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

Summary of provisional findings

Notified: 13 September 2024

OVERVIEW

1. The Competition and Markets Authority (**CMA**) has provisionally concluded that 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**) may be expected to result in a substantial lessening of competition (**SLC**) in two markets in the UK. These are the supply of retail mobile telecommunications services to end customers, including both consumers and business customers (the **retail market**), and the supply of wholesale mobile telecommunications services (the **wholesale market**). 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. With regards to the retail market, we have provisionally concluded that the Merger would lead to price increases for tens of millions of mobile customers, or see customers get a reduced service such as smaller data packages in their contracts. It would create the largest retail mobile operator by revenue in the UK and the second largest in terms of customers.

3. We consider these findings to be particularly significant given that the Parties collectively have over 27 million subscriptions in the UK which would be directly affected by any price rises. We also predict some level of price increase across the retail market as a whole, which in 2023 comprised almost 90 million mobile subscriptions.

4. With regards to the wholesale market, we have provisionally found that the Merger would negatively affect customers – known as Mobile Virtual Network Operators (**MVNOs**) - such as Sky Mobile, Lyca, Lebara and iD Mobile. MVNOs do not own their own networks and so rely on wholesale access to the mobile network operators' (**MNOs**) networks to provide their own mobile services. The Merger would reduce the number of MNOs from four to three, making it more difficult for independent MVNOs to secure competitive terms, restricting their ability to offer the best deals to retail customers. This is important because many MVNOs price aggressively, often focusing on value segments of the retail market.

5. VUK and 3UK have claimed that the rationale for the Merger is that:

   (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**), VMED O2 UK Limited (**VMO2**)) and two weak players (VUK and 3UK);

   (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 5G standalone (**5G SA**) and address explosive growth in data traffic; and

   (d) by bringing together the complementary assets 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.

6. We have provisionally found that the Merger, by integrating the VUK and 3UK networks, could improve the quality of mobile networks and bring forward the deployment of next generation 5G networks and services, as claimed by VUK and 3UK. But we currently consider that these claims are overstated, and that the Merged Entity would not necessarily have the incentive to follow through on its proposed investment programme after the Merger. Most consumers also told us that they would not be willing to pay more for better quality. We therefore have significant concerns about the impact of the Merger on the large number of consumers who might have to pay more for improvements in network quality they do not value.

7. We have therefore provisionally found that while some pro-competitive efficiencies are likely, these are not sufficient to offset the adverse effects of the Merger.

8. The report and its appendices, which will be published shortly after this summary, constitute our **Provisional Findings**. We invite any interested parties to make representations on these Provisional Findings by no later than 4 October 2024. We will take all submissions received by this date into account in reaching our final decision.

9. We are also consulting on potential solutions to our competition concerns. These include legally binding investment commitments overseen by the sector regulator, Ofcom, and measures to protect both retail customers and customers in the wholesale market. We will retain the option to prohibit the Merger should we conclude that other remedy options will not address our competition concerns effectively. In our notice of possible remedies, published alongside our Provisional Findings, we have set out more detail on options to remedy the provisional SLCs. We also invite submissions from interested parties on these initial views by 27 September 2024.

10. Interested parties should refer to the notice of provisional findings for details of how to do this.

ABOUT THE BUSINESSES

11. Vodafone – listed on the London Stock Exchange – is the holding company of a group of companies providing mobile and fixed telecommunication services, principally across Europe and Africa. In the UK, Vodafone supplies retail mobile services to consumers and businesses and wholesale mobile services through its wholly-owned subsidiary VUK. It operates under the Vodafone brand and the VOXI and Talk Mobile sub-brands.

12. CK Hutchison – listed on the Stock Exchange of Hong Kong – is a multinational conglomerate operating in over 50 countries across four core businesses: ports and related services, retail, infrastructure and telecommunications. In the UK, CK Hutchison supplies retail mobile services to consumers and businesses and wholesale mobile services through its wholly-owned subsidiary 3UK. It operates under the Three brand and the SMARTY sub-brand.

