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**Submission Reference: Anticipated Joint Venture Between Vodafone Group PLC and CK Hutchison Holdings Limited Concerning Vodafone Limited and Hutchison 3G UK Limited – Remedies Working Paper**

14 November 2024

Dear Mr. McIntosh,

[X] welcomes the opportunity to respond to the Competition & Market Authority (CMA) Remedies Working Paper in Anticipated Joint Venture Between Vodafone Group PLC (VGPLC) and CK Hutchison Holdings Limited (CKHHL) Concerning Vodafone Limited (VUK) and Hutchison 3G UK Limited (3UK), hereinafter referred to as the Remedies Working Paper.

[X] broadly welcomes the proposed remedies set out in the Remedies Working Paper that consists of:

- a partial divestiture of spectrum.
- an investment commitment.
- retail market protection.
- wholesale market protections.

Although [X] welcomes the CMA's proposal to include Wholesale Access Terms as a proposed remedy, we are deeply concerned that the proposed terms are time limited and seem to focus exclusively on Mobile Virtual Network Operators (MVNOs) serving the retail market. This focus means that the Wholesale Access Terms fail to address the substantial lessening of competition (SLC) in the supply of wholesale mobile telecommunication services by the Merged Entity to MVNOs focused on other market segments, Mobile Virtual Network Aggregators (MVNAs), and Mobile Virtual Network Enablers (MVNEs), - connectivity of corporate customers, Internet of Things (IoT) and Machine-to-Machine (M2M).

While IoT connections currently represent a small percentage of the capacity deployed by MNOs, Vodafone's Head of IoT Strategy, Phil Skipper, has stated, "There are fewer big bets, but the big bets are clearer. And Vodafone IoT is clearly a big bet."<sup>1</sup> This "big bet" consists of Vodafone:

- creating a separate standalone business for Vodafone's IoT connectivity platform in April 2024; and
- announcing that Microsoft would take a minority stake in this standalone business.<sup>2</sup>

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<sup>1</sup> See [Vodafone's Big Bet to Hive-Off and Hyper Scale IoT with Microsoft](#).

<sup>2</sup> [Vodafone and Microsoft signed a 10-year strategic partnership to bring generative AI, digital services, and the cloud to more than 300 million businesses and consumers.](#)

According to Sky, a 49% stake in the new standalone IoT connectivity platform is valued at GBP 1 billion.<sup>3</sup> Phil Skipper, Head of Strategy Vodafone IoT, has stated that in relation to IoT, Vodafone has:

... a super head start because we've got access to Vodafone's networks, of course, access to Vodafone's sales channels – and the combination of those has taken us from nothing to 185 million connections over 10 years.”

Following the merger, VGPLC's standalone IoT connectivity business will, in addition to having access to the networks of VUK and 3UK in the United Kingdom, at a minimum, have access to the networks in other countries in which VGPLC operates MNOs.

[X] is deeply concerned that the proposed Wholesale Access seem only to apply to MVNOs. If the final Wholesale Access Terms do not apply to MVNAs and MVNEs, they could be denied access to the Merged Entity's Network based on the conditions established in the final Wholesale Access Terms. While [X] does not believe that this is the intention we urge the CMA to ensure that the final Wholesale Access Terms are available to all relevant parties - MVNOs, MVNAs, and MVNEs - to prevent the remedy inadvertently distorting competition in the market.

In addition, to the general concern on the potential beneficiaries of the final Wholesale Access Terms, [X]'s has the following specific comments on the proposed terms:

**(a) Price**

The proposed prices for wholesale access are based on three tiers, depending on the MVNO's customer base size. [X]'s ability to comment on the proposed prices is limited, as the prices are not public. While [X] presumes a decrease in prices between tiers, we would welcome confirmation that this is the case.

Notwithstanding the fact that prices are not public, the proposal raises the following points that need further elaboration to ensure a clear and transparent pricing structure:

- the proposed pricing structure should apply to MVNOs, MVNAs, and MVNEs.
- the definition of customers must be broad enough to encompass the total number of SIMs/eSIMs deployed by the MVNOs, MVNAs, and MVNEs. In the case of IoT/M2M services, for example, there is only one customer (*e.g.*, the automobile manufacturer) but thousands of SIMs/eSIMs (*e.g.*, each SIMs deployed in an automobile).
- the method and period of time used to calculate the number of customers requires elaboration.
- the process by which new pricing will take effect when an MVNO, MVNA, or MVNE customer base increases or decreases needs elaboration.

The pricing is based on the current prevailing market terms observed by VUK and 3UK. VGPLC has formed a standalone company that has “a super head start” as it secures access to VUK network for IoT/M2M services. As such, it is imperative that the CMA determine the terms under which the standalone company secures network access from VUK and if the prices and tiers in the proposed Wholesale Access Terms are reasonable taking into consideration said terms. If the CMA finds that they are not, [X] urges the CMA to propose a pricing mechanism that is fair and reasonable based on an economic replicability test.

**(b) Future pricing mechanisms**

While the future pricing mechanism (**FPM**) may be sufficient to allay concerns with regards to the future evolution of data usage and retail pricing, [X] urges the CMA to maintain the ability to review pricing based on an economic replicability test – a well-established mechanism understood by all market participants.

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<sup>3</sup> See [Vodafone Dials up sale of stake in 1bn internet of things unit.](#)

**(c) Service equivalence**

[X] entirely agrees with the CMA that there should be no speed tiering limit, and the Merged Entity should provide parity of access to its network.

