that there should be no cure period specified in the remedy. Our view on the failure to meet the commitments is covered above.
- (b) **A rural commitment** – We consider (as set out in the Provisional Findings) that there is a greater commercial incentive to retain sites in urban areas than

³²⁷ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 4.26.

³²⁸ A cure period is a time period that would allow the Parties to remedy the failure to meet its targets before it becomes a formal failure.

³²⁹ Parties, Remedies letter to the Inquiry Group.

³³⁰ Ofcom told us that an example of this enforcement approach in practice is the enforcement against Vodafone's failure in 2013 to meet its 3G coverage obligation. Vodafone fell 1.4% short of the 90% coverage requirement. Following discussions with Ofcom, Vodafone put in place a plan to bring itself into compliance with the 3G coverage obligation by the end of 2013. Although Vodafone had missed the obligation and was proactive in remedying this in a matter of months. Ofcom decided to take no further action. Ofcom response to the CMA's RFI

rural areas. There is therefore a risk that the Parties deploy more sites in urban areas (even if not high traffic areas) which could reduce the benefits of the Network Commitment in rural areas. We therefore consider that the Parties' proposal to commit to a rural site roll-out is appropriate.

- (c) **Types of bands deployed** – the type of bands deployed will affect the capacity in an area and the coverage. For example, deployment of higher frequency bands could achieve high levels of capacity at a site but over a smaller area. Lower spectrum bands would need to be deployed to provide that coverage. Ofcom told us that it believes that this risk can be mitigated by requiring all sites to have each of 700 MHz, 800 MHz, 900 MHz and 1,400 MHz spectrum bands deployed.³³¹ As an exception to this, we consider that some flexibility could be provided to enable the Parties to substitute bands where it is not possible to deploy certain bands on certain sites.
- (d) **Type of technology** – Ofcom highlighted that the Parties could use cheaper microcells, the performance of which put the benefits of the Network Commitment at risk. Ofcom suggested that this could be mitigated by requiring the site numbers commitment to be met using macrocells meeting the Wide-Area BS class definition in 3GPP TS 38.104 v18.6.0 (2024-06).³³² The Parties submitted that this would not be feasible or appropriate given the varied location of their sites. The Parties proposed that the definition of sites in the Network Commitment should provide that the radio equipment on a site shall transmit power of a minimum of $[\text{X}]W$ per each 5MHz deployed on the site.³³³ We consider that technology requirements should be specified to ensure that the benefits of the Network Commitment are not undermined. We are still considering the specification on this matter.

1.314 Whilst we consider that the Network Commitment has a number of circumvention risks, as outlined above, we believe these do not undermine its effectiveness as there are mitigations available through appropriate specification.

Distortion risks

- 1.315 Market distortions can arise when a behavioural remedy alters normal market signals and changes the incentives of the Parties and/or third parties in a negative way. Such distortions can undermine the effectiveness of the remedy.
- 1.316 Our current view, as set out above, is that the delivery of the Parties' JNP (through the implementation of the Network Commitment), alongside Beacon 4.1, is likely to lead to a competitive response from the other two MNOs (for example to invest in

³³¹ Ofcom response to the CMA's RFI

³³² Ofcom response to the CMA's RFI

³³³ Parties response to the CMA's RFI.

their networks), and thus enhance rivalry compared to the counterfactual. Ofcom also noted that the prospect of higher network quality from the Merged Entity and VMO2 may result in BTEE having to invest more in response to increase its network quality.³³⁴

1.317 We do not consider that the Network Commitment is likely to lead to costly market distortions.

Provisional views on the effectiveness of the Network Commitment

1.318 Based on the assessment set out above, we provisionally consider that:

- (a) The Network Commitment would address the provisional SLCs in the retail market and wholesale market and their resulting adverse effects in the longer term (but would not on its own address the short term adverse effects, which are considered further below).
- (b) The Network Commitment should be 8 years in duration.
- (c) The Network Commitment would be capable of effective implementation, monitoring and enforcement, as a condition of the Merged Entity's spectrum licence(s).
- (d) The Network Commitment has an acceptable risk profile. In particular, we consider that the remedy can be appropriately specified, circumvention risks can be appropriately mitigated, and that the Network Commitment is not likely to lead to costly market distortions.

1.319 CMA guidance notes that where enabling measures take time to address an SLC, measures that control market outcomes may be needed for a limited period to provide protection to customers from the adverse effects of an SLC.³³⁵ We consider that supporting measures would be required for a limited period to provide protection to customers from the adverse effects of the provisional SLCs in the period before the rivalry-enhancing effects of Beacon 4.1 and the Network Commitment materialise. These are examined below.

Time limited customer retail protections

1.320 As outlined above (paragraph 1.321), we consider that the Network Commitment addresses long term anti-competitive effects in the retail market. However, as noted (paragraph 1.321), we have concerns that the Network Commitment may not address short term adverse effects of the provisional SLC in the retail market.

³³⁴ Ofcom response to the CMA's RFI

³³⁵ [CMA87](#), paragraph 3.50.

- 1.321 Our guidance anticipates that enabling measures (such as the Network Commitment) may be expected to work relatively slowly in addressing an SLC. In these circumstances, measures that control market outcomes may be needed for a limited period to provide protection to customers from the adverse effects of an SLC.³³⁶
- 1.322 To explore this further, in the Remedies Notice, we outlined that on the assumption that a Network Commitment addressed our concerns in the long term, there may be a case for considering some time-limited protections to protect customers from the adverse effects of the provisional SLCs during the initial years of network integration and roll-out under any Network Commitment.³³⁷
- 1.323 In the Remedies Notice we outlined that 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 measures to encourage uptake amongst those consumers who are eligible.³³⁸
- 1.324 As outlined below (paragraph 1.427), across a number of submissions, the Parties proposed a range of Time Limited Retail Customer Protections. No other short term protections were put to us.
- 1.325 In the rest of this paper, time limited retail market protections are referred to as the **Time Limited Retail Customer Protections** and time limited wholesale market protections are referred to as **Time Limited Wholesale Market Access Terms**, together the **Time Limited Protections**.

The Parties' proposed Retail Customer Protections

- 1.326 In this section, we provide a description of the Parties' proposed Retail Customer Protections including implementation considerations, before outlining the Parties' position as to how they address the SLCs identified in the Provisional Findings in combination with the Network Commitment. The Parties proposed four retail commitments:³³⁹
- (a) a commitment to maintain terms and conditions of existing customers (the **Terms and Conditions Commitment**);
 - (b) a commitment to maintain prices for value-focussed customers on all main brands (the **Pricing Cap Commitment**);

³³⁶ [CMA87](#), paragraph 3.50.

³³⁷ CMA, [Remedies Notice](#), 13 September 2024, paragraphs 34 to 36.

³³⁸ CMA, [Remedies Notice](#), 13 September 2024, paragraph 39.

³³⁹ Parties, Remedies letter to the Inquiry Group, Parties' follow up submission on Remedies.

- (c) a commitment to maintain social tariffs (the **Social Tariffs Commitment**); and
- (d) a commitment to exclude vulnerable customers in financial difficulty from mid-contract price rises (the **Vulnerable Customers Commitment**).

Overview of the Terms and Conditions Commitment

- 1.327 The Parties proposed to maintain the existing terms and conditions³⁴⁰ for all current consumer mobile voice customers across each of the Merged Entity's brands (Vodafone, VOXI, TalkMobile, Three and SMARTY) for 36 months from completion of the Merger.³⁴¹
- 1.328 The Parties submitted that under this proposal, customers would remain free to select alternative tariffs and offers at their own discretion and the Merged Entity would continue to notify consumers of the 'best tariff' available to them at the end of their contract (and at least annually thereafter) under the end of contract notification requirements which came into effect in 2020.³⁴²

Overview of the Pricing Cap Commitment

- 1.329 The Parties originally proposed to commit to maintain prices on SMARTY for 24 months from Day 1 for all tariffs that are currently GBP 10 or less per month.³⁴³ The Parties submitted that this commitment would address our initial views, as set out in the Remedies Notice, about particular concerns regarding the impact of the Merger on those customers least able to afford mobile services or who might have to pay more for improvements in service quality they do not value.³⁴⁴ The Parties submitted the remedy proposal is designed to enable value focussed customers to have continued access to low prices.³⁴⁵
- 1.330 Subsequent to the above proposal, the Parties submitted that they are willing to maintain prices across their main brands (Vodafone, Three, SMARTY and VOXI) for 36 months for all Vodafone and Three PAYM SIMO tariffs, VOXI, and SMARTY tariffs under 20GB monthly, using offers in place on 12 September 2024. The Pricing Cap Commitment would apply to standard tariffs only and would exclude

³⁴⁰ This meant that, once a customer's contract ends, they could remain on their standard tariff, with all existing contract terms and conditions being maintained including any terms which relate to pre-defined mid-contract price rises in compliance with Ofcom's latest applicable regulations.

³⁴¹ Parties' Remedies letter to the Inquiry Group.

³⁴² Parties' Remedies letter to the Inquiry Group.

³⁴³ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.11.

³⁴⁴ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraphs 5.34 and 5.37

³⁴⁵ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.12.

any time-limited discounts or promotions, which would not be fixed as part of the pricing cap commitment. This would be effective from completion.³⁴⁶

Figure 1.3: Tariffs covered by the Pricing Cap Commitment

Brand	Type of tariff	Price	Tariff duration	Data allowance	Voice minutes and texts
Vodafone	PAYM SIMO	£18	24 months	8 GB	Unlimited
		£19	12 months		
		£29	1 month		
		£15	24 months	3 GB	
		£16	12 months		
		£26	1 month		
Three	PAYM SIMO	£12	24 months	12 GB	Unlimited
		£14	12 months		
		£22	1 month		
		£11	24 months	4 GB	
		£13	12 months		
		£19	1 months		
		£9	24 months	1 GB	
		£11	12 months		
		£19	1 month		
VOXI	Pre-paid hybrid	£10	1 month	20 GB per month (with unlimited social media)	Unlimited
SMARTY	Pre-paid hybrid	£8	1 month	16 GB	Unlimited
		£7	1 month	8 GB	
		£6	1 month	5 GB	

Source: Parties' follow up remedies submission.

1.331 The Parties believe applying time-limited commitments to a 'good mix' of tariffs across their main brands (ie Vodafone and Three pay monthly SIM only (**PAYM SIMO**), VOXI, and SMARTY standard tariffs is appropriate as:³⁴⁷

- (a) There are [X] million customers currently on Vodafone and Three PAYM SIMO, VOXI and SMARTY tariffs of up to 20 GB ([X] million VUK customers

³⁴⁶ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.11, Parties' Remedies letter to the Inquiry Group, Parties' follow up submission on Remedies.

The Parties had initially proposed a 24 month commitment for the SMARTY Pricing Commitment in the their response to the Remedies Notice and subsequently amended the commitment to apply across all their main brands for 36 months after the Remedies Response Hearing.

³⁴⁷ Parties' follow up submission on Remedies.

and [X] million 3UK customers) and they represent [30-40]% of the combined current Vodafone and Three PAYM SIMO, VOXI, and SMARTY bases;

- (b) It would be available to consumers who are not currently customers of the Parties or customers of the Parties on other tariffs, since the pricing commitment would apply to the Merged Entity's customers for the duration of the commitment;
- (c) The price cap for these tariffs provides an anchor for the Parties' broader tariff portfolio (including tariffs with higher data allowances), and this would make it more difficult for the Parties to increase prices for tariffs with higher data allowances; and
- (d) The data allowances offered in the pricing commitment are generous. Ofcom data from 2022 shows that the average consumer across the UK mobile market used 7.1 GB of data per month and recent Ofcom data from June 2023 shows that 50% of UK customers use 2.7GB or less.

1.332 The Parties submitted that the pricing cap commitment would be available to all existing and new retail customers.³⁴⁸ Customers who sign up to these tariffs during the commitment period would be subject to the existing terms and conditions which apply to these tariffs, which for PAYM SIMO contracts include pre-defined mid-contract price rises in compliance with Ofcom's latest applicable regulations.³⁴⁹

Overview of Social Tariff Commitment

1.333 The Parties also offered to commit to maintaining the social tariffs currently offered by VOXI and SMARTY for 36 months after the Merger closes.³⁵⁰ This would be effective immediately after the Merger closes as the tariffs already exist.³⁵¹

1.334 SMARTY and VOXI's social tariffs are available to customers in receipt of certain government benefits.³⁵²

1.335 The social tariffs would continue to be advertised prominently so that customers can access the information relating to the tariffs. The Parties told us that VOXI For

³⁴⁸ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.16.

³⁴⁹ Parties' follow up submission on Remedies.

³⁵⁰ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.17 and Parties' Remedies letter to the Inquiry Group. The Parties had initially proposed a 24 month commitment for the SMARTY Pricing Commitment in their response to the Remedies Notice and subsequently amended the commitment to 36 months after the Remedies Response Hearings.

³⁵¹ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.19.

³⁵² [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.17.

Now, VOXI's social tariff, is advertised on its main landing page, and SMARTY's social tariff is advertised on the 'All Plans' page.³⁵³

- 1.336 The Parties proposed to commit to maintaining a clear and simple process for claiming social tariffs for customers, submitting that VOXI's eligibility process is currently managed by Moneyhub, a third-party partner, and Moneyhub checks customers' bank accounts for government benefits and advises VOXI on their eligibility.³⁵⁴ The Parties plan to continue to use third party charity partnership to promote the tariffs.³⁵⁵
- 1.337 The Parties submitted that Ofcom surveys have found that social tariffs can ensure mobile services remain affordable for low-income customers.³⁵⁶

Overview of Vulnerable Customers Commitment

- 1.338 The Parties submitted that they are willing to commit to exclude vulnerable customers from mid-contract price rises for 36 months after the Merger closes. This would include main brands and all sub-brands tariffs.³⁵⁷ The Parties submitted that a customer's vulnerability can be flagged through VUK's online portal or through customer-facing employees and through 3UK's Customer Contract Centre, retail advisors or on the 3UK app.³⁵⁸

General terms of the Retail Customer Protections

- 1.339 The Parties believe it is not necessary to fix non-price terms of the Retail Customer Protections as they are not individually negotiated with customers and do not determine the quality of the service.³⁵⁹
- 1.340 The Retail Customer Protections would be implemented as a Final Undertaking under section 82 of the Act and would be enforceable under section 94 of the Act. As with the Network Commitment, the Parties would appoint a monitoring trustee to monitor compliance and report to the CMA. The Parties would be responsible for the remuneration of the monitoring trustee.³⁶⁰ The Merged Entity would provide reports to the monitoring trustee and the CMA would confirm the Parties are complying with the protections.³⁶¹

³⁵³ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.20.

³⁵⁴ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.21.

³⁵⁵ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.21.

³⁵⁶ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.38.

³⁵⁷ Parties' Remedies letter to the Inquiry Group. The Parties had initially proposed a 24 month commitment for Vulnerable Customers Commitment in their response to the Remedies Notice and subsequently amended the commitment to 36 months after the Remedies Response Hearings.

³⁵⁸ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.22.

³⁵⁹ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.24.

³⁶⁰ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraphs 5.25-5.26.

³⁶¹ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraphs 5.27-5.28.

1.341 The Parties proposed a dispute resolution process involving either an independent adjudicator appointed by the monitoring trustee or an existing Ombudsman process.³⁶²

The Parties' views

1.342 The Parties submitted that there is no need for any specific remedy, beyond the Network Commitment, to address the provisional SLC in the retail market. The Parties consider that the Network Commitment would, from the outset, incentivise the Merged Entity, VMO2 (with help from Beacon 4.1) and BTEE to compete even more strongly including for low-income customers.³⁶³

1.343 With respect to the CMA's general framework for assessing remedies, including behavioural remedies, the Parties submitted that:

- (a) **Considering the impact on the SLC**, should we have any residual concerns relating to the initial years of network integration and roll-out under the Network Commitment because we believe that the REEs may take some time to manifest, the Retail Customer Protections would resolve any such concerns by providing retail customers with price protections for the duration of the Network Commitment's initial years.³⁶⁴
- (b) The Parties consider that each of their four proposals address our concerns as set out in the Provisional Findings:
 - (i) The Parties consider that the commitment to ensure that all existing contract terms and conditions are maintained for current consumer mobile voice customers for a period of three years, represents a significant expansion of the Retail Customer Protections, as it aligns with the first compliance milestone.
 - (ii) The tariffs included in the Pricing Cap Commitment represent an 'anchor' for the rest of the Parties' tariffs, whilst still leaving enough flexibility for the Parties to change and innovate on tariffs with higher data allowances, to avoid our concern of fossilising the market or providing a broad focal point for tariffs across the market. Also, the Parties consider the Pricing Cap Commitment is simple and predictable for customers to switch across all their brands.³⁶⁵

³⁶² [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.30.