ABOUT THE UK MOBILE INDUSTRY

13. Mobile services play an integral role in the daily lives of consumers and businesses in the UK. In the last decade, there has been a significant shift towards the use of mobile devices in UK consumers' everyday lives, with mobile internet access becoming an essential service. 97% of UK adults are estimated to have a mobile phone, and 92% a smartphone. In May 2023, UK adults spent on average 2 hours and 47 minutes a day online on their smartphones, with 89% of the time

spent via apps. Average monthly data volumes per mobile data user grew to 9.9 gigabytes (**GB**) per month in 2023 from 2.6GB in 2017.

14. Ofcom expects demand for mobile data to continue to grow to meet changing customer needs. Operating a mobile network involves high fixed costs and Ofcom anticipates that 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.

15. 5G is the next generation of mobile network technology. Compared to 4G, 5G technology is capable of providing faster speeds, greater capacity and very fast response times. These features mean that 5G will allow many more users and devices to access fast internet connections and a large amount of data at the same time. 5G in its most advanced form (ie 5G SA) also has the potential to enable various 'smart' applications, for example in e-healthcare, smart cities, connected vehicles, and automated technologies. However, most of these new applications are still under development in terms of technology and business cases, and MNOs and other market participants have said that the case for deploying 5G is challenging due to the uncertainty over the extent to which they can make a return on their investment.

16. There are currently four MNOs in the UK – BTEE, VMO2, VUK, and 3UK. All four MNOs are party to one of two network sharing arrangements in the UK: BTEE and 3UK have a network sharing arrangement (**MBNL**), and VUK and VMO2 have a separate network sharing arrangement (**Beacon**). These allow BTEE and 3UK on the one hand, and VMO2 and VUK on the other, to share – to some degree – the costs of rolling out and maintaining their networks while continuing to compete with each other at the retail and wholesale level. Although certain network infrastructure is shared between the parties to each arrangement, other infrastructure is not, and so each of the four MNOs is able to differentiate its network quality to some degree (for example regarding 5G roll-out).

17. In addition to the four MNOs, there are a number of MVNOs active in the supply of retail mobile services in the UK, including Sky Mobile, Tesco Mobile (which is 50% owned by VM02), Lebara, Lyca Mobile and iD Mobile.

OUR ASSESSMENT

Why are we examining this Merger?

18. On 14 June 2023, Vodafone and CK Hutchison entered into an agreement (the **Contribution Agreement**) to establish a joint venture combining their UK telecom businesses. Under the terms of the Contribution Agreement, 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. The Merger is subject to certain regulatory conditions, including merger control clearance from the CMA.

19. We have provisionally found that we have jurisdiction to review the Merger: each of Vodafone, CK Hutchison, VUK and 3UK is an enterprise; as a result of the Merger 3UK will cease to be distinct from Vodafone and, conversely, VUK will cease to be distinct from CK Hutchison, and VUK and 3UK together generated more than £70 million turnover in the UK in FY2023.

How have we examined this Merger so far?

20. In deciding whether a merger may be expected to result in an SLC, the question we are required to answer is whether there is an expectation—a more than 50% chance—that the merger will result in an SLC within any market or markets in the UK. This includes considering any claims of efficiencies that may offset an SLC that might otherwise arise as result of the merger (discussed in more detail below).

21. We have taken a forward-looking approach when assessing the impact of the Merger and considered how competition would have evolved with and without the Merger. To understand the impact of the Merger on competition, we considered a very wide range of evidence in the round. We received a large number of submissions and responses to information requests from the Parties and met with them in person on a number of different occasions to allow them to present their views directly. We gathered data, including on shares of supply, switching by customers, tenders for MVNO contracts and prices. We reviewed a large number of internal documents from Vodafone and CK Hutchison to understand their businesses, financial performance, competitive strategies and plans, their considerations in agreeing the Merger and the competitive landscape in which VUK and 3UK operate.

22. We also gathered evidence from other interested parties and sector participants, including MNOs and MVNOs, as well as the Parties' retail business customers. This included internal documents from other MNOs and MVNOs relating to commercial strategy, the current competitive significance of the Parties in both the retail and wholesale markets and the likely impact of the Merger, including whether they considered the Parties' claimed efficiencies would be realised and the impact of these if so. Finally, we commissioned a survey of the Parties' customers, as well as of the general population, and carried out an econometric estimation of consumer demand for mobile services using data from Ofcom and third-party providers (Open Signal and Pure Pricing).

