

# ANTICIPATED JOINT VENTURE BETWEEN VODAFONE GROUP PLC AND CK HUTCHISON HOLDINGS LIMITED CONCERNING VODAFONE LIMITED AND HUTCHISON 3G UK LIMITED

## Issues statement

2 May 2024

### The reference

1. On 4 April 2024, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the **Act**), referred the anticipated joint venture between Vodafone Group plc (**Vodafone**) and CK Hutchison Holdings Limited (**CK Hutchison**) that will combine their UK telecoms businesses, respectively Vodafone Limited (**VUK**) and Hutchison 3G UK Limited (**3UK**) (the **Merger**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**). Vodafone and CK Hutchison are together referred to as the **Parties**. For statements relating to the future, the Parties' UK telecoms businesses are together referred to as the **Merged Entity**.
2. In exercise of its duty under section 36(1) of the Act, we must decide:
  - (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
  - (b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.

### Purpose of this issues statement

3. In this issues statement, we set out the main issues we are likely to consider in reaching a decision on the SLC question (paragraph 2(b) above), having had regard to the evidence available to us to date, including the evidence obtained in the CMA's phase 1 investigation.

4. The CMA's phase 1 decision (the **Phase 1 Decision**)<sup>1</sup> contains much of the detailed background to this issues statement. We are publishing this statement to assist parties submitting evidence to our phase 2 investigation.
5. We currently intend to focus our investigation at phase 2 on the areas in which the CMA found in the Phase 1 Decision that the Merger may give rise to a realistic prospect of an SLC. This does not preclude the consideration of any other issues which may be identified during this investigation, and we invite interested parties to notify us if there are any additional relevant issues which they believe we should consider.
6. We intend to use evidence obtained during the phase 1 investigation. However, we will also be gathering and considering further evidence on the areas considered at phase 1 and any other issues which may be identified during the course of the investigation.

## **Background**

### ***The Parties***

7. Vodafone – listed on the London Stock Exchange – is the holding company of a group of companies providing mobile and fixed telecommunication services (such as broadband), principally across Europe and Africa. In FY2023, Vodafone generated global turnover of over €45 billion. In the UK, Vodafone supplies retail mobile services to consumers and businesses and wholesale mobile services through its wholly-owned subsidiary VUK and operates under the Vodafone brand and the VOXI and Talk Mobile sub-brands.<sup>2</sup>
8. CK Hutchison – listed on the Stock Exchange of Hong Kong – is a multinational conglomerate operating in about 50 countries across four core businesses: ports and related services, retail, infrastructure and telecommunications. In FY2023, CK Hutchison generated global turnover of approximately £47 billion. In the UK, CK Hutchison supplies retail mobile services to consumers and businesses and wholesale mobile services through its wholly-owned subsidiary 3UK and operates under the Three brand and the SMARTY sub-brand.<sup>3</sup>

### ***The Merger***

9. On 14 June 2023, Vodafone and CK Hutchison entered into a contribution agreement (the **Contribution Agreement**) relating to the establishment of a

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<sup>1</sup> The Phase 1 Decision is available on the case page [Vodafone / CK Hutchison JV merger inquiry - GOV.UK](https://www.gov.uk/government/cases/vodafone-ck-hutchison-jv-merger-inquiry) ([www.gov.uk](https://www.gov.uk)).

<sup>2</sup> [Phase 1 Decision](#), paragraph 4.

<sup>3</sup> [Phase 1 Decision](#), paragraph 5.

joint venture. Pursuant to the terms of the Contribution Agreement, on completion, CK Hutchison will hold 49% of the issued share capital of Vodafone UK Trading Holdings Limited, the joint venture vehicle which is currently indirectly wholly owned by Vodafone; Vodafone will hold 51% of the issued share capital of this entity; and each of VUK and 3UK will sit as a wholly-owned subsidiary of this entity.<sup>4</sup>

