Virgin Media O2 response to the CMA's Invitation to Comment: "SMS Investigations into Google and Apple's Mobile Ecosystems"

Non-confidential

12 February 2025

SMS INVESTIGATION INTO GOOGLE AND APPLE'S MOBILE ECOSYSTEM:

VIRGIN MEDIA O2'S RESPONSE TO CMA'S INVITATION TO COMMENT

Virgin Media O2 ("**VMO2**") welcomes the opportunity to respond to the Competition and Markets Authority's ("**CMA**") Invitation to Comment ("**ITC**") regarding the Strategic Market Status Investigations into Apple and Google's mobile ecosystems (the "**ME SMS Investigations**").

Ensuring the UK is fit for future growth

Mobile services play an integral role in the UK economy and are vitally important to consumers and businesses alike. With over 90% of UK adults having access to smartphones in the UK and an increasing reliance on mobile connectivity and data for all forms of societal engagement (such as communication, ecommerce, access to content, gaming etc), it has never been more important to ensure that the end-to-end mobile ecosystems function effectively and enable competition to flourish at all levels of the value chain.

With the UK Government evermore **focused on growth, it is essential that the regulatory environment encourages innovation, productivity and investment in new technologies and networks** (such as 5G and 6G) whilst also protecting/promoting competition in digital markets and consumer needs.

VMO2 supports the CMA's ambition to "*ensure that the UK keeps pace with the future, and to maximise its international attractiveness as a home for innovation and investment in these dynamic markets.*"[1] VMO2 therefore believes it is critical that the scope of the ME SMS investigations, and the interventions that follow, **ensure that the CMA is taking a proactive rather than reactive stance**.

VMO2 welcomes the CMA's position at paragraph 71(b) of the ITC that it will seek to understand the "*technological developments which could change the way that mobile devices are used and how mobile ecosystems deliver content and services to users*". It is essential that the CMA fully utilise their investigatory powers to understand the (near to medium term) issues that are likely to arise and take steps now to **ensure that all market players have a level playing field on which to compete and no incumbents have strangleholds over key aspects of the mobile ecosystems that could choke innovation and stymie growth**. VMO2 agrees that "*Firms competing on a level playing-field are spurred to invest so they can out-perform rivals. Where markets are not contestable and incumbents are safe from challenge, everyone's incentives to invest are reduced. Nor will firms and entrepreneurs invest to enter markets with new products and services without being confident of a fair chance of success.*"[2]

Set out below are some of the topics which do not appear to feature explicitly within the scope of the CMA's ME SMS Investigations (as set out in the ITC), but which VMO2 considers are key to the CMA's review in order to ensure its SMS designations take full account of the impact these digital firms have on the current and future mobile value chains and the need for appropriate interventions.

[1] CMA Draft Annual Plan 2025 to 2026, page 20 CMA Annual Plan 2025 to 2026
[2] CMA Draft Annual Plan 2025 to 2026, page 47 CMA Annual Plan 2025 to 2026

1. eSIMs

Competition in the UK retail mobile services market is strong. High levels of competition drive investment in network capacity and quality, increased levels of customer service and keenly priced innovative propositions enabling consumers and businesses to choose the mobile services that best suit their needs.

To date in the UK, eSIMs have had a relatively low take up fuelled in part by low customer awareness as well as fewer eSIM mobile devices being available in the UK. However, Ofcom noted back in 2022 that "*within the next five to ten years, we expect most consumers will be using eSIMs instead of physical SIMs, with physical SIMs eventually being phased out*"[3]. eSIMs are network agnostic and should therefore facilitate even greater levels of switching between networks and mobile service providers.

Whilst VMO2 acknowledges that eSIMs have the potential to give rise to a number of consumer benefits, they may only be short-lived if digital firms are able to leverage their strong position in the supply of their operating systems and vertically integrated ecosystems in a way that undermines competition and delivery of good outcomes in mobile markets in the long run.

As identified by Ofcom in its final statement regarding "Ofcom's future approach to mobile markets and spectrum", the rollout of eSIMs "*may enable Apple and Google to embed the ability for customers to select (and switch) mobile provider into their mobile operating systems, on a choice screen or app*".[4]

Source: BT Group's response to the CMA's Mobile Ecosystems Market Study Statement of Scope in July 2021

VMO2 therefore shares the concerns of Ofcom (and other Mobile Network Operators ("**MNOs**")) that the growth of eSIMs may result in digital firms acting as gatekeepers between MNOs and end customers. This could result in less transparency, and ultimately less choice, for consumers if the digital firms utilise their 'substantial and entrenched market power' to control how consumers are presented with the choice of providers and/or tariffs which are available to them on their devices.

