

THE PARTIES' RESPONSE TO THE REMEDIES WORKING PAPER

Case ME.7064.23

Vodafone UK / Three UK

SLAUGHTER AND MAY
FRESHFIELDS

TABLE OF CONTENTS

1.	EXECUTIVE SUMMARY	3
2.	NETWORK COMMITMENT	9
3.	TIME LIMITED RETAIL CUSTOMER PROTECTIONS	21
4.	TIME LIMITED WHOLESALE ACCESS TERMS	31
5.	PROPORTIONALITY AND RCBS	45
6.	CONCLUSION	58

1. EXECUTIVE SUMMARY

- 1.1 This submission responds to the Remedies Working Paper dated 5 November 2024 (the “**RWP**”) in relation to the joint venture between Vodafone Group plc (“**Vodafone**”) and CK Hutchison Group Telecom Holdings Limited (“**CK Hutchison**”, and together with Vodafone, the “**Parties**”) to combine their UK operating businesses, respectively Vodafone UK Limited (“**VUK**”) and Hutchison 3G UK Limited (“**3UK**”) (the “**Transaction**”).
- 1.2 The Parties remain firmly of the view that the Transaction would not result in a substantial lessening of competition (“**SLC**”) in the retail or wholesale mobile services markets, for the reasons set out in their response to the Provisional Findings (“**PFs**”). Rather, the Transaction will unlock transformational investment in mobile network performance (both capacity and quality), which will provide substantial benefits to UK customers and enhance competitive pressure across the retail and wholesale mobile services markets. The Parties welcome the CMA’s recognition in the RWP that the ‘Day 1’ benefits of the Parties’ joint network plan (the “**JNP**”) would be implemented shortly after closing (*para. 1.218*) and that the full implementation of the JNP would lead to significant and long-lasting quality improvements in the longer term that endure (*para. 1.247*).

A. Network Commitment

- 1.3 The Parties welcome the CMA’s recognition that an appropriately designed network commitment would fully address any SLC in the longer term (the “**Network Commitment**”). The Parties agree with the CMA’s characterisation of this remedy as an “*enabling measure*” that “*works with the grain of competition*” to “*deliver a structural change to the UK’s mobile networks, leaving market outcomes to be determined by the competitive process without further intervention*” (*para. 1.112*).
- 1.4 For the reasons explained in section 2 below, the Parties believe that such a commitment (supported by the effects of the Beacon 4.1 arrangement with VMO2– which is already akin to a wide-ranging structural remedy) would represent the most appropriate, effective, and proportionate remedy, fully addressing the concerns provisionally identified, including in the short term. As such, the Parties do not agree that supplemental measures are required during the initial years of network integration. However, as explained below, if necessary, the Parties could accept appropriately calibrated versions of the Time Limited Protections, which would be designed to fall away in Year 3 or upon meeting the Year 3 milestone for the Network Commitment.
- 1.5 The Parties agree with the CMA that it is vital that the Network Commitment is appropriately designed to ensure that the remedy is effective, appropriate and proportionate. The Parties can accept a number of the suggested adjustments set out in the RWP, including the proposed commitment to publish progress against the Network Commitment annually.

- 1.6 However, regarding the Year 1 milestone, whilst the Parties could commit to reporting on progress publicly against an appropriate Year 1 target, this should not involve any formal legal milestone for the purposes of enforcement (which should only apply in Years 3, 5 and 8), given the Parties will need operational flexibility during this early period. As the RWP acknowledges, “*there are often integration challenges post-merger*” (*para. 1.301*). For the avoidance of doubt, therefore, the Parties would agree to enhanced transparency and reporting at Year 1, with a clear target based on the JNP, but the Parties do not consider that the first legally enforceable milestone should (or needs to) occur as early as Year 1.
- 1.7 Notwithstanding the Parties’ acceptance of most of the adjustments in the RWP, there is one particularly important area where the Parties disagree with the position set out in the RWP, namely that the limited cure period and guard rails proposed by the Parties would “*simply soften the Network Commitment*” and, as such, be inappropriate (*para. 1.291*). However, in the interest of finding an alternative workable solution, the Parties could dispense with the cure period and guard rails under the condition that the precise wording of the Network Commitment acknowledges that, in determining whether a breach has occurred, unforeseen events outside the Parties’ control must be taken into account. The Network Commitment involves a complex infrastructure plan over an eight-year period; as the RWP acknowledges, there is clearly scope for, e.g. major geopolitical events, pandemics or changes to law and regulation, all of which would be outside the Parties’ control and could impact JNP delivery. Given the potential repercussions – including loss of licence and significant fines – it would not be appropriate or proportionate for the Parties to face the possibility, despite not being at fault, of finding themselves solely reliant on persuading a regulator to exercise its discretion (within whatever policy climate exists at the time) not to bring enforcement action. The Parties have proposed some very limited wording in this regard, closely modelled on the CMA’s recent policy position on administrative enforcement, which the Parties propose to be included in the final undertakings to address this concern.
- 1.8 Finally, [REDACTED]. They share the CMA’s “[REDACTED]” (*para. 1.276*). However, the Parties consider that the RWP [REDACTED].

B. Time Limited Retail Customer Protections

- 1.9 Although the Parties do not consider Time Limited Retail Customer Protections to be necessary, they agree in principle that such protections could complement the Network Commitment, increasing the effectiveness of the overall remedy package, while having an acceptable risk profile (*para. 1.420*). As explained in section 3 below, the Parties agree that any such commitment should be limited to maintaining “*an appropriate range of pre-Merger tariffs*” and social tariffs (*para. 1.368*).

- 1.10 The Parties agree that, in order to be effective, a Pricing Cap Commitment would need to target a “*limited subset of tariffs*” across VUK’s and 3UK’s main brands (*para. 1.374*). The Parties believe that the mix of tariffs which they have put forward squarely meets the criteria set out in the RWP, qualifying as “*popular, competitively priced and span[ning] different data allowances*” (*para. 1.424*). In particular, more than [REDACTED] of the combined current Vodafone and Three PAYM SIMO, and VOXI, and SMARTY bases are on tariffs under 20GB and the protected tariffs have been carefully scoped in order to provide a range of competitively priced tariffs and data allowances across the relevant brands while avoiding any significant market distortion.
- 1.11 The Parties can commit to displaying the relevant tariffs clearly and prominently in the full tariff lists accessible through their websites. The tariffs displayed on Price Comparison Websites (“**PCWs**”) and how they are published, are ultimately determined by the PCWs themselves and are the outcome of commercial agreements. Therefore, the Parties cannot commit to the protected tariffs being published on PCWs (*para. 1.402*) and the display and promotional requirement for the protected tariffs should be limited to the Parties’ websites.

C. Time Limited Wholesale Access Terms

- 1.12 Although the Parties do not consider the Time Limited Wholesale Access Terms to be necessary, they agree in principle that a commitment to offer pre-defined wholesale access terms could complement the Network Commitment, supplementing a remedy package that comprehensively addresses provisional concerns in the wholesale market, as well as helping to address any residual concerns in the retail market, while having an acceptable risk profile (*para. 1.506*).
- 1.13 The Parties consider that the Wholesale Reference Offer (the “**WRO**”) that they have proposed would be appropriate, effective and proportionate. As explained in section 4 below, the Parties are prepared to make a range of adjustments. However, there are two important areas where the Parties do not agree with the position set out in the RWP.
- 1.14 The Parties disagree with the RWP’s proposal of giving existing MVNOs the option to roll-over terms. In particular:
- (i) **Roll-over is unnecessary to meet the CMA’s objective for time-limited wholesale protections given the availability of the WRO.** The RWP provisionally accepts that the WRO “*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*” (*para. 1.467*) (emphasis added). The WRO is designed to work with the grain of the competitive process and to encourage MVNOs to negotiate with other host networks as well as MergeCo. It is not, and should not be used, to preserve any particular existing contractual framework for the benefit of that particular MVNO. The WRO is open to all current MVNO customers and new MVNOs and is already a fully effective remedy.

- (ii) **Roll-over would be highly impracticable and result in distortion risks.** Wholesale agreements evolve over time and terms are closely interrelated as part of striking an overall commercial bargain between the parties; therefore, many terms are not suitable to roll over and would in any event need to be renegotiated. In addition, roll-over gives rise to distortive effects by artificially preserving terms for a small number of MVNOs.

1.15 Therefore, the Parties would be happy to discuss the roll-over proposal further with the CMA and Ofcom to explain why there is no material risk for any of the Parties' existing MVNOs during the first three years.

1.16 While the Parties welcome the RWP's recognition that an onboarding cap is essential from a practical and execution perspective and appreciate the desire to "simplify" the onboarding limit, whether an MVNO is full or light is a critical distinction for these purposes, with very different levels of complexity and resourcing involved. The Parties cannot amend the onboarding limit in the way proposed, and consider that their proposed limit (up to eight Tier 1 light MVNOs through the [REDACTED] platforms, and up to two other MVNOs or MVNAs at any one time) – combined with a commitment to engage with any requesting MVNO and an obligation to follow strict procedural rules, including for dispute resolution – is already suitably high and therefore appropriate, not restrictive and will ensure no delays. By way of context, the greatest number of MVNOs that the Parties have won in any given year since 2018 is only [REDACTED], and the Parties understand (based on publicly available information) that BTEE has only won 5-6 light MVNOs a year over the same period, and never more than two full MVNOs a year.

1.17 Finally, the Parties disagree with the RWP's provisional view that their proposal to enable MVNOs to offer unlimited data contracts is "*unlikely to be effective, as the...proposed structure would involve significant costs for MVNOs*" (*para. 1.474(f)*). The Parties do not consider this to be the case: the fixed unlimited pricing option provided in the WRO almost entirely removes the MVNOs' risk of offering unlimited data contracts on the retail market. MVNOs do not need to accurately estimate their customers' data usage in unlimited tariffs – which can be challenging given the de facto potential for unlimited consumption – in order to price all tariffs across their portfolios in order to earn an attractive return. The WRO therefore protects the attractive profit margin MVNOs can achieve on these contracts which will ensure that MVNOs are able to continue to compete effectively with unlimited data offers in the retail market. Nevertheless, in response to the RWP, the Parties have proposed increasing the unlimited pricing usage threshold to make the proposition even more attractive to MVNOs.

D. Proportionality and RCBs

1.18 The Parties strongly agree that the Network Commitment, supported by the Time Limited Protections, is a less intrusive and more proportionate remedy than prohibition (*para. 1.573*).

1.19 As explained in section 5 below, the Parties consider that the RWP errs in its proportionality assessment, by understating the significant relevant customer benefits ("**RCBs**") – in the form of improved mobile connectivity, accelerated access to new and advanced 5G use cases, and expanded fixed wireless access ("**FWA**") proposition – that flow from the Transaction.

1.20 The Parties disagree with the proposition that prohibiting the Transaction would not incur significant costs (*para. 1.586*). Within the narrow terms of the Enterprise Act 2002 (the “**Act**”), the Parties have provided ample evidence to show that there would be a significant cost to prohibition, including in the form of material RCBs deriving from the JNP and early years benefits. This continues to apply even if the CMA did not accept that the Parties were incentivised to deliver the full JBP absent the Network Commitment and had regard only to those benefits that (as it and Ofcom accept) would accrue in the absence of this commitment. More broadly, reaching such a decision would deprive the country of what is a once-in-a-generation opportunity to transform the landscape of UK digital infrastructure, to the benefit of customers and competition.

E. Overview of this response

1.21 Finally, this section outlines: (i) the points where the Parties agree to adopt the changes set out in the RWP, (ii) the points where the Parties agree to make changes to reflect CMA feedback with a few adjustments, and (iii) the two critical points where the proposals in the RWP are not feasible.

1.22 In response to the CMA's RWP and, in order to address any residual concerns the CMA may have as to the effectiveness of the package, the Parties agree to adopt a number of adjustments to the proposed remedy package (across the Network Commitment, the Time Limited Retail Customer Protections and the Time Limited Wholesale Access Terms). In particular, the Parties agree to:

- (i) Publish progress against the Network Commitment annually (see paras. 2.34 to 2.35 below).
- (ii) [REDACTED].
- (iii) Require the site numbers commitment to be met [REDACTED] (see paras. 2.42 to 2.43 below).
- (iv) Commit to the Time Limited Retail Customer Protections to provide additional protection for retail customers during the initial years of the JNP (see section 3 below).
- (v) Make the end of the Time Limited Retail Customer Protections conditional on completion of the Year 3 milestone for the Network Commitment (see paras. 3.9 to 3.10 below).
- (vi) Commit to the Time Limited Wholesale Access Terms by offering the WRO to provide additional protection for MVNOs during the initial years of the JNP (see Section 4 below).
- (vii) Make the end of the WRO conditional on completion of the Year 3 milestone for the Network Commitment (see para. 4.27 below).
- (viii) Provide parity of access to new technologies in the WRO (see paras. 4.42 to 4.46 below).

- (ix) Appoint an independent commercial arbitrator from the outset to resolve any disputes that arise in negotiating terms under the WRO as part of a fast-track dispute resolution process (see paras. 4.12 to 4.13 below).
- 1.23 There are a number of other points where the Parties agree to make changes to reflect CMA feedback with a few adjustments for the reasons explained further in this response:
- (i) **Network Commitment:**
 - (a) The Parties can commit to reporting on progress publicly against an appropriate Year 1 milestone, but this should not involve any formal legal target for the purposes of enforcement (which should only apply in Years 3, 5 and 8) (see paras. 2.34 to 2.35 below).
 - (b) The Parties can dispense with the cure period and guard rails provided that the precise wording of the Network Commitment acknowledges that, in determining whether a breach has occurred, unforeseen events outside the Parties' control must be taken into account (see paras. 2.20 to 2.25 below).
 - (ii) **Time Limited Retail Customer Protections:** the Parties can agree to displaying the protected tariffs clearly and prominently on their websites. However, the Parties cannot commit to the protected tariffs being published on third party PCWs (see paras. 3.13 to 3.19 below).
 - (iii) **Time Limited Wholesale Access Terms:**
 - (a) The Parties can remove any perceived limit to higher speeds from the WRO by specifying the pricing structure in the WRO for speeds above 150 Mbps but continue to believe it is justified to distinguish speeds above 150 Mbps (see paras. 4.10 to 4.11 below).
 - (b) While the Parties consider that the proposed unlimited structure already ensures that MVNOs are able to compete effectively with unlimited data offers in the retail market, the Parties propose increasing the unlimited pricing usage threshold significantly to make the proposition even more attractive to MVNOs (see paras. 4.28 to 4.31 below).
- 1.24 There are two critical points where the proposals in the RWP are not feasible:
- (i) The Time Limited Wholesale Protections should not be supplemented by the CMA's proposal of giving existing MVNOs the option to roll-over terms, as this would be unnecessary given the existence of the WRO, highly impracticable and could result in distortion risks (see paras. 4.14 to 4.20 below).
 - (ii) The Parties cannot amend the WRO onboarding limit in the way proposed, and consider that their proposed limit (up to eight Tier 1 light MVNOs through the [REDACTED] platforms, and up to two other MVNOs or MVNAs at any one time) is already suitably high and therefore appropriate (see paras. 4.21 to 4.26 below).