10. The Parties have submitted that the strategic and economic rationale for the Merger is that: <sup>5</sup>
  - (a) the UK currently lags behind other countries in terms of 5G infrastructure, roll-out and performance due to a bifurcated market structure, with two strong converged players (BT Group plc (**BTEE**) and VMED 02 UK Limited (**VMO2**)) and two weak players (VUK and 3UK). VUK and 3UK are both sub-scale, earning unsustainable returns and at a growing disadvantage to invest and compete against BTEE and VMO2. BTEE and VM02 therefore face insufficient competitive pressure to invest, with the result that the UK lags behind in the global 5G race;
  - (b) absent the Merger, VUK's and 3UK's lack of scale will further impede their ability to compete;
  - (c) VUK and 3UK need greater scale to address the investment challenge posed by the need to deploy standalone 5G and address explosive growth in data traffic; and
  - (d) by bringing together the complementary assets (including spectrum and sites) of VUK and 3UK and increasing their investment capacity, the Merger will create a stronger third network operator that will invest in a 'best-in-class' network which will force BTEE and VMO2 to invest more. This will in turn bring significant benefits to customers – consumers, businesses and public sector organisations – to competition and to the wider UK economy.

## Our investigation

11. Below we set out the main areas of our intended assessment in order to help parties who wish to make representations to us.

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<sup>4</sup> [Phase 1 Decision](#), paragraph 28.

<sup>5</sup> [Phase 1 Decision](#), paragraph 29.

## Assessment of the competitive effects of the Merger

### *Jurisdiction*

12. We shall consider the question of jurisdiction in our inquiry. A relevant merger situation exists where the following conditions are satisfied:<sup>6</sup>
- (a) Two or more enterprises have ceased to be distinct; and
  - (b) Either:
    - (i) the value of the target enterprise's UK turnover exceeded £70 million in its last fiscal year (the turnover test); or
    - (ii) the enterprises ceasing to be distinct have a share of supply in the UK, or in a substantial part of the UK, of 25% or more in relation to goods or services of any description (the share of supply test).
13. In its Phase 1 Decision, the CMA found that it is or may be the case that the CMA has jurisdiction to review the Merger on the basis that (i) each of VUK and 3UK should be considered an enterprise, (ii) 3UK will cease to be distinct from Vodafone and, conversely, VUK will cease to be distinct from CK Hutchison as a result of the Merger, and (iii) the turnover test is met because VUK and 3UK together generated more than £70 million turnover in the UK in FY2023.<sup>7</sup>

### *Counterfactual*

14. We will compare the prospects for competition resulting from the Merger against the competitive situation without the Merger: the latter is called the 'counterfactual'. The counterfactual is not a statutory test but rather an analytical tool used in answering the question of whether a merger gives rise to an SLC.<sup>8</sup>
15. The counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition. The counterfactual is not intended to be a detailed description of the conditions of competition that would prevail absent the Merger,<sup>9</sup> which we intend to consider in the competitive assessment. An assessment based on the prevailing conditions of competition can reflect that, absent the merger, the

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<sup>6</sup> Section 23 of the Act.

<sup>7</sup> [Phase 1 Decision](#), paragraphs 35 – 40.

<sup>8</sup> [CMA 129](#), paragraph 3.1.

<sup>9</sup> [CMA 129](#), paragraph 3.7.

position of the merging parties and their competitors would have continued to change and evolve in the market over time.<sup>10</sup>

16. In its Phase 1 Decision, the CMA found that the relevant counterfactual was the prevailing conditions of competition.<sup>11</sup>
17. In our phase 2 investigation, to reach a judgement as to whether or not an SLC is likely to occur as a result of the Merger, we will select the most likely conditions of competition as the counterfactual against which to assess the Merger.<sup>12</sup>
18. As noted above, the Parties have submitted that the rationale for the Merger is that VUK and 3UK are both currently sub-scale, earning unsustainable returns and at a growing disadvantage to invest and compete against BTEE and VMO2, and that absent the Merger, VUK's and 3UK's lack of scale will further impede their ability to compete in the future. However, the Parties have not submitted that we should adopt a counterfactual other than the prevailing conditions of competition.
19. We currently intend to adopt the prevailing conditions of competition as the most likely counterfactual to the Merger and to consider how (if at all) the competitive constraint from VUK and 3UK would likely evolve in the future in more detail as part of our competitive assessment, but welcome any evidence on this part of our assessment.