³⁶³ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraphs 5.3-5.8.

³⁶⁴ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraphs 5.32 – 5.33.

³⁶⁵ Parties' follow up submission on Remedies.

- (iii) The Parties consider that the Social Tariffs Commitment addresses our particular concerns about the impact of the Merger on those customers least able to afford mobile services.³⁶⁶
 - (iv) The Parties consider that the Vulnerable Customers Commitment addresses our particular concerns about the impact of the Merger ‘on those customers least able to afford mobile services’ as it specifically protects consumers who are financially vulnerable from mid-contract price rises for a period of 36 months.³⁶⁷
- (c) As to the duration and timing, the Parties submitted that the Retail Customer Protections will address any residual SLC and its effects from Day 1 of the Merger as they will be in force from the outset and do not require a long period of implementation.³⁶⁸ The Parties also submitted that the three year duration of the Retail Customer Protections aligns with the significant improvements in coverage, congestion and speeds that will be realised by the end of Year 3.³⁶⁹
- (d) As to practicality, the Parties submitted that the Retail Customer Protections are practically achievable, and the Parties have experience in delivering both social tariffs and protections for vulnerable customers.³⁷⁰
- (e) With respect to risks the CMA typically assesses in the context of behavioural remedies, the Parties submitted that:
- (i) **Specification risks:** the Retail Customer Protections are clearly specified and form an effective basis for monitoring and compliance.³⁷¹ The commitments do not need to be specified in a way to take account of technological change given their time limited nature.³⁷²
 - (ii) **Circumvention risks:** no circumvention risks arise from the Retail Customer Protections. The Vulnerable Customers Commitment will also be public. A monitoring trustee will have a role in monitoring all of the commitments.³⁷³
 - (iii) **Distortion risks:** the Retail Customer Protections cannot distort the market in a way that would undermine their effectiveness.³⁷⁴ The Merged Entity would be able to amend the relevant prices downwards

³⁶⁶ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.37.

³⁶⁷ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.40 and Parties, Remedies letter to the Inquiry Group.

³⁶⁸ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraphs 5.42 – 5.43.

³⁶⁹ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.11.

³⁷⁰ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.44 – 5.45.

³⁷¹ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.47.

³⁷² [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.48.

³⁷³ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.49.

³⁷⁴ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.51.

as they would only act as a price cap as opposed to a strict restriction on future pricing for retail tariffs.³⁷⁵ In addition, social tariffs and protections for vulnerable consumers are already in place across the market.³⁷⁶

- (iv) **Monitoring/ enforcement risks:** the Retail Customer Protections would not be subject to any monitoring or enforcement risks. They are easy to monitor as the exact commitments are clear and can be tracked via the brand websites.³⁷⁷ The monitoring trustee would be remunerated by the Merged Entity so no unreasonable demands are placed on CMA resources.³⁷⁸

Ofcom's views

- 1.344 Ofcom told us that it has not been involved in setting retail prices in mobile markets and accordingly does not see a clear intersection between this remedy and Ofcom's role.³⁷⁹ Ofcom told us that retail customer remedy options would be less readily implemented as licence conditions as they are unlikely to be relevant to the deployment of spectrum under the licence.³⁸⁰
- 1.345 Ofcom also told us that it would be too complex to have a remedy that addresses every single contract in the retail market due to varying level of allowances, contract lengths and add-ons.³⁸¹
- 1.346 Ofcom told us that if we were minded to impose time limited protections in the retail market, we should seek to make these as simple as possible to avoid market distortion.³⁸² Ofcom suggested that short term tariff protections would be better due to the potential distortive effect of longer term tariff protections.³⁸³
- 1.347 Ofcom told us that SIMO contracts provide a reasonable anchor for other types of contract (Handset & Airtime, and Split) given the ease with which these other contract types can be unbundled.³⁸⁴

Third Party views

- 1.348 BTEE submitted that time limited protections would be ineffective and would raise risks of market distortion.³⁸⁵ BTEE further submitted that a commitment to rollover

³⁷⁵ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.52.

³⁷⁶ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.53.

³⁷⁷ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.54.

³⁷⁸ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.55.

³⁷⁹ Ofcom call note

³⁸⁰ Ofcom email

³⁸¹ Ofcom call note

³⁸² Ofcom call note

³⁸³ Ofcom call note

³⁸⁴ Ofcom, letter

³⁸⁵ BTEE [response to the Remedies Notice](#), 27 September 2024, paragraphs 3.41 and 3.46.

existing contracts would only give some degree of protection to the Merged Entity's customers but not address loss of competition in the acquisition market for customers out of contract or customers looking to adjust their service.³⁸⁶ BTEE submitted that, similarly, social tariffs would be limited to a specific customer group and insufficient to address any pricing SLC.³⁸⁷ BTEE submitted that retail price protections would also face specification and monitoring challenges.³⁸⁸ BTEE submitted that - since the provisional SLC is not stated to be time limited - the protections to address adverse price effects on price conscious consumers would need to be long term and possibly in perpetuity.³⁸⁹

- 1.349 BTEE submitted that the dynamic nature of the retail mobile market makes it challenging to design a remedy which would constrain quality adjusted prices to address the SLC provisionally identified and not give rise to significant market distortions even for a one- or two-year period.³⁹⁰ BTEE noted that any price protections designed to control prices for the 27 million subscriptions that could be impacted by prices from the SLC would be impossible to specify with clarity and would give rise to significant circumvention risk and this would ultimately have a distortive effect on competition.³⁹¹
- 1.350 BTEE also submitted that monitoring would be an onerous and complex task (eg Ofcom would need to engage with the Merged Entity as well as several million consumers) and any retail protection could be easily circumvented due to the myriad variables that affect pricing (eg tariffs and prices of handsets).³⁹²
- 1.351 VMO2 considers that time limited protections, if required, could be achieved through an Undertaking by the Parties.³⁹³ VMO2 submitted that social tariffs are already encouraged by Ofcom and the Parties could be required to engage in promotional activities to encourage uptake amongst eligible consumers.³⁹⁴
- 1.352 Communication Chambers submitted that time limited retail protections should be linked to CPI or RPI to allow for input cost changes that are beyond the control of the MNOs.³⁹⁵
- 1.353 Enders Analysis told us that retail remedies are workable provided they are not punitive, protracted, overly prescriptive and do not cause unintended consequences in a complex and competitive market.³⁹⁶

³⁸⁶ BTEE [response to the Remedies Notice](#), 27 September 2024, paragraph 3.43(a).

³⁸⁷ BTEE [response to the Remedies Notice](#), 27 September 2024, paragraph 3.43(b).

³⁸⁸ BTEE [response to the Remedies Notice](#), 27 September 2024, paragraphs 3.46 and 3.47.

³⁸⁹ BTEE [response to the Remedies Notice](#), 27 September 2024, paragraph 3.53.

³⁹⁰ BTEE [response to the Remedies Notice](#), 27 September 2024, paragraph 3.54.

³⁹¹ BTEE [response to the Remedies Notice](#), 27 September 2024, paragraph 3.60.

³⁹² BTEE [response to the Remedies Notice](#), 27 September 2024, paragraphs 3.55-3.57.

³⁹³ VMO2 [response to the Remedies Notice](#), 27 September 2024, paragraphs 3.7-3.8.

³⁹⁴ VMO2 [response to the Remedies Notice](#), 27 September 2024, paragraphs 3.7-3.8.

³⁹⁵ Communication Chambers [response to the Remedies Notice](#), 27 September 2024, page 5.

³⁹⁶ Enders Analysis [response to the Remedies Notice](#), 27 September 2024, page 6.

- 1.354 On the design of price protections, Which? submitted that time limited price protections would pose a significant risk of distortion due to the level of heterogeneity between contract types (ie consumers on pre-pay or monthly terms may have standalone contracts or contracts bundled with handsets, with different contract term length and differing data and call minutes allowances).³⁹⁷ Further, Which? submitted that there is also a distortive risk from the possibility of the MNOs increasing their prices at remedy expiry.³⁹⁸
- 1.355 On other retail customer terms to be protected, Which? was of the view that we should consider flexibility of contract term length and offering (ie roaming, etc) and any retail protection would need to apply to all customers if the SLC is expected to lead to a welfare loss for all the Parties' retail customers. Which? also submitted it was in favour of social tariff protections in relation to eligibility, price, call and data allowances/speeds, service levels and contract flexibility, however they should be promoted by the Parties to encourage uptake. However, Which? noted that there would be associated monitoring and enforcement risks in relation to enforcement of compliance by the Parties.³⁹⁹
- 1.356 [redacted] submitted that it was not in support of time-limited retail market customer protections, as it would not be sustainable in the long term and could lead to retail market distortion.⁴⁰⁰ In its view, a wholesale remedy would be more effective as it would ensure the underlying wholesale access terms are attractive and secure enough to allow the retail market to flourish in a sustainable and long-term way, and this would result in better outcomes and benefits for customers.⁴⁰¹
- 1.357 [redacted] considered that the roll over of existing contract terms would be possible, but various factors would need to be considered for it to be effective. It also agreed with the proposal for social tariffs in principle but did not believe the commitments outlined by the Parties to be adequate.⁴⁰²
- 1.358 One third party told us that a 'more efficient way to protect the neediest from price rises is through a time-limited retail protection of social tariffs'.⁴⁰³

Our assessment of the Retail Customer Protections (behavioural framework)

- 1.359 In assessing the effectiveness of the Retail Customer Protections, we are following the framework outlined in paragraph 1.12 and the behavioural risks identified in above.

³⁹⁷ Which? [response to the Remedies Notice](#), 27 September 2024, page 3

³⁹⁸ Which? [response to the Remedies Notice](#), 27 September 2024, page 1.

³⁹⁹ Which? [response to the Remedies Notice](#), 27 September 2024, page 1.

⁴⁰⁰ [redacted] [response to the Remedies Notice](#), 26 September 2024, page 3.

⁴⁰¹ [redacted] [response to the Remedies Notice](#), 26 September 2024, page 3.

⁴⁰² [redacted] response to the CMA's RFI

⁴⁰³ Professor Stephen Temple [response to the Remedies Notice](#), 17 September 2024, page 2.

- 1.360 The Parties' proposed Retail Customer Protections included two retail protections targeted at current customers. As described above, the proposals were to maintain the existing terms and conditions of existing customers (the Terms and Conditions Commitment) and exclude customers flagged in their system as vulnerable customers from in contract price rises (the Vulnerable Customers Commitment). We consider that, if implemented, these measures could create inertia amongst certain customers who believe they are protected, but for whom there may be better deals in the market which, absent such protections, they might have switched to. The Parties' vulnerable customer offer, which we consider to be poorly targeted and difficult to monitor, would require a more complex dispute resolution mechanism than the one currently envisaged by the Parties, and would also, as noted above, potentially harm some vulnerable customers by disincentivising them from seeking better deals.
- 1.361 We note in this respect Ofcom's submission that if we were minded to impose time limited protections in the retail market, we should seek to make these as simple as possible to avoid market distortion.⁴⁰⁴
- 1.362 The rest of this assessment is focused on whether the Parties' other proposals, or an amended version of them, could be effective. The two proposals we consider further are:
- (a) The Pricing Cap Commitment; and
 - (b) The Social Tariffs Commitment.

Impact on the SLC and resulting adverse effects

- 1.363 In this section we discuss the potential for the Parties' proposal or a variant of it to address residual time-limited concerns in the retail market that are not addressed by the Network Commitment alone.
- 1.364 In our Provisional Findings, we provisionally found that the Merger would lead to price increases for retail customers (or to equivalent reductions in data packages or service features). We considered that any price increases would potentially affect tens of millions of mobile customers, and that we had particular concerns about the impact of the Merger on those customers least able to afford mobile services or who might have to pay more for improvements in service quality they do not value.⁴⁰⁵

⁴⁰⁴

Ofcom call note

⁴⁰⁵ CMA, [Provisional Findings Report](#), 13 September 2024, paragraphs 14.210 and 14.211 and CMA, [Remedies Notice](#), 13 September 2024, paragraph 10(a).

- 1.365 As set out above (paragraphs 1.164 to 1.242), we do not consider that the Network Commitment alone can comprehensively address the provisional SLC and its adverse effects, as the rivalry-enhancing effects of Beacon 4.1 and the Network Commitment will take time to materialise.
- 1.366 We therefore consider that it is necessary to provide some time limited protections to prevent these short-term adverse effects.
- 1.367 When considering the impact on the provisional SLC, we have given particular weight to the potential distortion risks associated with any form of price protection (see paragraphs 1.412 to 1.419 below). In particular, one of our primary concerns is that any price protections should seek to reduce as far as possible any customer inertia. Inertia could inadvertently reduce competition and prevent customers from seeking better deals. Therefore, as a design concept, the time limited protections should focus on providing customers options and require customers to make active decisions about what is in their best interest.
- 1.368 It is our view that a commitment to preserve an appropriate range of pre-Merger tariffs for a specified period of time may provide the protections we seek without creating any material market distortions. As set out further below, we consider that protecting a selection of tariffs is likely to reduce distortion risks and make monitoring more practical.
- 1.369 We consider that, to be effective, the protected tariffs should represent a mix of tariffs which are popular, competitively priced and span different data allowances. We consider that such a protection would provide sufficient options for new and existing customers.
- 1.370 We further note that, even if only a selection of tariffs were protected, this would still, to some degree, provide a constraint on the price of the Parties' other tariffs. This is because we understand that, when setting tariffs, mobile operators consider how tariffs are positioned in relation to each other.
- 1.371 Whilst the Retail Customer Protections would not replace the loss of competition (and would not 'work with the grain of competition'), other operators are influenced by competitors' pricing when deciding on their own tariffs, so this remedy should help keep competitor prices lower than they otherwise might be absent this remedy.
- 1.372 As noted above, we consider that to be effective, Retail Customer Protections would need to target a small subset of tariffs across both Vodafone and Three brands that would be available to new and existing customers. The protections therefore would need to include Vodafone, Three, SMARTY and VOXI tariffs. Our current view is that the protections should include relevant tariffs from prepay and PAYM SIMO deals across all of the above brands, that were available pre-

publication of the Provisional Findings. We note that the Parties have proposed that the Pricing Cap Commitment would be assessed against the pricing and contractual terms as of 12 September 2024, which is the day before the notification of the Provisional Findings.⁴⁰⁶ We note that the Parties have proposed that the Pricing Cap Commitment would be assessed against the pricing and contractual terms as of 12 September 2024, which is the day before the notification of the Provisional Findings.⁴⁰⁷

- 1.373 Due to specification risks explored further below (paragraphs 1.412 to 1.419), practicality and circumvention risks, we do not propose to include the following: (i) Business tariffs; (ii) PAYM handset tariffs (iii) PAYM data-only; and (iv) pay as you go (**PAYG**).
- 1.374 We propose to only select a limited subset of tariffs from across the brands to keep the protections simple, easy to understand for customers and manageable. We understand that around [X] of the Parties' retail customers are on prepay and SIMO deals across the Vodafone, Three, SMARTY and VOXI brands. We consider that if customers are made aware of these subsets of tariffs, this is likely to create downward pressure on tariffs not captured by this customer protection.
- 1.375 We believe that capturing PAYM handset, pure PAYG and data only deals is markedly more complex due to the nature of these deals. For example, PAYM handset deals cover the cost of the handset and the mobile tariff in one payment. We do not consider it feasible, practical or desirable to cap handset tariffs. As outlined above, we consider that the tariffs selected would still likely provide some downward pressure on these tariffs, which we provisionally conclude overall is an effective and practical solution to our time limited concerns.
- 1.376 As outlined above, we consider that to be effective, the protected tariffs should represent a mix of tariffs which are popular, competitively priced and span different data allowances. We are seeking further data from the Parties prior to settling the specification on which tariffs we would require to be protected. In relation to the selected tariffs, we would require the selected tariffs to be in full compliance with Ofcom's regulations relating to mid contract price increases and would settle the specification on this point once we receive the further data from the Parties.
- 1.377 This proposal would ensure that protected tariffs are available in the market for a period of time to protect consumers from the adverse effects of the provisional SLC in the retail market before the Network Commitment and Beacon 4.1 have

⁴⁰⁶ Parties' follow up submission on Remedies. 12 September 2024 is the day before the Provisional Findings were released on 13 September 2024.

⁴⁰⁷ Parties' follow up submission on Remedies. 12 September 2024 is the day before the Provisional Findings were released on 13 September 2024.

positive impacts on the market structure (ie through improvements in network quality as set out at paragraphs 1.164 to 1.242 .