2. NETWORK COMMITMENT

- 2.1 The Parties welcome the CMA's recognition that the Network Commitment will address the provisional SLCs in the retail and wholesale market (at least in the longer term), will be capable of effective implementation, monitoring and enforcement, will have an acceptable risk profile (*para. 1.318*) and will have a "*lasting impact beyond 8 years*" (*para. 1.247*). As set out in detail in the NOPR Response, the Parties consider that the Network Commitment, together with Beacon 4.1, represents the most appropriate, effective and proportionate remedy that fully addresses the competition concerns provisionally identified and ensures the delivery of the structural and transformational benefits of the Transaction to customers and the wider economy.¹
- 2.2 The Parties also agree with the CMA's characterisation of the Network Commitment as an "*enabling measure*" on the basis that it "*delivers a structural change to the UK's mobile networks, leaving market outcomes to be determined by the competitive process without further intervention*" (*para. 1.112*). The Network Commitment also works "*with the grain of competition*" and addresses the SLC by "*seeking to remove obstacles to competition or stimulating competition, rather than [being a measure] that controls market outcomes*" (*para. 1.25*).
- 2.3 The Parties can accept a number of the suggested adjustments / additions to the Network Commitment as expressed in the RWP. There are some points which the Parties do not consider appropriate, as explained in further detail in this section. In this section, the Parties assess the RWP's consideration of how the Network Commitment:
- (i) fully addresses the SLC identified by the CMA and any resulting adverse effects which may be expected (paras. 2.4 - 2.10 below). The Parties consider the Network Commitment is sufficient to address adverse effects in both the short and long term alone without the need for supplemental time limited measures. This is particularly the case when its impact is considered in combination with the impact of Beacon 4.1;
 - (ii) is of appropriate duration and timing (*para. 2.11* below);
 - (iii) is a practicable remedy, in terms of monitoring and enforcement risks. This includes an assessment of [REDACTED] (paras. 2.12 – 2.19 below) and how to account for situations which arise due to no fault of the Parties in the absence of a cure period or other limited guard rails (paras. 2.20 - 2.25 below);
 - (iv) has an acceptable risk profile, in terms of:
 - (a) specification risks, including why any Year 1 milestone should be non-binding (paras. 2.26 - 2.32 below) and the benefit of annual public reporting (paras. 2.34 - 2.35 below);

¹ The Parties agree with the RWP view that a partial divestiture remedy, as set out in the Remedies Notice, would not be an effective remedy 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 (*RWP, para. 1.31*).

- (b) circumvention risks, including how the absence of a cure period could be addressed (paras. 2.36 - 2.38 below), the benefit of a rural commitment (para. 2.39 below), the agreed types of band that must be deployed at all sites (paras. 2.40 - 2.41 below) and the agreed type of technology that must be used (paras. 2.42 - 2.43 below); and
- (c) distortion risks (para. 2.44 below).

The Network Commitment fully addresses the SLC identified and any resulting adverse effects

2.4 The Parties consider that the Network Commitment would prevent any SLC in the retail and wholesale markets and incentivise MergeCo and its competitors to compete harder. This is because the Network Commitment would:

- (i) enhance the coverage and capacity of MergeCo, incentivising it to make attractive retail and wholesale offers to fill the new available capacity. This would be particularly relevant in competing for MVNOs;
- (ii) decrease MergeCo's incremental costs of expanding capacity, leading to lower prices and better quality;
- (iii) improve MergeCo's network quality, which will benefit customers directly; and
- (iv) increase competitive pressure on and trigger a pro-competitive response from VMO2 and BTEE to provide better wholesale and retail offers and to invest in their networks. Beacon 4.1 also provides VMO2 with additional spectrum and access to sites, facilitating investment in network quality and capacity, leading to increased network quality competition. As the CMA notes, the Beacon 4.1 spectrum transfer provides a "*notable and rapid increase in network quality for VMO2's wholesale and retail customers*" (para. 1.14).

Retail market

2.5 The Parties agree with the CMA's assessment in the retail market that (para. 1.173):

- (i) There is evidence that quality is one of the most important parameters of competition in the mobile industry and that, by improving network quality in a way that affects customer experience, this could make MergeCo a stronger rival for its competitors. As customers told the CMA, they would "*react strongly to a deterioration in network quality: 60% of 3UK customers and 65% of VUK customers...would switch if the network they were using was 'a bit less reliable'*" (para.1.178). The CMA's econometric analysis also found willingness to pay for aspects of network quality and in particular for additional 4G download speeds (para. 1.178).
- (ii) 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 which could give MergeCo – all else being equal – an incentive to provide a better quality of service and/or lower prices.

- (iii) The key quality improvements implemented by MergeCo would in turn likely elicit a competitive response (for example, by way of further investment) from BTEE and VMO2 to also improve their respective network quality (*para. 1.174*).

2.6 On the impact on pricing, the Parties agree with the CMA's assessment that MergeCo's increase in capacity (compared to the counterfactual) and the increase in capacity of VMO2 through Beacon 4.1 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*" (*para. 1.187*).² However, the Parties respectfully disagree with the CMA's provisional view that there may be different pricing impacts over the short and long term, and in particular 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*" (*para. 1.188*):

- (i) There will be no upwards pricing pressure in the short term. As the Parties evidenced in their response to the PFs, even if only the improvements of download speeds and coverage achieved on Day 1 are taken into account in the CMA's merger simulation model, the SLC is fully eliminated and the Transaction is predicted to substantially increase consumer welfare (by £672 million per annum).³
- (ii) As the CMA recognises when assessing its own quantitative analysis which suggested upwards pricing pressure in nominal terms, "*even if higher nominal prices were to result [from the Transaction], rivalry-enhancing customer welfare benefits from higher quality could exceed customer losses from higher prices (i.e. quality-adjusted prices could fall even if nominal (i.e. unadjusted) prices increase)*" (*para. 1.184*).

2.7 The Parties therefore also respectfully disagree with the provisional finding that the Network Commitment alone would not comprehensively address the provisional SLCs identified (*para. 1.216*). The Parties consider that the Network Commitment would provide a comprehensive remedy, and that no supplemental measures are necessary to deal with any short-term pricing effects. Nevertheless, as set out in section 3, notwithstanding this view, the Parties agree in principle that Time Limited Retail Customer Protections would provide additional protection for retail customers during the initial years of the Parties' JNP.

² The Parties also agree with the RWP's recognition that the link between capacity and retail pricing decisions may not be evident from internal documents, which may not 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*" (*RWP, para. 1.185*).

³ Parties' PFs response, Annex 4, Table 3.7.

Wholesale market

2.8 The Parties agree with the CMA's assessment in the wholesale market that (*para. 1.173*):

- (i) 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"* (*para. 1.233*).
- (ii) 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"* (*para. 1.234*).
- (iii) 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"* and that post-Merger VMO2 will have a *"stronger incentive to both more frequently bid for wholesale contracts and to price competitively when it does so"* (*paras. 1.235-1.236*).

2.9 However, the Parties disagree with the provisional view that there may be different impacts on the wholesale market from the Transaction over the short and long term so 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 remedy package is effective (*paras. 1.239-1.240*):

- (i) There will be a substantial increase in network capacity from Day 1, with the PFs acknowledging that the bulk of REEs will be realised in the early years:
 - (a) the PFs find that the *"Day 1' benefits"* are likely to occur shortly after closing given that they will generate benefits for the Merged Entity and are relatively easy to implement".⁴ By *"Day 1 benefits"*, the PFs include the benefits of the combination of MOCN and the deployment of additional spectrum through sharing the Parties' combined holdings (for example, in relation to 1800 MHz spectrum).⁵ These *"Day 1 benefits"* alone, which the PFs find are *"timely"*, are substantial; and
 - (b) the PFs find that *"[s]ome degree of network integration"* will *"start once the Merger completes"* and will be *"timely, particularly given the inevitability of network integration"*.⁶
- (ii) The PFs also acknowledge that the *"rivalry-enhancing network quality improvements of the spectrum transfer to VMO2 pursuant to Beacon 4.1 are likely to occur within the short- to medium-term"*, and that Beacon 4.1 would provide a

⁴ PFs, para. 14.197.

⁵ PFs, para. 14.192.

⁶ PFs, para. 14.197.

“notable and rapid” increase in network quality for its wholesale customers.⁷ The Parties therefore do not recognise the significance the RWP appears to attach to VMO2 acquiring additional spectrum over [REDACTED], in particular given:

- (a) the [REDACTED] – for [REDACTED]. In particular:⁸
 - (I) The obligation to transfer [REDACTED] of [REDACTED] will be [REDACTED].
 - (II) The obligation to transfer [REDACTED] in the [REDACTED] will be [REDACTED].
 - (III) The obligation to transfer [REDACTED] in the [REDACTED] will be [REDACTED].
 - (IV) For the obligation to transfer [REDACTED] in the [REDACTED]. Whilst the full spectrum transfer in this band will be complete by [REDACTED]:
 - 1. [REDACTED] of the spectrum to be transferred to VMO2 will be transferred by [REDACTED]; and
 - 2. [REDACTED] of the spectrum to be transferred to VMO2 will be transferred by [REDACTED].
- (b) The RWP appears to focus only on the capacity benefits resulting from the spectrum transfer to VMO2 and does not appear to take into account the fact that VMO2 will also get access to [REDACTED].
- (iii) As recognised by the RWP, the nature of pricing decisions at the wholesale level are longer-term than at the retail level (*para. 1.234*). Therefore, when an MNO is considering its bid for an MVNO contract, it not only focuses on the amount of capacity it has today, but also the amount of capacity it will have in the longer term (including through any potential build-out of capacity to accompany winning the MVNO contract, as VUK immediately did after it won the [REDACTED]). The MNO’s predicted capacity in the future therefore affects its wholesale pricing decisions today. Nevertheless, as set out in section 3.20 below, notwithstanding the Parties’ view that Time Limited Wholesale Access Terms are unnecessary, the Parties agree in principle with the view expressed in the RWP that the WRO 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.

⁷ PFs, para. 14.198.

⁸ See also the Parties’ response to the CMA’s s.109([REDACTED]) Question [REDACTED] of s.109([REDACTED]) [REDACTED], (submitted to the CMA on 31 May 2024) and slide [REDACTED] of the *Beacon 4.1 – CMA Briefing* slide deck ([REDACTED]). These release milestones are set out in the [REDACTED] (submitted to the CMA on [REDACTED]) [REDACTED].

- 2.10 The Parties therefore consider that the Network Commitment alone would provide a comprehensive remedy, and that no supplemental measures are necessary during the initial years of network integration to address any SLC in the short term.

Duration and timing

- 2.11 The Parties agree with the provisional finding that an 8-year duration of the Network Commitment is appropriate, and that the remedy would have lasting benefits that would continue into the future (*para. 1.255*).

The Network Commitment is a practicable remedy

Monitoring and enforcement risks

Ofcom's role

- 2.12 The Parties agree with the CMA's provisional finding that it would be appropriate for Ofcom to take on a monitoring and enforcement role and agree that this could be done by incorporating the Network Commitment obligations as licence conditions (*para. 1.261*). The Parties confirm that they are also willing to appoint and pay for a monitoring trustee to provide support to Ofcom (and to the CMA) (*para. 1.261*).
- 2.13 The Parties welcome the provisional finding that the spectrum licence(s) variation process in itself does not “*materially affect*” the risk profile associated with the Network Commitment (*para. 1.269*) and share the CMA's “[REDACTED]” (*para. 1.276*). The Parties propose [REDACTED].
- 2.14 However, the Parties consider that, [REDACTED].⁹
- 2.15 [REDACTED]:
- (i) [REDACTED].
 - (ii) [REDACTED].¹⁰ As noted in the RWP, 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*” (*para. 1.263*). Ofcom also informed the CMA that the data required to confirm compliance with the Network Commitment is similar to the data already provided by the Parties for Ofcom's

⁹ The UK ranks 22nd out of 25 European countries for 5G availability and download speeds and has the slowest data download speeds in the G7. OpenSignal, [Mobile network speeds leaped ahead 2023, but some markets lag behind](#), 1 February 2024.

¹⁰ See Communications Act 2003, section 135. In addition, under section 32A WTA, Ofcom can require MergeCo to provide all such information as Ofcom considers necessary for the purposes of carrying out their radio spectrum functions. Ofcom can impose financial penalties if it has reasonable grounds for believing that a person has contravened the requirements of the information request (sections 32C and 32D WTA 2006). There is the possibility of criminal prosecution in certain circumstances if MergeCo provides information that is false (section 33 WTA 2006).

Connected Nations reports, and that the Parties could provide data in a similar way as part of its Network Commitment compliance reports (*para. 1.278*).

- 2.16 [REDACTED]. The statement in the CMA's guidance relating to behavioural remedies that "[t]he likelihood of effective monitoring will be significantly increased if it is possible to involve a sectoral regulator in the monitoring regime" [REDACTED].¹¹
- 2.17 [REDACTED].¹² [REDACTED]:
- (i) The Parties note that this is [REDACTED].
 - (ii) [REDACTED].¹³
- 2.18 The Parties therefore [REDACTED]. The Parties are [REDACTED]. [REDACTED].
- 2.19 Therefore, rather than making [REDACTED].

Cure period and limited "guard rails"

- 2.20 The CMA provisionally finds that the proposed "cure period" and limited "guard rails" would "simply soften the Network Commitment" and, as such, are inappropriate (*para. 1.291*). The Parties consider that a cure period and limited guard rails are reasonable and proportionate. For example, the cure period proposed is very narrow in scope as it would apply only if the Parties missed their Year 3, 5 and 8 targets by a very small amount (10% or less), with any such shortfall then having to be swiftly rectified (within six months).¹⁴ The Parties believe it would be appropriate for the commitment to specify what would happen if a target were to be missed by this amount or such smaller amount that the CMA considers necessary.
- 2.21 The Parties understand the CMA agrees in principle that no adverse consequences should follow if the Network Commitment were to be (narrowly) missed through no fault of the Parties – the RWP acknowledges that "there may be legitimate reasons for failing to comply with a commitment that are outside of the Parties' control" (*para. 1.292*). The Parties understand, however, that the CMA's position is that Ofcom's discretion in applying its spectrum licensing enforcement powers, and the CMA's discretion in deciding whether to take enforcement action, should provide sufficient protection for the Parties in such circumstances (*para. 1.292*).

¹¹ CMA Merger Remedies Guidance (CMA87), para. 7.6.

¹² As noted in the RWP, the DMCCA expands the enforcement powers available to the CMA in relation to final undertakings and final orders, including the ability to impose financial penalties in respect of a failure to comply with final undertakings or orders 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, with a commencement order giving effect to these new powers at least 28 days before the commencement date.

¹³ CMA, Register of breaches of the CMA's markets and merger remedies, 5 August 2024.

¹⁴ Parties' Remedies Letter to the Inquiry Group dated [REDACTED] (the "Remedies Letter").

- 2.22 Nevertheless, given the CMA's concerns, the Parties could dispense with the cure period and guard rails proposed, provided the commitment acknowledges in an appropriate way that, in determining whether a breach has occurred, unforeseen events outside the Parties' control are taken into account.
- 2.23 The Parties consider that it would not be appropriate to be left to rely entirely on general enforcement discretion in this matter.
- (i) The JNP involves investing £11 billion into a complex infrastructure project over a number of years, with clear scope for, e.g., significant geopolitical events, pandemics, changes to law and mandatory regulatory events, force majeure or "acts of God" to arise which are entirely outside the Parties' control but which may have an impact on delivery. It would be highly unusual for any undertaking to enter into a contract/commitment of this scale that contained no recognition that, for example, "acts of God" or a force majeure might operate to excuse them from a delay in delivery of their obligations.¹⁵
 - (ii) To ensure compliance and delivery of the full JNP, the CMA has imposed stakes that are significant, given the severity of the potential consequences of a breach – loss of MergeCo's licence, and very significant fines. It cannot be reasonable for the Parties to face a scenario where – through no fault of their own – they find themselves formally in breach of the commitment, and therefore exposed to such consequences, and reliant on regulatory discretion regarding enforcement.
 - (iii) The Parties also note that their potential exposure extends beyond enforcement actions taken by the CMA or Ofcom. Entering into a final undertaking would place them under a duty to comply that would be owed to any person who may be affected by a breach.¹⁶ They could therefore potentially face proceedings from any third party who claimed to have sustained damage as a result. Whilst this situation is unlikely to arise, the Parties could not reasonably be expected to rely on a third party's discretion not to bring such claims, which is why it would be important for the undertaking to include, in an appropriate form, that unforeseen events should be taken into account.
- 2.24 The Parties suggest that this could be achieved by including the following formulation, which is modelled on the CMA's recent draft statement of policy on its approach to taking enforcement action (including in relation to breaches of final undertakings) using powers that will be brought in under the Digital Markets, Competition and Consumers Act 2024:¹⁷

¹⁵ The Parties note, for example, the T-Mobile / Sprint network commitment in the US included the clause: "*The Bureau shall take into account and, in its reasonable discretion, appropriately reduce the metric, extend the deadline or reduce the contribution amount associated with commitments missed due to unanticipated circumstances beyond New T-Mobile's control (e.g. acts of God, such as fire, flood, earthquake, or other natural disasters; terrorist events, riots, insurrections, war, strikes or national emergencies; law or order of any government body; or significant interruptions in the supply chain).*" (Attachment 1 of the FCC Memorandum in the Matter of T-Mobile US, Inc., and Sprint Corporation, page 237.)