23. Throughout our phase 2 inquiry, in line with CMA guidance in relation to merger investigations involving regulated sectors, we also engaged with Ofcom given its

sector expertise, particularly in relation to the technical aspects of the Parties' claims about rivalry-enhancing efficiencies which they said would result from the Merger.

…and how have we considered the Parties' efficiency claims?

24. If the CMA provisionally finds that a merger gives rise to competition concerns (as is the case here), it must then assess whether there are any 'countervailing factors' which prevent or mitigate any SLC arising from a merger, including potential efficiencies.

25. Rivalry-enhancing efficiencies are efficiencies resulting from a merger that are likely to strengthen the ability and incentive of the merged entity to act pro-competitively for the benefit of consumers. These efficiencies may prevent an SLC by offsetting any anti-competitive effects of the merger. The CMA will generally first consider whether there is scope for an SLC absent any efficiencies and, if there is, it will consider rivalry-enhancing efficiency claims from the merger firms before determining the overall impact of the merger on competition.

26. When announcing the Merger, the Parties made a number of claims about pro-competitive efficiencies and consumer benefits which they said would result. For example, they said that from 'Day one' (ie within the first 12 months from closing the Merger) millions of customers of VUK and 3UK would enjoy a better network experience with greater coverage and reliability at no extra cost. They also said that the combined business would invest £11 billion in the UK over ten years to create one of Europe's most advanced 5G SA networks, and that the Merger would create a third mobile operator with scale, levelling the competitive playing field, and thereby increasing competition to the UK's two leading converged operators (BTEE and VMO2).

27. In the course of the merger review process, the Parties also supplied us with a number of complex economic models and submissions which they claimed quantified in different ways (for example in terms of quality and capacity improvements) the efficiencies that would result from the Merger.

28. Part way through the phase 2 investigation, the Parties entered into an agreement with VMO2 (**Beacon 4.1**) which involves, among other things, the divestment of spectrum to VMO2 (conditional on CMA approval for the Merger). The Parties claimed Beacon 4.1 would generate further Merger-specific efficiencies, in particular by making VMO2 a more effective competitor in the wholesale and retail markets.

29. Cost and revenue synergies (which in this case are intended to provide a large proportion of the funding for the claimed network investment) often form part of the rationale for mergers, and it is not uncommon for firms to make efficiency claims in

merger proceedings. Some studies have found that firms often do not fully realise the expected synergies from their mergers and, even for the synergies that they do realise, firms do not always pass on the benefits to their customers. Merger efficiencies therefore must be likely to be realised so as to ensure that customers in the UK do benefit overall from a merger; this means that the evidence supporting claimed future efficiencies needs to be verifiable.

30. The CMA case team comprised a range of specialist advisors (for example, economists, financial analysts, lawyers, econometricians and a third-party academic advisor) and worked closely with technical specialists at Ofcom to assist the Inquiry Group in carefully considering these claims and the models the Parties submitted in support of them.

What did the evidence tell us?

… about the relevant markets?

31. Where the CMA makes an SLC finding, this must be ‘within any market or markets in the United Kingdom for goods or services’. 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.

32. As noted above, we have 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.

… about the effects on competition in the retail market of the Merger?

In terms of what matters to UK customers

33. At the outset, we sought to understand the factors that matter to UK end customers of retail mobile services, so as to better assess how the Merger (through its impact on competition) would affect their overall user experience. We found that price is the most important parameter of competition. Whilst customers also require a minimum level of quality, and network quality related parameters play an important role in customer decisions, they are less important than price.

34. For example, most consumers told us that they would not be willing to pay more for better quality (with 76% unwilling to pay for faster speed, and 59% unwilling to pay more for more reliability). Ofcom also noted the current limited evidence of customer willingness to pay a premium for services that rely on 5G SA capabilities. We recognise the possibility that consumer attitudes may evolve as the mobile industry develops.

