



The Federation of Communication Services (FCS) response to the CMA on the proposed remedies for the Vodafone/Three merger

The FCS represents companies which provide professional communications solutions to business users. Our members deliver telecommunications services via mobile and fixed line telephony networks, broadband, satellite, wi-fi and business radio. Our members' customers range from SMEs, home-workers and micro-businesses up to the very largest private enterprises and public sector users. FCS is the largest trade organisation in the professional communications arena, representing the interests of circa 350 businesses which supply B2B services nationwide.

The FCS welcomes the chance to comment on the remedies for the proposed Vodafone/Three merger. Mobile communications are central to most business-to-business propositions, and it is vital that all parts of the complex supply chain can access mobile services on fair terms if the communications market more generally is to remain competitive and provide the UK with the benefits that a flourishing market supports. This is particularly important as the proposed merger would reduce the providers of mobile networks in the UK to three vertically integrated providers, with all the attendant competition concerns.

On a general point, the FCS believes that Ofcom should review the whole mobile market as access to mobile networks is currently a "gift" not the right it needs to be. The FCS believes that there needs to be separation between the infrastructure and retail levels and that regulation should ensure competition between networks at the infrastructure level. For this to happen there needs to be a regulatory requirement to provide Communication Providers (CPs) access to mobile networks and for the access to be on terms and conditions that do not discriminate, indeed they should be on the same price, terms and conditions available to the downstream businesses of the mobile networks. This needs to be the starting point of regulation. It is important particularly, that small providers are able to access mobile networks and choose the way they do so, either directly from the Mobile Networks or via a Wholesale provider, and any cap on wholesale provision should carry safeguards to ensure that smaller CPs can still access services.

The current remedies do not provide a "level playing field", as the downstream retail provider of the new entity still retains advantages. The FCS believes that the wholesale remedies should be strengthened. In particular, whilst the remedies provide some level of service equivalence, they do not require pricing equivalence. This area needs to be addressed. Additionally, it is important that new entrants into the market can prosper. The Wholesale Reference Offer (WRO) is available for three years, with the possibility of signing a five-year contract during. This will mean that any new entrants entering the market after the initial reference offer lapses could be at considerable disadvantage for a significant period of time, which could have profound impacts on competition.

The availability of new technology is another key area which needs to be safeguarded to ensure enduring competition. Technological advances will occur in the short to mid-term and any delay in making them available to the complex supply chain will undoubtedly have a dampening effect on competition. The FCS therefore believes that this remedy should be changed to ensure that wholesale providers have parity with the downstream retail provider.

Lastly, the FCS notes that there is a monitoring regime proposed and believes that transparent reporting is vital to ensure that remedies are implemented. The current proposals do not seem to be sufficiently stringent and there should be at least six-monthly reporting to both the CMA and Ofcom. The model that BT introduced with the Undertakings and subsequently the Commitments should give a good starting point for the level of independent scrutiny that is required, to give industry confidence that the remedies are being introduced appropriately and that the impact on the wider market is kept under review.

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