¹⁶ Under s. 94 of the Act.

¹⁷ See: The CMA's draft guidance "Administrative Penalties: Statement of Policy on the CMA's Approach" (11 July 2024).

“In determining whether there has been a breach of these undertakings, the CMA should disregard any shortfall to the Year 3, 5 or 8 milestones that are the result of factors which represent a “reasonable excuse”. A reasonable excuse shall include any significant and genuinely unforeseeable or unusual event and/or a significant factor or event beyond the Parties’ control has caused the failure to meet the relevant milestone.”

- 2.25 This language could also be mirrored in the Ofcom licence condition, if appropriate.

The Network Commitment has an acceptable risk profile

Specification risks

- 2.26 The Parties welcome the RWP finding that the 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... (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*” (para 1.298).
- 2.27 The Parties also welcome the RWP finding that “*we consider it appropriate that the licence variation includes only input measures*” (para. 1.306).
- 2.28 The Parties have proposed 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.
- 2.29 The RWP provisionally finds that these proposed dates are suitable “*with the exception of the early year or ‘Day 1’ benefits*” (para. 1.301). The Parties welcome the RWP finding that the Years 3, 5 and 8 measurement points are suitable, but do not consider it appropriate for the first legal milestone to be as early as Year 1.
- 2.30 As the RWP recognises, “*there are often integration challenges*” post-merger, which the Parties consider should be taken into account by the CMA when deciding what the first milestone for legal compliance should be (para. 1.301). The Parties had originally proposed it would be appropriate to include the first interim legal milestone at Year 4, which was then subsequently brought forward to Year 3 after feedback from the CMA (alongside detailed reports to Ofcom, the Monitoring Trustee and the CMA three times a year to provide clear visibility over the progress of the network roll-out).
- 2.31 Bringing this first legal milestone any earlier to, for example Year 1, would fail to take into account the operational flexibility needed in the early years when the integration process is in its most labour-intensive phase.¹⁸ Integration challenges are typically greatest at the outset, when engineering, network and other resources are first assembled, with issues being identified, and “teething problems” must be addressed before integration can be undertaken. It is possible that the integration could be faster in one area and slower in another area as MergeCo seeks to benefit from or resolve any relevant considerations. Once any issue has been resolved, MergeCo would then divert additional resources to benefit from the insights gained in that area to speed up the integration in that area and

¹⁸ NOPR Response, para. 4.20.

other areas, as MergeCo would still need to meet the Year 3 commitment.¹⁹ By setting the first legal milestone at Year 1, this could unfairly lead to a finding that the Parties had breached the Network Commitment despite having made very substantial progress and remaining fully on track to meet the Year 3 legal milestone.

2.32 The Parties recognise the importance of the ‘Day 1’ benefits, however, and are therefore prepared to address the RWP’s concerns that “*stakeholders and the market may not become aware of any failure to deliver the JNP until significantly after the fact*” (*para. 1.302*).²⁰ The Parties could therefore report against an appropriate Year 1 milestone, although for the reasons explained in paras. 2.30 - 2.31 above, this Year 1 milestone should not be legally binding – i.e. this commitment should merely be a transparency commitment, rather than an implementation commitment.

2.33 The Parties also welcome the CMA’s “*open[ness] to considering the precise specification of the Year 1 commitment*” given the integration challenges. The Parties would propose reporting at Year 1 relating to activities that would be carried out in the early years and which “*ensure[s] day-1 benefits are delivered*” and can develop the precise specification further with Ofcom (*para. 1.301*), including by reference to the implementation of MOCN and activation of VUK’s 1800 MHz spectrum on 3UK sites.

Annual public reporting

2.34 The Parties accept the proposal in the RWP for a separate commitment to publish its progress against the Network Commitment annually – as audited by a monitoring trustee (*para. 1.302*). For the avoidance of doubt, this would be on the basis that this would not amount to a legal breach of the Network Commitment, in the unlikely event that these annual progress expectations were not met. Rather, the purpose of the public annual progress reports would be to make stakeholders aware of the Merged Entity’s progress assessed against expectations, in addition to the detailed non-public reports the Merged Entity would already provide to Ofcom three times a year.

2.35 The Parties also accept the RWP’s proposal that this annual public report should include output measures, assessed against expectations (*para. 1.306*). The Parties will engage with Ofcom to agree an appropriate set of output measures that would meet the objective of the annual progress reports while avoiding the disclosure of any competitively sensitive information. For example:

- (i) The Parties currently provide input and certain output data as part of the Connected Nations reporting, detailed in the table below. Ofcom uses this data (alongside crowdsourced information) to report on coverage and key network performance metrics in its annual Connected Nations report, which also includes metrics for each MNO. Therefore, the following output measures in Ofcom’s Connected Nations report will be available.

¹⁹[REDACTED].

²⁰ The Parties do not consider “the market” needs a detailed view on the progress of MergeCo’s joint network roll-out.

Table 2.1
Output measures in Connected Nations reporting to Ofcom

Ofcom request	Data Provided	Frequency
Connected Nations M01	Coverage data by technology and spectrum bands – Ofcom uses this data to assess geo, technology-specific, indoor/outdoor coverage, based on their defined signal strength threshold	Three times a year
Connected Nations M02	For each site in the network – location, technology, deployed spectrum, data and voice call volumes.	Once a year
Connected Nations FWA	Average Max peak download speed for each customer (it is not possible to report this for all customers due to data quality issues)	Currently three times a year but from 2025 onwards it will be twice a year

- (ii) To the extent the CMA and/or Ofcom consider it necessary, the Parties would additionally propose reporting annually against further output measures relating to speed and coverage, and can develop the precise specification further with Ofcom.

Circumvention risks

- 2.36 The Parties note that the RWP identifies a number of circumvention risks that could undermine the effectiveness and risk profile of the Network Commitment (*para. 1.313*). The Parties consider these identified circumvention risks can be mitigated through appropriate specification. The Parties address each of the circumvention risks identified in the RWP in turn below.

Cure period

- 2.37 As noted in para. 2.20 above, the RWP considers there should be no cure period specified in the remedy.
- 2.38 As explained in paras. 2.22 to 2.24 above, the Parties could dispense with the cure period and guard rails proposed, provided the commitment acknowledges in an appropriate way that, in determining whether a breach has occurred, any shortfall from unforeseen events outside the Parties' control must be excluded.

Rural commitment

- 2.39 The RWP (and PFs) provisionally find that there is a greater commercial incentive to retain sites in urban areas than rural areas. Whilst the Parties disagree with this assessment, the Parties welcome that the RWP recognises that the Parties' proposal to commit to a specific site roll-out in rural areas is appropriate and addresses this identified risk (para. 1.313(b)).

Types of spectrum band deployed

- 2.40 The RWP finds that the type of spectrum bands deployed will affect the capacity in an area and the coverage. The RWP also states that Ofcom believes 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. The Parties can [REDACTED] the inclusion of this requirement in the Network Commitment (para. 1.313(c)).
- 2.41 The Parties also agree with the suggestion 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*" (para. 1.313(c)).

Type of technology

- 2.42 The RWP notes that Ofcom believes the Parties "*could use cheaper microcells, the performance of which put the benefits of the Network Commitment at risk*". Ofcom suggests 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) (para. 1.313(d)).
- 2.43 [REDACTED].²¹ [REDACTED].

Distortion risks

- 2.44 The Parties agree with the RWP's finding that the Network Commitment is not likely to lead to costly market distortions (paras. 1.315-1.317).

Conclusion

- 2.45 The Parties agree that the Network Commitment is an enabling measure that delivers a structural change to the UK's mobile market, leaving market outcomes to be determined by the competitive process without further intervention. The Parties believe that such a commitment (together with Beacon 4.1) would represent the most appropriate, effective and proportionate remedy, fully addressing the concerns provisionally identified, in both the short and long term. The Parties accept a number of the suggested adjustments set out in the RWP, including the proposed commitment to publish progress against the

²¹ [REDACTED].

Network Commitment annually. However, there are three important points raised in the RWP to which the Parties respond as follows:

- (i) In relation to the cure period and “guard rails”, whilst the Parties could dispense with them, provided the commitment acknowledges that, in determining whether a breach has occurred, any shortfall from unforeseen events outside the Parties’ control must be excluded.
- (ii) The Parties do not agree that the first legal milestone should occur as early as Year 1, however would commit to reporting publicly on progress against an appropriate Year 1 target (subject to removing information that is competitively sensitive).
- (iii) The Parties agree that it would be appropriate for Ofcom to take on a monitoring and enforcement role, [REDACTED].

3. TIME LIMITED RETAIL CUSTOMER PROTECTIONS

3.1 The Parties welcome the provisional finding in the RWP that the Network Commitment “*will, in time, lead to significant and long-lasting quality improvements in a way that positively affects customer experience*”, lead to a lower incremental cost of adding further capacity and fully address the SLC the CMA has 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*” (paras. 1.213-1.214 and 1.221). The pro-competitive rivalry enhancing efficiencies that result from the Transaction, the Network Commitment and Beacon 4.1 will have an immediate and enduring effect on the retail market. As the CMA has already recognised in its PFs, MergeCo will have “*the incentive (and ability) to deliver the so-called ‘Day 1’ benefits of a combination of MOCN and deployment of additional spectrum through sharing of the Parties’ combined holdings*”²² and that these benefits are “*likely to occur shortly after closing*”.²³ There is therefore no need for any additional retail customer protections, even on a time limited basis.

3.2 Notwithstanding the Parties’ view that Time Limited Retail Customer Protections are unnecessary, the Parties agree in principle with the view expressed in the RWP that Time Limited Retail Customer Protections would provide additional protection for retail customers during the initial years of the Parties’ JNP.

3.3 Therefore, the Parties submit that the scope of any Time Limited Retail Customer Protections should be focussed and time-limited, comprising:

- (i) a Pricing Cap Commitment: incorporating all standard Vodafone and Three PAYM SIMO, VOXI, and SMARTY tariffs with allowances under 20GB as at 12 September 2024;²⁴ and

²² PFs, para. 14.192.

²³ PFs, para. 14.197.

²⁴ Follow-up Remedies Submission, [REDACTED].

- (ii) a Social Tariffs Commitment: maintaining the comprehensive social tariffs currently offered by both VOXI and SMARTY.²⁵

3.4 The Parties agree with the view expressed in the RWP that to be effective, the Retail Customer Protections would need to target a “small” and “limited subset of tariffs” across VUK and 3UK’s main brands (*para. 1.372 and 1.374*). The mix of tariffs would need to be a limited number of tariffs across the brands to “keep the protections simple, easy to understand for customers and manageable” (*para. 1.374*).

3.5 In this section, the Parties respond to the view expressed in the RWP that:

- (i) the Retail Customer Protections should include protected tariffs which comprise a mix of tariffs that are “popular, competitively priced and span different data allowances” (*para. 1.424*); and
- (ii) the Parties should offer a transparency requirement in the undertaking which covers the type of information that needs to be displayed and ensure it is displayed consistent with the disclosure principles set out in the RWP via suitable distribution channels (*para. 1.401*).

Tariff mix

3.6 In the Parties’ Follow-up Remedies Submission of [REDACTED] (“**Follow-up Remedies Submission**”), the Parties proposed a mix of tariffs which account for all Vodafone and Three PAYM SIMO, VOXI, and SMARTY standard tariffs under 20 GB (replicated in **Table 3.1** below). These tariffs fully meet the RWP’s requirement of being “popular, competitively priced and span different data allowances, across the Parties’ various brands” (*para 1.424*). The Parties also agree that the Time Limited Retail Customer Protections must be scoped in a manner that avoids potential market distortion risks. The tariffs proposed by the Parties have therefore been carefully scoped in order to provide a range of competitively priced tariffs and data allowances across the relevant brands while avoiding any significant market distortion.

Table 3.1: Proposed tariffs subject to 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		

²⁵ NOPR Response, para. 5.17.

Brand	Type of tariff	Price	Tariff duration	Data allowance	Voice minutes and texts
		£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		
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	

Notes:

[1] Table 3.1 contains standard tariffs only (i.e. it excludes any time-limited discounts or promotions, which would not be fixed as part of the pricing cap commitment).

[2] Table 3.1 excludes the separate commitment the Parties have proposed to maintain social tariffs for 3 years. This additionally comprises VOXI for Now (which is £10 per month on a rolling 30-day fixed-term plan for unlimited 5G-ready data, calls and texts for six months) and SMARTY's social tariff (which is £12 per month for unlimited UK calls, texts and 5G-ready data on a rolling monthly plan).

[3] 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 full compliance with Ofcom's latest applicable regulations.

[4] Note that 3UK's 1-month 1 GB tariff was not available as at 12 September 2024 and therefore has been excluded from the list of proposed protected tariffs in Table 3.1.

- 3.7 The tariffs in Table 3.1 meet the RWP's requirements for the Pricing Cap Commitment for the following reasons:

The proposed tariffs cover several popular tariffs representing an appropriate proportion of the Parties' customer bases

- (i) The Parties provided data in the Follow-up Remedies Submission to demonstrate that there are currently [REDACTED] million customers on Vodafone and Three PAYM SIMO, VOXI, and SMARTY tariffs up to 20 GB ([REDACTED] million VUK customers and [REDACTED] million 3UK customers) which represents a significant proportion ([REDACTED]%) of the combined current Vodafone and Three PAYM SIMO, VOXI, and SMARTY bases.²⁶
- (ii) Self-evidently, these are popular tariffs with the Parties' respective customers and their inclusion in the Pricing Cap Commitment will ensure that some of the Parties' most popular tariffs will remain available to new and existing customers at their competitive price points. The Pricing Cap Commitment is also restricted to a limited number of tariffs to ensure that this remedy is simple, easy to understand and manageable for customers, the Parties and the CMA.

The proposed tariffs ensure a wide range of customer preferences are covered

- (iii) As explained in the Follow-up Remedies Submission, the data allowances covered in the Pricing Cap Commitment are both wide-ranging and generous and cater to a wide range of customer preferences. The data allowances covered by the proposed tariffs are well in excess of average customer use of data across the market as Ofcom data from 2023 shows that the average customer across the UK mobile market used 9.9 GB of data per month.²⁷
- (iv) In Ofcom's data from June 2023, the median data usage of UK consumers was 2.7 GB per month and 75% of UK consumers use 8.7GB or less per month.²⁸ This demonstrates that the Parties' proposed tariffs for the Pricing Cap Commitment – which cover a range of data allowances under 20 GB – would comfortably cover the current data usage of the vast majority of consumers in the UK.
- (v) The Parties agree with the RWP that including PAYM handset, pure PAYG and data only tariffs would be “*markedly more complex*”, and result in specification, practicality and circumvention risks (*paras 1.373 and 1.375*).²⁹ Inclusion of these tariffs would also increase the potential distortion risk unnecessarily by fossilising what is offered today and stifling the dynamic process whereby players innovate new types of tariffs to replace old tariffs. As the CMA has identified, the Pricing

²⁶ See the Follow-up Remedies Submission dated [REDACTED]. The Parties provided further data in response to RFI [REDACTED].

²⁷ Excluding M2M. [Ofcom's Communications Market Report 2024: Interactive data](#), last accessed 8 November 2024.

²⁸ Ofcom's report on [Monitoring Consumer Outcomes in the Mobile Sector](#), page 15, last accessed 8 November 2024.

²⁹ Follow-up Remedies Submission, [REDACTED].

Cap Commitment would still provide downward pricing pressure on these tariffs as it would provide an anchor for the Parties' broader tariff portfolio (*para. 1.375*).

The proposed tariffs provide a competitively priced offering

- (vi) As Table 3.1 above demonstrates, the proposed tariffs for the Pricing Cap Commitment guarantee that customers continue to have access to low prices for a range of data allowances, contract types and tariff durations. New and existing MergeCo customers would have access to data allowances ranging from 1GB to 20GB per month (plus unlimited voice and text) for as little as £6-£10 a month. The PFs identified that “3UK consistently offers lower-priced tariffs out of the MNOs”³⁰ and therefore the Parties' commitment to freeze Three and SMARTY prices under the Pricing Cap Commitment will effectively commit MergeCo to continue with this approach, thereby delivering the Time Limited Retail Customer Protections that the CMA seeks.