### ***Market definition***

20. Where the CMA makes an SLC finding, this must be 'within any market or markets in the United Kingdom for goods or services'.<sup>13</sup> We are therefore required to identify the market or markets within which an SLC exists. An SLC can affect the whole or part of a market or markets. Within that context, the assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of a merger and should not be viewed as a separate exercise.<sup>14</sup>
21. In its Phase 1 Decision, the CMA assessed the impact of the Merger in the supply of retail mobile telecommunications services to end consumers, including both consumers and business customers, and the supply of wholesale mobile telecommunications services in the UK.<sup>15</sup>

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<sup>10</sup> CMA 129, paragraph 3.3.

<sup>11</sup> Phase 1 Decision, paragraph 75.

<sup>12</sup> CMA 129, paragraph 3.13.

<sup>13</sup> Section 35(1)(b) / Section 36(1)(b), the Act.

<sup>14</sup> CMA 129, paragraph 9.1.

<sup>15</sup> Phase 1 Decision, paragraph 221.

22. We will use this as a starting point for our analysis in the phase 2 inquiry and we expect our view of market definition will be largely drawn from the same evidence that informs our competitive assessment.
23. We will consider the Parties' and other submissions and evidence on these points but we do not expect market definition to be determinative in the outcome of our assessment.

### ***Theories of harm***

24. The term 'theories of harm' describes the possible ways in which an SLC could arise as a result of a merger. The theories of harm provide the framework for analysis of the competitive effects of a merger.<sup>16</sup>
25. In the Phase 1 Decision, the CMA found that the Merger gives rise to a realistic prospect of an SLC as a result of:
  - (a) Horizontal unilateral effects in:
    - (I) the supply of retail mobile telecommunications services to end consumers in the UK, and
    - (II) the supply of wholesale mobile services in the UK; and
  - (b) Anti-competitive effects in the supply of retail mobile telecommunications services and wholesale mobile services in the UK, arising from the sharing of commercially sensitive information through the Merged Entity's participation in both network sharing arrangements.<sup>17</sup>
26. We currently intend to focus our competitive assessment on these theories of harm at phase 2.
27. We may revise our theories of harm as our investigation progresses, and the identification of a theory of harm does not preclude an SLC being identified on another basis following further work, or our receipt of additional evidence. However, subject to new evidence being submitted, we do not currently intend to investigate any other theories of harm in relation to this Merger.

### ***Horizontal unilateral effects***

28. Horizontal unilateral effects may arise in a horizontal merger when one firm merges with a competitor that would otherwise provide a competitive constraint, allowing the merged entity profitably to raise prices or degrade

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<sup>16</sup> CMA 129, paragraph 2.11.

<sup>17</sup> Phase 1 Decision, paragraph 887.

non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals. Unilateral effects giving rise to an SLC can occur in relation to customers at any level of a supply chain, for example at a wholesale level or retail level (or both) and is not limited to end consumers.<sup>18</sup>

29. The CMA's main consideration when considering horizontal unilateral effects is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger. Where there are few existing suppliers, the merger firms enjoy a strong position or exert a strong constraint on each other, or the remaining constraints on the merger firms are weak, competition concerns are likely.<sup>19</sup>
30. In order to investigate the horizontal unilateral effects theories of harm identified above, we will consider the Parties and their key rivals' competitive incentives and strategies, the closeness of competition between the Parties, the strength of the competitive constraints exerted by their rivals, and the impact of the Merger on these alternative constraints.
31. In its Phase 1 decision, the CMA found that the Merger gives rise to a realistic prospect of an SLC in the supply of retail mobile telecommunications services to end consumers in the UK. As a result, the CMA found that the Merger may lead to higher retail mobile prices for consumers and businesses, and MNOs investing less in network quality.
32. In particular, based on the evidence available to it, the CMA found that:<sup>20</sup>
  - (a) The Merged Entity may have incentives to raise prices or degrade non-price aspects of its offerings (including by reducing network investment). This is because:
    - (i) the Parties individually have strong incentives to compete aggressively relative to other MNOs, particularly 3UK. This is because the CMA believes that smaller MNOs may have stronger incentives to increase their revenue in order to be able to maintain and invest in their network. By contrast, the Merged Entity may have lower incentives to compete aggressively due to its significantly larger customer base;
    - (ii) the Parties compete closely in the supply of retail mobile telecommunication services to UK end consumers and this will continue in future; and

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<sup>18</sup> CMA 129, paragraph 4.1.