Duration and timing

- 1.378 As outlined above (paragraphs 1.214 to 1.222), we consider that the Network Commitment addresses long term anti-competitive effects in the retail market. However, we have provisionally found that the Network Commitment would not address short term adverse effects from the provisional SLC in the retail market.
- 1.379 Our guidance anticipates that enabling measures (such as the Network Commitment) may be expected to work relatively slowly in addressing an SLC. In these circumstances, measures that control market outcomes may be needed for a limited period to provide protection to customers from the adverse effects of an SLC.⁴⁰⁸
- 1.380 As behavioural remedies are designed to have ongoing effects on business conduct throughout the period they are in force, the duration of these measures is a material consideration. Our guidance further notes that we may specify a limited duration if measures are designed to have a transitional effect.⁴⁰⁹
- 1.381 As outlined above, the Parties originally proposed a three-year timeframe for the Retail Customer Protections. However, given our residual concerns that the Network Commitment might not address short term adverse effects from the provisional SLCs in the retail market, we consider that the timeframe of any Retail Customer Protections must be tied to a deliverable under the Network Commitment and not simply an elapsed timeframe. We consider that once it is corroborated by the CMA and Ofcom that the Parties have met their Year 3 obligation under the Network Commitment, the Retail Customer Protections can fall away. We consider that the impact of the Network Commitment and Beacon 4.1 will have begun to have a material positive effect on competition at that point (paragraph 1.219) such that the retail protections could be lifted.
- 1.382 Our current view is that by Year 3, significant improvements in the Merged Entity's coverage, reliability and capacity will have been delivered and the benefits of Beacon 4.1 on VMO2's quality and capacity will also have started to take effect:
- (a) The Network Commitment by Year 3 is expected to deliver benefits from:
- (i) The Parties claimed Day 1 benefits;
 - (ii) Over [X]% C-Band 5G population coverage;

⁴⁰⁸ [CMA87](#), paragraph 3.50.

⁴⁰⁹ [CMA87](#), paragraphs 7.10 and 7.11.

- (iii) [X]% 4G geographic coverage;
 - (iv) Only [X]% of customers receiving speeds below 2Mbps; and
 - (v) Only [X]% of customers receiving speeds below 5Mbps.⁴¹⁰
- (b) Much of the VMO2 spectrum transfer also occurs by the end of Year [X]:
- (i) Subject to completion of the Merger and Ofcom's consent, the Merged Entity will transfer spectrum assets to VMO2 in the [X] bands;⁴¹¹
 - (ii) VMO2 will acquire the majority of the spectrum [X] and a smaller proportion [X];⁴¹²
 - (iii) Spectrum in the [X] will be divested [X];⁴¹³
 - (iv) Spectrum [X] will be divested [X];⁴¹⁴ and
 - (v) VMO2 also explained that the Merged Entity will be [X].⁴¹⁵

1.383 We also consider a three year period strikes an appropriate balance in terms of cost and risks (in particular distortion risks) identified in the following sections and therefore the protections should be tied to the delivery of the Year 3 Network Commitment.

1.384 Further, as noted below (paragraph 1.482), the Wholesale Access Terms (discussed further below) can be expected to have some continued effect beyond Year 3, both in the wholesale and retail markets, until the rivalry enhancing effects of the Network Commitment are fully realised. Ofcom also stated that in particular if Wholesale Access Terms are put in place covering unlimited tariffs, this should provide some protection for retail customers that have higher usage or require an allowance greater than in the tariffs covered by the Retail Customer Protections.⁴¹⁶

1.385 We note that the Parties accept that their release from the Retail Customer Protections could be conditional on completion of the Year 3 milestone for the Network Commitment.

⁴¹⁰ Parties, Relevant customer benefits.

⁴¹¹ Parties, Beacon 4.1 CMA briefing.

⁴¹² Parties, Beacon 4.1 CMA briefing.

⁴¹³ Parties, Beacon 4.1 CMA briefing.

⁴¹⁴ Parties, Beacon 4.1 CMA briefing.

⁴¹⁵ VMO2's Response to the CMA's RFI

⁴¹⁶ Ofcom, submission

Practicality

1.386 A practical remedy should be capable of effective implementation, monitoring and enforcement. The practicality of any remedy is likely to be reduced if elaborate and intrusive monitoring and compliance programmes are required.⁴¹⁷

Monitoring and enforcement risks

1.387 The CMA has an ongoing responsibility for the monitoring and enforcement of any behavioural remedies.⁴¹⁸

1.388 A remedy may be deemed ineffective if monitoring and enforcement is not feasible or if it could be costly and intrusive. This risk is exacerbated where the form of remedy is complex.

1.389 By limiting the Retail Customer Protections to a subset of tariffs, we consider that the monitoring would be practical; however, there will be a need to monitor the following measures, on a regular basis:

- (a) The protected tariffs remain on the market.
- (b) The protected tariffs are displayed clearly and prominently on the Parties' website and the tariffs are available on Price Comparison Websites (PCWs).
- (c) That a dispute resolution process is set up and that disputes are settled quickly and fairly.

1.390 Whilst the CMA would remain responsible for monitoring and enforcing compliance with the Undertaking, we do not consider it appropriate that the CMA takes on the above monitoring functions, as the CMA does not have the resources or capability to undertake such a role.

1.391 Our guidance notes that the likelihood of effective monitoring will be significantly increased if it is possible to involve a sectoral regulator in the monitoring regime.⁴¹⁹ However, we do not consider this appropriate for the Retail Customer Protections. The sectoral regulator, Ofcom, does not regulate mobile retail prices or resolve individual customer complaints. As such, we consider this would be an inappropriate use of Ofcom's resources.

1.392 We consider that a monitoring trustee could perform the above functions in relation to the protected retail tariffs. We note that the Parties submitted that they propose to appoint a monitoring trustee, to be remunerated by the Parties, which they

⁴¹⁷ [CMA87](#), paragraph 3.5 (c).

⁴¹⁸ [CMA87](#), paragraph 4.71 and [Section 92](#) of the Act.

⁴¹⁹ [CMA87](#), paragraph 7.6.

consider will ensure no unreasonable demands are placed on CMA resources.⁴²⁰ The Parties will need to commit to provide the monitoring trustee the information that it considers it needs to monitor compliance with the retail protections.

- 1.393 We further expect the Parties to put in place a dispute resolution process for customer disputes and for this process to be readily accessible to customers. In this regard, we note that both of the Parties contract with third parties for their current dispute procedures. The Parties should commit to extend their contracts with one or both of these providers (or an equivalent provider) and agree to abide by any outcomes from the dispute resolution process. It is our view that given we have rejected protections that target current customer contracts, whilst still necessary, the importance and utilisation of a dispute resolution mechanism is significantly reduced because the requirement is for the Parties to keep the selected tariffs and social tariffs in the market and available to customers.

Acceptable risk profile

- 1.394 To be considered an effective remedy, we require a high degree of certainty of it achieving its intended effect.⁴²¹ As set out at above, given their behavioural nature, we examine the specification, circumvention and distortion risks associated with the Retail Customer Protections.

Specification risks

- 1.395 Specification risks arise if the form of conduct required to address the SLC or its adverse effects cannot be specified with sufficient clarity to provide an effective basis for monitoring and compliance.⁴²²
- 1.396 There are a large number of tariffs on the market, and we consider that many are complex in nature and sometimes not easy to isolate, for example if part of a bundled service or tied to a handset. Trying to cover every tariff type would create a very high risk of mis-specification and undermine our ability to monitor and enforce.
- 1.397 We also consider that specification risks could arise due to the complexity of the retail mobile market, the number of subscribers and the different customer groups rolling over their existing contracts or wanting to acquire new contracts.
- 1.398 However, as outlined above, we consider that a comprehensive remedy for these time limited retail market concerns would require the Parties to commit to keep on the market a subset of tariffs which are popular, competitively priced and span different data allowances. Whilst not covering every tariff type, we consider that

⁴²⁰ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.55.

⁴²¹ [CMA87](#), paragraph 3.5 (d).

⁴²² [CMA87](#), paragraph 7.4 (a)

this would sufficiently address the short term SLC concerns in the retail market. We consider that the specification risks are lowered if limited to protecting a subset of tariff types.

1.399 Our assessment has still identified specification risks with respect to defining the following:

- (a) display and promotional requirements of these tariffs;
- (b) dispute resolution process; and
- (c) future tariff changes.

1.400 In terms of the requirement to promote and make available the protected tariffs, this needs to be implemented in a way that supports and enables customers to make informed decisions. It is our provisional view that any remedy of this type should require the Parties to make these tariffs visible to both their current and potential customers.

1.401 In its markets work, the CMA has previously imposed transparency requirements covering not only the type of information that needs to be displayed but also the way it is displayed and, in some circumstances, where the information needs to be displayed.⁴²³ To ensure that customers can access and are aware of these tariffs, we consider that any Undertaking should require the Parties to present the tariffs 'clearly and prominently' on their websites. The detailed specification would be set out in the Undertaking, applying the following principles:

- (a) 'Clear' means (i) displayed in plain language; (ii) correct; and (iii) not misleading.
- (b) Prominent means (i) presented in such a way as to enable consumers to easily identify, read and understand the relevant information as a whole; (ii) clearly visible in each location or is directly accessible; (iii) not obscured by other information which is shown to consumers, such as, but not limited to, information displayed in signs, banners and as pop-up text and images.

1.402 We currently consider that the protected tariffs should be displayed on the Parties' website and made available through price comparison websites (PCWs). We consider that the protected tariffs should be displayed in a way that reflects their relative competitiveness compared to other available tariffs (determined on an objective basis).

⁴²³ Market studies and investigations are one of the tools at the CMA's disposal to address competition or consumer protection problems, alongside its enforcement and advocacy activities. They are examinations into the causes of why particular markets may not be working well, taking an overview of regulatory and other economic drivers and patterns of consumer and business behaviour. See [Market Studies and Market Investigations: Supplemental guidance on the CMA's approach](#)

- 1.403 A requirement to promote and display a limited number of tariffs through specific channels for a limited period of time is sufficiently simple that it should be monitorable and enforceable (below). However, potential concerns could arise in relation to customers being denied access to these tariffs. This requires a dispute resolution process to be put in place.
- 1.404 The Parties both use a third-party provider for dispute resolution.⁴²⁴ We consider a contract between the Parties and one of these third party providers would be appropriate and should include a regular summary report of complaints to be provided to the monitoring trustee.
- 1.405 We would not want the protections to prevent the Parties from offering new and potentially better tariffs. The protections would be time limited and only cover a subset of tariffs and there would be no restrictions on the other tariffs that the parties and others can offer. This approach ensures that a mix of the better value, popular tariffs that the Parties have available pre-Merger would continue to be available to new and existing customers for the initial years of network integration – protecting them from price increases, without preventing new and innovative offers from emerging. Subject to getting the right balance as to how these tariffs are displayed, we do not believe customers would be unduly prevented from getting these better deals, nor the Parties disincentivised from offering them.

Circumvention risks

- 1.406 Circumvention risks arise as a consequence of behavioural remedies generally not dealing with the source of an SLC.⁴²⁵
- 1.407 In our assessment, tying the delivery of the Retail Customer Protections to Year 3 of the Network Commitment further incentivises the Parties to deliver on the Network Commitment.
- 1.408 The two key circumvention risks we consider need protecting against are:
- (a) Protected tariffs not being adequately available to customers, either through how they are displayed or sold.
 - (b) The Parties raising other tariffs even higher to compensate for the protected tariffs.

⁴²⁴ VUK currently uses the Communication & Internet Services Adjudication Scheme. 3UK currently uses the Communications Ombudsman. [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 5.30, footnote 193.

⁴²⁵ [CMA87](#), paragraph 7.4 (b)

- 1.409 We have set out the principles above which we would incorporate into an Undertaking on the display and promotion of the tariffs. We consider that such principles should be sufficient to address any material circumvention risks.
- 1.410 We have considered the risk that the Parties raise the price of other tariffs above the level they would absent some tariffs being protected. Whilst this risk cannot be removed, we consider that the ability of the Parties to raise the prices of other tariffs may be constrained. This is because, as outlined above, we consider that the protected tariffs would, to some degree, provide a constraint on the price of the Parties' other tariffs as we understand that, when setting tariffs, operators consider how they are positioned in relation to each other.

Distortion risks

- 1.411 Market distortions can arise when a behavioural remedy alters normal market signals and changes the incentives of the Parties and/or third parties in a negative way. Such distortions can undermine the effectiveness of the remedy.⁴²⁶
- 1.412 Imposing any pricing restrictions or protections in a market has a high chance of creating market distortions, both foreseen and unforeseen. It is due to these risks that we have ruled out long term behavioural remedies of this nature.
- 1.413 Similarly, trying to strike the right balance between protecting consumers and not creating market distortions is one of the reasons we have decided against protections covering the majority of, or possibly all, tariffs, given the risks of market distortions and unintended consequences.
- 1.414 At the outset, we have ruled out a remedy that would seek to provide some form of protection covering a large number of current contracts. The Parties' proposals to continue the existing terms and conditions of all current customers falls within this bracket.
- 1.415 Nevertheless, even with a more limited scope, there are potential risks of distortion with protections that seek to keep certain tariffs, including social tariffs, on the market. In particular:
- (a) The tariffs may become a focal point and, if long term trends around falling price per GB continue,⁴²⁷ this focal point could dampen innovation and/or good offers that would otherwise arise.

⁴²⁶ [CMA87](#), paragraph 7.4(c).

⁴²⁷ The Parties submitted to us in response to the Provisional Findings that prices per GB have come down over time over a significant period. See Annex 3 to the Parties response to the Provisional Findings, 4 October 2024, paragraphs 5.30 et seq.

- (b) The Parties may be incentivised to worsen other non-price elements of the protected tariff offerings which are difficult to measure or specify (and which may not be covered in the existing terms and conditions), resulting in a reduction in quality (eg through throttling speed or providing worse customer service).
- (c) The tariffs could inadvertently alter consumer behaviour in a negative way, such as leading to consumers migrating to a protected tariff when better options may exist in the market. For example, the measure may lead to less searching and switching by the customers on protected tariffs, lowering incentives for rivals to lower prices.
- (d) In the event that costs rise, it could be difficult for other value providers to respond without becoming uncompetitive relative to the protected tariffs, and this may deter the potential growth or entry of MVNOs.

1.416 A number of third parties have raised concerns about distortion risks arising from retail protections, as set out in paragraphs 1.378 to 1.386. In particular, BTEE and Which? submitted that applying restrictions to a diverse range of contract types would lead to distortion risks.

1.417 The key protection against material distortion is to keep the duration short. We consider that the protection should be linked to the Year 3 deliverable under the Network Commitment. We consider that the short, three-year time period, coupled with the limited subset of tariffs sufficiently reduces potential distortion risks.

1.418 Based on the assessment set out above, we consider that the scope of the proposal, the length of time and the proposed monitoring and enforcement give us comfort that the risk profile of the Retail Customer Protections is acceptable.

Provisional views on Time Limited Retail Customer Protections

1.419 If the Merger were to proceed only subject to the Time Limited Retail Customer Protections, the provisional SLCs identified would not be comprehensively addressed.

1.420 Our provisional view is that the Retail Customer Protections (along with the Wholesale Access Terms, which also affect the retail market as explained below) would complement the Network Commitment, increasing the effectiveness of the overall remedy package.

1.421 The Time Limited Retail Market Protections are:

- (a) A pricing Cap Commitment.
- (b) A Social Tariff Commitment.

- 1.422 We consider these Time Limited Retail Customer Protections have an acceptable risk profile and would not lead to costly market distortions given that the proposed measures would have a short duration and would be designed with the risks outlined in mind.
- 1.423 The CMA invites views in particular on the specification of the following aspects of the design of the Time Limited Retail Market Protections:
- (a) Which tariffs should be included
 - (b) Disclosure requirements
- 1.424 On tariffs, our current view is that the protected tariffs should represent a mix of tariffs which are popular, competitively priced and span different data allowances, across the Parties' various brands.
- 1.425 On disclosure requirements, our current view is that the Parties should offer an Undertaking that follows the principles set out above of 'Clear' and 'Prominent' via suitable distribution channels including PCWs.

Time limited Wholesale Access Terms

- 1.426 As outlined above, we provisionally consider that the Network Commitment addresses the SLC in the wholesale market in the longer term. However, as noted above, we consider that the Network Commitment would not address short term adverse effects from the provisional SLC in the wholesale market.
- 1.427 Our guidance anticipates that enabling measures (such as the Network Commitment) may be expected to work relatively slowly in addressing an SLC. In these circumstances, measures that control market outcomes may be needed for a limited period to provide protection to customers from the adverse effects of an SLC.⁴²⁸
- 1.428 To explore this further, in the Remedies Notice, we outlined that – on the assumption that a Network Commitment were found to address our concerns in the long term – there may be a case for considering some time-limited protections for MVNOs from the adverse effects of the provisional SLCs during the initial years of network integration and roll-out under any Network Commitment.⁴²⁹
- 1.429 In the Remedies Notice, we identified Wholesale Access Terms as a potential measure to complement a Network Commitment, noting that this could involve pre-agreed non-discriminatory wholesale terms (including prices) being made

⁴²⁸ [CMA87](#), paragraph 3.50.