This group of tariffs would exert a constraint on the Parties' other tariffs

- (vii) As recognised at para. 1.370 of the RWP, by protecting a selection of tariffs, the Pricing Cap Commitment would also “provide a constraint on the price of the Parties' other tariffs” as mobile operators consider how tariffs are positioned in relation to each other when setting tariffs. As explained in the Parties' Follow-up Remedies Submission, the Parties offer a “ladder” of tariffs, with prices gradually increasing as the data allowance increases. Customers typically compare the price of tariffs a level or two both above and below the tariff with the data allowance they are initially drawn to. The tariffs included in the Pricing Cap Commitment therefore “anchor” the rest of the Parties' tariffs not included within the commitment, whilst leaving enough flexibility for the Parties to change and innovate on tariffs with higher data allowances.

Customers will continue to be able to take advantage of new and better tariffs

- (viii) The Parties agree with the view in the RWP that offering these protected tariffs to both existing and new customers will not prevent customers from getting better deals or disincentivise the Parties from offering them (*para. 1.405*). In particular:
- (a) The Parties would still be obliged to notify consumers of the “best tariff” available to them at the end of their contracts under Ofcom's end of contract notification requirements.
- (b) The Parties will be able to offer cheaper tariffs than those listed in Table 3.1, including for short-term trading offers / promotions, which ensures that customers can benefit from even better deals, without sacrificing the protections offered by this commitment.

³⁰ PFs, para. 8.194(a).

3.8 Overall, the Time Limited Retail Customer Protections would directly benefit millions of customers:

- (i) The Pricing Cap Commitment benefits new and existing MergeCo customers for a period of three years, using offers in place on 12 September 2024, and incorporating all standard Vodafone and Three PAYM SIMO, VOXI, and SMARTY tariffs with allowances under 20GB.
- (ii) The Social Tariffs Commitment would protect customers who are least able to afford mobile services.

Duration and timing: a three-year period for the Time Limited Retail Customer Protections would “strike an appropriate balance”

3.9 The Parties agree that a three-year period strikes an appropriate balance in terms of costs and risks and could be conditional on completion of the Year 3 milestone for the Network Commitment (*paras. 1.383 and 1.385*).³¹ As the RWP states, “*the impact of the Network Commitment and Beacon 4.1 will have begun to have a material positive effect on competition at that point*” (*para. 1.381*). As set out in PCEP2, the bulk of MergeCo’s capacity and coverage benefits will be realised in the first few years.³² The Parties consider that, once the Year 3 milestone has been reached, any SLC in the retail market will be fully offset. By Year 3, significant improvements to MergeCo’s network coverage, reliability and capacity will have been delivered and the benefits of Beacon 4.1 on VMO2’s network quality and capacity will have been effective for three years (*para. 1.382*).

3.10 The Parties also note that, as the CMA recognises, the WRO (discussed in section 4 below) will continue to have a positive impact on the retail market even after the Time Limited Retail Customer Protections have come to an end on the completion of the Year 3 milestone (*para 1.384*). By linking the Time Limited Retail Customer Protections to the Year 3 milestone for the Network Commitment, release from the Retail Customer Protections is conditional upon delivery of the pro-competitive effects of the JNP (*para. 1.381*).

Practicality: monitoring and enforcement would be practical

3.11 The Parties agree with the RWP finding that, by limiting the Retail Customer Protections to a subset of tariffs, the monitoring would be practical (*para. 1.389*). The Parties also agree with the RWP proposal to arrange for a monitoring trustee to monitor compliance with the following measures on a regular basis (*para. 1.389*):³³

- (i) The protected tariffs remain on the market and available to consumers.

³¹ Follow-up Remedies Submission, [REDACTED].

³² PCEP 2, [REDACTED]; and see RWP, para. 1.54.

³³ This proposal is consistent with the Parties’ submission in the NOPR response, para. 5.6.

- (ii) The protected tariffs are displayed “*clearly and prominently*” (*para. 1.389*) – see from *para. 3.13* below for further detail on the Parties’ response to the RWP’s proposed display requirements.
- (iii) A dispute resolution process is set up and the disputes are settled fairly and quickly (see from *para. 3.20* below for further detail on the Parties’ response to the RWP’s proposed dispute resolution requirements).

3.12 The Parties commit to providing the monitoring trustee the information that they consider necessary to monitor compliance with the retail protections (*para. 1.392*).³⁴

Specification: promotion and disclosure requirements will ensure the protected tariffs are accessible

Protected tariffs will be displayed clearly to all customers

3.13 The CMA has proposed that the tariffs protected under the Retail Customer Protections are promoted and made available in a way that supports and enables customers to make informed decisions, including by ensuring that these are visible to current and potential customers (*para. 1.400*).

3.14 The Parties agree to incorporate a transparency requirement in the undertaking to display the protected tariffs clearly and prominently on their websites to ensure that customers can access and are aware of these tariffs, including by (*paras. 1.401-1.402*):

- (i) displaying the protected tariffs on the Parties’ websites correctly, in plain language and in a manner that is not misleading to customers;
- (ii) presenting information relating to the protected tariffs in a way:
 - (a) to enable consumers to easily identify, read and understand relevant information concerning the protected tariffs;
 - (b) that is clearly visible in each location it is displayed or that is directly accessible on the Parties’ websites; and
 - (c) that it is not obscured by other information shown to consumers such as, but not limited to information displayed in signs, banners and as pop-up text and images.

3.15 These requirements are consistent with the Parties’ existing practices regarding the publication and display of standard tariffs on their websites – see examples at Figures

³⁴ NOPR Response, *para. 5.27*.

3.1 and 3.2 below. The Parties would continue to offer time-limited promotions and discounts separately.

Figure 3.1: Screenshot of tariffs displayed on the 3UK website (as at 10 November 2024)

SIM Only deals

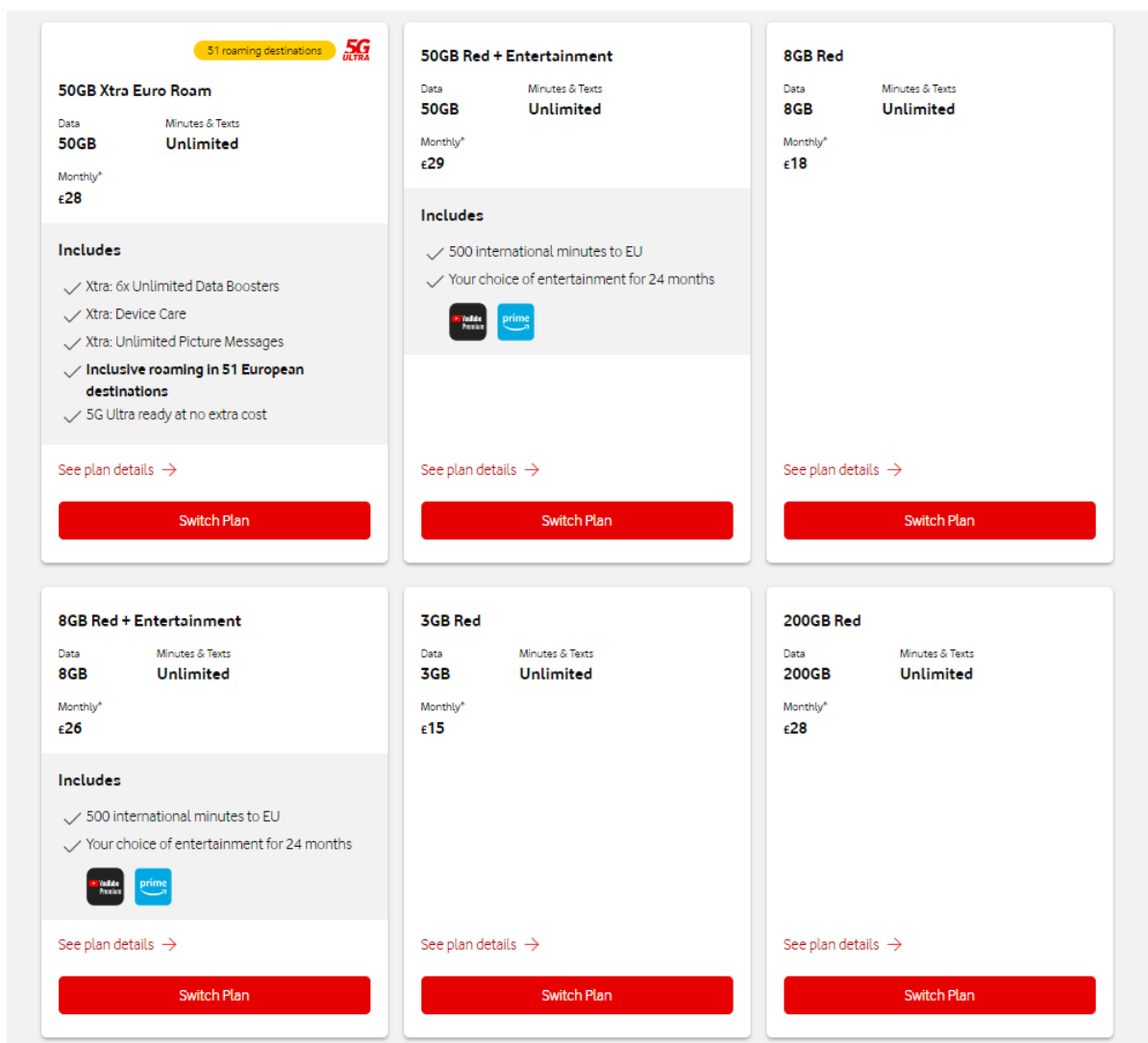
Happy with the handset you have but looking for a great SIM Only deal? At Three we've got a range of fantastic SIM Only packages - with 30-day, 12 and 24 month contracts and Pay As You Go across 5G SIMs, Unlimited Data SIMs and more.

Pay Monthly [Pay As You Go](#)

[View Pay Monthly SIM plans](#)

Plan Name	Contract Type	Price	Offer
Unlimited data	24 month plan	£13.00 a month for 6 months	6 months half price
25GB data	24 month plan	£7.00 a month for 6 months	6 months half price
4GB data	24 month plan	£5.50 a month for 6 months	6 months half price
120GB data	24 month plan	£16.00 a month	£8 for the first 6 months
250GB data	24 month plan	£20.00 a month	£10 for the first 6 months
12GB data	24 month plan	£12.00 a month	£6 for the first 6 months

Figure 3.2: Screenshot of tariffs displayed on the VUK website (as at 11 November 2024)



3.16 The CMA states that the protected tariffs should be “available on Price Comparison Websites” (*para. 1.389(b)*). PCWs are third party search engines operating as commercial entities which have affiliate marketing arrangements with retail operators whereby retail operators pay PCWs to display their tariffs. The tariffs published on PCWs are therefore not a complete overview of the tariffs available in the market but are driven by the commercial arrangements agreed between PCWs and retail operators (for example, BTEE is not promoted on Uswitch or Compare the Market).³⁵ Therefore, PCWs do not operate as a neutral, consumer-focussed body, such as *Which?*

3.17 The tariffs displayed on PCWs, and the manner in which they are published, are ultimately determined by the PCWs themselves and are the outcome of commercial agreements with retailers. For example, PCWs will determine the ranking of tariffs and can choose to delist tariffs, notwithstanding that commercial agreements are in place, which do not

³⁵ https://www.uswitch.com/mobiles/compare/sim_only_deals/ee_network/ (accessed 10 November 2024).

deliver expected commercial performance via click-through and sale conversion rates given that PCW revenues are primarily derived from these click-throughs. Therefore, the Parties cannot commit to the protected tariffs being published on PCWs (*para. 1.402*).

3.18 Additionally:

- (i) It is not clear which PCWs would be relevant to the proposed requirement at para. 1.425 of the RWP or how this would be appropriately determined. [REDACTED].
- (ii) Typically, only a [REDACTED] of each of the Parties' tariffs would be displayed on a PCW – the addition of each of the protected tariffs each week for three years would be a [REDACTED]. Requiring the Parties to commit to making available all protected tariffs on PCWs risks distortive effects in a competitively functioning retail market.
- (iii) Monitoring and enforcement of such a requirement would be complex as the tariffs displayed on PCWs change dynamically based on retail demand (i.e. whether they prove to be popular tariffs) and are linked to the separate commercial arrangements described above and ultimately determined by the PCWs.

3.19 On this basis, the display and promotional requirement for the protected tariffs must be limited to the Parties' websites. A requirement to promote and display the protected tariffs clearly and prominently on the Parties' websites can be designed such that it is simple, monitorable and enforceable, while ensuring customers have the information to make informed decisions (*para 1.400*). This, coupled with the specification measures committed to by the Parties in para. 3.13 - 3.15 above, will ensure the CMA's objectives are met.

Dispute resolution procedure

3.20 The Parties agree with the RWP's finding that there should be a dispute resolution process in place for customer disputes that are not resolved via internal processes and that this process should be readily accessible to customers (*paras. 1.393 and 1.404*). This procedure would be available where customers believe that MergeCo has:³⁶

- (i) wrongfully denied their access to the Retail Customer Protections; or
- (ii) not provided them with the correct contractual terms under one of the Retail Customer Protections.

3.21 The Parties are willing to commit to abide by any outcomes from the dispute resolution process (*para. 1.393*) and extend their contracts with one or both of their existing third party providers for their current dispute procedures: VUK currently uses the Communication & Internet Services Adjudication Scheme, while 3UK currently uses the Communications Ombudsman.³⁷ The Parties are willing to ensure that the contract

³⁶ NOPR Response, para. 5.29.

³⁷ NOPR Response, para. 5.30.

arrangement with the third party provider requires a regular summary report of complaints to be provided to the monitoring trustee (*para. 1.404*).

Circumvention risk: the ability of the Parties to raise other tariffs higher to compensate for the protected tariffs would be constrained

- 3.22 The Parties agree with the RWP's conclusion that the proposed retail commitment will not prevent customers from obtaining better deals, and neither will it disincentivise the Parties from offering better deals or new and innovative tariffs (*paras. 1.405 and 1.410*).
- 3.23 The Parties agree that only a selection of tariffs need to be protected (see *para. 3.4* above). As the RWP recognises, by protecting a selection of tariffs, this would still "*provide a constraint on the price of the Parties' other tariffs*" as mobile operators consider how tariffs are positioned in relation to each other when setting tariffs (*paras. 1.370 and 1.410*).

Conclusion

- 3.24 While the Parties consider that Time Limited Retail Customer Protections are unnecessary, the Parties nevertheless agree that, should the CMA consider them necessary, the Retail Customer Protections would complement the protections offered by the Network Commitment to enhance the effectiveness of the remedy package offered by the Parties (*para. 1.420*). The short-term nature of these protections will provide additional assurance that customers are protected during the initial years of the MergeCo JNP and limit any market distortion (*paras. 1.417 and 1.422*). The RWP sets out requirements which are consistent with the Pricing Cap Commitment and Social Tariff Commitment offered by the Parties, and the Parties are willing to commit to the requirements set out above in an undertaking.

4. TIME LIMITED WHOLESALE ACCESS TERMS

- 4.1 The Parties welcome the provisional conclusion in the RWP that the Network Commitment addresses the SLC provisionally identified in the wholesale market in the longer term.³⁸
- 4.2 As explained further in *para. 2.1* above, the pro-competitive rivalry enhancing efficiencies that result from the Transaction and the Network Commitment will have an immediate and enduring effect on the wholesale market in both the short and long term, such that there is no need for any additional protections in the wholesale market, even on a time limited basis.
- 4.3 Notwithstanding the Parties' view that Time Limited Wholesale Access Terms are unnecessary, the Parties agree in principle with the view expressed in the RWP 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*

³⁸ RWP, *para. 1.426*.

*by ensuring guaranteed access to the wholesale market on terms that enable MVNOs to compete effectively in the retail market”.*³⁹

4.4 The WRO proposed by the Parties will provide all MVNOs (regardless of size) with access to pre-defined, competitive wholesale terms.

