

VODAFONE UK/THREE UK**VMO2 SUPPLEMENTARY RESPONSE TO THE CMA REMEDIES WORKING PAPER**

25 November 2024

1. Virgin Media O2 (“**VMO2**”) welcomes the thorough investigation conducted by the Inquiry Group, and the care taken by the CMA to ensure that mobile network operators have the incentives to make, and indeed bring forward, the multi-billion pound investments required in 5G networks, while at the same time ensuring that consumers are fully protected in the interim period. VMO2 continues to move forward in planning for the spectrum transfer and network upgrades agreed as part of the Beacon 4 arrangements in the event that the Merger is cleared.
2. The Network Commitment, together with the time-limited retail and wholesale protections proposed by the CMA, represent an effective and proportionate solution to address any residual competition concerns, while preserving the substantial efficiencies and benefits which will flow from the Merger. Any alternative option, such as prohibiting the Merger, would be disproportionate and highly costly, as it would inevitably destroy these efficiencies and benefits. VMO2 continues to support clearance of the Merger on the basis of the Beacon 4 arrangements and the remedies outlined in the Remedies Working Paper.
3. However, when reviewing some of the recent submissions made to the CMA by other market participants, VMO2 has become increasingly concerned that some of these parties appear to be seeking windfall benefits from the merger clearance process, which go well beyond preserving effective competition in the wholesale market. While MVNOs are valuable wholesale customers for mobile operators, they do not invest in building, maintaining and upgrading the network and are insulated from the risks associated with such investments. The current wholesale agreements in the market strike a careful balance between enabling MVNOs to compete and earn a reasonable return, while at the same time ensuring that mobile network operators continue to have an incentive to make multi-billion pound network investments.
4. It is, therefore, extremely important that the time-limited wholesale market protections do not up-end this balance and distort competition in the wholesale market. VMO2, therefore, strongly supports the principle that any time-limited wholesale market protections should reflect actual market practice, particularly as the remedy is time-limited and such agreements will be entered into in the short-term. VMO2 agreed with the views of Ofcom and the CMA that the Wholesale Reference Offer terms put forward by the merging parties are broadly reflective of the terms available in the market. Given the interim nature of the remedies, it would be inconsistent and highly distortive to suggest that the wholesale access terms go materially beyond what is currently available in the wholesale market.
5. By way of concrete example, in the Remedies Working Paper, the Inquiry Group invited views on how pricing could be structured to allow for MVNOs to compete

effectively in high-data package segments, including the ‘unlimited’ data segment. In response, some market participants appear to be suggesting that MVNOs should not bear the risks associated with the unlimited tariffs which they place on the market. Certain respondents, for example, appear to suggest that they have no ability to control the usage by their customers. Such a statement is clearly incorrect, as MVNOs control the price and terms of their retail propositions (including in relation to “fair usage”), as well as their promotional activities and ongoing relationship with their customers. No MNO should have to agree to a wholesale agreement which would allow a MVNO to flood its network with traffic, while bearing no risk for the substantial network costs involved in supporting such traffic or the potential degradation in quality experienced by other customers (including those of the mobile operator and other MVNOs).

6. VMO2 firmly believes that, in order to achieve their intended effect, whilst also avoiding any disruptive and distortive outcomes, the time-limited wholesale protections should be consistent with current market dynamics. Existing wholesale arrangements have been carefully negotiated in a competitive market between MVNOs and mobile network operators. High-data and unlimited packages are a well-established feature of the retail market. Existing wholesale arrangements have been negotiated, taking into account such packages and the associated risks, and therefore provide an appropriate basis for the Wholesale Access Terms. VMO2 urges the CMA to reject proposals from market participants seeking regulatory intervention that would go beyond what the market currently offers, distorting competition and undermining incentives to invest.