

Assessment of the CMA Remedies working paper (12th November 2024)

CMA paper

“Anticipated joint venture between Vodafone Group PLC and CK Hutchison Holdings Limited concerning Vodafone Limited and Hutchison 3G UK Limited.”

Remedies Working Paper

ref: ME/70346/23, 5th November 2024

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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.

The Merged Entity have claimed that from Day 1 (within first 12 months) millions of customers would enjoy a better network experience with greater coverage and reliability at no extra cost. CMA should (i) ensure that no prices are increased for retail or wholesale customers, (ii) require a benchmark of the current network quality, coverage, reliability for each of the networks and a comparison of the progress throughout the first year to ensure the Merged Entity is delivering as planned with a remedial plan or other sanctions where it fails to deliver on its promises.

ii. What the Parties should be required to publish in an annual progress report.

For each key deliverable the Merged Entity should provide key statistics and KPIs on the progress. This should not be a technical/network detailed output, but at a higher level focused on deliverable output with sufficient information which can be easily understood and monitored. We are proposing an output based performance review because it is closely linked with the end customer experience.

There should be an industry accepted methodology for measuring network performance which would then allow the Merged Entity to be benchmarked and assessed if it is on track to deliver its commitments. For instance, we would expect Ofcom to regularly carry out mobile drive testing to validate mobile coverage usage in the UK.

In order to do this there should be an independent trustee to review the plan, monitor benchmarking and share results. the Merged Entity should provide input on how it would rectify where it is falling behind the agreed plans and be obliged to implement a remedial plan and be subject to suitable penalties or sanctions if it fails to comply with the commitment.

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.

We agree with the CMA’s perspective that the protected tariffs should include a variety of popular and competitively priced options and offer different data allowances across the various brands of the Parties. Since the indirect market remains a significant channel for value-conscious customers, any remedy to be effective must include tariffs currently available through indirect channels.

c) To ensure the tariffs are accessible, what promotion and disclosure should be required in relation to these tariffs.

Regarding disclosure requirements, to ensure that the tariffs are clear and prominent to consumers, it is essential that the undertaking includes the Indirect channel. By providing the tariffs in Indirect channels, consumers will have a better opportunity to understand the available tariffs and thus ensure it is an effective remedy.

d) 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.**

Submitted to CMA on 7th October 2024 with a slight adjustment

The tiered proposal by the Merged Entity restricts healthy competition and the ability of new entrants receiving competitive rates. Commercial rates should be negotiated between the Merged Entity and MVNOs.

In response to the Unlimited segment, the proposal by the Parties is restrictive and could cause MVNOs more harm than good e.g. having to pay via the FPM as usage cannot be controlled by the MVNO. The concerns with the proposal are; (i) the MVNO would have to pay per subscriber irrespective to the amount of data consumption, (ii) it places a restriction on how much data can be consumed on the tariff which would make "unlimited" obsolete, and (iii) when usage is above the average, the MVNO would be charged based on the FPM, which, as outlined below, is an unfair mechanism.

- 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 [redacted]' basis.**

Firstly, we are unclear on what has been redacted as part of this proposal e.g. would it apply on a downwards "[only]" or "[and upwards basis]"?

Secondly, as the FPM is based on the entire Merged Entity, their ARPU typically is higher than those on an MVNO. Therefore, linking directly to the Merged Entity as opposed to an MVNO's competitor such as Smarty, will only result in a high wholesale price for the MVNO. It should be linked more closely to the sub-brands of the Merged Entity and/or the lowest ARPU of either one of the Merged Entity brands (Three, Vodafone, Smarty, Voxi or future brand and joint ventures).

- iii. **Over what time period MVNOs should receive access to new technology.**

All MVNOs should have the option to gain access at the same time to the new technology as the Merged Entity. Therefore, it will require the Merged Entity to engage with MVNOs sooner.

A 9-month delay in having the new technology available would place the Merged Entity ahead in the market, whilst the MVNO's customers would be disadvantaged. This would remove parity in the market for the consumer. Likewise, there should be no different treatment between MVNO's owned by the Merged Entities and third party MVNOs.

Furthermore, for any new technology (e.g. 6G), MVNOs should be expected to receive it under current commercial terms and not be subject to a separate contract.

- iv. **The appropriate timescales for dispute resolution.**

We agree with the CMA on the approach of a dispute resolution by ensuring it is overseen by a commercial and independent arbitrator. Regarding the timescales proposed by the Parties we would expect the resolution to be sooner than 5 months – our view is 6 weeks. Any adjudicator appointed should have the authority to bind the parties so that the resolution is enforceable.

v. How the approach to the minimum revenue commitment could impact MVNOs or the effectiveness of the Wholesale Access Terms.

We do not believe a minimum revenue commitment should be enforced on MVNOs. Such commitment would make the Wholesale Reference Offer by the Merged Entity unattractive. This would impact new entrants to the market, or those MVNOs who may want to consider moving away from their existing network provider. Have the Parties explained why they feel one is necessary?

vi. The appropriateness of the proposed limit on the number of MVNOs that can be on-boarded at any one time, including our proposed approach to this given the practical challenges of on-boarding multiple MVNOs simultaneously.

We agree with the CMA that onboarding should be simplified and not determined by the type of MVNO (for example; light or full).

Regarding the number of MVNOs, it is difficult to gauge the impact this could have on the Parties combined network. Therefore we would recommend an assessment is made before onboarding new MVNOs, to avoid adversely impacting the network service to existing customers.

An independent adjudicator should be appointed to measure the capacity performance and if there is any significant deterioration then the MVNOs have the right to exit or receive a penalty payment from the Parties.

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