(i) The WRO will be available for up to [15-20]% of the total capacity of the MergeCo network, sufficient to cover at least 4 million (and up to 10 million) end customers of MVNOs. This capacity limit does not prevent other MVNOs from separately negotiating wholesale agreements outside the WRO.

(ii) The WRO will be open to expressions of interest for three years post-completion, for a term of up to 5 years.

4.5 The Parties agree with the RWP on the following points and therefore do not address these further in this response:

(i) Capacity ring-fencing is not an appropriate remedy.⁴⁰

(ii) Wholesale Access Terms would: (i) 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’);⁴¹ (ii) be used by MVNOs to negotiate competing offers with other MNOs;⁴² and (iii) ensure, by means of the FPM, that pricing and terms do not become outdated.⁴³

(iii) Release from the WRO is conditional on achievement of the Year 3 milestone for the Network Commitment. At Year 3 of the JNP, the Network Commitment and Beacon 4.1 will have had a material positive effect on competition such that any SLC is fully offset and Wholesale Access Terms would no longer be required.⁴⁴

(iv) The WRO term strikes an appropriate balance in terms of costs and risks in respect of the (i) three year period (with MVNOs able to take up the WRO by the fourth year post-completion provided they have registered an expression of interest within the first three years post-completion),⁴⁵ and (ii) each MVNO being able to contract for up to five years.⁴⁶

³⁹ RWP, para. 1.467.

⁴⁰ RWP, para. 1.434. NOPR Response, paras. 7.1 – 7.19; Parties’ response to the CMA’s RFI [REDACTED].

⁴¹ RWP, para. 1.469(a). NOPR Response, paras. 6.25 to 6.31; Parties’ response to the CMA’s RFI [REDACTED]; Parties’ response to the CMA’s RFI [REDACTED].

⁴² RWP, para. 1.469(b): Remedies Letter, [REDACTED].

⁴³ RWP, para. 1.469(c). NOPR Response, paras. 6.30 to 6.31; Parties’ response to the CMA’s RFI [REDACTED].

⁴⁴ RWP, para. 1.480.

⁴⁵ RWP, para. 1.482.

⁴⁶ RWP, para. 1.483.

- (v) Oversight of Wholesale Access Terms can be managed by a monitoring trustee that reports to the CMA and those requirements can be specified sufficiently so that monitoring and enforcement need not be prohibitively complex.⁴⁷ Further, given that the WRO would be on offer for a limited time period, any residual monitoring and enforcement risks are likely to be limited.⁴⁸
- (vi) The distortion risk profile of Wholesale Access Terms, as identified by the CMA, is acceptable given the limited duration, together with the proposed monitoring and enforcement process.⁴⁹
- (vii) Specification risks can be appropriately managed in the design of the Undertakings.⁵⁰

4.6 The Parties agree with the RWP's conclusion that the *"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"*.⁵¹

4.7 In the following sections, the Parties:

- (i) address the changes the CMA considers are required to the specification of certain WRO 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;⁵² and
- (ii) provide the CMA with further information on the WRO elements identified at para. 1.518 of the RWP.⁵³

⁴⁷ RWP, para. 1.485. The mechanics of the monitoring trustee process are explained at NOPR Response, paras. 6.36 to 6.38.

⁴⁸ RWP, para. 1.486.

⁴⁹ RWP, para. 1.504. Distortion risks are also unlikely to arise because the pricing under the WRO will be subject to an NDA: NOPR Response, para. 6.28.

⁵⁰ RWP, para. 1.492.

⁵¹ RWP, para. 1.507.

⁵² RWP, para. 1.474.

⁵³ RWP, para. 1.518.

The CMA's proposed specification changes to the WRO

- 4.8 The RWP considers changes are required to the specification of certain WRO terms to ensure that this measure (alongside the Network Commitment) is effective in addressing the adverse effects of any SLC in the wholesale market in the short term.
- 4.9 The Parties address each of those proposed changes set out at para. 1.474 of the RWP in turn below.

Speed tiering limit and parity of access

- 4.10 The WRO contains extensive non-discrimination and service equivalence terms: as the Parties submitted in the NOPR Response, MergeCo will supply the same quality of service, technical operational and performance standards and coverage to MVNOs in respect of the MVNOs' customers as MergeCo does to MergeCo's own customers and to those of other MVNOs on the MergeCo network, including with respect to suspension of services for maintenance (including repairs, upgrades and modifications to the MergeCo network) and emergencies.⁵⁴
- 4.11 Within that context, the RWP records that the WRO should not contain a speed tiering limit and should provide parity of access to MergeCo's network.⁵⁵ The WRO proposal put forward by the Parties does not prevent MVNOs accessing speeds higher than 150Mbps, instead it contained a commitment to offer higher speeds with prices to be negotiated separately with MVNOs. However, to address the RWP's concerns, the Parties could remove any perceived limit to higher speeds from the WRO by specifying the pricing structure in the WRO for speeds above 150 Mbps, with a [REDACTED] premium on the standard prices (as summarised in **Table 4.1** below). This is intended to be reflective of the arrangements that already exist in [REDACTED] existing MVNO contracts with [REDACTED] ([REDACTED]). The Parties do not consider this speed tiering would limit the competitiveness of MVNOs under the WRO.

Table 4.1: Year 1 MVNO pricing per Tier

Tier	MVNO customer base	Per GB pricing		Unlimited price per subscriber ⁵⁶	
		Speeds up to 150 Mbps	Speeds above 150 Mbps	Speeds up to 150 Mbps	Speeds above 150 Mbps
Tier 1	Less than 0.5 million customers	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Tier 2	0.5 million – 1.0 million customers	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

⁵⁴ NOPR Response, para. 6.12(iii).

⁵⁵ RWP, para. 1.474(a).

⁵⁶ See para. 4.28 below for further details on the proposal for a separate unlimited price per subscriber.

Tier	MVNO customer base	Per GB pricing		Unlimited price per subscriber ⁵⁶	
		Speeds up to 150 Mbps	Speeds above 150 Mbps	Speeds up to 150 Mbps	Speeds above 150 Mbps
Tier 3	More than 1.0 million customers	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Dispute resolution

4.12 The RWP considers that MVNOs with concerns that the Parties are not complying with the WRO measures should have the ability to access a dispute resolution process swiftly.⁵⁷ The proposed dispute resolution procedure will require a prescribed adjudication process and timeline to be followed and ensure swift resolution of any disputes. In summary:

- (i) MVNOs will have immediate access to the dispute resolution process where certain disputes arise, such as disputes regarding the eligibility of an MVNO to access the terms in the WRO, determining whether a refusal by MergeCo to provide access is a breach of the WRO, or determining whether all of the individual WRO terms have been offered during negotiation of the MVNO agreement.⁵⁸ The CMA could also include disagreement as to prices in the list of issues that could be subject to immediate fast-track adjudication.⁵⁹
- (ii) For other disputes, if MergeCo and an MVNO have not agreed upon the terms of a wholesale agreement within a period of 5 months,⁶⁰ the MVNO will have access to the WRO's fast-track dispute resolution process. The Parties consider five months to be an ambitious (but achievable) target; in their experience, initial commercial negotiations typically involve 3 – 6 months for the technical evaluation, followed by up to 6 months for the contracting phase.⁶¹

4.13 Given the views expressed in the RWP,⁶² the Parties could amend the fast-track dispute resolution procedure proposed in the NOPR Response by appointing an independent

⁵⁷ RWP, para. 1.474(b).

⁵⁸ NOPR Response, para. 6.43; Parties response to the CMA's RFI [REDACTED]; and Follow-up Remedies Submission, [REDACTED].

⁵⁹ Follow-up Remedies Submission, [REDACTED].

⁶⁰ Starting from MergeCo's receipt of the written request from the MVNO that they want to contract with MergeCo under the terms of the WRO, and provided that the CEO of MergeCo and the MVNO have not resolved the matters in dispute within 4 weeks of the matter being escalated to them in writing by either party.

⁶¹ Follow-up Remedies Submission, [REDACTED].

⁶² RWP, para. 1.474(b).

commercial arbitrator at the outset. The arbitrator would be pre-approved by the CMA and available to adjudicate on any WRO-related disputes as necessary.

Providing existing MVNOs the option to retain terms

- 4.14 The RWP considers that the Parties' existing MVNOs – 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.⁶³

Rollover is unnecessary to meet the CMA's objectives for time-limited wholesale protections

- 4.15 As outlined in the Follow-up Remedies Submission, the Parties do not believe that such an expansion is required or practicable. The CMA provisionally accepts that the WRO "would prevent harm accruing to MVNOs in the short term by ensuring guaranteed access on the wholesale market **on terms that enable MVNOs to compete effectively in the retail market**"⁶⁴ (emphasis added). The WRO is open to all of the Parties' current MVNO customers and new MVNOs. On this basis, the WRO is already a fully effective remedy.

- 4.16 The purpose of the time limited WRO is to provide fallback protection for MVNOs which can be assured that they will be able to access competitive terms to be hosted on MergeCo's network for the short time period that the CMA has identified such fallback protection is necessary. The WRO is designed to work with the grain of the competitive process and to encourage MVNOs to negotiate with other host networks as well as MergeCo. It is not, and should not be used, to preserve any particular existing contractual framework for the benefit of one particular MVNO. Indeed, there is no obligation on MVNOs only to seek access under the WRO and they are free to seek to negotiate different terms with MergeCo, safe in the knowledge that they can always fall back on the WRO terms if necessary.

- 4.17 The Parties therefore consider the WRO to be the only appropriate remedy to address any residual short term SLC concern identified by the CMA in the wholesale market. It guarantees the continued availability of competitive pricing to MVNOs, and underpins MVNOs' abilities to offer highly competitive pricing to end consumers, addressing any 'residual' concerns in the retail market. The WRO would not be unduly complex to implement, would standardise and simplify negotiations, and there are a number of precedents for similar remedies. This contrasts with any supplemental commitment to rollover wholesale agreements, which would be highly impracticable and result in number of distortion risks which are set out further below.

Rolling over wholesale agreements would be highly impracticable and result in distortion risks

- 4.18 In addition to being unnecessary, the suggestion in the RWP is not practicable. Wholesale agreements evolve over time and – should the MVNO customers wish to continue with

⁶³ RWP, para. 1.474(c).

⁶⁴ RWP, para. 1.467.

their existing host MNOs – are typically renegotiated prior to contract expiry,⁶⁵ such that giving MVNOs the choice of contracting on their current terms (i.e. contract “rollover” of existing terms)⁶⁶ [REDACTED] arises in practice. The CMA appears to recognise this in saying that there should be a “future-proofing” mechanism. It is not clear what such a mechanism would be, apart from necessitating a negotiation between MergeCo and the MVNO, and to which terms it would apply. Many terms of wholesale agreements are closely interrelated as part of striking an overall commercial bargain between the parties; and are not suitable to be rolled over and would in any event need to be renegotiated.

4.19 The proposal to rollover existing contracts would therefore give rise to several unintended consequences and therefore wholesale market distortions:

- (i) MVNO contracts are of significant duration – three to five years is common. Rolling over existing terms equates to maintaining terms negotiated a number of years previously, at a time when both commercial and market circumstances will almost certainly have been different. Existing terms almost certainly include commercial requirements that are no longer relevant, for example terms reflecting the cost of migration for the MVNO and the benefits for the MNO of moving traffic to its network. Consequently, the Parties have [REDACTED] rolled over an MVNO contract on the same terms as when it was first entered into. Rollover gives rise to distortive effects by fossilising historical agreements as it will not reflect the market conditions that currently exist in the market.⁶⁷
- (ii) Wholesale agreements will require renegotiation in relation to key commercial terms post-Transaction. This includes circumstances where formulae or mechanisms have been put in place to calculate key terms for the duration of the existing contract but which cannot be subsequently applied to MergeCo, as well as terms where there are figures with no formulae or mechanism underpinning them which cannot therefore be easily replicated without specific negotiation. For example:
 - (a) In respect of 3UK’s wholesale contract with [REDACTED].
 - (b) 3UK’s wholesale contract with [REDACTED] includes [REDACTED].
 - (c) 3UK’s wholesale contract with [REDACTED] includes [REDACTED].
 - (d) For [REDACTED] current contract with VUK, [REDACTED].
 - (e) Similarly, VUK’s contracts with eSIM Go and Gigs have minimum revenue commitments and volume bonuses which would be inappropriate and illogical to apply several years after their signing as they would likely have revised growth ambitions having entered into the market and gained

⁶⁵ For example, [REDACTED].

⁶⁶ RWP, para. 1.474(c).

⁶⁷ By way of example, a longer term rollover of 3UK’s wholesale contract with [REDACTED] would risk [REDACTED].

further experience – potentially revising their offerings and advanced their competitive position.

- (f) There are a number of other terms for which automatic rollover would not be appropriate, including parity of network access, which would be benchmarked to the standalone 3UK or VUK network and customers, and would need to be revised to apply to MergeCo as network integration occurs.
 - (iii) While the WRO would be available to all MVNOs, a provision requiring MergeCo to roll over certain terms would only be available to the few MVNOs with existing contracts with the Parties and may therefore have distortive effects on MVNO competition in the downstream retail market. The terms of these contracts may also have been driven by particular circumstances that no longer prevail and so their continuation would distort competition between MVNOs.
- 4.20 The Parties would be happy to discuss this further with the CMA and Ofcom to explain why there is no material risk for any of the Parties' existing MVNOs during the first three years.

Simplifying the onboarding limit

- 4.21 The CMA considers that the 'onboarding' limit should be simplified, so that MergeCo 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'.⁶⁸
- 4.22 The Parties welcome the RWP's recognition that a cap is essential from a practical and execution perspective, as it takes material operational, IT and network resources to onboard each MVNO. The technical and integration work to onboard "full" or hybrid MVNOs (including the first-time setup of an MVNA) typically takes [REDACTED], including secure transport connectivity, core network integration and extensive testing.⁶⁹ By comparison, the onboarding process is simpler for "light" MVNOs that wish to be onboarded using an already-integrated MVNE partner – like Vodafone's [REDACTED] or Three's [REDACTED] platforms.⁷⁰ These pre-configured platforms limit the technical implementation requirements to onboarding small MVNOs.⁷¹
- 4.23 It follows that whether an MVNO is "full" or "light" is a critical distinction. Therefore, the Parties cannot simplify the onboarding limit in the way that the RWP suggests, as MergeCo's process for onboarding light MVNOs – i.e. those integrated within the [REDACTED] or [REDACTED] platforms – is significantly less resource intensive than

⁶⁸ RWP, para. 1.474(d).

⁶⁹ Follow-up Remedies Submission, [REDACTED].

⁷⁰ Follow-up Remedies Submission, [REDACTED].

⁷¹ Follow-up Remedies Submission, [REDACTED].

the equivalent process for full MVNOs, which requires significant network integration and extensive testing.

4.24 Given the different resource requirements to onboard full MVNOs compared to those that use an integrated MVNE partner, the Parties could simultaneously onboard up to 10 MVNOs (or MVNAs), comprising:⁷²

- (i) up to eight Tier 1 light MVNOs that want to be onboarded through Vodafone's [REDACTED] or Three's [REDACTED] platforms; and
- (ii) up to two other MVNOs or MVNAs not falling within the above category (i.e. MVNOs in Tiers 2 or 3, or MVNOs which are full/hybrid MVNOs, or MVNOs which do not want to be integrated via Vodafone's [REDACTED] and / or Three's [REDACTED] platforms, or MVNAs).

4.25 Moreover, this cap is already set very high. Over the last five years, the Parties themselves have not come close to meeting this cap: the most MVNOs they have won in a given year since 2018 is [REDACTED].⁷³ More broadly, the Parties understand based on publicly available information that BTEE has won 5-6 light MVNOs a year over the same period, and never more than two full MVNOs a year. Indeed, there are only a few full MVNOs in the UK (for example, Sky Mobile, Tesco Mobile and Lyca Mobile), so the cap is highly unlikely to restrict MVNOs seeking access to MergeCo's network.⁷⁴

4.26 In these circumstances, the Parties believe that their proposed onboarding limit is appropriate and not unduly restrictive.