⁴²⁹ CMA, [Remedies Notice](#), 13 September 2024, paragraphs 34 to 37.

available to MVNOs, subject to a reasonable limit (ie number of MVNOs or network capacity utilisation).⁴³⁰

- 1.430 We welcomed views on whether Wholesale Access Terms, combined with other measures or in isolation, could address the anti-competitive effects provisionally identified in the wholesale market, including whether they should be time limited or not.
- 1.431 We also set out our initial view that such measures were likely to present a number of challenges and risks that are associated with behavioural measures, including specification, distortion, circumvention as well as monitoring and enforcement risks.⁴³¹
- 1.432 In this section, we consider the effectiveness of Wholesale Access Terms in addressing short term concerns in the wholesale market.

Wholesale remedy options under consideration

- 1.433 The Parties submitted that the Network Commitment addresses the provisional SLCs in both the retail and wholesale markets. Despite this view, [REDACTED], the Parties proposed a remedy [REDACTED]⁴³² which they referred to as the Wholesale Reference Offer, and updated this proposal following further discussions with us.⁴³³ The Parties offered to commit to offering certain pre-agreed MVNO access terms for a period of up to [REDACTED] years.
- 1.434 As set out at paragraph 1.82, we are currently not considering capacity ring-fencing measures in relation to the wholesale market but are considering remedy options which are similar to the Parties' proposed Wholesale Reference Offer. In this section, we refer to the Parties' proposed terms as the **Wholesale Reference Offer**, and to our proposed measure as **Wholesale Access Terms**.

Overview of the Parties' Wholesale Reference Offer

- 1.435 The Wholesale Reference Offer – as proposed by the Parties – would have the following key features:⁴³⁴
- (a) **Price:** there would be three different pricing tiers, depending on the MVNO's size (see Table 1.1), with pricing set on a per-GB basis and based on currently prevailing market terms (as observed by VUK and 3UK). In contrast

⁴³⁰ CMA, [Remedies Notice](#), 13 September 2024, paragraphs 40-41.

⁴³¹ CMA, [Remedies Notice](#), 13 September 2024, paragraph 43.

⁴³² This means that the remedy proposal was submitted [REDACTED].

⁴³³ In particular, following discussions with the inquiry group and case team, the Parties updated the Wholesale Reference Offer in their response to the Remedies Notice and – following Response Hearings – in letters to the inquiry group of [REDACTED].

⁴³⁴ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.12.

with the Parties' submission in their response to the Remedies Notice, there would be no upper subscriber 'limit' for MVNOs able to access the terms in 'Tier 3'. There would also be an option of a per-subscriber wholesale price for MVNOs to offer unlimited data contracts to consumers (priced at GBP [X] per subscriber for each tier).⁴³⁵ This would be subject to a usage limit (calculated on a pooled basis across all of an MVNO's unlimited customers) of 150% of the average data usage of the Merged Entity's subscribers using unlimited data contracts.⁴³⁶ Based on current usage, this threshold would be approximately [X] GB per subscriber. Above this limit, incremental usage would be charged to the MVNO at a rate of GBP [X] per GB, which would be subject to the future pricing mechanism (**FPM**) below.⁴³⁷

- (b) **Future pricing mechanism:** the FPM would allow for an MVNO's pricing terms to change with reference both to the Merged Entity's average revenue per user (**ARPU**) and average data usage on the Merged Entity's network. The FPM uses a formula which means that when the Merged Entity's data usage per customer increases, or when the Merged Entity's ARPU decreases, the wholesale price paid by the MVNO is reduced proportionally.⁴³⁸ The FPM works such that MVNOs' pricing can [X] be adjusted downwards;⁴³⁹
- (c) **Service equivalence:** mobile service would be provided to MVNOs' customers on the same basis as it is provided to the Merged Entity's own customers, including as this relates to 5G SA, subject to speed tiering (with MVNOs able to obtain speeds of 150 Mbps, and speeds/ quality above this to be negotiated separately);⁴⁴⁰
- (d) **Non-discrimination:** the offer would contain a term that the Merged Entity will supply the same quality of service to MVNOs' customers as it does to the Merged Entity's customers;
- (e) **Access to new technologies:** MVNOs would gain access to new technologies within 9 months of the new technology being launched by the Merged Entity.⁴⁴¹

⁴³⁵ Parties, Remedies Letter to Inquiry Group.

⁴³⁶ Parties, Remedies Letter to Inquiry Group.

⁴³⁷ Parties, Remedies Letter to Inquiry Group.

⁴³⁸ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.31 and Parties, Follow-up remedies submission.

⁴³⁹ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.30 and Parties, Follow-up remedies submission.

⁴⁴⁰ Parties, Follow-up remedies submission.

⁴⁴¹ Parties, Follow-up remedies submission.

- (f) **Implementation costs:** to be borne by the MVNO with a minimum of 50% of these being paid upfront, and the remainder offset against minimum revenue commitments (see below).⁴⁴²
- (g) **Contract term:** 5 years with the ability for MVNOs to request a shorter term.⁴⁴³
- (h) **Duration:** MVNOs can seek access under the Wholesale Reference Offer in the first three years following completion of the Merger. In an update to the Parties' position in the Remedies Notice, MVNOs would have until the end of the fourth year post-completion to conclude a contract on Wholesale Reference Offer terms, provided that they express interest within the first three years post-completion.⁴⁴⁴ This, together with the contract term, is intended to be broadly consistent with the period of the Network Commitment, and with the Parties' submission that many significant benefits of the JBP will have materialised by the end of the third year post-Merger.⁴⁴⁵
- (i) **Minimum revenue commitment:** the Parties submitted that this would be based on a set monthly rate for each tier, depending on the number of subscribers of an MVNO in a given month, and it is expected to be around GBP [X] million per year for tier 2, and around GBP [X] million per year for tier 3, with a '[X]' for tier 1.⁴⁴⁶
- (j) **Payment terms:** the Merged Entity can request payment in advance depending on the perceived degree of risk of the MVNO, although 30 day payment terms are 'typical'.
- (k) **Capacity limit:** the Merged Entity would not be obliged to offer the Wholesale Reference Offer to any MVNO when the aggregate forecasted MVNO mobile data traffic for the coming 12 months is more than [15-20]% of the total capacity of the Merged Entity's network (as measured by the amount of data carried over the Merged Entity's network in petabytes per month). Given that the Parties estimate that currently contracted MVNOs would use around [5-10]% of projected capacity, the offer is - in substance - limited to [10-20]% of the Merged Entity's estimated total network capacity.⁴⁴⁷ The Parties submitted that this would cover at least 4 million (and up to 10 million) end customers of MVNOs, which the Parties estimate would cover [X] with additional capacity for new entrants.⁴⁴⁸ The Parties submitted that other

⁴⁴² [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.12(v).

⁴⁴³ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.12(vi).

⁴⁴⁴ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.35 and Parties, Remedies Letter to Inquiry Group.

⁴⁴⁵ Parties' response to the CMA's RFI.

⁴⁴⁶ Parties' response to the CMA's RFI.

⁴⁴⁷ Parties' response to the CMA's RFI.

⁴⁴⁸ Parties', Remedies Letter to Inquiry Group.

MVNOs can contract on separately negotiated terms, outside of this capacity limit.

- (l) **Onboarding limit:** The Merged Entity would onboard simultaneously between 3 -10 MVNOs, including a combination of full MVNOs, light MVNOs and MVNAs.⁴⁴⁹ The Parties suggested that MVNOs can join a 'queue' if the limit has been reached, allowing MVNOs to subsequently join in the order that interest was expressed in writing, with this process being overseen by the monitoring trustee.⁴⁵⁰ The 10 MVNOs or MVNAs would comprise:
- (i) Up to eight Tier 1 'light' MVNOs to be onboarded through pre-configured platforms; and
 - (ii) Up to two MVNOs or MVNAs which do not fall within the above (ie any 'full' or 'hybrid' MVNOs, any light MVNOs in Tiers 2 or 3, MVNOs opting not to be integrated through pre-configured platforms, or MVNAs).
- (m) **Other terms:** would be negotiated separately, outside of the Wholesale Reference Offer, and might include terms relating to technical change requests (including who bears the cost), and complementary services (interconnect, international call routing, call termination).⁴⁵¹
- (n) **Dispute resolution:** if the MVNO and the Merged Entity have not agreed on terms within a period of five months since the receipt of a written request to take up a Wholesale Reference Offer contract and – if the MVNO and the Merged Entity have not resolved a disagreement within four weeks of the matter being escalated in writing⁴⁵² – a fast track dispute resolution mechanism would apply.⁴⁵³ Certain types of disputes (such as those relating to the eligibility of an MVNO to access the Wholesale Reference Offer) would be referred to this process on an immediate basis (ie without a five month delay).⁴⁵⁴ An independent adjudicator would manage any disputes on the terms of access between MVNOs and the Merged Entity.⁴⁵⁵ The independent adjudicator would report to the monitoring trustee or Ofcom, who would report to the CMA,⁴⁵⁶ and the dispute resolution process would be concluded within 3 months.⁴⁵⁷

⁴⁴⁹ Parties' follow-up remedies submission.

⁴⁵⁰ Parties' follow-up remedies submission.

⁴⁵¹ ⁴⁵¹ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.15

⁴⁵² Under the Parties' proposal, this would be within four weeks of the matter having been escalated to the CEO of the Merged Entity. See [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.40.

⁴⁵³ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.40 and Parties' follow-up remedies submission.

⁴⁵⁴ Parties' follow-up remedies submission.

⁴⁵⁵ Parties' wholesale reference offer. Parties' follow-up remedies submission.

⁴⁵⁶ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.46.

⁴⁵⁷ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.45.

- (o) **Implementation and enforcement:** to be reflected in a Final Undertaking to the CMA under section 82 of the Act,⁴⁵⁸ with the CMA able to enforce under section 94 of the Act.⁴⁵⁹
- (p) **Monitoring and reporting:** to be managed by a monitoring trustee reporting to the CMA and perhaps Ofcom.⁴⁶⁰

1.436 The Wholesale Reference Offer pricing structure, which would not be made public and would be provided to requesting MVNOs under a non-disclosure agreement (**NDA**),⁴⁶¹ would be as set out at Table 1.1. The Parties subsequently updated the Wholesale Reference Offer to apply to all MVNOs (ie with no upper subscriber limit).⁴⁶²

Table 1.1 Pricing per GB tiers under the Wholesale Reference Offer

Tier	Structure	Pricing per GB
	MVNO customer base size	Year 1
Tier 1	Less than 0.5 million customers	[X]
Tier 2	0.5 million – 1.0 million customers	[X]
Tier 3	More than 1.0 million customers	[X]

Source: [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.26 and Parties, Remedies Letter to Inquiry Group.

1.437 The Wholesale Reference Offer would be offered on a 'first come, first served' basis,⁴⁶³ and – up to the capacity and 'onboarding' limit – the Merged Entity would be obliged to enter into an agreement with any MVNO on the Wholesale Reference Offer terms.⁴⁶⁴

The Parties' views on the Wholesale Reference Offer

1.438 While the Parties consider such a remedy to be unnecessary,⁴⁶⁵ they view the key benefits of the Wholesale Reference Offer to be that:⁴⁶⁶

- (a) It guarantees the continued availability of competitive pricing to MVNOs, as well as underpinning MVNOs' abilities to offer highly competitive pricing to end consumers, including price-sensitive consumers, addressing any 'residual' concerns in the retail market;
- (b) It would not be unduly complex to implement, and there are a number of precedents for similar remedies, including in the UK;

⁴⁵⁸ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.34.

⁴⁵⁹ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.39.

⁴⁶⁰ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraphs 6.36 – 6.38.

⁴⁶¹ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.28

⁴⁶² Parties, Remedies Letter to Inquiry Group.

⁴⁶³ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.18 – 6.20

⁴⁶⁴ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.21 – 6.22

⁴⁶⁵ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraphs 6.50 and 6.6 – 6.7.

⁴⁶⁶ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 1.13.

(c) It could be effectively monitored and enforced by a monitoring trustee and independent adjudicator; and

(d) It has been designed to minimise any impact on RCBs.

- 1.439 The Parties also submitted that the Wholesale Reference Offer represents a price 'cap', as it does not prevent the Merged Entity or MVNOs entering into separate agreements, or MVNOs negotiating separately with other MNOs.⁴⁶⁷
- 1.440 The Parties submitted that the [15-20]% capacity limit is required to allow sufficient additional capacity to attract a number of additional MVNOs, without any material increase to congestion or degradation of the network experience (for all end users), while also ensuring that RCBs are delivered.⁴⁶⁸
- 1.441 The Parties also submitted that technical implementation requirements mean that the proposed limit to the number of MVNOs that could be onboarded is essential as it takes operational, IT and network resources to onboard each MVNO.⁴⁶⁹
- 1.442 In response to a suggestion that the Merged Entity's existing MVNO customers' terms continue, the Parties submitted that they do not believe this should be required as the Wholesale Reference Offer has been expanded to cover all MVNOs and would be open to the Parties' existing MVNO customers once their contracts expire.⁴⁷⁰
- 1.443 According to the Parties, the 9 month limit for providing MVNOs with access to new technologies that the Merged Entity have launched would increase certainty for the MVNO that they will be able to obtain access to new technologies within a set time period, as the Parties' current MVNO contracts [§] on the Parties.⁴⁷¹ The Parties submitted that the proposed network speed tiering is also consistent with terms offered to their current MVNO customers.⁴⁷²
- 1.444 The Parties consider the FPM, calculated with reference to the Merged Entity's ARPU, to be the most appropriate mechanism to protect MVNOs and account for future evolutions in data usage and retail pricing.⁴⁷³
- 1.445 In respect of dispute resolution, the Parties submitted that this process would standardise and simplify negotiations, ensuring no unnecessary administrative burden is placed on the adjudicator or the monitoring trustee.⁴⁷⁴

⁴⁶⁷ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.14.

⁴⁶⁸ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.21.

⁴⁶⁹ Parties' follow-up remedies submission.

⁴⁷⁰ Parties' follow-up remedies submission.

⁴⁷¹ Parties' follow-up remedies submission.

⁴⁷² In particular, the Parties' submitted that this is consistent with VUK's existing contracts and that 3UK's existing contracts [§] network speed tiering or limits. See Parties', Follow-up remedies submission.

⁴⁷³ Parties' follow-up remedies submission.

⁴⁷⁴ Parties' follow-up remedies submission.

1.446 With respect to the CMA's general framework for assessing remedies, including behavioural remedies, the Parties submitted that:

- (a) **Considering the impact on the SLCs:** the Wholesale Reference Offer would prevent any SLC by guaranteeing the continued offer of competitive pricing terms to MVNOs.⁴⁷⁵ More broadly, the Merged Entity's, and VMO2's, increased network quality resulting from the Merger would mean MVNOs would benefit from access to a 'best-in-class' network.⁴⁷⁶ The Merged Entity's reduced network costs would also incentivise pass-through of savings, and both of the Merged Entity and VMO2 – with additional network capacity – would be incentivised to compete aggressively to win wholesale business (and fill additional capacity).⁴⁷⁷ In relation to the wholesale market, the Parties submitted that the Wholesale Reference Offer ensures the continuation of prevailing market rates, including to new entrants (guaranteeing that MVNOs will continue to obtain competitive wholesale contracts).⁴⁷⁸ In relation to the retail market, the Parties submitted that the Wholesale Reference Offer would enable MVNOs to continue to offer highly competitive prices to end consumers.⁴⁷⁹ The Parties submitted that the timing is appropriate to protect MVNOs in the period during which initial network integration is underway, and the Wholesale Reference Offer is highly practicable, with CK Hutchison having previously successfully delivered a similar remedy in the context of another merger (ie Hutchison 3G Austria / Orange Austria).⁴⁸⁰
- (b) With respect to risks the CMA typically assesses in the context of behavioural remedies, the Parties submitted that:
- (i) **Specification risks:** do not arise, as the Wholesale Reference Offer will clearly specify all necessary terms, which are akin to the terms already in wholesale contracts today (and are therefore familiar to MVNOs and potential adjudicators).⁴⁸¹ Material technological developments, noted in our guidance as meaning behavioural remedies may be vulnerable to specification risk, are not expected during the period of the Wholesale Reference Offer, given that the UK is currently near the beginning of the 5G SA technology life cycle.⁴⁸²

⁴⁷⁵ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.49.