<sup>19</sup> CMA129, paragraph 4.3.

<sup>20</sup> Phase 1 Decision, paragraph 553-556.

- (iii) the Merger will eliminate the competitive constraint which 3UK and VUK place upon each other now and in the future in an already concentrated market. This means that it may be less costly (in terms of potential lost customers) for the Merged Entity to raise price or reduce quality (including through reducing network investment).
- (b) The remaining competitive constraints appear insufficient to offset this loss of competition. While other MNOs currently provide a constraint, they appear to compete less aggressively than 3UK and, in some respects, VUK. Regarding MVNOs, with the exception of Sky Mobile which exerts some constraint, the constraint from other MVNOs is very limited. MVNOs also, to a large extent, do not compete on network quality as they do not own their own mobile radio network infrastructure.
- (c) The remaining competitive constraints the Merged Entity would face may be further reduced as a result of the Merger. This is because:
  - (i) in an oligopolistic market, the other MNOs may respond to a price rise by the Merged Entity by also increasing their own prices, which in turn could have some positive feedback on the Merged Entity's prices and therefore magnify the effect of the Merger on price in the market;
  - (ii) the Merged Entity may have the ability and incentive to disrupt the effective functioning of the network sharing agreements which could have the effect of limiting the constraint exerted by BTEE and VMO2;
  - (iii) the Merger may lead to the constraint from MVNOs being reduced due to the impact of the reduction in competition in the supply of wholesale mobile services; and
  - (iv) these factors, taken together, may limit the competitive constraints which the Merged Entity faces and increase its incentives to raise prices or degrade non-price factors (including through reducing network investment and therefore degrading the quality of its offering to customers) as it risks losing fewer customers by doing so.

33. In order to investigate this theory of harm, we will consider:

- (a) the drivers of consumer choice and how consumers would likely respond to price and/or quality changes;
- (b) the competitive positions, incentives, and strategies of the Parties, including in relation to both pricing and network investment, and how these compare to their rivals;
- (c) how closely the Parties compete for different types of retail customers;



- (d) the constraint remaining from alternative operators post-Merger and whether this constraint may be sufficient to prevent an SLC at the retail level;
  - (e) the Parties' plans and likely competitive trajectory absent the Merger; and
  - (f) the Merged Entity's incentives to raise prices and degrade non-price aspects post-Merger, and how their rivals may respond to this.
34. In our assessment, we expect to use the extensive data and information collected in the phase 1 investigation and seek to expand this evidence base as appropriate. In particular, in addition to updating the evidence gathered in our phase 1 investigation, we intend to:
- (a) commission a survey of the Parties' customers, as well as of the general population;
  - (b) carry out an econometric estimation of consumer demand for mobile services;
  - (c) consider the internal strategy documents of both the Parties and their key rivals; and
  - (d) obtain more detailed financial performance information from the Parties on a range of important metrics.
35. At this stage, we would particularly welcome evidence regarding the current and future competitive constraint on the MNOs, including the Parties, from MVNOs, and how their rivals are likely to respond to any increase in price or degradation of non-price aspects post-Merger.
36. In the Phase 1 decision, the CMA also found that the Merger gives rise to a realistic prospect of an SLC in the supply of wholesale mobile services in the UK. In particular, based on the evidence available to it, the CMA found that:<sup>21</sup>
- (a) The Merger would reduce already limited competition in the supply of wholesale mobile services. There are only four MNOs capable of supplying wholesale mobile services and all four do not compete for all opportunities to host an MVNO on their network. Removing one of four competitors may have the effect of diminishing the MVNOs' ability to leverage a real or potential offer from another MNO, thereby reducing their ability to negotiate favourable wholesale access terms.
  - (b) Both 3UK and VUK are regarded as credible wholesale suppliers and constrain each other when competing for wholesale opportunities. VUK

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<sup>21</sup> [Phase 1 Decision](#), paragraphs 718 – 720.

and 3UK are close competitors, in particular with respect to larger MNVO opportunities.