Making the three-year term conditional on satisfying Network Commitment measures

4.27 As outlined in the Follow-up Remedies Submission and at para. 4.5(iii) above, the Parties are willing to offer the WRO until the CMA is satisfied that the Merged Entity has met its obligations under the Network Commitment at the agreed 'Year 3' milestone.⁷⁵

Pricing of unlimited data tariffs

4.28 The RWP considers that the Parties' existing 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.⁷⁶

4.29 The Parties do not consider that the proposed unlimited pricing option would involve significant costs for MVNOs. To the contrary, at £[REDACTED] per subscriber for each tier, all MVNOs, regardless of size, would be able to offer unlimited packages returning a healthy commercial margin. As set out in response to the Parties' response to the CMA's

⁷² Follow-up Remedies Submission, [REDACTED].

⁷³ Confidential Annex [REDACTED].

⁷⁴ Merger Notice, [REDACTED].

⁷⁵ RWP, para. 1.474(e). Follow-up Remedies Submission, [REDACTED].

⁷⁶ RWP, para. 1.474(f).

RFI [REDACTED], the Parties have estimated that if an MVNO charges £20.83 (excluding VAT) per month for an unlimited tariff (i.e. at a £25 retail price including VAT), which is the current average retail price to customers for unlimited bundles, it will achieve a £[REDACTED] profit per unlimited subscriber.⁷⁷ This makes the £[REDACTED] offer highly competitive, enabling MVNOs to achieve a commercially attractive profit margin of [REDACTED]%⁷⁸ whilst still offering competitively priced unlimited contracts. This pricing will remain competitive over time as the £[REDACTED] offer would be subject to a downwards [REDACTED] FPM to ensure that MVNOs are protected from market pricing changes and retain the margin outlined above.

- 4.30 As set out in the Remedies Letter, in order to ensure that the MVNO is incentivised to deal with any customer misuse of the network, the £[REDACTED] per subscriber rate applies for usage of up to [REDACTED]% of the average usage of MergeCo's Unlimited customers on a pooled basis across the customer base of the MVNO in question (with any incremental usage above this threshold charged at a rate of [REDACTED]p per GB).
- 4.31 In light of the concerns set out in the RWP, the Parties propose expanding the unlimited pricing usage threshold to [REDACTED]%. Based on current usage, this would mean that MVNOs pay £[REDACTED] per unlimited subscriber up to a threshold of [REDACTED]GB per month each (on a pooled basis) which is well in excess of the [REDACTED].⁷⁹ The incremental usage charge would remain at [REDACTED]p per GB above this threshold.
- 4.32 Therefore, a fixed unlimited pricing option in the WRO almost entirely removes the MVNOs' risk of offering unlimited data contracts on the retail market: MVNOs do not need to accurately estimate their customers' data usage in unlimited tariffs – which can be challenging given the de facto potential for unlimited consumption – in order to price all tariffs across their portfolios in order to earn an attractive return. It therefore protects the attractive profit margin MVNOs can achieve on these contracts which will ensure that MVNOs are able to compete effectively with unlimited data contracts in the retail market.

The CMA's requests for further information

- 4.33 To assist the CMA, the Parties provide further information on the following topics where the RWP invites views in respect of Time Limited Wholesale Access Terms.

Overall approach of offering a single per-GB price to an MVNO based on its number of subscribers

- 4.34 The RWP invites views on the overall approach of offering a single per-GB price to an MVNO, based on its number of subscribers, and how pricing could be structured to allow

⁷⁷ Parties' response to the CMA's RFI [REDACTED].

⁷⁸ Parties' response to the CMA's RFI [REDACTED].

⁷⁹ [REDACTED].

for MVNOs to compete effectively in high-data package segments, including the 'unlimited' data segment.⁸⁰

- 4.35 The WRO sets out pricing tiers which are competitive and therefore sufficient for MVNOs to achieve a healthy margin and compete effectively. The pricing tiers are based on [REDACTED].⁸¹ The pricing tiers reflect the fact that the [REDACTED].⁸²
- 4.36 The WRO pricing tiers have therefore been structured with three tiers of MVNOs based on subscriber numbers (less than 0.5 million subscribers, 0.5 million – 1 million subscribers and 1 million plus subscribers), [REDACTED] for each tier. An MVNO can profitably and competitively offer a range of tariffs to the market (including unlimited tariffs) with a [REDACTED] under the WRO pricing.
- 4.37 In addition, to further enable MVNOs to compete effectively in high-data package segments, including the 'unlimited' data segment, the Parties' proposed WRO includes an option for a separate £[REDACTED] per subscriber unlimited wholesale price. As discussed at paras. 4.29 to 4.32 above, this pricing option will enable MVNOs to offer competitively priced unlimited data contracts profitably. As set out in further detail at para. 4.31, MVNOs will face no further costs for unlimited data customers, except if their unlimited data customers' usage exceeds [REDACTED]GB per month each on a pooled basis (i.e. more than [REDACTED] the average usage of MergeCo's unlimited data customers), and even then the incremental usage is charged at a highly competitive [REDACTED] per GB. Given how high the cap is set, the Parties do not consider it impedes the competitiveness of MVNOs in higher data segments – rather, it merely ensures the MVNO is incentivised to deal with any customer misuse of network access.

FPM

- 4.38 The RWP invites views on 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.⁸³
- 4.39 The Parties have set out their detailed proposal for the FPM in response to the NOPR and Question [REDACTED] of RFI [REDACTED]. The Parties propose that the FPM should be based on a usage-based reference margin calculated using MergeCo's ARPU, MergeCo's average monthly data usage per user, and the relevant MVNO's wholesale

⁸⁰ RWP, para. 1.518I(i).

⁸¹ Parties' response to the CMA's RFI [REDACTED].

⁸² Parties' response to the CMA's RFI [REDACTED].

⁸³ RWP, para. 1.518(c)(ii).

rate and operate on a strictly downwards [REDACTED] basis⁸⁴ (with a separate downwards [REDACTED] FPM applying for unlimited subscribers⁸⁵).

- 4.40 As the Parties observed in the Follow-up Remedies Submission, [REDACTED] the FPMs in [REDACTED] MVNO contracts are anchored against [REDACTED] ARPU (with some [REDACTED] exceptions). The Parties consider that anchoring the FPM against MergeCo's ARPU both reflects what is most typically used in existing [REDACTED] contracts and ensures the WRO rates remain competitive. In turn, the FPM ensures that MVNOs remain competitive and resilient amidst evolving market conditions, as MergeCo's own ARPUs reflect prevailing competitive conditions and any changes in the broader competitive retail market.⁸⁶
- 4.41 By contrast, market-wide (or value brand) ARPU and data usage trends are not publicly available whereas MergeCo's ARPU data is readily verifiable by a monitoring trustee.⁸⁷

Time period for MVNO to receive access to new technology

- 4.42 The RWP invites views on the time period over which MVNOs should receive access to new technology.⁸⁸
- 4.43 Under the WRO, 5G SA will be available to MVNOs hosted on MergeCo's network at the same time as 5G SA is enabled on MergeCo's network.⁸⁹
- 4.44 Other new technology, including new technology for which MergeCo has yet to plan, will be made available to MVNOs under the WRO. To account for any technical work that MergeCo – and the MVNO itself – may need to undertake to make that technology available to MVNOs, the WRO provides MergeCo with a short [REDACTED] month window to complete the technical enabling and validation work.⁹⁰
- 4.45 For example, there is extensive technical work required to enable key services such as VoLTE, VoWiFi and eSIM in terms of network architecture, design, testing and integration, followed by extensive customer experience and regulatory compliance validation (e.g. billing accuracy, emergency services, location services, etc.). While a proportion of this enabling work is done by the host MNO, the MVNO must undertake a similar level of testing, and the MNO and MVNO must jointly conduct end-to-end validation. There is a

⁸⁴ Parties' response to the CMA's RFI [REDACTED]; Follow-up Remedies Submission, [REDACTED].

⁸⁵ Parties' response to the CMA's RFI [REDACTED].

⁸⁶ Parties' response to the CMA's RFI [REDACTED]. Follow-up Remedies Submission, [REDACTED].

⁸⁷ Parties' response to the CMA's RFI [REDACTED].

⁸⁸ RWP, para. 1.491.

⁸⁹ NOPR Response, para. 6.11.

⁹⁰ Follow-up Remedies Submission, [REDACTED].

further layer of complexity when, as is often the case, the MNO and MVNO use different technology vendors.

- 4.46 As the RWP notes, the length of delay before MVNOs have access to new technology varies, with most of the Parties' contracts committing to providing MVNOs with access to new technology without any specified timeframe.⁹¹ In these circumstances, the WRO provision is intended to codify (and therefore limit) what is a reasonable period to both negotiate any new access terms and charges and complete the technical integration.⁹² The Parties also note that, [REDACTED], VUK is required to make [REDACTED] available [REDACTED] within [REDACTED] of it being available to customers on VUK's consumer price plans. This is [REDACTED] than the Parties have proposed including in the WRO, which applies to all technologies, demonstrating that the [REDACTED] months is an ambitious period of time to specify in the WRO.

Appropriate timescales for dispute resolution

- 4.47 The RWP invites views on the appropriate timescales for dispute resolution.⁹³
- 4.48 As set out above at para. 4.12(ii), five months is an ambitious (but achievable) target; in the Parties' experience, initial commercial negotiations typically involve 3 – 6 months for the technical evaluation, followed by up to 6 months for the contracting phase.⁹⁴

Impact of the approach to minimum revenue commitment

- 4.49 The RWP invites views on how the approach to the minimum revenue commitment ("MRC") could impact MVNOs or the effectiveness of the WRO.⁹⁵
- 4.50 MRCs are necessary to demonstrate the MVNO's commitment and support for their business case, to incentivise their growth and to recover part of the associated implementation costs.⁹⁶
- 4.51 The Parties' proposed MRC, and its structure, is competitive based on prevailing market pricing. The Tier 1 MRC, for example, matches [REDACTED],⁹⁷ [REDACTED].
- 4.52 The MRC has been calculated on a conservative basis and cannot be used to increase the effective price of the WRO or prevent MVNOs from taking up the WRO:
- (i) A Tier 1 MVNO would only need ~25,000 subscribers to meet the Year 1 MRC of £[REDACTED] million – based on a conservative estimated monthly cost per subscriber of £[REDACTED] per month.

⁹¹ RWP, para. 1.471. As set out in the Follow-up Remedies submission, for access to new technology, each of VUK's existing contracts with [REDACTED], as discussed in para. 4.46). For 3UK's existing contracts, [REDACTED].

⁹² Follow-up Remedies Submission, [REDACTED]; and see the Parties' response to the CMA's RFI [REDACTED].

⁹³ RWP, para. 1.518(c)(iii).

⁹⁴ Follow-up Remedies Submission, [REDACTED].

- (ii) The Year 1 MRC for both Tier 2 and 3 MVNOs (~£[REDACTED]m and ~£[REDACTED]m respectively) are calculated on a highly conservative basis by taking the lowest number of subscribers possible for each pricing tier (500,000 and 1 million subscribers respectively) and applying a conservative cost assumption of £[REDACTED] per subscriber per month. Therefore, the MRC for both Tiers 2 and 3 is set at the minimum level expected for the number of subscribers that the MVNO would require to fall within Tiers 2 or 3.

Proposed limit on the number of MVNOs that can be onboarded at any one time

- 4.53 The RWP invites views on the appropriateness of the proposed limit on the number of MVNOs that can be on-boarded at any one time, including the Parties' proposed approach to this given the practical challenges of on-boarding multiple MVNOs simultaneously.⁹⁸
- 4.54 As set out above at para.4.22, the Parties consider the proposed limit is necessary from a practical and execution perspective, as it takes material operational, IT and network resources to onboard each MVNO.⁹⁹

Conclusion

- 4.55 The Transaction, Beacon 4.1 and the Network Commitment will have immediate and profound pro-competitive effects in the wholesale market. The Parties agree that a Wholesale Access Terms measure, like the WRO, would be effective in addressing any residual concerns about short-term adverse effects in the wholesale market.¹⁰⁰ The WRO provides a comprehensive and effective means to prevent any harm to MVNOs by guaranteeing access to pre-defined, competitive terms, enabling them to continue to compete effectively.
- 4.56 The Parties have considered the feedback in the RWP suggestion that certain areas of the WRO be clarified or amended to reduce specification risks. The Parties consider that the amendments and further clarifications set out above ensure that the WRO will

⁹⁵ RWP, para. 1.518(c)(v).

⁹⁶ Parties' response to the CMA's RFI [REDACTED]. As explained in para. 6.12(v) of the NOPR Response, implementation costs would be borne by the MVNO with a minimum of 50% of these being paid upfront and the remainder being offset against the MRC.

⁹⁷ Parties' response to the CMA's RFI [REDACTED].

⁹⁸ RWP, para. 1.518(c)(vi).

⁹⁹ Follow-up Remedies Submission, [REDACTED]; Parties' response to the CMA's RFI [REDACTED].

¹⁰⁰ RWP, para. 1.473.

comprehensively and effectively address residual concerns in the wholesale market.

5 PROPORTIONALITY AND RCBS

RCBs must be recognised and included in any assessment of the cost of prohibition

- 5.1 The Parties strongly agree with the CMA's provisional finding that the Network Commitment, supported by the Time Limited Protections, is a less intrusive and more proportionate remedy than prohibition of the Transaction, i.e. the alternative remedy option considered by the CMA (*para. 1.573*).
- 5.2 Nonetheless, the Parties consider that, contrary to the proportionality assessment in the RWP, the Transaction generates significant RCBS that must be taken into account when assessing the costs of prohibition. In particular, the CMA provisionally finds that:
- (i) neither the full extent of the in-market benefits nor the out-of-market benefits identified by the Parties meet the test to qualify as RCBS under s.30(3) of the Act (*para. 1.558-1.561*); and
 - (ii) the costs associated with prohibition are therefore limited (*para. 1.569*).
- 5.3 The Parties consider that the Transaction delivers substantial in-market RCBS within the meaning of the Act, even on the basis of the network improvements that the CMA accepts as likely, namely the 'Day 1' benefits resulting from the Parties' network integration (*para. 1.218*).¹⁰¹ The Parties have shown that these mobile connectivity improvements will have a real-life impact on the everyday mobile experience of millions of MergeCo and VMO2 customers.
- 5.4 The CMA accepts that "*many of the [out-of-market] benefits claimed by the Parties in respect of 5G SA and FWA could accrue, with significant positive impact on UK consumers*" (*para. 1.560*) but suggests it has not seen "sufficient evidence" regarding their nature or scale, or to demonstrate that they may be expected to accrue within a reasonable time period. The Parties consider that the nature and extent of the substantial evidence they have provided clearly meets the applicable standard of proof in light of the CMA's decisional practice.
- 5.5 The cost of prohibition as an effective remedy cannot be considered as "limited". Indeed, in the early years, millions of MergeCo and VMO2 customers would lose out on key network improvements. This is the huge cost of prohibition, compared to the limited monitoring and reporting costs of the Network Commitment and the Time Limited Protections.
- 5.6 Without a competitive environment with three scaled MNOs able and incentivised to invest fully in mobile networks, UK customers will not get the full transformational benefits which would result from the Transaction and a high competition, high-investment equilibrium. Instead, in the counterfactual, UK consumers and businesses would remain

¹⁰¹ Parties' response to the PFs, Annex 3, paras. 14.195-14.199.

exposed to the current low investment environment with the poor network connectivity that it delivers relative to international peers, to the detriment of the UK economy.

5.7 This section is structured as follows:

- (i) Part 1 briefly recaps the significant RCBs that the Transaction will deliver;
- (ii) Part 2 sets out the legal test for RCBs under the Act and explains how each of the benefits meets it; and
- (iii) Part 3 explains that, once RCBs are properly accounted for, there is a highly compelling reason to select the Network Commitment supported by the Time Limited Protections as the appropriate remedy, and prohibition would be manifestly disproportionate.

Part 1: the Transaction gives rise to significant RCBs

5.8 As the Parties have previously submitted,¹⁰² the Transaction will lead to wide-ranging customer benefits generating billions of pounds of value to UK customers.