⁴⁷⁶ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.51.

⁴⁷⁷ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraphs 6.51 – 6.52.

⁴⁷⁸ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraphs 6.54 – 6.59.

⁴⁷⁹ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.61.

⁴⁸⁰ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.69. The Parties submitted that a wholesale mobile reference offer was successfully delivered in Case M.6497 - Hutchison 3G Austria / Orange Austria (2012).

⁴⁸¹ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.72

⁴⁸² [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.73

- (ii) **Circumvention risks:** the price cap is set from the outset with terms clearly stated and not open to interpretation, leaving no room for circumvention.⁴⁸³
- (iii) **Distortion risks:** the Wholesale Reference Offer cannot distort the market in a way that would undermine its effectiveness. The pricing rates and terms will be competitive based on prevailing market conditions, and the FPM allows the terms to be adjusted for future developments in pricing and data usage. The pricing will also be confidential, and act as an upper bar for future MVNO contracts. Rather than distorting the market, the Wholesale Reference Offer will trigger a pro-competitive response from BTEE and VMO2 in their offers to MVNOs and in network investment.⁴⁸⁴
- (iv) **Monitoring/ enforcement risks:** the appointment of a monitoring trustee and independent adjudicator will ensure no unreasonable demands are placed on CMA resources, and compliance will be simple to monitor.⁴⁸⁵

1.447 The Parties submitted that the remedy should be designed such that the substantial RCBs are preserved.⁴⁸⁶

Ofcom's views

1.448 Ofcom noted that the terms of the Wholesale Reference Offer do not seem to differ greatly from what is currently offered by the Parties, which is currently sufficient for MVNOs to compete in certain market segments.⁴⁸⁷

1.449 Ofcom told us that the appropriate duration and capacity limit of the Wholesale Reference Offer is linked with efficiencies, and it also noted that the longer the obligations are imposed in the market the higher the chance of a distortion risk.⁴⁸⁸ Ofcom told us it is sensible to link the duration of the Wholesale Reference Offer with the Network Commitment measurement targets.⁴⁸⁹

1.450 According to Ofcom, there is some risk that the terms of Wholesale Access Terms become a focal point, which could lead to higher prices than anticipated.⁴⁹⁰ Ofcom

⁴⁸³ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.74

⁴⁸⁴ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.75 – 6.77.

⁴⁸⁵ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.79 – 6.80.

⁴⁸⁶ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 6.81.

⁴⁸⁷ Ofcom, call note

⁴⁸⁸ Ofcom, call note

⁴⁸⁹ Ofcom, call note

⁴⁹⁰ Ofcom, call note

also noted the adjudication process would have to be straightforward and a 'brightline' process or it might be difficult to enforce.⁴⁹¹

Third Party views

- 1.451 BTEE submitted that a wholesale market remedy, however designed, would need to be in place permanently in order to be (potentially) effective, as otherwise there would be a clear gap between the permanent, structural loss of competition resulting from the Merger and a time limited remedy.⁴⁹² BTEE submitted that this would lead to lasting distortions of competition while not being able to compensate for the loss of competition from the Merger,⁴⁹³ and that there would be inherent difficulties and tensions in specifying the terms, monitoring and enforcement of such a remedy (including given that different MVNOs have different needs and requirements).⁴⁹⁴
- 1.452 VMO2 submitted that it does not believe a wholesale remedy is required as the Merger and Beacon 4.1 would deliver substantial benefits to the largest MVNOs (ie Tesco and Sky Mobile, which both have long term agreements with VMO2).⁴⁹⁵ With respect to the Wholesale Reference Offer specifically, VMO2 told us that – should the CMA continue to have concerns with respect to the wholesale market – this represents a workable and practical solution that targets the part of the market where it is most needed (ie protecting new entrants and/or smaller MVNOs).⁴⁹⁶ VMO2 also told us that a benefit of the Wholesale Reference Offer (to competition) would be that VMO2 would be incentivised to bid for all MVNO business, in the knowledge that the Merged Entity would be required to do so.⁴⁹⁷
- 1.453 [redacted] submitted that it does not support a package of pre-agreed terms as it is unlikely to address the wholesale SLC and would lead to adverse outcomes for consumers.⁴⁹⁸ [redacted] further submitted that the prescriptive parameters would need to be reviewed at least annually to ensure they are in line with market dynamics.⁴⁹⁹ However, [redacted] supported a high-level binding commitment on minimum obligations alongside a potential capacity ring-fencing remedy.⁵⁰⁰ These include making new technology available to MVNOs on the network as soon as it becomes available, negotiating a reasonable price indexation mechanism taking into consideration an MVNO's ability to offer competitive offerings over time, and prohibition on

⁴⁹¹ Ofcom, submission

⁴⁹² BTEE [response to the Remedies Notice](#), 27 September 2024, paragraphs 3.73.

⁴⁹³ BTEE [response to the Remedies Notice](#), 27 September 2024, paragraph 3.70.

⁴⁹⁴ BTEE [response to the Remedies Notice](#), 27 September 2024, paragraph 3.75, 3.80.

⁴⁹⁵ VMO2 [response to the Remedies Notice](#), 27 September 2024, paragraph 3.9.

⁴⁹⁶ VMO2 call note

⁴⁹⁷ VMO2 call note

⁴⁹⁸ [redacted] [response to the Remedies Notice](#), 27 September 2024, paragraph 4.1.

⁴⁹⁹ [redacted] [response to the Remedies Notice](#), 27 September 2024, paragraph 4.4 - 4.5.

⁵⁰⁰ [redacted] [response to the Remedies Notice](#), 27 September 2024, paragraph 4.6.

discriminating between the Merged Entity's own customers and MVNO customers on its network.⁵⁰¹

- 1.454 Sky Mobile submitted that pre-agreed wholesale access terms would not be an effective remedy and that there would be a serious risk that these lead to market distortions, price symmetry and undermine competition.⁵⁰² Sky Mobile also submitted that there are a number of specific potential specification and 'gaming' risks.⁵⁰³
- 1.455 Communication Chambers submitted that it does not believe ring-fencing capacity or price control would be justified (as it does not consider there to be any significant competition concerns with respect to the wholesale market), and that either would distort the wholesale market.⁵⁰⁴
- 1.456 Community Fibre submitted that a Network Commitment along with capacity-based wholesale protections could be effective.⁵⁰⁵
- 1.457 Enders Analysis submitted it does not consider the Wholesale Reference Offer or ring-fencing remedies necessary, and that these could cause inefficient use of spectrum and resources.⁵⁰⁶
- 1.458 Honest Mobile submitted that wholesale market remedies should ensure MVNOs' access networks on fair and non-discriminatory terms and with transparent wholesale pricing.⁵⁰⁷ Honest Mobile further submitted that the remedies should consider new and innovative business models,⁵⁰⁸ and that this would ensure virtual providers such as Honest Mobile would have access on non-discriminatory terms.⁵⁰⁹
- 1.459 [redacted] considers a long-term wholesale access agreement for a limited number of MVNOs would allow third party MVNOs to compete profitably and sustainably across all value tiers of the retail market. [redacted] submitted that the selection criteria could be a candidate's retail track record, its potential to deliver compelling offers, its commitment to long term customer growth and customer proposition,⁵¹⁰ and that this agreement should provide competitive pricing to sustain competition in the MVNO market. [redacted] suggested that such an arrangement would require the Merged Entity to ring-fence a proportion of its network capacity for MVNOs.⁵¹¹

⁵⁰¹ [redacted] [response to the Remedies Notice](#), 27 September 2024, paragraph 4.6 - 4.7.

⁵⁰² Sky Mobile [response to the Remedies Notice](#), 27 September 2024, paragraph 38.

⁵⁰³ Sky Mobile [response to the Remedies Notice](#), 27 September 2024, paragraphs 34 - 39.

⁵⁰⁴ Communication Chambers [response to the Remedies Notice](#), 27 September 2024, pages 3, 6.

⁵⁰⁵ Community Fibre [response to the Remedies Notice](#), 27 September 2024, page 2.

⁵⁰⁶ Enders Analysis [response to the Remedies Notice](#), 27 September 2024, page 3.

⁵⁰⁷ Honest Mobile [response to the Remedies Notice](#), 27 September 2024, page 3.

⁵⁰⁸ Honest Mobile [response to the Remedies Notice](#), 27 September 2024, page 2.

⁵⁰⁹ Honest Mobile [response to the Remedies Notice](#), 27 September 2024, page 1.

⁵¹⁰ [redacted] [response to the Remedies Notice](#), page 3.

⁵¹¹ [redacted] [response to the Remedies Notice](#), page 3.

- 1.460 [X] submitted that Wholesale Access Terms would be the best remedy to address competition concerns as they would provide MVNOs with certainty around pricing over a fixed period and with a guaranteed MNO.⁵¹² [X] submitted that the remedy should include a ceiling for wholesale pricing, terms specifying access to technologies and features, and specifications on the duration of the contract.⁵¹³ [X] proposed that the offer should cover a proportion of the Merged Entity's network capacity and be available for a minimum of five years, and that disputes regarding the terms could be dealt by Ofcom.⁵¹⁴
- 1.461 [X] submitted that pre-agreed access terms could contribute in mitigating the SLC in the wholesale market but would be an inadequate solution due to the dynamic nature of the market. Further, [X] submitted that the terms of the wholesale access terms should be made public to increase transparency and prevent discriminatory practices.⁵¹⁵
- 1.462 eir told us that Wholesale Access Terms must allow MVNOs to offer competitive retail tariffs and the GBP10 retail benchmark set by the Parties should directly inform the pricing framework for the any wholesale deal.⁵¹⁶
- 1.463 [X] considers that Wholesale Access Terms may work as a concept but any limitations on the access to such an offer would reduce potential benefits, and designing effective Wholesale Access Terms may be difficult due to the wide variety of factors like quality, time and price required to be considered.⁵¹⁷
- 1.464 [X] does not consider that Wholesale Access Terms would materially address the concerns in the wholesale market after the reduction of MNOs from 4 to 3.⁵¹⁸ In [X]'s view, standardising terms would decrease additional competitiveness brought to the market by MVNOs as they would lose a competitive edge and appeal for end consumers, and this would be particularly detrimental and impactful for less well-known MVNO brands, while it could commercially benefit 'super brands' within the MVNO market.⁵¹⁹ [X] submitted that tiers could potentially act as a barrier to entry for new players as they might not receive competitive rates.⁵²⁰ [X] submitted that the Parties should sustain their current commercial terms with existing MVNOs on their networks in perpetuity in order to prevent increasing consumer pricing and ensure ongoing consumer choice. [X] submitted that this is because any time-limited remedy would reduce their ability to invest.⁵²¹

⁵¹² [X] [response to the Remedies Notice](#), 1 October 2024, page.4.

⁵¹³ [X] [response to the Remedies Notice](#), 1 October 2024, page.4-5.

⁵¹⁴ [X] [response to the Remedies Notice](#), 1 October 2024, page.5.

⁵¹⁵ [X] response to the Remedies Notice, 27 September 2024.

⁵¹⁶ eir [response to the Remedies Notice](#), 10 October 2024, page 1.

⁵¹⁷ [X] call note.

⁵¹⁸ [X] response to the CMA's RFI.

⁵¹⁹ [X] response to the CMA's RFI.

⁵²⁰ [X] response to the CMA's RFI.

⁵²¹ [X] call note.

Impact on the SLC and resulting adverse effects

- 1.465 In this section we consider whether pre-agreed Wholesale Access Terms would address time-limited concerns in the wholesale market that are not addressed by the Network Commitment in isolation.
- 1.466 As set out above (1.163 - 1.241), we do not consider that the Network Commitment alone can comprehensively address the SLC and its adverse effects, as the rivalry-enhancing effects of Beacon 4.1 and the Network Commitment will take time to materialise.
- 1.467 It is our provisional view that a commitment to offer pre-defined Wholesale Access Terms (such as those envisaged by the Wholesale Reference Offer) would prevent harm accruing to MVNOs in the short term by ensuring guaranteed access to the wholesale market on terms that enable MVNOs to compete effectively in the retail market.
- 1.468 We consider that the Wholesale Access Terms, which would form the basis for contractual terms that apply beyond the initial period of the measure, would provide protections for MVNOs that would allow them to compete effectively over the long term. Over time, we consider that the combination of the additional network quality and capacity improvements deriving from the Network Commitment (described above) would function to ensure workable and effective long term wholesale competition.
- 1.469 In particular – in principle – our current view is that:
- (a) Wholesale Access Terms would ensure MVNOs can operate with terms that allow them to compete effectively in the retail market (based on them being representative of pricing and terms across the market ‘today’).
 - (b) MVNOs may use Wholesale Access Terms to negotiate competing offers with other MNOs.
 - (c) The FPM would ensure that pricing and terms do not become outdated (ie changes in retail pricing and data usage will automatically feed into updated terms).
- 1.470 To assess the appropriateness of the price and non-price terms of Wholesale Access Terms, we have reviewed contracts of MVNOs using the Parties’ and other MNOs’ networks. We are continuing to assess market-wide evidence to gain a broader perspective of the detailed price and non-price terms in MVNOs’ contracts, in order to form a view on detailed aspects of the specification of the measure, and we invite views on these aspects at paragraph 1.518 below.

- 1.471 With respect to non-price terms, we found that most MVNOs' commercial terms include access to services and coverage broadly equivalent to that received by the host MNO's own retail customers, and these are clauses that MVNOs have sought in contracts.⁵²² Other common features included in MVNO contracts include voice calls and texts, VoLTE, e-SIM, and roaming.⁵²³ Most large MVNO contracts include 5G access; however, some MVNO contracts include restrictions on the speeds they can access. For example, one large MVNO's contract [REDACTED].⁵²⁴ However, [REDACTED].⁵²⁵ MVNOs have also sought [REDACTED] access to new technologies launched by the MNO – however, the length of delay before access is granted varies. While the Wholesale Reference Offer includes a 9-month delay, some MVNOs have [REDACTED],⁵²⁶ and some contracts include provisions relating to new technologies being made available but without specifying any set timeframe.
- 1.472 With respect to price terms, the Parties provided evidence on the average prices paid by MVNOs that currently have contracts with them (and in the case of 3UK some contract terms that were offered in negotiations where it did not succeed in winning the contract). We can see from these that the terms the Parties have suggested are in line with the broad averages of these contracts for 'Tier 1' and 'Tier 3' MVNOs (the Parties do not currently host any 'Tier 2' MVNOs).⁵²⁷ However, as with the other terms in the contracts, MVNOs that contract with the Parties pay a wide range of average prices. We expect that these prices may vary in relation to other non-price terms of the contact, as well as the bargaining power of the MNO and MVNO at the time that the contract was entered into. In addition, some aspects of MVNO prices are often not based on a simple average price per GB, and MVNOs can have different pricing for different levels of consumption.
- 1.473 Overall, we are satisfied that the principles suggested in the Parties' Wholesale Reference Offer are broadly reflective of terms we have seen for MVNOs using the Parties' networks 'today'. We also consider (as set out at paragraph 1.467) that a Wholesale Access Terms measure would – in principle – be effective in addressing the adverse effects of the provisional wholesale SLC in the short term.
- 1.474 However, we consider that changes would be required to the specification of certain terms to ensure that the measure (alongside the Network Commitment) is effective in addressing the adverse effects of the SLC in the wholesale market in the short term. In particular:

⁵²² [REDACTED]. Parties response to the CMA's RFI, [REDACTED].

⁵²³ Parties response to the CMA's RFI. [REDACTED] and [REDACTED].

⁵²⁴ [REDACTED] response to the CMA's RFI.

⁵²⁵ VMO2 internal document.

⁵²⁶ For example, [REDACTED] call note and Sky Mobile call note.

⁵²⁷ Some MVNOs were excluded from these averages, as the averages were substantially higher. In these cases the rates that the MVNOs paid for lower consumption were broadly in line with the rates being proposed.