About the market positions of the Parties and their rivals

35. We then considered the position of the Parties and their rivals in the market, including how closely they currently compete and what alternative competitive constraints would remain if the Merger took place.

36. We found that VUK and 3UK are the third and fourth largest mobile operators in the supply of retail mobile services by revenue and subscribers. Since commencing a network investment programme in 2020 (when it was ranked as the lowest performing network on some third-party measures), 3UK has improved its network quality rankings relative to other MNOs and is particularly strong in (non-standalone or **NSA**) 5G and it currently has the fastest 5G speeds in the areas where it has rolled this out.

37. VUK has historically had the second-best network quality behind BTEE across several third-party measures. More recently, due to improvements in 3UK's network, VUK's network quality is broadly similar to 3UK's on some aspects of these third-party measures and slightly behind 3UK's on others (notably 5G).

38. We provisionally found that the Parties compete closely in the supply of retail mobile services and that this would continue in the future absent the Merger. In particular we found that most competitors consider each Party to be a strong or very strong competitor to the other, whilst switching and diversion data shows the Parties provide a constraint on each other. We further found that the Parties compete particularly closely in some subsegments of the retail market, including in the unlimited data, pre-paid and small office/home office (**SoHo**) subsegments.

39. We currently consider that both BTEE and VMO2 compete closely with the Parties, and that this will likely continue in the future, absent the Merger. We found that they both have a large presence in the supply of retail mobile services, high switching and diversion from customers of the Parties, and strong brands, particularly BTEE which has consistently had the highest network quality. However, there is also some evidence to suggest that both BTEE and VMO2 compete less aggressively than the Parties in some respects.

40. BTEE positions itself towards the premium end of the market and third parties see it as more expensive. VMO2 operates a dual-brand strategy, using Giffgaff to compete in the value subsegment and O2 in the premium subsegment and is a 50% shareholder in Tesco Mobile, the largest MVNO. On a number of third-party measures, and according to competitor views, it now has the lowest network quality of the UK MNOs. Third parties view BTEE as being slow to change and VMO2 as being less innovative. BTEE and VMO2 have also both been losing share by both revenue and subscribers, whilst the Parties have been gaining share by revenue and have had largely stable shares by subscribers in the period from 2020 to 2023.

41. We provisionally found that some independent MVNOs currently exercise some constraint on the Parties, namely Sky Mobile and, especially in the value segment, Lebara, Lyca and iD Mobile. Overall, however, we currently consider that the constraint from MVNOs is limited. This is because, firstly, all independent MVNOs individually have a very small share of supply and are dependent on wholesale contracts to compete. Most MVNOs are also not considered by third parties to be either a strong or very strong competitor to the Parties. Secondly, MVNOs typically only compete in some segments. Most MVNOs, including Lebara, Lyca and iD Mobile, appear to generally cater more towards cost-sensitive consumers. A significant exception to this is Sky Mobile, which is the largest of the independent MVNOs (with strong recent growth) and particularly competes in the PAYM handset segment. However, its share of supply in the overall retail segment is small (less than 5% by subscribers and revenue) and it does not offer pre-paid or business tariffs.

About the effect of the Merger on price

42. In light of these findings and given the importance of price to customers, we sought to quantify the likely impact of the Merger on pricing using a range of economic techniques, and carefully considered the robustness of our results. It is difficult to estimate the impact of a merger on retail pricing with precision in this industry for a range of reasons. We have therefore considered our economic estimates in the round, rather than as a single definitive source of evidence about the likely impact of the Merger.

43. Our quantitative economic analyses consistently show that the Merger is likely to have a material upwards impact on retail prices. Our analysis of the Gross Upwards Pricing Pressure Index (**GUPPI**) suggests significant pricing pressure of between 5-10% and 10-20% for 3UK and between 0-5% and 5-10% for VUK. Our merger simulation predicts that the Merged Entity's prices would rise by 7.0% for 3UK and 3.8% for VUK on average. This, along with predicted price rises from the other retail providers, would lead to a harm to UK customers which is equivalent to at least £328 million per year, though our sensitivity analysis suggests that this could be as high as £1.1 billion.