5.9 There are three main categories of RCBs that will accrue from the Transaction in the short term through to the long term:

- (i) improved mobile connectivity (referred in the RWP as the “**improved mobile connectivity RCB**”);
- (ii) accelerated access to new and advanced 5G use cases (referred in the RWP as the “**5G use cases RCB**”); and
- (iii) expanded and improved FWA proposition (referred in the RWP as the “**FWA RCB**”).

Improved mobile connectivity

5.10 The PFs and RWP recognise that quality is an important competitive parameter and customers would react strongly to a deterioration in network quality: 60% of 3UK customers and 65% of VUK customers surveyed by the CMA would switch if their network was “*a bit less reliable*” (*paras. 1.177 – 1.178*). Network quality is a key driver of customer dissatisfaction with mobile services.

5.11 Prohibition of the Transaction would have severe adverse effects on the development of competition in the retail and wholesale mobile services markets as the UK’s mobile

¹⁰² The RCBs Submission ([REDACTED]), the Without Prejudice Network Commitment Proposal ([REDACTED]), the NOPR Response ([REDACTED]), and the RCBs Presentation ([REDACTED]). In the RWP, the CMA notes that based on its revised merger simulation model, the estimated consumer loss in a no efficiencies scenario has reduced by more than £100m compared to the estimates presented in the PFs (i.e. £216 million versus £328 million per year). Further, the Parties have set out their estimated consumer welfare benefits of £672m when accounting for quality related REEs, which further increases to £1.2 billion when considering both quality and costs REEs. These estimates are based on the sample correction described in Annex 4 of the Parties’ response to the PFs.

markets would remain trapped in a low investment, low competition equilibrium. This equilibrium has resulted in the unsatisfactory position facing the UK today – millions of customers are unable to use their mobile devices properly due to significant congestion or lack of 4G / 5G coverage. The UK ranks 22nd out of 25 European countries for 5G availability and download speeds and has the slowest data download speeds in the G7.¹⁰³

- 5.12 Put simply, the prevailing conditions of competition are not good enough to meet the significant future needs of customers in the UK, and the counterfactual without the Transaction is weaker competition with declining network quality and poorer user experience. As recognised by Ofcom, and noted in the RWP, it is likely that in the counterfactual “3UK may curtail investment, with the result that it is likely to be a less strong competitor in future” (para. 1.194). It is notable that in August the Government awarded a £1.85 billion contract to BTEE for the Mobile Emergency Services Network without a competitive tender due to the inadequate network quality and coverage of the three other MNOs.¹⁰⁴
- 5.13 In relation to 5G, also tracked by Ofcom, there is a deep urban-rural digital divide in the UK: currently, 5G connectivity is almost completely absent across all rural areas in the UK, leaving 99.4% of rural constituencies (approx. 4.87 million people) either: (i) without any 5G coverage from any operator (a total not spot); or (ii) limited access to 5G coverage, i.e., access from one or more operators but not all (a partial not spot). This compares to 66.2% of not-spots (total and partial) in urban constituencies.¹⁰⁵
- 5.14 The Transaction will provide higher quality services to MergeCo’s customers as a direct consequence of the JNP, representing £1.8 billion of value from improved mobile connectivity.¹⁰⁶
- 5.15 Additionally, customers will experience further benefits (not captured in the £1.8 billion estimate) when VMO2 and BTEE accelerate investments in their mobile networks post-Transaction due to the incentives created by the need to respond to: (i) the roll-out of MergeCo’s best-in-class network; and (ii) the Beacon 4.1 Long-Form Agreements between VMO2 and the Parties. As a result, all customers in the UK – not just MergeCo’s customers – can be expected to benefit from meaningful quality improvements and better mobile connectivity post-Transaction.

Unlocking 5G use cases

- 5.16 MergeCo’s enhanced network capabilities will unlock and support the deployment of a wide range of 5G use cases spanning numerous verticals and sectors of the UK economy, including healthcare, media/entertainment, public safety, energy and utilities, rural industries, retail and hospitality, smart urban, transport, and manufacturing logistics and

¹⁰³ OpenSignal, [Mobile network speeds leaped ahead 2023, but some markets lag behind](#), 1 February 2024.

¹⁰⁴ GOV.UK, ESMCP – Mobile Services Agreement for the Emergency Services Network, 31 July 2024.

¹⁰⁵ See further the Parties’ submission on the Impact of the Transaction on customer experience, [REDACTED].

¹⁰⁶ For more details, see RCBs Submission, section 3.1.

distribution. 5G use cases will generate positive and significant benefits in terms of productivity gains and cost savings. For example:

- (i) Healthcare: 5G will transform how healthcare is delivered in the UK as it will enable remote patient monitoring, better administering of medication, and wider use of smart-health devices and sensors. This will drive huge productivity benefits, improve patient outcomes, and save money for local councils and the NHS. It is estimated that the NHS could save £1 billion annually from 5G roll-out across the UK.
- (ii) Rail and road transport: 5G will enable the rollout of technology to improve productivity, save time in commuting and better manage the traffic. Specifically:
 - (a) 5G sensors on trains could recover 2.6 hours per rail commuter per year and save £440 million in lost productivity;
 - (b) 5G enabled road management systems could save the UK economy £880 million per year; and
 - (c) a recent trial of 5G technology by Transport for London reduced traffic delays by 20%.
- (iii) Energy: 5G powered technology will enable improvements in productivity as well as significant savings in public spending:
 - (a) 5G smart grids are forecast to increase productivity by £3.4 billion annually. 5G sensors fitted along the grid will help detect and respond to spikes in demand, reducing the chance of blackouts. In 2015, the UK experienced 533 hours of blackouts, costing £23.4 billion in lost productivity; and
 - (b) 5G smart street lighting could save £700 million over 5 years in the UK, with the potential to cut CO2 emissions by 1 million tonnes over the same timeframe.
- (iv) Small businesses: it is estimated that SMEs are missing out on up to £8.6bn per year from the UK's slow 5G-SA rollout. Deploying 5G SA at speed, and accelerating the development of the technology it enables, would lead to a collective saving of over 37.7 million working hours a year across the SME sector. This would deliver £112 million in annual productivity savings.¹⁰⁷

Materially improved FWA proposition

- 5.17 The Transaction will also expand and improve the Parties' FWA proposition through MergeCo's greater capacity and coverage. Greater 5G C-band coverage and cell density will provide customers with faster and more reliable FWA connections at competitive

¹⁰⁷ For more details, see RCBs Submission, [REDACTED]; RCB Presentation, [REDACTED].

prices - the JBP conservatively forecasts [REDACTED] FWA customers by 2032.¹⁰⁸ The Transaction enables FWA to become more widely available, and given that the majority of 3UK's FWA customers are presently located in areas already served by ultrafast broadband, this is a clear indication that 5G FWA is an attractive alternative to fixed broadband services even where these are available.¹⁰⁹ In particular, FWA has very material benefits relative to fibre to the home services ("FTTH"), adding to its attractiveness to consumers:¹¹⁰

- (i) FWA has very competitive pricing and is a genuine value proposition compared to fixed broadband services;
- (ii) FWA does not require physical cable installations and can be installed more quickly than wired services (without the need for a landline or engineer). All that is needed for FWA is a router, which will often be sent by post and set up by the user;
- (iii) FWA provides fast broadband where there is no physical infrastructure for fixed connections (or where it would be difficult) and provides high, reliable speeds;
- (iv) FWA offers a higher degree of flexibility as compared to wired connections, with users often taking their FWA router to locations other than their homes; and
- (v) Unlike FTTH, FWA offers do not require long-term contracts (which can be a barrier for low-income customers).

Part 2: the RCBs meet the criteria of the Act

5.18 In relation to an anticipated merger, s.30 of the Act sets out that a benefit qualifies as an RCB if the following three cumulative criteria are fulfilled:

- (i) it benefits relevant customers in the form of lower prices, higher quality, greater choice of goods or services in any market, or greater innovation in relation to such goods or services (s.30(1) and s.30(4) of the Act);
- (ii) the benefit may be expected to accrue within a reasonable period as a result of the creation of the merger (s.30(3)(a) of the Act); and
- (iii) the benefit is unlikely to accrue without the creation of the merger or a similar lessening of competition (s.30(3)(b) of the Act).

5.19 The CMA provisionally finds that both in-market and out-of-market benefits are capable of meeting the requirements in s.30(1)(a) and s.30(4) of the Act, as they would benefit relevant customers in the form of "*lower prices, higher quality or greater choice of goods*

¹⁰⁸ For more details, see RCBs Submission, [REDACTED].

¹⁰⁹ See Parties' response to the PFs, Annex 3, para. 3.27(i).

¹¹⁰ RCBs Submission, [REDACTED]; RCB Presentation, [REDACTED].

or services... in the UK... or greater innovation in relation to those goods or services” (para. 1.558 and 1.559).

- 5.20 However, the CMA provisionally finds that “the extent” of the claimed mobile connectivity benefits may not meet the causality test (*para. 1.558*) under s.30(3)(a) and questions whether the out-of-market benefits satisfy certain of the requirements under s. 30(3)(a) and (b). These are each considered in turn below.

In-market benefits

Section 30(3)(a) of the Act: the improved connectivity RCB “is expected to accrue as a result of the creation of the relevant merger situation concerned”

- 5.21 In a recent decision, the CMA stated its position that, to satisfy the causal requirement in section 30(3)(a), the CMA must “*believe that the benefit may be expected to accrue as a result of the enterprises ceasing to be distinct*”.¹¹¹

- 5.22 The Parties have explained that in their view the improved mobile connectivity RCB meets this requirement:¹¹²

(i) The JNP / JBP deliver the combination of the Parties’ businesses – i.e. their “ceasing to be distinct”. Whereas in other industries, the combination of two businesses might occur over a short period (e.g. merging two staffing groups / brands could occur nearly instantly), the process of combining two large infrastructure businesses will necessarily occur over several years, involving many complex steps. The network integration, i.e. the delivery of the JBP / JNP, is a description of these very steps. The JBP / JNP are therefore not only causally connected to the combination of the Parties’ businesses – they, in fact, describe this process of combination.

(ii) As explained in the RCBs Submission (section 4.1), MergeCo’s “best-in-class” network will be the foundation for all the RCBs (including 5G use cases and improved FWA proposal), given the extended coverage and improved network capabilities.

- 5.23 However, the CMA holds that “*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)*” (emphasis added) (*para. 1.558*).

- 5.24 The Parties understand that the CMA has arrived at this position on the basis of its provisional finding (in the context of assessing rivalry-enhancing efficiencies) 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*

¹¹¹ Final Report, *Microsoft Corporation / Activision Blizzard, Inc.* [2022] ME/6983/22 para. 11.154. See also the more general discussion of the three elements of section 30 from paras. 11.148 to 11.161.

¹¹² See also [REDACTED] Network Commitment Proposal, [REDACTED].

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” (emphasis added) (para. 1.557).

5.25 Notwithstanding the Parties’ position that the benefits MergeCo would deliver through the full implementation of the JBP (as underwritten by the Network Commitment) should be taken into account, the failure to give full weight to the materiality of the RCBs in the RWP is itself inconsistent with the PFs accepting that some of the key network improvements are likely to be delivered absent any commitments (even if not to the full extent set out in the JBP). Specifically, in the PFs, the CMA considered that MergeCo will have the incentive and ability to deliver the early years benefits through a combination of:

- (i) “Easy” MOCN;
- (ii) the deployment of additional spectrum through sharing of the Parties’ combined holdings (e.g. in relation to 1800 MHz spectrum);
- (iii) site densification; and
- (iv) the spectrum transfer to VMO2 agreed through Beacon 4.1.

5.26 Although these key network improvements are recognised as a result of network integration and Beacon 4.1, and are therefore likely, the CMA did not attempt to quantify them. The Parties have in fact demonstrated that these early years benefits are timely, at least material and will have a real impact on everyday customer experience for millions, as also recognised by Ofcom in the RWP:

- (i) In the months after completion of the Transaction, MOCN implementation will occur and VUK’s 1800 MHz spectrum will be made available to 3UK’s customers, resulting in at least seven million 3UK customers experiencing improved mobile connectivity compared to the counterfactual. This was acknowledged by Ofcom in the RWP, where it stated *“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” (para. 1.206).*
- (ii) The largest capacity uplift will be delivered in Year 1, by when the number of congested MergeCo sites will fall by between [REDACTED]% and the share of MergeCo customers served by congested sites will fall by [REDACTED]%.¹¹³ This is equivalent to approx. [REDACTED] million fewer customers experiencing congestion in the first year compared to the counterfactual.¹¹⁴
- (iii) Congestion will continue to fall sharply over the early years. Today, c. [REDACTED] 3UK and VUK customers receive speeds below 1 Mbps every day, meaning they struggle to access basic web services (e.g. reading BBC news, using navigation maps, getting an Uber, using messenger services, accessing online banking etc). Following the Transaction, by the end of the first 12 months,

¹¹³ This is measured using a 5 Mbps threshold during the busy hour. PCEP 2, para. 1.7 (a).

¹¹⁴ RCBs Submission, para. 113(a).

this number will fall by [REDACTED]% to [REDACTED], with a [REDACTED]% reduction by Year 8.¹¹⁵ By Year 4, the number of congested MergeCo sites is projected to fall by [REDACTED]% (from [REDACTED] to [REDACTED]).¹¹⁶ This is equivalent to approximately 5.3 million fewer customers experiencing congestion by Year 4.¹¹⁷

- (iv) The Parties estimate that the JNP will eliminate 25% of the uncovered area of each of VUK's and 3UK's networks, with geographic coverage increasing from 88% to 91% from Day 1 and a further increase to over 94% by the end of Year 3.¹¹⁸ This will bring greater reliability for customers. Ofcom confirmed that customers in low and medium traffic areas *"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 also unlock latent demand from those who choose to not attempt to use mobile in areas where it is (currently) unreliable"* (para. 1.208).

5.27 As these benefits flow directly from the delivery of the "best network" REEs and constitute a key driver of improved mobile connectivity for customers (and even on the CMA's interpretation will arise absent any commitments), they qualify as RCBs under the legal framework set out in the Act, including under s. 30(3)(a). Their omission in the RWP is erroneous and inconsistent even with the CMA's own analysis in the PFs where it recognised that the Parties will have the commercial incentives to deliver the early years benefits, regardless of any commitments.¹¹⁹

5.28 The Parties further note that the finding that in-market RCBs may not materialise in full appears to sit at odds with the analysis of out-of-market RCBs. Given that all three categories of RCBs derive from the implementation of the JBP/JNP, it does not seem logical that mobile connectivity RCBs would not fully accrue as a result of the merger due to the Parties' lack of incentives to deliver the JBP, whilst the other two categories of RCBs would be more likely to accrue.

5.29 The Parties have previously submitted why the CMA's finding of a lack of incentives to deliver the JBP in full is incorrect. In summary, there are strong commercial incentives for the Parties to pursue a best-in-class network strategy and these incentives are contractually reinforced.¹²⁰

5.30 With reference to *"cost savings that can be realised through site decommissioning"*, the RWP appears to refer to the concern set out in the PFs *"that the Parties may have the commercial incentive to retain a lower number of sites than claimed"* and that *"this*

¹¹⁵ Parties' response to the CMA's RFI [REDACTED].

¹¹⁶ PCEP 2, para. 1.7(b).

¹¹⁷ RCBs Submission, para. 113(a).

¹¹⁸ PCEP 2, para. 1.15.

¹¹⁹ PFs, paras. 14.190-14.194.