- (a) We consider that there should be no speed tiering limit, and that the Merged Entity should provide parity of access to its network.
- (b) In respect of dispute resolution, we consider that this should be overseen by a commercial arbitrator, appointed at the outset and approved by the CMA to ensure capability and independence, with the Parties to reimburse relevant costs. MVNOs that have concerns that the Parties are not complying with the measures should have the ability to access a dispute resolution process swiftly and we invite views (see below) on prospective timescales for this.
- (c) As set out further below, we consider that different MVNOs are likely to have different commercial strategies and priorities in negotiating wholesale contracts, and that the 'blueprint' terms of Wholesale Access Terms could be less attractive – from their perspective – than what they would otherwise have negotiated. We therefore consider that existing MVNOs of the Parties – for the period in which Wholesale Access Terms are in place – should have the choice of contracting on either: (i) their current contract terms (as adjusted for 'future-proofing' mechanisms, and including re-contracting on their current contract lengths), or (ii) Wholesale Access Terms.
- (d) We consider that the 'onboarding' limit should be simplified, so that the Merged Entity can onboard 8 'Tier 1' MVNOs, and up to two 'Tier 2' and 'Tier 3' MVNOs at any one time, regardless of whether the MVNOs in these categories are 'full' or 'light'. We invite views on this below.
- (e) We consider that the Parties should be required to offer Wholesale Access Terms until the CMA is satisfied that the Merged Entity has met its obligations under the Network Commitment at the agreed 'Year 3' milestone.
- (f) We consider that the Parties' proposal to enable MVNOs to offer unlimited data contracts is unlikely to be effective, as the current proposed structure would involve significant costs for MVNOs. We invite views on how terms could be structured to allow for MVNOs to compete in the unlimited data segment below.

1.475 There are a limited number of aspects of a potential Wholesale Access Terms measure where the specification would still need to be determined. We seek specific feedback on these areas below.

Duration and timing

1.476 As outlined above, we consider that the Network Commitment addresses long term anti-competitive effects in the wholesale market. However, as noted, we have some residual concerns that the Network Commitment might not address short term adverse effects from the provisional SLC in the wholesale market.

- 1.477 Our guidance anticipates that enabling measures (such as the Network Commitment) may be expected to work relatively slowly in addressing an SLC. In these circumstances, measures that control market outcomes may be needed for a limited period to provide protection to customers from the adverse effects of an SLC.⁵²⁸
- 1.478 As behavioural remedies are designed to have ongoing effects on business conduct throughout the period they are in force, the duration of these measures is a material consideration. Our guidance further notes that we may specify a limited duration if measures are designed to have a transitional effect.⁵²⁹
- 1.479 As outlined above, the Parties originally proposed a three year timeframe for the Wholesale Reference Offer. However, conceptually, given our residual concerns that the Network Commitment might not address short term adverse effects from the provisional SLC in the wholesale market, we consider that the timeframe of any Wholesale Access Terms must be tied to a deliverable under the Network Commitment. We consider that once it is corroborated by the CMA and Ofcom that the Parties have met their Year 3 obligation under the Network Commitment, the Wholesale Access Terms may no longer be required to be offered. We are of the view that although the provisional SLC is not comprehensively addressed at Year 3 of the JNP, the impact of the Network Commitment and Beacon 4.1 will have begun to have a material positive effect on competition such that the Wholesale Access Terms would no longer be required.
- 1.480 Our current view is that by Year 3, significant improvements in the Merged Entity's coverage, reliability and capacity will have been delivered and the effects of Beacon 4.1 on VMO2's quality and capacity will also have started to take effect (as described in the section on retail protections).
- 1.481 We also note that the Wholesale Access Terms can be expected to have some continued effect, both in the wholesale and retail markets, throughout the period until the rivalry enhancing effects of the Network Commitment are fully realised. Although the protection would be in place for three years⁵³⁰ (subject to the Parties meeting the 'Year 3' target under the Network Commitment), MVNO contracts under Wholesale Access Terms would last up to five years, therefore ensuring some continued effects for a total period of 8-9 years. The Wholesale Access Terms would therefore continue protecting MVNOs after the end of the protection period, which would also have some effect in the retail market as MVNOs covered by the Wholesale Access Terms would be able to compete effectively in the retail

⁵²⁸ [CMA87](#), paragraph 3.50.

⁵²⁹ [CMA87](#), paragraphs 7.10 and 7.11.

⁵³⁰ MVNOs would have until the end of the fourth year post-completion to conclude a contract on Wholesale Access Terms, provided that they express interest within the first three years post-completion

market (and their pricing terms would be protected throughout their contracts by an appropriately specified FPM).

- 1.482 As set out in further detail below, we also consider a three year period (with MVNOs able to take up Wholesale Access Terms by the fourth year post-completion) to strike an appropriate balance in terms of cost and risks (in particular distortion risks) identified in the following sections.
- 1.483 We therefore consider it appropriate for the remedy to be in place this period, and with each MVNO contracting under the Wholesale Access Terms able to contract for up to 5 years. As outlined above, this would be subject to the CMA being satisfied that the Merged Entity has met its obligations under the Network Commitment as at the 'Year 3' milestone. We note that the Parties accept that their release from the Retail Customer Protections could be conditional on completion of the Year 3 milestone for the Network Commitment.

Practicality

- 1.484 A practical remedy should be capable of effective implementation, monitoring and enforcement. The practicality of any remedy is likely to be reduced if elaborate and intrusive monitoring and compliance programmes are required.⁵³¹

Monitoring and enforcement risks

- 1.485 In this instance, we consider that the oversight of Wholesale Access Terms can be managed by a monitoring trustee that reports to the CMA. Given that the measure would be in place for a relatively short duration (and monitoring would be less complex during the period of impacted MVNO contracts), we consider that requirements can be specified sufficiently so that monitoring and enforcement need not be prohibitively complex.
- 1.486 We consider that monitoring is likely to become more complex, the longer the suggested measure is in place.⁵³² However, in this instance, given that the Wholesale Access Terms measure would be in place for 3-4 years, we consider that these risks are likely to be limited. We consider that, over this period, terms can be sufficiently specified to address challenges in defining or identifying non-compliance. We also consider that a robust monitoring and adjudication process (overseen by the monitoring trustee and the commercial arbitrator), as well as the

⁵³¹ [CMA 87](#), paragraph 3.5 (c).

⁵³² For example - in the event of a dispute - proving a breach of an obligation (for example, timely access to new technology if that new technology is undefined as at the time of the agreement) may be challenging, particularly where the Merged Entity's commercial incentives are not aligned with the 'spirit' and intention of the obligation, as well as the 'letter'. In addition, an MVNO that is unable to access terms as agreed (or as intended) under a remedy such as the Wholesale Access Terms may have commercial considerations (ie the need to continue to negotiate with the Merged Entity and/or other MNOs over the longer term, and its relative bargaining position in this) which prevent it from reporting and/or escalating a breach of obligations.

commercial incentives of the Merged Entity to increasingly offer good terms to MVNO customers as the JBP progresses, are likely to incentivise the Merged Entity to comply with the measure, and MVNOs to escalate any disputes.

Acceptable risk profile

- 1.487 To be considered an effective remedy, we require a high degree of certainty of it achieving its intended effect.⁵³³ As set out above, given the behavioural nature of Wholesale Access Terms to accompany the Network Commitment, we consider the specification, circumvention and distortion risks associated with it.

Specification risks

- 1.488 Specification risks arise if the form of conduct required to address the SLC or its adverse effects cannot be specified with sufficient clarity to provide an effective basis for monitoring and compliance.⁵³⁴
- 1.489 As noted, we have found that price and non-price terms of the Wholesale Reference Offer (as suggested) are broadly reflective of the Parties' existing MVNO contracts.
- 1.490 However, as our guidance notes, specification risks become more relevant in markets subject to frequent changes.⁵³⁵ We have found that certain terms – particularly as these relate to parity of access to technology and the timescales over which MVNOs may access new technology – require more clarity.
- 1.491 We have outlined our views on this at paragraph 1.474, and in particular invite views on aspects set out at paragraph 1.518. In particular, we consider that speed tiering should not apply, and we invite views on the time period over which MVNOs gain access to new technologies.
- 1.492 In the relatively short time period over which Wholesale Access Terms would be in place, we consider that likely technological developments are able to be captured by sufficiently specified Undertakings and commercial agreements. We therefore currently consider that specification risks can be appropriately managed in the design of the measure.

Circumvention risks

- 1.493 Circumvention risks arise as a consequence of behavioural remedies generally not dealing with the source of an SLC.⁵³⁶ We consider that Wholesale Access Terms –

⁵³³ [CMA87](#), paragraph 3.5 (d)

⁵³⁴ [CMA87](#), paragraph 7.4 (a)

⁵³⁵ [CMA87](#), paragraph 7.4 (a)

⁵³⁶ [CMA87](#) paragraph 7.4 (b)

particularly if in place for a significant time period – could give rise to circumvention risks.

- 1.494 For example, as a result of the Merged Entity’s commercial incentives not always being aligned with the spirit and/or intention of a Wholesale Access Terms measure,⁵³⁷ there is a risk that commercial incentives may influence the Merged Entity to frustrate various processes (for example, through the use of any exceptions) or worsen less well specified aspects of the Wholesale Access Terms.
- 1.495 An example of this could be using minimum revenue commitments, which are currently less well defined, to increase the effective price of the Wholesale Access Terms, perhaps even preventing the Wholesale Access Terms from being taken up. It may be possible to use the ‘contribution to costs’ obligation on MVNOs in a similar way.
- 1.496 We currently consider that the Wholesale Access Terms should be appropriately specified (including through our additions outlined at paragraph 1.474, and following detailed specification of certain aspects as set out at paragraph 1.518). We also consider that the measure would be appropriately monitored and enforced through a monitoring and dispute resolution mechanism, respectively overseen by a monitoring trustee and a commercial arbitrator. We therefore provisionally consider that circumvention risks can be sufficiently addressed.

Distortion risks

- 1.497 Market distortions can arise when a behavioural remedy alters normal market signals and changes the incentives of the Parties and/or third parties in a negative way. Such distortions can undermine the effectiveness of a behavioural measure.⁵³⁸
- 1.498 We consider that setting a ‘blue print’ for terms in the market, to be used by the Merged Entity (up to the capacity and onboarding limits) may – if in place over a long period – give rise to distortion risks.
- 1.499 For example, the existence of the Wholesale Access Terms may create ‘winners’ and ‘losers’ in the wholesale market: those able to contract under Wholesale Access Terms with the Merged Entity before the capacity and onboarding limits are reached, and those that need to separately and independently negotiate terms in the context of a less competitive market structure than would have been the case absent the Merger.

⁵³⁷ For example, we discussed in our Provisional Findings that MNOs consider cannibalisation (ie the implications of enabling a retail competitor to grow and/or do business) when onboarding an MVNO. See CMA, [Provisional Findings Report](#), 13 September 2024, chapter 9.

⁵³⁸ [CMA 87](#), paragraph 7.4 (c).

- 1.500 The Wholesale Access Terms could also become a market ‘focal point’, with many of the terms being public knowledge (and only pricing terms protected by NDA). Given that MVNOs may use the Wholesale Access Terms pricing as a reference point for negotiation, the pricing (or pricing in the region of what is set out in the Wholesale Access Terms) may become more widely known. Risks of pricing otherwise being shared, even if unintentionally, are relatively high – especially over time.⁵³⁹
- 1.501 The pre-set nature of price and non-price aspects of the Wholesale Access Terms may also result in less competition around a less diverse set of terms and conditions than may otherwise have been the case absent the Merger.
- 1.502 In addition, the set level of the price and non-price terms of the Wholesale Access Terms may reduce the flexibility for MVNOs to pursue different commercial strategies, including different downstream pricing strategies in the retail market – potentially distorting competition in that market.
- 1.503 However, for MVNO customers of the Merged Entity’s network, as outlined at paragraph 1.474(c), we consider that the Merged Entity should be required to continue to offer the option of current contract terms – extended over the same time period as current contracts and including any ‘future-proofing’ mechanisms (such as FPMs) – over the period in which Wholesale Access Terms are in place. We consider that the MVNOs currently hosted by the Parties would be more exposed to potential risks during this period, because the Merged Entity would have the largest change in its commercial incentives and barriers to switching limit external choices. Therefore, we consider that it is appropriate for these MVNOs to have this additional protection.
- 1.504 We further consider that the risks outlined are time limited, given our provisional view (as outlined in the section on the Assessment of the effectiveness of the Network Commitment and time limited protections) that – following full implementation of the Network Commitment and Beacon 4.1 – competition in the retail and wholesale markets would be at least as effective as would have been the case in the counterfactual. We therefore consider that the limited duration, together with the proposed monitoring and enforcement process, give us comfort that the risk profile of Wholesale Access Terms is acceptable.
- 1.505 Provided that the Wholesale Access Terms are designed with distortion risks in mind, and are in place for a short duration, we consider that the Wholesale Access Terms would be an effective short-term solution before the benefits of the Network

⁵³⁹ For example, the pricing may be used as a reference point as staff members move across MNOs in the industry with the parameters/ region of the pricing being revealed, even if unintentionally.

Commitment are able to progress towards offsetting the anticompetitive effects of our provisionally identified SLCs.

Provisional decision on Wholesale Access Terms

- 1.506 If the Merger were to proceed only subject to the Time Limited Wholesale Access Terms, the provisional SLCs identified in the wholesale market would not be comprehensively addressed. Our provisional decision is that the time limited Wholesale Market Access would complement the Network Commitment, creating a remedy package that comprehensively addresses our provisional concerns in the wholesale market. We note that the time limited Wholesale Market Access Terms also affect the retail market (by allowing MVNOs to access terms which allow them to compete effectively) and support the Network Commitment – together with the Time Limited Retail Customer Protections – in addressing our provisional concerns in the retail market.
- 1.507 We consider these time limited Wholesale Market Access terms have an acceptable risk profile and do not lead to costly market distortions, given that the proposed measures would have a short duration and would be designed with the risks outlined in mind.
- 1.508 The CMA invites views in particular on the specification of some aspects of the design of the Time Limited Wholesale Access Terms. These are set out at paragraph 1.518.

Summary of provisional decision on effectiveness of remedies

- 1.509 Based on the above assessment, we have identified the following effective remedies:
- (a) Prohibition of the Merger; and
 - (b) A remedy package comprising the Network Commitment supported by Time Limited Protections.
- 1.510 We have found that prohibition of the Merger would be a comprehensive, effective remedy in addressing the SLCs and the adverse effects outlined in the Provisional Findings and capable of ready implementation.
- 1.511 Overall, we provisionally consider that the Network Commitment would address the SLCs we provisionally identified in the retail and wholesale markets in the longer term by delivering a market structure that is at least as competitive as the current market structure. We provisionally consider, however, that it would need to be accompanied by short term (time limited) protections during the initial years of network integration to address the SLCs in the short term.

- 1.512 If the Merger were to proceed only subject to the implementation of the Network Commitment, the provisional SLCs identified would not be comprehensively addressed as adverse effects would arise before the rivalry-enhancing effects of Beacon 4.1 and the Network Commitment fully materialise. As such, the SLCs would not be fully addressed throughout their expected duration solely through the Network Commitment.⁵⁴⁰
- 1.513 In these circumstances, our remedies guidance notes that, in addition to so-called ‘enabling measures’ like the Network Commitment that work relatively slowly in addressing an SLC, measures that control market outcomes may be needed to supplement enabling measures for a limited period to provide protection to customers from the adverse effects of an SLC.⁵⁴¹ In light of the CMA’s obligation to ensure that any SLC identified is remedied to a ‘high degree of certainty’, and its obligation to achieve a solution to the SLC which is as comprehensive as is reasonably practicable,⁵⁴² we therefore consider that the Network Commitment alone would not be an effective remedy and that supporting measures are required to ensure the overall remedies package is effective.
- 1.514 In addition to the Network Commitment, the Parties put forward some time limited proposals in an attempt to address any residual time limited concerns. We found these proposals to not be without risk in terms of both their effectiveness and potential distortive impact. However, we provisionally found that amended versions of the Parties’ proposals, both limited in time and scope, would provide protection during the initial years of the Network Commitment roll-out.
- 1.515 We have considered whether it is necessary and appropriate for the Time Limited Protections to remain for the eight year duration of the Network Commitment, when the rivalry enhancing effects of the Network Commitment are fully realised. We consider this is neither necessary nor appropriate as:
- (a) imposing these behavioural remedies for a longer period would risk material distortive effects, especially given the dynamic nature of the retail and wholesale markets;
 - (b) the time limited remedies are appropriately targeted at the initial years where the risk of harm is most acute. By Year 3 of the Network Commitment, nearly [X]% of the Merged Entity’s sites will have been fully integrated with the Merged Entity’s spectrum deployed across specified frequency bands. At this stage, significant improvements in the Merged Entity’s coverage, reliability and capacity will have been delivered. As the Network Commitment, Beacon

⁵⁴⁰ [CMA 87](#), paragraph 3.5(b).

⁵⁴¹ [CMA 87](#) paragraph 3.50.

⁵⁴² [Section 36\(3\)](#) of the Act.

4.1 and competitor responses progressively take effect, the need for the supporting measures reduces; and

- (c) the time limited Wholesale Market Access Terms can be expected to have some continued effect throughout the period until the rivalry enhancing effects of the Network Commitment are fully realised. Although the protection would be in place for three years, MVNO contracts under the Wholesale Access Terms would last up to five years, therefore ensuring some continued effects for a total period of eight years, both directly in the wholesale market, and indirectly through MVNOs' ability to offer competitive terms in the retail market.