- (c) Due to their larger customer bases, both BTEE and VMO2 may have more limited incentives to win new wholesale customers, and in a market characterised by already limited competition the constraint imposed by BTEE and VMO2 would not be sufficient to constrain the Merged Entity.
- (d) Additionally, the Merged Entity may have a reduced incentive to supply MVNOs as an indirect effect of its expanded presence in the supply of retail mobile services due to the increased risk of cannibalisation of its existing customer base.
- (e) As noted above in relation to horizontal unilateral effects, the Merged Entity may have the ability and incentive to disrupt the effective functioning of the network sharing agreements which could have the effect of limiting the constraint exerted by BTEE and VMO2.

37. In order to investigate this theory of harm, we will consider:

- (a) The factors which MVNOs consider when choosing between MNOs, their perceptions of each of the four MNOs, and the ease with which they can switch MNO host;
- (b) how closely VUK and 3UK compete for MVNO opportunities and the strength of the constraint from the other MNOs;
- (c) the competitive position of 3UK in the supply of wholesale services;
- (d) the Parties' wholesale strategies and how they compare to those of the other MNOs; and
- (e) how the Parties' incentives to host MVNOs, and the terms they offer, may change as a result of the Merger.

38. In our assessment, we expect to use the extensive data and information collected in the phase 1 investigation and seek to expand this evidence base as appropriate. In particular, in addition to updating the evidence gathered in our phase 1 investigation, we intend to:

- (a) Obtain internal documents from the other MNOs on their wholesale strategy; and
- (b) Obtain further information on contract negotiations and awards (in particular from larger MVNOs).

*Competitive impact of the Merged Entity's participation in both network sharing arrangements*

39. In its Phase 1 Decision, the CMA considered the impact of the Merged Entity's participation in the two network sharing arrangements in the UK on the competitive constraint exerted by BTEE and VMO2 individually as part of its assessment of its horizontal unilateral effects theories of harm. Separately, the CMA also considered the impact of the Merged Entity's participation in both network sharing arrangements on MNOs' collective incentives to invest and compete.
40. In this context, the CMA considered whether sharing of commercially sensitive information (eg data on investments, information on deployment plans, technical specifications or any other information which, in the context of a concentrated market, may facilitate the Merged Entity's prediction of its competitors' commercial strategy) between the Merged Entity and each of BTEE and VMO2 separately, may lead to competition concerns by reducing MNOs' incentives to invest.
41. In its Phase 1 Decision, the CMA found that the Merger gives rise to a realistic prospect of an SLC as a result of anti-competitive effects in the supply of retail mobile telecommunications services to end consumers and wholesale mobile services in the UK arising from the sharing of commercially sensitive information through the Merged Entity's participation in both network sharing arrangements. In particular, based on the evidence available to it, the CMA found that:
- (a) Given its position in both network sharing arrangements, the Merged Entity may have significant visibility as to the network upgrades and/or launch of new technologies planned by BTEE and VMO2.<sup>22</sup>
  - (b) While the safeguards in place may provide some protection, the Merged Entity could breach these safeguards, and there is scope for information sharing without the safeguards being breached.<sup>23</sup>
  - (c) By getting access to information on network investments planned by the other MNOs, the Merged Entity could take this into account in deciding how to time and target its own investments and could cancel or delay previous roll-out plans on the basis of receiving information regarding competing MNOs' roll-out plans.<sup>24</sup>
  - (d) In addition, BTEE and VMO2's incentives to invest may also be reduced and/or they may seek to rely less on network sharing arrangements which could lead to less or slower network deployment and higher costs.<sup>25</sup>

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<sup>22</sup> [Phase 1 Decision](#), paragraph 734.

<sup>23</sup> [Phase 1 Decision](#), paragraph 742.

<sup>24</sup> [Phase 1 Decision](#), paragraph 746a.

<sup>25</sup> [Phase 1 Decision](#), paragraph 746b.