¹²⁰ RCBs Submission, [REDACTED]; Parties' response to the PFs, Annex 3, section 3; and NOPR Response, paras. 2.40-2.43.

incentive may be particularly strong in low and mid traffic areas, where the impact on network congestion of the site decommissioning may be less [...].¹²¹ This concern is unfounded for the following reasons:

- (i) Removing existing sites where customers are already served and downgrading network quality represents a reputational risk. As smaller grids ¹²² likely result in a loss of existing coverage, the Parties would be strongly disincentivised from scaling back in these areas due to the risks of reputational damage. The RWP itself acknowledges that “*it is rare for MNOs to remove or reduce coverage or capacity by decommissioning sites that they have invested in*” (para. 1.247(a)); and
- (ii) The RWP’s concern does not acknowledge the logic at the heart of the Parties’ plans: when carrying out a full-scale network integration, the optimal strategy is to deliver a “future proof” network robust to uncertainties over future rates of traffic growth and the magnitude of potential competitive responses from rivals. Given that the additional costs of retaining and future proofing sites are relatively low, any costs saved at this stage by scaling back would be more than offset by the cost of finding new and/or upgrading existing sites in the future.¹²³

Out-of-market benefits

Section 30(3)(a) of the Act: the 5G use cases and FWA RCBs are “expected to accrue within a reasonable time”

- 5.31 By contrast to the in-market RCBs, the CMA provisionally considers it “*possible that many of the benefits claimed by the Parties in respect of the 5G SA and FWA could accrue, with significant positive impact on UK consumers*”, but queries whether they have been sufficiently evidenced or demonstrated to arise within a reasonable time period (para. 1.560).
- 5.32 In relation to the temporal element of s. 30(3)(a) of the Act, as per the CMA’s previous decisional practice,¹²⁴ what constitutes a “reasonable period” will be assessed on a case-by-case basis. For example, in the context of assessing RCBs, the CMA has previously noted that “*a large-scale building project or merger of a maternity or A&E service may reasonably require a longer implementation period – with benefits possibly not accruing to patients for a number of years – than a small project*”.¹²⁵ The Transaction is a clear example of a large-scale infrastructure project that necessitates a “longer implementation period”. Indeed, the CMA recognised at para. 1.216 of the RWP, as well as at para. 14.19

¹²¹ PFs, para. 14.185.

¹²² For example, Altman Solon explained to the CMA that the initially envisaged number of [REDACTED] sites resulted [REDACTED] – see Transcript of 3 June 2024 call between Altman Solon and the CMA, page 23. See PF Annex 3, para. 3.10.

¹²³ Parties’ response to the PFs, Annex 3, para. 3.4.

¹²⁴ Final Report, *Central Manchester University Hospitals/University Hospital of South Manchester*, [2017] ME/6653/16 para. 15.21.

¹²⁵ CMA Guidance on the review of NHS mergers, at para. 7.16.

of the PFs, that “investment in mobile networks requires a long-term perspective”. Accordingly, the Parties consider that all the relevant benefits deriving from the JBP / JNP accrue “within a reasonable period”.

- 5.33 In any event, as explained above and in the Parties’ previous submissions, a significant part of the network improvements, which are the foundation of the improved connectivity as well as the 5G use case and FWA RCBs, accrue within the early years following the completion of the Transaction, as acknowledged by the RWP and the PFs.¹²⁶
- 5.34 The RWP challenges the nature and scale of evidence provided to support these RCBs. However, in previous decisions, the CMA has accepted RCBs despite recognising that some uncertainty is inherent in any forward-looking estimation, and that a range of evidence, both qualitative and quantitative, must therefore be taken into account to approximate the importance of RCBs. For example:
- (i) The Competition Commission has accepted that a merger may lead to price savings for customers, without these being precisely quantified. In *Macquarie*,¹²⁷ the Competition Commission noted that the exact savings that would accrue to customers were “difficult to quantify”,¹²⁸ but accepted the parties’ claim that cost savings would be passed through to customers.¹²⁹ The Competition Commission concluded that despite the uncertainty with quantifying these cost savings, they were significant, likely to occur, and should be taken into account.¹³⁰
 - (ii) Where precise quantification is not possible, the CMA has previously presented the value of RCBs as a range. In *Macquarie*,¹³¹ the financial savings that would accrue to television customers were estimated as a “...range of £[] to £[]” to “reflect the uncertainty surrounding the value of the pass-through under the BBC contract provisions”.¹³² This uncertainty did not, however, result in the RCBs being disregarded altogether.
 - (iii) In some instances, the CMA has not found it necessary to quantify RCBs at all. In *Manchester Hospitals*,¹³³ the CMA considered that RCBs, in the form of improved patient outcomes, such that no remedy was imposed, despite declining to estimate the exact number of patients affected. On the contrary, the CMA concluded that a “significant number” of patients would be impacted, with the parties relying mainly on qualitative data, giving only broad estimates of the

¹²⁶ RWP, para. 1.218; and Parties’ response to the PFs, Annex 3, paras. 14.195-14.199.

¹²⁷ *Macquarie UK Broadcast Ventures Limited/National Grid Wireless Group (11.03.08)*.

¹²⁸ Final Report: *Macquarie UK Broadcast Ventures Limited/National Grid Wireless Group (para 10.13)*.

¹²⁹ Final Report: *Macquarie UK Broadcast Ventures Limited/National Grid Wireless Group (para 10.19)*.

¹³⁰ Final Report: *Macquarie UK Broadcast Ventures Limited/National Grid Wireless Group (para 10.13)*.

¹³¹ Final Report: *Macquarie UK Broadcast Ventures Limited/National Grid Wireless Group (para 10.12(a))*

¹³² Final Report: *Macquarie UK Broadcast Ventures Limited/National Grid Wireless Group (para 10.12(a))*

¹³³ Final Report: *Central Manchester University Hospitals and University Hospital of South Manchester (2017)*, at paras. 15.336 and 15.340.

numbers of patients who would benefit and providing quantitative evidence in only a subsection of instances.¹³⁴

- 5.35 The ample evidence the Parties provided both in terms of substantiating these RCBs, as well as quantifying them, goes above and beyond the evidentiary threshold previously applied by the CMA, as reiterated below.

RCB: access to new and Advanced 5G use cases

- 5.36 The CMA considers 5G use cases “*to be nascent*”, possibly capable of being “*significant*” and to “*generate significant benefits for the UK*”, but provisionally concludes that it has not seen sufficient evidence to support such a finding (*para. 1.560(a)*).

- 5.37 As explained above in *para. 5.16*, the Parties have provided extensive evidence on the nature and scale of 5G use cases to demonstrate these RCBs will generate significant value to UK customers as a realistic economic prospect, in line with Government studies as well as the Labour Manifesto.¹³⁵ Similarly, the Parties have demonstrated that these benefits will arise within a reasonable time horizon. As illustrated in the RCBs Submission:

- (i) Incremental revenue from Advanced 5G use cases are expected to materialise within three years following completion of the Transaction;
- (ii) [REDACTED]; and
- (iii) Advanced 5G use cases requiring broader coverage will begin generating incremental revenues from FY29. This is due to their dependence on expansive network reach, in contrast to the location-specific nature of the former use cases.

RCB: materially improved FWA

- 5.38 The CMA raises two concerns regarding the FWA RCB (*para. 1.560(b)*):
- (i) Size of the benefit: the overall size of the benefit appears “*small and may only accrue to a small proportion of the UK population*”;
 - (ii) Longevity of the benefit: over time the increasing data demand from non-FWA customers may reduce incentives to provide this service.

¹³⁴ *Ibid.*, see for example at *para. 15.335*.

¹³⁵ The Wireless Infrastructure Strategy states that “*By transforming our economy, widespread adoption of 5G can bring a cumulative productivity benefit of £159 billion by 2035, driving growth and inward investment, and improving lives for communities in every corner of the country*”. This ambition is echoed in the manifesto commitment of the Labour Government, elected on 4 July 2024, which reads: “*in an ever more connected world, Britain’s communication network is also vital. Under the Conservatives, investment in 5G is falling behind other countries and the rollout of gigabit broadband has been slow. Labour will make a renewed push to fulfil the ambition of full gigabit and national 5G coverage by 2030*” available at [Change-Labour-Party-Manifesto-2024-large-print.pdf](#) (accessed 7 November 2024).

5.39 These findings fail to acknowledge the real economic and welfare enhancing potential of FWA:

- (i) A significant number of customers will benefit nationwide. As the RWP acknowledges at para 1.554, the estimate that MergeCo will support [REDACTED] FWA customers is conservative. As noted in footnote 65 of the NOPR Response, this figure only focuses on the potential customers [REDACTED]. However, in practice, MergeCo's FWA offering will compete for customers in the broader fixed broadband market and will benefit from MergeCo's wider C-band footprint and lower congestion.
- (ii) Whilst the number of customers benefitting will be large (by Year 6, on a very conservative estimate, MergeCo will have an additional [REDACTED] FWA customers compared to 3UK's customer base,¹³⁶ it is also important to focus on the specific customer groups that might particularly benefit from an expanded FWA offering, such as rural and price-sensitive customers.
 - (a) MergeCo will extend 5G C-band further outside the major cities, which will enable FWA to be offered more widely than either Party could offer in the counterfactual,¹³⁷ benefitting customers in rural and otherwise less populated areas who are not currently served by FWA. This includes areas where FTTH has not currently been deployed.¹³⁸
 - (b) This is vastly different to the current situation, where VUK only has an FWA offering sold to a base of [REDACTED] subscribers¹³⁹ and 3UK only offers FWA [REDACTED].¹⁴⁰
 - (c) In the US, the significant benefits of FWA are clear. According to OpenSignal, FWA has accounted for all of the growth in broadband subscribers in the US since mid-2022.¹⁴¹ Significant uptake and growth in demand empirically demonstrates that FWA offers a viable and attractive solution for rural areas.
- (iii) Ultimately, faster rollout of 5G C-band will make it more likely that there will be sufficient capacity to offer FWA (specifically 5G FWA) in any locations covered by MergeCo's network rollout, bringing significant benefits nationwide.

¹³⁶ RCBs Submission, Timeline for Transaction RCBs, Figure 1.

¹³⁷ RCBs Submission, section 1.3, para. 12(iii).

¹³⁸ RCBs Submission, section 3.3, para. 49.

¹³⁹ Confidential Annex [REDACTED].

¹⁴⁰ RCBs Submission, section 3.3, para. 49.

¹⁴¹ OpenSignal, "5G Fixed wireless access (FWA) Success in the US: A roadmap for broadband success elsewhere?", 6 June 2024. 5G Fixed Wireless Access (FWA) Success in the US: A Roadmap for Broadband Success Elsewhere? | Opensignal, (accessed 19 July 2024). See also Leichtman Research Group: Fixed Wireless Services Accounted for 90% of the Broadband Net Adds in 2022! – Technology Blog (comsoc.org), (accessed 19 July 2024)

- (iv) Price-sensitive customers will benefit, given FWA's attractiveness as a genuine value proposition compared to fixed broadband services and increased flexibility in contract length (see above at para. 5.17).

Section 30(3)(b) of the Act: the 5G use cases are “unlikely to accrue without the creation of that situation or a similar lessening of competition”

5.40 In *Microsoft/Activision*, the CMA expressed its position that section 30(3)(b) “focuses on what might occur absent the creation of the RMS [relevant merger situation]. It asks whether the benefit might be achieved by some means other than the creation of the RMS or a similar lessening of competition.”¹⁴²

5.41 The CMA queries whether the 5G use cases RCB meets the test under section 30(3)(b) of the Act. In particular, the CMA suggests that “[t]here 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” (para. 1.561).

5.42 This is untenable given the evidence provided regarding the Parties’ capabilities and 5G rollout plans in the counterfactual. Operating a mobile network involves high fixed costs and, as recognised by Ofcom and the RWP, “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” (para. 1.191). Both VUK and 3UK on a standalone basis would lack the requisite capex to invest in the network improvements required to deliver the scale and quality of 5G technology that could sustain new use cases. In particular, to reiterate:

- (i) VUK: in the counterfactual, VUK would likely continue its limited and targeted rollout of 5G SA in a selection of densely populated urban areas, with no prospect of elevating 5G SA to a nationwide offering or a comprehensive solution for its business customers. As explained in the Response to the PFs and the Phase 1 Decision,¹⁴³ [REDACTED].
- (ii) 3UK: in the counterfactual, [REDACTED]. As explained in previous submissions,¹⁴⁴ [REDACTED] This was confirmed by Ofcom as well as by the RWP:
 - (a) “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” (para. 1.194).

¹⁴² Final Report, *Microsoft Corporation / Activision Blizzard, Inc.* [2022] ME/6983/22, para. 11.157.

¹⁴³ See 3UK’s response to the CMA’s RFI [REDACTED].

¹⁴⁴ Parties’ response to the PFs, Annex 3, para. 5.8(iv).

- (b) “[W]e consider that there is likely to 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” (para. 1.196).

Part 3: RCBs provide a highly compelling reason to select the Network Commitment supported by Time Limited Protections as the appropriate remedy; prohibition would be manifestly disproportionate

- 5.43 The CMA provisionally concludes that “neither remedy incurs significant costs when set against the adverse effects of the Merger” (para. 1.586). But even if the CMA does not accept that the Parties are incentivised to deliver the full JBP absent the Network Commitment, and has regard only to those benefits which would accrue in its absence, it is clear that there would be a very material cost to prohibition. The benefits “foregone”¹⁴⁵ would include the improved mobile connectivity and other RCBs deriving from “Day 1” / early years’ benefits, as recognised in the PFs and set out above.
- 5.44 This provides a highly compelling reason to prefer the Network Commitment supported by the Time Limited Protections, in addition to the fact that it is clearly less intrusive than prohibition, which would be manifestly disproportionate. The CMA should avail itself of the broad discretion afforded under s. 36(4) of the Act to bolster its decision on remedies accordingly.

6. CONCLUSION

- 6.1 The Parties remain firmly of the view that the Transaction would not result in a SLC in the retail or wholesale mobile services markets. Rather, the Transaction will unlock transformational investment in mobile network performance (both capacity and quality), which will provide substantial benefits to UK customers and enhance competitive pressure across the retail and wholesale mobile services markets.
- 6.2 Nevertheless, the Parties welcome the CMA’s recognition that the Network Commitment would fully address any SLC identified by the CMA in the longer term. The Parties agree with the CMA’s characterisation of this remedy as an “enabling measure” that “works with the grain of competition” to “deliver a structural change to the UK’s mobile networks, leaving market outcomes to be determined by the competitive process without further intervention” (para. 1.112).
- 6.3 As regards the Network Commitment, the Parties agree with the CMA that it is vital that the Network Commitment is appropriately designed to ensure that the remedy is effective, appropriate and proportionate. The Parties have responded to the CMA’s feedback and

¹⁴⁵ CMA Merger Remedies Guidance (CMA87), para. 3.10 and 3.16.

proposals in detail above and can accept most of the suggested adjustments set out in the RWP.

- 6.4 The Parties agree with the CMA's "[REDACTED]" (*para. 1.276*). [REDACTED].
- 6.5 The Parties believe that the Network Commitment (supported by the effects of the Beacon 4.1 arrangement with VMO2 – which is already akin to a wide-ranging structural remedy) would represent the most appropriate, effective and proportionate remedy, fully addressing the concerns provisionally identified, including in the short term. As such, the Parties do not agree that supplemental measures are required during the initial years of network integration.
- 6.6 However, as explained above, if necessary, the Parties could accept appropriately calibrated versions of the Time Limited Protections, which would be designed to fall away on meeting the Year 3 milestone for the Network Commitment. The Parties have responded in detail to the CMA's proposals and requests for feedback in this response. In particular:
- (i) **Time Limited Retail Customer Protections:** the Parties agree that, in order to be effective, the Pricing Cap Commitment would need to target a "*limited subset of tariffs*" across VUK's and 3UK's main brands (*para. 1.374*). The Parties believe that the mix of tariffs which they have put forward squarely meet the criteria set out in the RWP, qualifying as "*popular, competitively priced and span[ning] different data allowances*" (*para. 1.424*) and are willing to commit to displaying the protected tariffs clearly and prominently via their websites.
 - (ii) **Time Limited Wholesale Protections:** the Parties can make a number of adjustments as set out above. However, the Parties, disagree with the RWP's proposal of giving existing MVNOs the option to roll-over terms, which (i) is unnecessary to achieve the objectives of the Time Limited Wholesale Protections, (ii) is impracticable given the nature of wholesale agreements, and (iii) gives rise to distortive effects by artificially preserving terms for a small number of MVNOs.
- 6.7 The Parties strongly agree that the Network Commitment, supported by the Time Limited Protections, is a less intrusive and more proportionate remedy than prohibition (*para. 1.573*). The Parties consider that, contrary to the proportionality assessment in the RWP, there would be a very material cost to prohibition: the Transaction generates significant RCBs, including improved mobile connectivity, accelerated access to new and advanced 5G use cases, and an expanded FWA offering, which must be taken into account.