[3] See: Conclusions paper: Ofcom's future approach to mobile markets and spectrum, page 56
[4] See: Conclusions paper: Ofcom's future approach to mobile markets and spectrum, paragraph 4.53

As Ofcom noted "*Consumer choices can be strongly influenced by the way in which different service options are presented to them, due to behavioural biases*"[5]. If Apple and Google have influence over the degree of prominence any provider or set of tariffs may have on their home screen or app, or the range of competitive parameters which is displayed to consumers – this could impact on customers making informed choices and ultimately could have significant consequences for the degree of retail mobile services competition. There could also be a regulatory imbalance if the digital firms are not subject to the same level of scrutiny as the MNOs/MVNOs in terms of the level of transparency they need to display to customers in terms of the packages/prices available.

In a similar way they do today with app developers, Apple and Google could also use their power to extract "rent" or commission from mobile providers to determine how they are presented to consumers, with mobile providers having limited ability to negotiate terms (and acceptance may even be tied to the terms of supply (or continued supply) of handsets and/or the provision of additional customer data). Ultimately, these commissions may be passed on to consumers in the form of increased retail prices and/or disincentivise network investment if there is a reduced ability for network providers to earn a fair rate of return on their investment.

These concerns could be compounded if Apple or Google should decide to enter the retail mobile services market as an MVNO and choose to foreclose other MNOs and MVNOs entirely from their home screens or design their ecosystems in such a way that customers are steered towards the digital firms own mobile services i.e. self-preferencing.

These concerns were raised as part of the CMA's Mobile Ecosystem Market Study and, as noted above, have been and continue to be considered by Ofcom. Whilst there is no explicit reference to the consideration of the growth of eSIMs in the ITC, VMO2 urges the CMA to include such technological developments within scope of the ME SMS Investigations and to consider, as it has alluded to in the past, the range of potential interventions that may be necessary to ensure there is no unreasonable disintermediation of MNOs and MVNOs in the mobile services market that could result in serious consumer harms.

2. Direct-to-Device ("D2D") satellite services to mobile handsets

Mobile devices in the UK have traditionally connected to one or more of the terrestrial mobile networks hosted by a MNO. However, in recent years, as is the trend globally, the UK has seen the evolution of new mobile-satellite services in the UK. Whilst the technology appears to be at a relatively nascent stage, VMO2 agrees that such services have the potential to present a number of benefits for both consumers and businesses, subject to appropriate regulatory frameworks being in place.

Indeed, VMO2 highlighted as part of its response to Ofcom's recent Call for Inputs[6] that a clear benefit of D2D satellite services is that "*there may be scope for MNOs to extend coverage even*

[5] See: Conclusions paper: Ofcom's future approach to mobile markets and spectrum, paragraph A3.23.
[6] Ofcom's Call for Input: Improving mobile connectivity from the sky and space, 23 July 2024 – see: Improving mobile connectivity from the sky and space

further, in very hard to reach areas, beyond those served by the Shared Rural Network, through partnering with satellite operators to deliver D2D services"[7].

VMO2's own research has noted that [✂].

[✂]

Source: VMO2's [✂] research, October 2024

As noted by Ofcom, the first commercial, mass-market, D2D services were rolled out by Apple in 2022, with an emergency messaging service on the iPhone 14 models. Rather than using D2D in mobile bands, Apple is using Globalstar's existing satellite constellation and allocated MSS spectrum to support the service. To enable their handsets to offer such features, Apple's chipsets (only in the more recent models) have been developed to connect to the relevant satellite frequencies.

Public reports[8] state that Apple is in the process of developing its first in-house developed proprietary chip which will be launched in 2025 which will be "*tightly integrated with Apple-designed main processors to use less power, scan for cellular service more efficiently and better support on-device features for connecting to satellite networks*". The third generation, already tipped to be launched in 2027, will have in built support for "next-generation satellite networks" and AI. Accordingly, Apple is designing proprietary satellite features tailored specifically for its own mobile operating systems and satellite network. If Apple develops such technology and essentially foreclose its mobile devices (with their inbuilt chipsets and closed operating systems) to MNOs and other satellite providers that are developing D2D for use in mobile bands, this could have the potential to greatly impact on the level of investment for this relatively nascent market and the potential level of innovation that could come about to the detriment of consumers and businesses.

For the purposes of the ME SMS Investigations, it is therefore incumbent upon the CMA to expand the scope of its review to take account of such technological developments particularly given the potential impact it could have on the level of investment and innovation in a potentially high-growth area for the UK. The CMA, working alongside Ofcom, should consider aspects of interoperability as well as how Apple can influence standard setting that would have a marked impact on the roll out of competing D2D services.

3. Net Neutrality

At the heart of net neutrality is the principle that "*internet users – not their broadband or mobile provider – have control over what they do online*"[9]. Individuals should have the ability to access the content and services they want online unimpeded and without interference, and equally content and app owners should have the ability to reach their customers online. For internet service providers ("**ISPs**") this has manifested in net neutrality regulations which are designed to

[7] VMO2's response to Ofcom's Call for Input: Improving mobile connectivity from the sky and space, September 2024 – see: VMO2

[8] See: Three generations of Apple modems detailed in new report, iPhone SE marks debut - GSMArena.com news

[9] See: Ofcom revises net neutrality guidance - Ofcom

ensure that ISPs treat the traffic that is carried across their networks equally and that no particular devices, content or services are prioritised over others.