1.516 In light of the above, we provisionally conclude that the Network Commitment supported by the Time Limited Protections is a comprehensive, effective remedy in addressing the SLCs and the adverse effects outlined in the Provisional Findings and capable of ready implementation.

1.517 Within the Network Commitment and the Time Limited Protections, there are a number of points which would need to be specified on which the CMA is in particular inviting views and supporting evidence where appropriate.

1.518 The areas on which the CMA in particular invites views on specification are:

(a) Network Commitment:


- (i) How the CMA should specify the 'Year 1' Network Commitment to ensure that day-1 claimed benefits are delivered.
- (ii) What the Parties should be required to publish in an annual progress report.

(b) Time limited Retail Market Protections:

- (i) The minimum set of tariffs that need to be included to provide sufficient protection for current and new customers.
- (ii) To ensure the tariffs are accessible, what promotion and disclosure should be required in relation to these tariffs.

(c) Time Limited Wholesale Access Terms:

- (i) While the specific prices are proposed to remain confidential, we invite views on the overall approach of offering a single per-GB price to an MVNO, based on its number of subscribers. We also invite views on how pricing could be structured to allow for MVNOs to compete effectively in high-data package segments, including the 'unlimited' data segment.

- (ii) What the FPM should be based on or calculated with reference to, noting that the current proposal is for it to apply on a 'downwards [

Proportionality

1.519 We summarised above our provisional conclusions that there are two remedies that would be effective in addressing the SLC and its adverse effects:

- (a) a remedy package consisting of the Network Commitment with Time Limited Protections; and
- (b) prohibition of the Merger.

1.520 In this section we set out our provisional view on the proportionality of the Network Commitment with Time Limited Protections and prohibition of the Merger.

1.521 After identifying remedies that would be effective in addressing the SLC and resulting adverse effects, the CMA then considers the costs of those remedies.⁵⁴³

1.522 In order for a remedy to be reasonable and proportionate, the CMA will:⁵⁴⁴

- (a) Select the least costly and intrusive remedy, or package of remedies, of those remedy options that it considers will be effective.
- (b) The CMA will then seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.

⁵⁴³ [CMA87](#), paragraph 3.6.

⁵⁴⁴ [CMA87](#), paragraphs 3.4 and 3.6.

The Parties' views on proportionality

- 1.523 The Parties submitted that prohibition would be disproportionate as a less onerous and costly remedy is available, and prohibition would in any event be disproportionate in relation to the provisional SLCs.⁵⁴⁵
- 1.524 The Parties submitted that prohibition of the Merger would have severe adverse effects on the development of competition as the UK's mobile markets would remain trapped in a low investment, low competition equilibrium which has resulted in an unsatisfactory position for millions of customers in the UK. The Parties consider that prevailing conditions of competition are not good enough to meet the future needs of customers in the UK.⁵⁴⁶
- 1.525 The Parties also submitted that prohibition would result in the loss of the RCBs, and submitted that the CMA is required to treat the loss of RCBs as a cost of prohibition.⁵⁴⁷ Due to the elimination of all RCBs, prohibition would not be the least costly effective remedy.⁵⁴⁸ The Parties submitted that there are less onerous remedies than prohibition available to address the provisional SLC, in particular, the Network Commitment which would not only preserve the RCBs but ensure that they are delivered in full.⁵⁴⁹

Costs of effective remedies

- 1.526 The costs of a remedy may arise in various forms. Remedies may result in costs through distortions in market outcomes. This is more likely to be the case where behavioural remedies are used, which intervene directly in market outcomes, especially over a long period. Remedies may also result in significant ongoing compliance costs. The CMA will endeavour to minimise such costs, subject to the effectiveness of the remedy not being reduced, and will have regard to the costs to the CMA and other monitoring agencies in ensuring compliance. If remedies extinguish RCBs then the benefits foregone may be considered to be a relevant cost of the remedy.⁵⁵⁰
- 1.527 In this case, we have identified three forms of possible costs associated with the remedies we have provisionally found to be effective:
- (a) the possible loss of RCBs in respect of prohibition of the Merger;

⁵⁴⁵ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 8.3.

⁵⁴⁶ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 8.4.

⁵⁴⁷ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 8.10.

⁵⁴⁸ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 8.12.

⁵⁴⁹ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 8.12.

⁵⁵⁰ [CMA87](#), paragraph 3.10.

- (b) possible monitoring costs (particularly for Ofcom and/or the CMA) in respect of the Network Commitment and Time Limited Protections; and
- (c) possible market distortions in respect of the Network Commitment and Time Limited Protections.

1.528 In order to reach a provisional view on which of the two effective remedies is the least costly, and also in order to determine whether either remedy is disproportionate to the SLC and its adverse effects, we assess the extent of these costs below.

RCBs

1.529 When deciding on remedies, the CMA may have regard to the effects of remedial action on any RCBs.⁵⁵¹ In this section, we consider whether there are any RCBs (within the meaning of the Act⁵⁵²) that should be taken into account in our remedy assessment.

1.530 RCBs that will be foregone due to the implementation of a particular remedy may be considered as costs of that remedy.⁵⁵³ An effective remedy may be considered disproportionate if it denies customers substantial benefits arising from the merger. Insofar as these benefits constitute RCBs for the purposes of the Act,⁵⁵⁴ the statutory framework allows us to take them into account,⁵⁵⁵ in assessing what, if any, remedial action to take.

1.531 The CMA may modify a remedy to ensure retention of an RCB or it may change its remedy selection. For instance, it may decide to implement a remedy other than prohibition or, in rare cases, it may decide that no remedy is appropriate.⁵⁵⁶

Framework for assessment of RCBs

1.532 The Act defines RCBs as a benefit to ‘relevant customers’ in the form of:

- (a) lower prices, higher quality or greater choice of goods or services in any market in the UK; or
- (b) greater innovation in relation to such goods or services.⁵⁵⁷

⁵⁵¹ [Section 36\(4\)](#) of the Act.

⁵⁵² [Section 36\(4\)](#) of the Act.

⁵⁵³ [CMA87](#), paragraph 3.16.

⁵⁵⁴ [Section 30](#) of the Act.

⁵⁵⁵ [Section 36\(4\)](#) of the Act.

⁵⁵⁶ [CMA87](#), paragraph 3.16.

⁵⁵⁷ [Section 30\(1\)\(a\)](#) of the Act.

- 1.533 For these purposes, ‘relevant customers’ are direct and indirect customers (including future customers) of the merger parties at any point in the chain of production and distribution – they are not limited to final consumers.⁵⁵⁸
- 1.534 What constitutes higher quality, greater choice or greater innovation will depend on the facts of individual cases.
- 1.535 RCBs can be considered even if they are expected to be realised in markets other than the one subject to an SLC finding.⁵⁵⁹
- 1.536 In addition, for a benefit to constitute an RCB under the Act, the CMA must believe, in the case of an anticipated merger, that:
- (a) the benefit may be expected to accrue within a reasonable period as a result of the creation of the relevant merger situation concerned;⁵⁶⁰ and
 - (b) the benefit is unlikely to accrue without the creation of that situation or a similar lessening of competition.⁵⁶¹
- 1.537 In assessing a claimed benefit’s likelihood, the CMA considers the merging parties’ incentives, and their ability to implement the claimed benefit, post-merger. For the CMA to consider exercising its discretion to alter a remedy proposal, the claimed RCBs must be clear. The merging parties will be expected to provide convincing evidence regarding the nature and scale of RCBs that they claim to result from the merger and to demonstrate that these fall within the Act’s definition of such benefits.⁵⁶²
- 1.538 A merger may lead to economies of scale, for example, in production or distribution, but if this benefit just accrued to the merged firm, it would not constitute an RCB. To qualify as an RCB, the prospective cost reductions must be expected to result in lower prices (or better quality, service, choice or innovation) than if the merger did not take place. In many instances, this may not be the case, as the parties may have scope to charge higher prices, or not pass on cost reductions, due to the reduction in competitive pressures resulting from the merger.⁵⁶³
- 1.539 The CMA normally takes RCBs into account by considering the extent to which alternative remedies may preserve such benefits.⁵⁶⁴ The CMA may modify a remedy to ensure retention of an RCB or it may change its remedy selection.⁵⁶⁵

⁵⁵⁸ [Section 30\(4\)](#) of the Act and [CMA87](#), paragraph 3.18.

⁵⁵⁹ [Section 30\(1\)\(a\)\(i\)](#) of the Act.

⁵⁶⁰ [Section 30\(3\)\(a\)](#) of the Act.

⁵⁶¹ [Section 30\(3\)\(b\)](#) of the Act.

⁵⁶² [CMA87](#), paragraph 3.20.

⁵⁶³ [CMA87](#), paragraph 3.22.

⁵⁶⁴ [CMA87](#), paragraph 3.15.

⁵⁶⁵ [CMA87](#), paragraph 3.16.

1.540 In practice, the CMA has rarely exercised its discretion to rely on RCBs as a reason to alter its remedy decision.⁵⁶⁶

The Parties' submissions on RCBs

1.541 The Parties claimed that three categories of RCBs would arise as a result of the Merger:

- (a) Benefits from improved mobile connectivity (the claimed improved mobile connectivity RCB);
- (b) Benefits from accelerated UK Advanced 5G and 5G SA cases (the claimed 5G SA RCB); and
- (c) Benefits from improved FWA offering (the claimed FWA RCB).

1.542 The Parties submitted that the RCBs overlap in substance with the REEs that will accrue as a direct result of the Merger, noting that the network improvement benefits arising from the JNP and Beacon 4.1 enhance both the rivalry enhancing benefits and the customer benefits. The Parties submitted that although the RCBs and REEs involve conceptually separate legal tests under the applicable legal framework, the network improvements are Merger-specific and qualify under both tests.⁵⁶⁷

1.543 The Parties submitted that, if the Merger did not proceed, the RCBs which in their view are substantial would be lost and this would be an enduring detriment for the UK. The Parties told us that if remedies were required by the CMA to approve the Merger, any remedies selected would need to be designed in a way that the RCBs were preserved.⁵⁶⁸

The claimed improved mobile connectivity RCB

1.544 The Parties submitted that the Merged Entity's JNP would deliver material quality improvements nationwide, reflected in lower quality-adjusted consumer mobile prices. This is possible only through integration of the Parties' assets and the additional investment by the Merged Entity to create a 'best-in-class' network.⁵⁶⁹

⁵⁶⁶ See the CC's investigation into [the completed acquisition by Macquarie UK Broadcast Ventures Limited of National Grid Telecoms Investment Limited, Lattice Telecommunications Asset Development Company Limited and National Grid Wireless No.2 Limited \(2008\)](#). The CC concluded that a package of behavioural remedies had a high probability of being effective in addressing the adverse effects of the merger and would pass back to customers a significant proportion of the relevant merger synergies and substantial compensation in lieu of the loss of future competition. The CMA has only ever cleared three cases on the basis of relevant customer benefits: [Central Manchester University Hospitals NHS Foundation Trust/South Manchester NHS Foundation Trust](#), [University Hospitals Birmingham NHS Foundation Trust/Heart of England NHS Foundation Trust](#) and [Derby Teaching Hospitals/Burton Hospitals](#).

⁵⁶⁷ Parties' submission, Relevant customer benefits.

⁵⁶⁸ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraph 2.1, page 7.

⁵⁶⁹ Final Merger Notice (**FMN**).

1.545 As a result of the above quality improvements to the network, the Parties submitted the overall effect of this would be to enable the Merged Entity to offer better quality, lower quality-adjusted prices and a lower price per GB than the Parties could offer as standalone operators.

The claimed 5G SA RCB

1.546 The Parties submitted that the Merger would lead to accelerated 5G SA capability in the UK benefiting customers of communication services delivered using 5G SA / Advanced 5G capabilities, in turn driving benefits for the wider UK economy.⁵⁷⁰

1.547 The Parties told us that 'assuming that the wider benefits of 5G to the UK economy estimated by DCMS are brought forward by only one year, then the Merged Entity's network would generate economic benefits to the UK by 2030 in the range of £[~~3~~] to £5 billion'.⁵⁷¹

1.548 The Parties submitted that Advanced 5G use cases are wide ranging and would likely benefit various sectors including healthcare, media/entertainment, public safety, energy and utilities, rural industries, retail and hospitality, smart urban, transport, manufacturing, logistics and distribution.⁵⁷²

1.549 The Parties submitted that consumers will also benefit indirectly from the adoption of Advanced 5G use cases within key sectors. For example, Advanced 5G use cases in the healthcare sector will result in reduced time to treatment, reduced recovery times, and lower complication and mortality rates. The Parties also submitted that by 2030, 5G SA services will be available to all schools and hospitals in the UK.⁵⁷³

1.550 According to third party sources identified by the Parties, the benefits from deploying 5G SA will include:⁵⁷⁴

- (a) approximately GBP 3.4 billion annually in productivity benefits from the creation of a smart grid;
- (b) GBP 1.3 billion annually in productivity benefits from applications to rail and road transport;
- (c) GBP 1 billion annually in cost savings from 5G applications in healthcare;
- (d) GBP 2,359 per field of wheat or GBP 7,550 on the average sheep farm in productivity and costs savings to farmers from unmanned aerial vehicles;

⁵⁷⁰ FMN.

⁵⁷¹ Parties' [initial submission](#), 1 May 2024, paragraph 6.40.

⁵⁷² Parties' submission, Relevant customer benefits.

⁵⁷³ Parties' submission, Relevant customer benefits.

⁵⁷⁴ Parties' submission, Relevant customer benefits.

- (e) an estimated GBP 2 million in revenue with every 200,000 uses of tourists augmented reality applications; and
- (f) cost savings reaching up to GBP 700 million over a 5-year period from smart street lighting, with the potential to cut CO2 emissions by 1 million tonnes over the same timeframe.

The claimed FWA RCB

- 1.551 As noted above, the Parties claim that the Merger would create a network with greater capacity. They submitted that this increased capacity would in turn enable the Merged Entity to offer FWA to a greater proportion of the country.⁵⁷⁵
- 1.552 FWA is not offered in the UK on a universal basis but in selected areas where an MNO has spare capacity. The more capacity an MNO has, all other things being equal, the more incentive it has to offer FWA. 3UK, unlike other MNOs, does not offer fixed broadband to customers and therefore has no cannibalisation risk from offering FWA to customers.
- 1.553 The Parties submitted that 3UK has grown its 5G FWA base from zero in 2019 to [X] subscribers as of May 2024. VUK has an FWA offering that has been sold to a very small base of fewer than [X] subscribers. The Parties submitted that absent the Merger, it would become increasingly difficult for 3UK to [X] because it is unable to further invest [X].⁵⁷⁶
- 1.554 In their response to the Remedies Notice, the Parties submitted that the Merged Entity's greater capacity will provide FWA to more customers, as well as faster and more reliable FWA connections, supporting on a conservative basis around [X] FWA customers by 2032.⁵⁷⁷

Our provisional assessment of RCB claims

- 1.555 For the purposes of assessing the extent of any RCBs that should be treated as a cost of prohibition of the Merger, we have considered:
- (a) possible benefits that may arise within the retail market and wholesale market; and

⁵⁷⁵ FWA is a type of broadband Internet access that uses radio waves from an MNOs Mobile network to provide Internet services to users in fixed locations. For some people it can be an alternative to a fixed broadband service (provided through copper or fibre connections).

⁵⁷⁶ Parties' submission, Relevant customer benefits.

⁵⁷⁷ [Parties' response to the Remedies Notice](#), 27 September 2024, paragraphs 2.35, page 18.

- (b) possible benefits that may arise in markets outside of the retail market and wholesale market (ie expected to be realised in markets other than the ones subject to an SLC finding).

Possible benefits within the retail market and wholesale market

- 1.556 As recognised by the Parties, many of the benefits that the Parties claim will arise as a result of the Merger would also fall for assessment under the REEs framework.
- 1.557 We considered the extent to which the Merger may give rise to REEs in our Provisional Findings. We provisionally concluded that the Parties were not likely to have the incentive to deliver the full JBP (in particular, that the Parties may have the commercial incentive to retain a lower number of sites than claimed in the JBP given the cost savings that can be realised through site decommissioning) and therefore the quantum of benefits was likely to be less than claimed by the Parties.⁵⁷⁸ We provisionally concluded that the increased rivalry from those efficiencies which were likely to be realised (absent any remedial intervention by the CMA) were not sufficient to offset the adverse competitive impacts identified in relation to the retail market and wholesale market.⁵⁷⁹
- 1.558 Turning to the RCB framework, the claimed improved network connectivity RCB is capable of meeting the definitions in sections 30(1)(a) and 30(4) of the Act, as it would benefit relevant customers in the form of ‘lower prices, higher quality or greater choice of goods or services... in the UK... or greater innovation in relation to those goods or services’.⁵⁸⁰ However, having regard to the incentives of the Parties in the absence of legally binding commitments to deliver the full JBP, we do not believe that the extent of the benefits claimed by the Parties ‘may be expected to accrue within a reasonable period as a result of the creation of the relevant merger situation concerned’ (section 30(3) of the Act). Accordingly, to the extent any RCBs arise within the retail market and wholesale market we do not consider these to be significant when set against the adverse effects of the Merger.