**(d) Non-discrimination**

The non-discrimination provision should ensure that the Merger Entity provides the same quality of service it provides its customers, including but not limited to VGPLC's standalone IoT business.

**(e) Access to new technologies**

[X] welcomes that access to new technologies will be provided within a predefined period. While gaining access to new technologies within nine months of the new technology being launched by the Merged Entity may be adequate for consumer-facing services, the nine-month period is too long for IoT/M2M services that are contracted for multiple years (e.g., five years) and are rapidly evolving. As such, [X] urges the CMA to reduce the period to access new technologies for IoT/M2M connectivity from nine months to four. This four-month period should not apply when access to the technology is required to meet regulatory obligations such as net generation eCall. In such cases, the access to new technologies should be made available at the same time the Merged Entity implements the new technology.

**(f) Implementation Cost**

[X] does not object to the MNVO, MVNA, or MVNE bearing the implementation cost, provided that the cost is fair and reasonable, and the technical architecture is optimised to avoid complex and expensive solutions. In this regard, the Merged Entity should be required to implement an international roaming architecture when providing wholesale access for IoT/M2M services.

**(g) Contract Term**

The CMA should ensure that MVNOs, MVNAs, and MVNEs can renew the contract for two additional terms irrespective of the duration of the proposed Whole Access Remedy. This is particularly important to ensure continuity of services for IoT/M2M use cases, which are contracted for multiple years.

**(h) Duration**

[X] welcomes the proposal of the CMA that Merged d should be required to offer wholesale access until the CMA is satisfied that the Merged Entity has met its obligations under the Network Commitment. [X], however, is concerned that the requirement to offer Wholesale Access Terms is limited to the 'Year 3' milestone, notwithstanding the fact that the Network Commitment has a duration of eight years. As such, [X] urges the CMA to require the Merged Entity to offer Wholesale Access Terms until the CMA is satisfied that the Merged Entity has met all its Network Commitments. If the event that the CMA is satisfied that the 'Year 8' Network Commitment has been met by the Merged Entity between year 3 and 7, the CMA, following a public consultation, can determine that offering Wholesale Access Terms is no longer required.

**(i) Minimum Revenue Commitment**

Minimum revenue commitments (MRCs) are unlikely to impact established MVNOs, MVNEs, and MVNAs negatively. Still, new entrants might struggle to meet these commitments, which can stifle innovation and diversity in service offerings. MNOs can also use MRCs to offer

MVNOs, MVNEs, and MVNAs, less favourable terms compared to their own services, including for the avoidance of doubt the services provided to VGPLC's standalone IoT business, leading to a less competitive market. Many IoT/M2M use case require that services be provided over at least two radio access networks to ensure redundancy, coverage and quality of service. As such, MRCs make it virtually impossible for MVNOs, MVNEs and MVNAs providing services for IoT/M2M use case to meet the two radio access networks requirements. As VGPLC has a standalone IoT business, [X] urges the CMA to review the standalone business's access arrangement with VUK and other MNOs in the UK to establish if MRCs should be imposed and if they should be imposed the reasonableness of the MRCs proposed prior to adopting a final Wholesale Access Terms.

In addition, the MRCs should be lowered to reflect reductions attributed to proposed FPM. Failure to make such adjustment could result in any savings resulting from the downward adjustment to wholesale prices paid by the MVNO, MVNA or MVNE due to the FPM being cancelled out by the MRCs.

**(j) Payment Terms**

While [X] does not object to the Merged Entity being able to request upfront payment based on the risk profile of the MVNO, MVNE or MVNA, [X] is concerned that the proposed Wholesale Access Terms state that upfront payments will be based on "perceived" risk. If upfront payments are required, they must be based on objective and data-driven criteria. [X] therefore, urges the CMA to adjust the final Wholesale Access Terms accordingly.

**(k) Capacity Limit**

In line with other mergers approved in the sector, such as Telefonica/O2 in Ireland and Telefónica Deutschland/E-Plus in Germany, [X] believes that that 30% of the total capacity of the Merged Entity's network should be available to MVNOs, MVNAs and MVNEs versus the [15% - 20%] proposed by the Parties.

**(l) Onboarding Limit**

[X] fully supports the simplification put forward by the CMA on onboarding limits. [X] believes that these limits should be simplified even further than proposed by CMA, by not being applied when the technical architecture of the access arrangement that is implemented is an international roaming architecture. The onboarding limits, for the avoidance of doubt, should include not only MVNOs, but also MVNAs and MVNEs.

**(m) Other Terms**

In the final Wholesale Access Terms, [X] urges the CMA to prohibit the Merged Entity from:

- including exclusivity provisions that limit the ability of MVNOs, MVNAs and MVNEs to purchase wholesale access services from other MNOs.
- requiring minimum volume commitments from MVNOs, MVNAs and MVNEs.
- tying the sale of complementary services to exclusivity or minimum volume commitments.
- limiting the ability of MVNOs, MVNAs and MVNEs to resell the wholesale access services.

**(n) Dispute Resolution**

[X] believes that the dispute resolution timetable proposed by the Parties should be reduced to three months from the five months proposed by the Parties irrespective of whether or not the disagreement has been escalated. Otherwise, it is likely to take over a year to agree a contract from receipt of a written request to take up the Wholesale Access Terms.

[X] is happy to engage further with the CMA and provide any additional information or clarification that the CMA may require.

**About [X]**

[X]

Yours sincerely,

[X]