Since the net neutrality rules were put in place, there has been a significant shift in how consumers access content and the type of content accessed. This has meant other players have assumed positions within the value chain that have the ability (and incentive) to control how consumers access content and to prioritise customers' access to their own devices, or their partners' content and services. Moreover, the ability and incentive for ISPs and mobile providers to diverge from the principles of net neutrality are now greatly diminished, given the competitive nature of the internet access market and the bargaining power/'must have' nature of many content and other services.

By virtue of their mobile ecosystems (including operating systems, app stores and browsers) integrated into the mobile devices, both Google and Apple hold gatekeeper positions and can control what content and services consumers have access to and how they access it. This is heightened through certain other features such as Apple Private Relay (see below) which encrypts mobile traffic and controls the way in which consumers enter the internet.

This position is already recognised by Ofcom in its latest Net Neutrality Statement – "*The providers of these gateways, particularly those that supply devices and operating systems such as Apple and Google, have developed strong positions in determining how consumers access the internet, such that a consumer's choice of device and software may impact the ways they access internet content*".[10]

Despite this, both Apple and Google remain unregulated and outside the purview of net neutrality regulation which does not make for a level playing field. The CMA should therefore widen its scope to take this into account when determining the extent to which both Apple and Google hold SMS status. If designated with SMS, we recommend, for the reasons set out above, that the CMA, together with other relevant bodies like Ofcom and the DRCF, undertake a comprehensive review of net neutrality regulations to understand if they contribute to the entrenchment of gatekeeper status.

4. Apple Private Relay

The effects of Apple Private Relay and the role of enhanced encryption does not appear to be explicitly called out as within the current scope of the CMA's ME SMS Investigations.

Rather than repeating old ground within this submission, VMO2 would instead encourage the CMA to take account of the previous submission it made, together with other MNOs, via Mobile UK, as part of the Mobile Ecosystem Market Study[11]. VMO2 believes this remains an important consideration as to the ability of a digital firm to implement proprietary technology within its ecosystem (and encourage customers to adopt (if not enabled by default) under the guise of protecting privacy) and set the rules for how consumers interact with mobile service providers. The CMA should consider this within its scope to determine how entrenched Apple's mobile

[10] See paragraph 3.36 of Ofcom's Net Neutrality Review Statement, 26 October 2023 - Statement Net Neutrality Review

[11] See: Response: Mobile UK

ecosystem is and the different levels of the value chain that can be impacted (negatively) as a result.

5. Adjacent Markets, Standards and Access to Data

The latest (e.g. 5G standalone) and future mobile technologies have the potential to drive innovation and competition. If consumers are to enjoy the maximum benefit from this innovation and increased choice, the interface and interplay between connectivity providers and mobile ecosystems must be open and transparent and must not be controlled or leveraged by the ecosystem operators.

VMO2 is particularly concerned about mobile operators' continued ability to develop products which rely on network slicing. While in its early stages of development and implementation, this technology presents opportunities to offer services and applications that are much more tailored to specific use cases and/or customers (both business and consumer). However, the provision of services through network slicing has a high dependency on the mobile operating systems running on a customer's handset[12]. As a result, the digital firms both have a strong incentive and ability to influence the development of network slicing, for example by imposing standards or terms on mobile operators that would restrict their ability to realise the full capabilities of the technology, diminish the business case for investment and, potentially, foreclose them from the market. We urge the CMA, therefore, to afford this appropriate consideration.

Separately, VMO2 welcomes the CMA's confirmation that it will consider the role of AI assistants' integration with mobile operating systems and the way that connected devices (such as wearables and IoT solutions) interoperate with mobile devices[13]. With the rise in importance of such products and features to consumers and businesses, their interplay within the mobile ecosystem is critical to the CMA's forward-looking assessment.

VMO2 would encourage the CMA to make reference to some of the keen observations made by the European Commission's in its final report published in 2022[14] resulting from its sector inquiry into the consumer Internet of Things. Not only did the Commission's report consider the issues of interoperability of voice assistants and wearable devices, but also the role that the gatekeepers play in standard setting and access to data with their ability to leverage more easily into adjacent markets. VMO2 would reiterate that these are both important features to consider as part of the CMA's review of AI assistants and wearables as well across the whole mobile ecosystem.

VMO2 reiterates its previous concerns regarding the role of data i.e. that through vertical integration in their respective mobile ecosystems, Google and Apple are able to accumulate data from multiple different sources and combine and process it to not only provide innovative, better-quality services, but to control data flows and leverage this control to expand market power rapidly in neighbouring markets. This control over data can also hinder competition in relation to third parties' activities within the mobile ecosystem. VMO2 encourages the CMA to take account of the role of data in the value chain for Apple and Google as part of these ME SMS investigations.

[12] The operating systems are currently the enforcement point where the routing of the traffic on the app towards available slices is decided.
[13] See paragraph 71(b) of the CMA's ITC
[14] See: internet-of-things_final_report_2022_en.pdf