(e) Knowing that its competitors may have reduced incentives to invest as a result of the increased information sharing, the Merged Entity might respond in turn by reducing its own investment plans.<sup>26</sup>

42. In order to investigate this theory of harm, we will consider:

- (a) the extent of the information that would be shared with, and how it is or could be used by, the Merged Entity to inform investment decisions;
- (b) the extent to which the safeguards in place which limit information sharing via the network sharing arrangements may mitigate any concerns;
- (c) the extent to which the sharing of commercially sensitive information could impact the Merged Entity's and its rivals' incentives to invest; and
- (d) the importance of network quality as a dimension of competition.

43. In our assessment, we expect to use the extensive information and documents collected in the phase 1 investigation and seek to expand this evidence base as appropriate. In particular, in addition to updating the evidence gathered in our phase 1 investigation, we intend to:

- (a) Obtain further information from the Parties to the network sharing arrangements and their nature and operational history; and
- (b) Obtain further relevant documents about these arrangements themselves.

### ***Countervailing factors***

44. We will consider whether there are countervailing factors which are likely to prevent or mitigate any SLC that we may find. Some of the evidence that is relevant to the assessment of countervailing factors may also be relevant to our competitive assessment.

45. As discussed in more detail below, the Parties have publicly claimed that the Merger will result in extensive efficiencies which they say will provide improved network quality for their customers and in turn stimulate more intensive competition in the relevant markets, particularly with regard to mobile network quality. The Parties have also provided the CMA with a significant amount of material which they claim corroborates their ability and incentive to realise these efficiencies, including a Joint Business Plan and Joint Network Plan for the Merged Entity underpinned by detailed economic modelling.

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<sup>26</sup> Phase 1 Decision, paragraph 746c.

46. Due to the timing of the submission of some of this material to the CMA, the CMA was not able to consider core documents underlying these claims in detail in the phase 1 investigation. We therefore anticipate that considering these claims will comprise a material part of its phase 2 analysis.
47. The CMA will analyse these efficiency claims using its established framework, which distinguishes between:<sup>27</sup>
- (a) Rivalry-enhancing efficiencies: efficiencies that change the incentives of the merger firms and induce them to act as stronger competitors to their rivals, for example, by reducing their marginal costs giving them the incentive to provide lower prices or a better quality, range or service. These go towards the finding of whether or not there is an SLC.
  - (b) Relevant customer benefits: benefits to UK customers that may result from a merger – for example, greater levels of innovation resulting from the combination of unique assets of the merger firms applying to products other than those where the firms compete. These do not go towards the finding of whether or not there is an SLC, but may influence the nature of any remedy imposed in response to any SLC that is found.
48. While all merger assessments are prospective, the CMA's guidance recognises that there can be a higher degree of uncertainty in some markets, such as those characterised by potentially significant changes in competitive conditions.<sup>28</sup> We currently consider that this is likely to be the case in the assessment of the Parties' efficiency claims, given the long time period over which it is claimed they will be realised, the scale of each Party's current operations (which would need to be integrated), the extent of the claimed additional investment and the potential uncertainty as to how competitors would respond.
49. In line with the approach outlined in its guidance, the fact that there may be some uncertainty in how the market is likely to develop in future is a relevant consideration but may not be determinative of our conclusions.<sup>29</sup> As in all cases, we must determine on the basis of all the available evidence whether the relevant standard of proof is met.

### *Rivalry Enhancing Efficiencies*

50. The Parties submitted that at least some of the efficiencies they claim will result from the Merger would act as rivalry-enhancing efficiencies.

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<sup>27</sup> CMA129, paragraph 8.3.

<sup>28</sup> CMA129, paragraph 2.10.

<sup>29</sup> CMA129, paragraph 2.10.