Possible benefits outside the retail market and wholesale market

- 1.559 We consider many of the benefits from the claimed 5G SA RCB and claimed FWA RCB, may accrue outside of the retail market and wholesale market and are capable of meeting the definitions in sections 30(1)(a) and 30(4) of the Act, as they would be benefits to relevant customers in the form of ‘lower prices, higher quality

⁵⁷⁸ CMA, [Provisional Findings Report](#), 13 September 2024, paragraphs 14.185 and 14.189.

⁵⁷⁹ CMA, [Provisional Findings Report](#), 13 September 2024, paragraph 15.3.

⁵⁸⁰ [Section 30\(1\)](#) and [Section 30\(4\)](#) of the Act.

or greater choice of goods or services... in the UK... or greater innovation in relation to those goods or services'.⁵⁸¹

- 1.560 However, as stated above, in order to qualify as an RCB for the purposes of the Act, in anticipated mergers, the CMA must believe that 'the benefit may be expected to accrue within a reasonable period as a result of the creation of the relevant merger situation concerned'.⁵⁸² In this case, while we consider it possible that many of the benefits claimed by the Parties in respect of 5G SA and FWA could accrue, with significant positive impact on UK consumers, we have not seen sufficient evidence regarding the nature and scale of RCBs that the Parties claim to result from the Merger or to demonstrate that these may be expected to accrue within a reasonable time period:
- (a) We consider the new use cases that would rely on 5G-SA to be nascent. It is possible that these could be significant and could generate significant benefits for the UK. However, we have not seen sufficient evidence to support such a finding.
 - (b) Whilst we recognise that the Merged Entity may be able to increase its FWA offering, the overall size of any benefit appears small and may only accrue to a small proportion of the UK population. We also have concerns about the longevity of FWA, as we consider the service only makes economic sense where the parties have spare network capacity that cannot be commercialised by other means, as FWA customers are very high data users. Over time, increasing data demand from non-FWA customers may reduce incentives to provide this service.
- 1.561 Furthermore, even if the Parties could demonstrate that 'the benefit may be expected to accrue within a reasonable period as a result of the creation of the relevant merger situation concerned', the CMA would also need to believe that 'the benefit is unlikely to accrue without the creation of that situation or a similar lessening of competition'.⁵⁸³ There is a further layer of uncertainty to the Parties' 5G-SA claims as it is not clear to us what impact the Merger will have. Vodafone has already launched its 5G-SA service in key cities in the UK. As a result, whilst we consider there may be some 5G-SA benefits arising from the Merger, for example faster and more extensive deployment, the evidence provided as to the benefits that may bring is not sufficient.
- 1.562 Therefore, we provisionally conclude that the RCBs that are appropriate to treat as a cost of prohibition of the Merger are not significant when set against the adverse effects of the Merger.

⁵⁸¹ [Section 30\(1\)](#) and [Section 30\(4\)](#) of the Act.

⁵⁸² [Section 30\(3\)\(a\)](#) of the Act.

⁵⁸³ [Section 30\(3\)\(b\)](#) of the Act.

Monitoring costs

- 1.563 As explained above, (see paragraphs 1.257, 1.388, and 1.486) monitoring the Parties' compliance with the Network Commitment and Time Limited Protections will mean that Ofcom and the CMA each incur some cost. However, those costs are not expected to be significant:
- (a) Ofcom would provide a monitoring and enforcement role in respect of the Network Commitment. Ofcom noted that it already undertakes similar monitoring analysis to that which would be required to monitor the Network Commitment metrics on mobile deployment as part of its existing functions. Ofcom expects that the additional cost to monitor the Network Commitment metrics would be likely to be marginal. Ofcom expects this additional monitoring, with the help of a monitoring trustee, to require around 2 FTE for 3 months at a cost of approximately GBP [redacted] for each cycle of review.
 - (b) With respect to costs to the CMA, we note that Ofcom, as the sectoral regulator, would have the primary role in monitoring compliance with the Network Commitment. The CMA would have sole responsibility for monitoring compliance with the Time Limited Protections. The CMA has an existing remedies monitoring function that could carry out this task and the monitoring trustee (funded by the Parties) would provide support to the CMA in this role. In addition, any disputes arising with respect to both the Wholesale Access Terms and the Retail Customer Protections would be subject to independent disputes resolution processes. Furthermore, the Time Limited Protections would be in place for three years (with more limited monitoring of contracts by the monitoring trustee after this period), limiting the CMA's monitoring obligations in respect of this aspect of the remedy.
- 1.564 As explained above, the Parties would be required to fund a monitoring trustee for the full duration of the Network Commitment (ie 8 years) to support the CMA and Ofcom in their monitoring functions. Although the cost of this monitoring trustee would not be immaterial, the CMA will generally attribute less significance to the costs of a remedy that will be incurred by the merger parties than the costs that will be imposed by a remedy on third parties, the CMA or other monitoring agencies.⁵⁸⁴ The merger parties have the choice of whether or not to enter into a merger agreement, and on what terms.
- 1.565 Therefore, our provisional view is that the relevant monitoring costs associated with the Network Commitment and Time Limited Protections are not significant.

⁵⁸⁴ [CMA87](#), paragraph 3.8

Distortion risks

- 1.566 With regards to the risk of market distortions, we consider that the Network Commitment works with the grain of competition but we have received evidence, in particular in relation to the Time Limited Protections, that the Time Limited Protections may create market distortions. We accept these protections may have some distortive impact on the retail and wholesale markets. We have sought to limit these risks by limiting the scope and duration of these remedies to the minimum that is necessary in order to be effective at achieving the desired outcome. We are of the view that the distortion risk, whilst real, is sufficiently low that we provisionally concluded that the Time Limited Retail Market Protections and Time Limited Wholesale Access Terms both had acceptable risk profiles (see 1.412 and 1.498).
- 1.567 Therefore, our provisional view is that the distortion risk associated with the Network Commitment and the Time Limited Protections is limited.

The least costly and intrusive remedy

- 1.568 When selecting a remedy, the CMA must select the least costly and intrusive remedy, or package of remedies, of those remedy options that it considers will be effective.⁵⁸⁵
- 1.569 With respect to the costs of prohibition of the Merger, we have found that prohibition would leave the market structure unchanged and therefore does not cause distortions in outcomes. The implementation of the remedy would not give rise to compliance and monitoring costs. We have also found that the extent of benefits that are appropriate to take into account as RCBs for the purposes of the Act are not significant when set against the adverse effects of the Merger. Therefore, we consider there are only limited costs associated with prohibition of the Merger.
- 1.570 However, we acknowledge that prohibition is an intrusive remedy, as it would prevent the proposed Merger from completing.
- 1.571 With respect to the Network Commitment and Time Limited Protections, we have found that while the remedy would require the CMA and Ofcom to incur monitoring costs, these would not be significant, and while there are some distortion risks, these are limited.
- 1.572 The Network Commitment and Time Limited protections would be a less intrusive remedy as it would allow the Parties to complete the Merger.

⁵⁸⁵ [CMA87](#), paragraphs 3.4 and 3.6.

- 1.573 Given our provisional conclusions that none of the costs associated with the remedies are significant when set against the adverse effects of the Merger, our proportionality framework requires us to select the less intrusive remedy. The package consisting of the Network Commitment and Time Limited Protections is therefore our preferred remedy option.
- 1.574 If the Parties are not willing to offer an Undertaking giving effect to the Network Commitment and Time Limited Protections as outlined in this working paper, we provisionally consider that prohibition would be the only available effective remedy and the CMA would seek to impose an Order prohibiting the Merger.

Proportionality of the Network Commitment and Time Limited Protections in relation to the SLC and its adverse effects

- 1.575 Having identified the least costly and intrusive effective remedy, we then consider whether this remedy would be disproportionate to the SLC and its resulting adverse effects. In doing so, we compare the extent of harm associated with the SLCs with the relevant costs of our preferred remedy outlined above.
- 1.576 Absent remedial action, the provisional SLCs can be expected to lead to price increases for mobile customers (or to equivalent reductions in data packages or service features) affecting tens of millions of mobile users in the UK. We also consider that absent remedial action the Merged Entity – and its competitors – may have less of an incentive to bid for wholesale business and/or may offer less competitive prices/terms to MVNOs.
- 1.577 As set out above, we consider the costs of the Network Commitment and Time Limited Protections to be limited. The remedy is also not intrusive as it would enable the Parties to complete the Merger. Therefore, we provisionally conclude that our preferred remedy is not disproportionate to the SLC and its adverse effects.

Proportionality of prohibition in relation to the SLC and its adverse effects

- 1.578 As set out above, if the Parties are not willing to offer an Undertaking giving effect to the Network Commitment and Time Limited Protections as outlined in this working paper, we provisionally consider that prohibition would be the only available effective remedy and the CMA would seek to impose an Order prohibiting the Merger. [✂].
- 1.579 Therefore, we have also considered whether prohibition of the Merger would be disproportionate to the SLC and its resulting adverse effects.
- 1.580 As set out above, the provisional SLCs can be expected to lead to price increases for mobile customers (or to equivalent reductions in data packages or service

features) affecting tens of millions of mobile users in the UK. We also consider that absent remedial action the Merged Entity – and its competitors – may have less of an incentive to bid for wholesale business and/or may offer less competitive prices/terms to MVNOs.

- 1.581 We have also provisionally found that any RCBs that would be lost as a result of prohibition of the Merger would not be significant when set against the adverse effects of the Merger (see paragraphs 1.562).
- 1.582 The loss of RCBs is the only cost we have provisionally identified associated with prohibition of the Merger (see paragraph 1.545a).
- 1.583 Therefore, in the absence of any less costly and intrusive alternative effective remedy, we consider that prohibition of the Merger would not be disproportionate to the SLC and its adverse effects.

Provisional conclusion on proportionality

- 1.584 We have provisionally identified two effective remedies:
- (a) Prohibition of the Merger; and
 - (b) The Network Commitment supported by Time Limited Protections.
- 1.585 We identified the relevant costs associated with each of those remedies and provisionally concluded that:
- (a) The only relevant costs in the case of prohibition of the Merger are the loss of RCBs. Any RCBs within the meaning of the Act that would be lost as a result of prohibition of the Merger would not be significant when set against the adverse effects of the Merger.
 - (b) The Network Commitment and Time Limited Protections give rise to monitoring costs for the CMA and Ofcom, and limited distortion risks but, overall, these are limited.
- 1.586 We are required, as per our guidance, to select the least costly and intrusive remedy we consider to be effective. We consider that neither remedy incurs significant costs when set against the adverse effects of the Merger, but that prohibition of the Merger is more intrusive. We therefore consider that the Network Commitment supported by Time Limited Protections is more proportionate than prohibition of the Merger.
- 1.587 We consider the Network Commitment supported by Time Limited Protections would not be disproportionate to the SLC and its adverse effects. We further consider that, in the absence of any less costly and intrusive alternative effective

remedy – which would be the case if the Parties are not willing to offer an Undertaking giving effect to the Network Commitment and Time Limited Protections as outlined in this working paper – prohibition of the Merger would not be disproportionate to the SLC and its adverse effects.

Provisional decision on remedies

- 1.588 We have provisionally concluded that there are two effective, proportionate remedies that would comprehensively address the provisional SLCs in the retail and wholesale markets outlined in the Provisional Findings. These are:
- (a) Prohibition of the Merger; and
 - (b) Network Commitment (with the Time Limited Protections described above in the retail and wholesale markets).
- 1.589 Our preferred remedy is the Network Commitment supported by the Time Limited Protections, this being the least costly and intrusive effective remedy that is not disproportionate in relation to the SLC and its adverse effects we have provisionally identified.
- 1.590 If the Parties are not willing to offer an Undertaking giving effect to the Network Commitment and Time Limited Protections as described in this working paper, as the only other effective remedy, we would seek to impose an Order prohibiting the Merger.

2. GLOSSARY

3UK	Hutchison 3G UK Limited
5G SA	5G Standalone – 5G networks which use a new 5G core network, rather than relying on the 4G core. Offers improved responsiveness and may enable innovative use cases.
the Act	The Enterprise Act 2002
Beacon	Agreements through which VUK and VMO2 share active infrastructure.
Beacon 4	On 7 December 2023, VMO2 and the Parties signed Heads of Terms to set out intentions as to the on-going operation of Beacon (the suite of proposed amendments are referred to as ‘Beacon 4’)
Beacon 4.1	On 3 July, 2024, Vodafone UK and Virgin Media O2 have agreed to extend and enhance their existing mobile network sharing agreement
BTEE	BT Group plc
CA03	Communications act 2003
CK Hutchison	CK Hutchison Holdings Limited
CMA	Competition and Markets Authority
CMA129	Merger Assessment Guidelines (CMA129)
CMA2(revised)	Mergers: Guidance on the CMA’s jurisdiction and procedure , January 2021 (as amended on 4 January 2022)
DMCCA 2024	digital markets competition and consumers act 2024
FMN	Final Merger Notice
FPM	Future pricing mechanism
FWA	Fixed wireless access
GB	Gigabyte

The inquiry group	A group of CMA panel members
JBP	Joint Business Plan (which incorporates the JNP)
JNP	Joint Network Plan
MAGs	Merger Assessment Guidelines
the Merged Entity	For statements referring to the future, the Parties' UK telecoms businesses are together referred to as the Merged Entity.
the Merger	that the anticipated joint venture between Vodafone and CK Hutchison that will combine their UK telecoms businesses, respectively VUK and 3UK
MNO	Mobile Network Operator
MOCN	Multi-operator core network – a technology that allows two or more core networks to share the same RAN.
MORAN	multi-operator radio access network
MVNO	Mobile Virtual Network Operator
NDA	Non-disclosure agreement
the Network Commitment	a commitment that would deliver the key elements of the Merged Entity's Joint Network Plan
NSA 5G	Non-standalone 5G
Ofcom	Office of communications
Party	Vodafone and CK Hutchison are each a Party
the Parties	Vodafone and CK Hutchison
PAYG	Pay as you go
PAYM	Pay monthly

PAYM handset	Where the user buys both their airtime and handset from a mobile provider
PAYM SIMO	Where the user buys their airtime from a mobile provider and uses it with a separately acquired handset
the Pricing Cap Commitment	a commitment to maintain prices for value-focused customers on all main brands
the Provisional Findings	On 13 September 2024, the CMA provisionally found competition concerns as part of its in-depth investigation of the anticipated joint venture between Vodafone Group Plc and CK Hutchison Holdings Limited concerning Vodafone Limited and Hutchison 3G UK Limited.
RCBs	Relevant customer benefits
REEs	Rivalry-enhancing efficiencies
the Retail Customer Protections	a short-term pricing commitment that would guarantee the availability of, maintain the terms and conditions of, and cap the prices of a range of the Parties' existing tariffs for three years
the retail market	The supply of retail mobile telecommunications services to end consumers, including both consumers and business customers in the UK
Remedies Notice	The notice of possible remedies published by the CMA on 13 September 2024
RFI	Request for information
SIMO	SIM-only
SLC	Substantial lessening of competition
the Social Tariffs Commitment	a commitment to maintain social tariffs
SRN	The Shared Rural Network scheme
the Terms and Conditions Commitment	a commitment to maintain terms and conditions of existing customers on selected tariffs

Time limited protections	The time limited retail customer protections and the time limited wholesale market access terms
UK	United Kingdom
VMO2	VMED O2 UK Limited
Vodafone	Vodafone Group plc
VUK	Vodafone Limited
the Vulnerable Customers Commitment	a commitment to exclude vulnerable customers in financial difficulty from mid-contract price rises
the wholesale market	the supply of wholesale mobile telecommunications services in the UK
the Wholesale Reference Offer	a Wholesale Reference Offer, to provide MVNOs competitive access terms (protecting wholesale customers and their price sensitive end users)
the Wireless Infrastructure Strategy	This strategy sets out a policy framework to help deliver the government's priority of growing the economy and to ensure the UK benefits from advances in wireless connectivity for the next decade
WTA06	Wireless Telegraphy Act 2006