51. In particular, the Parties have claimed that:<sup>30</sup>
- (a) by combining their mobile spectrum and assets in a single network, the Merger would deliver, in a relatively short time period, a large one-off multiplicative increase in network capacity (which would significantly improve network quality for their customers);
  - (b) the Merger would also reduce the cost of expanding network capacity in the longer run. This is because in the future when the Merged Entity needs to invest to expand capacity it would have significantly more spectrum than either individual firm could deploy at a new site absent the Merger;
  - (c) the Merged Entity would be able to use capacity more efficiently given the new spectrum holdings and would avoid more costly deployment solutions. The greater capacity 'base' means the Merged Entity would have less need to deploy more costly solutions as, according to the Parties' submissions, the cost of adding sites increases as operators with congestion may have to increasingly rely on less cost-effective sites; and
  - (d) In addition to the capacity expansion, the Parties submitted that extensive short and long-run Merger cost synergies (both network and non-network related) would allow them to fund accelerated investment in 5G (particularly 5G standalone) network equipment architecture, infrastructure and equipment compared to what VUK and 3UK could achieve on their own.
52. The Parties submitted that the overall effect of this would be to enable the Merged Entity to offer better quality, lower quality-adjusted prices and a lower price per GB of mobile data than the Parties could offer as standalone operators. This would, in turn, incentivise BTEE and VMO2 to respond by reducing their quality-adjusted prices (whether through improving their network quality or reducing their prices or a combination of both).
53. We will use the following criteria in assessing whether merger efficiencies mean that the Merger does not result in an SLC. Merger efficiencies must:<sup>31</sup>
- (a) enhance rivalry in the supply of those services where an SLC may otherwise arise;
  - (b) be timely, likely and sufficient to prevent an SLC from arising;

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<sup>30</sup> Phase 1 Decision, Section 6.2.2 and the references contained therein.

<sup>31</sup> CMA129, paragraph 8.8.

- (c) be Merger-specific, ie reliant on the Merger and not capable of being brought about by other means; and
  - (d) benefit customers in the UK.
54. The greater the expected adverse effect of the Merger, the greater the expected efficiencies must be to prevent the SLC.<sup>32</sup>
55. CMA guidance notes that most of the information relating to the synergies and cost reductions resulting from a merger is held by the merger firms.<sup>33</sup> As a result, our assessment of the Parties' claims is likely to focus on material held by the Parties, such as the assumptions made by the Parties in producing the Joint Business Plan and Joint Network Plan for the Merged Entity together with the modelling to support this.
56. However, we will also consider any other relevant evidence, including seeking technical input on the Parties' claimed post-merger plans from the UK's communications regulator, Ofcom, and information from other MNOs.<sup>34</sup> We will also examine closely the likely commercial incentives of the Merged Entity in light of our conclusions as to the likely competitive conditions in the relevant markets post-Merger.
57. We particularly welcome any evidence from third parties regarding the extent to which the Parties' claimed efficiencies would be timely, likely and sufficient to prevent any identified SLC from arising.

#### *Possible remedies and relevant customer benefits*

58. Should we conclude that the Merger may be expected to result in an SLC within one or more markets in the UK, we will consider whether, and if so what, remedies might be appropriate.
59. In any consideration of possible remedies, we may have regard to their effect on any relevant customer benefits that might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be, and which customers would benefit.<sup>35</sup>
60. The Parties have claimed that the Merger will generate significant relevant customer benefits. These claims are based on similar underlying factors to their claims relating to rivalry-enhancing efficiencies. In particular, the claimed customer benefits derive from the Merged Entity purportedly benefitting from a

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<sup>32</sup> CMA129, paragraph 8.14.

<sup>33</sup> CMA129, paragraph 8.7.

<sup>34</sup> This is in addition to any other information that the CMA may obtain from Ofcom during the course of the inquiry as envisaged by relevant CMA guidance (see for example, CMA 2 at paragraph 17.2 and CC 7 at paragraph 6.20).

<sup>35</sup> [Merger Remedies](#) (CMA87), paragraphs 3.4 and 3.15-3.24.

lower unit cost of capacity and increasing capacity compared to the counterfactual.

61. As such, we currently consider that the same types of evidence as outlined in relation to the claimed rivalry-enhancing efficiencies will also be relevant to our consideration of the Parties' claims of relevant customer benefits.

### *Entry and Expansion*

62. We will also consider any available evidence of entry and/or expansion by third parties and whether entry and/or expansion would be timely, likely and sufficient to prevent any SLC from arising as a result of the Merger.<sup>36</sup>

### **Responses to this issues statement**

63. Any party wishing to respond to this issues statement should do so in writing, no later than **5pm on Thursday 16 May 2024** by emailing [Vodafone.Three@cma.gov.uk](mailto:Vodafone.Three@cma.gov.uk).

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<sup>36</sup> CMA 129, paragraphs 8.28–8.43.