44. This analysis does not account for the loss of competition arising from the Merger on the wholesale market. Faced with less competitive wholesale terms, MVNOs would be less able to compete in the retail market, particularly in the low-cost segment where they tend to operate. This would lead to greater price increases than already outlined from the direct loss of retail competition resulting from the Merger.

45. We also note that our estimates are broadly consistent with the results of a recent European Commission study on the effects of market concentration on retail mobile pricing across European Union member countries (which at the time

included the UK), which found a strong and significant positive relationship between market concentration and prices.

About the effect of the Merger on network quality

46. Although less important than price, we also found that network quality is important for customers. There are multiple dimensions of network quality including coverage, speed, latency, consistency and reliability.

47. Many (but not all) of the Parties' claimed efficiencies relate to what they described as 'transformational' increases in network quality that they said would result from the integration of their individual networks (and related investments), which they claimed would accelerate the deployment of 5G SA across the UK. The Parties said there would be significant improvements across a range of the different technical dimensions of network quality. The Parties said that without the Merger, they would remain 'sub-scale' compared to the two other UK mobile networks, and therefore unable to invest sufficiently to allow them to compete with them on network quality.

48. We agree that these improvements (if delivered) have the potential to enhance network quality. We therefore carefully considered, firstly, what network quality was likely to result without the Merger, and in particular whether there was evidence that supported the Parties' claims that they are currently 'sub-scale'. We have provisionally found that absent the Merger, both of the Parties' standalone networks are likely to deliver higher network quality than they have claimed. We have reviewed the current business plans of both of VUK and 3UK, which show that they expect to continue to make network investments to improve customer experience. We also challenge the Parties' claim that they are unable to effectively compete on a standalone basis so as to deliver good outcomes for UK customers.

49. Secondly, we assessed what the likely impact on network quality (and therefore competition) would be if the Merger were to take place. Many of the Parties' claims in this regard are based on their 'joint business plan' (**JBP**) which incorporates the 'joint network plan' (**JNP**) they have prepared for the Merged Entity, and which provides for integration and investment over the period up to FY34. We therefore carefully considered whether the Parties were able, and likely, to deliver this plan, including by consulting Ofcom, particularly in relation to its technical aspects.

50. We consider that there are a number of practical implementation risks in the integration of any two large and established businesses, and in particular – in this case – the consolidation of two of the four UK mobile networks. However, we have provisionally concluded that the Parties are likely to have the ability to deliver the JBP (or a plan that is broadly comparable). We consider the JBP to be a credible integration plan, reflecting detailed due diligence by external consultants and significant time and resource investment by the Parties. We also recognise that

the network improvement plans in the JNP involve the consolidation and upgrading of existing mobile sites, to rationalise down rather than scale up the total number of sites held by the Merged Entity. This process contrasts with the identification of locations for and subsequent construction of new sites, which would be required for site footprint expansion by each of the Parties absent the Merger, and which is likely to be significantly more practically challenging.

51. However, we have also provisionally concluded that the Parties are not likely to deliver the full JBP. In reaching this conclusion, we have carefully considered the detailed economic modelling which the Parties provided to us which they claim demonstrates their commercial incentive to implement the full JBP as opposed to, for example, a less ambitious network integration and investment approach. We found that if we apply a number of alternative assumptions that we consider reasonable, the case for the implementation of the JBP becomes substantially less commercially compelling.

52. We consider that the commercial strategies of the Merged Entity would respond dynamically to future market circumstances and that the Merged Entity would re-assess (and potentially reduce) the scale of network investment in light of future market circumstances, which may differ from what they project currently in the JBP.

53. In particular, we consider that the Parties may have the commercial incentive to retain a lower number of sites than claimed in the JNP given the cost savings that can be realised through site decommissioning. This commercial incentive may be particularly strong in low and mid traffic areas, where the impact on network congestion of the site decommissioning may be less, and Ofcom has raised concerns with us in this respect.

54. We have also carefully considered the Parties' quantitative modelling of the claimed network capacity and quality impacts of the Merger (which include the claim of a market-wide welfare gain of £1.8 billion per year). We have a number of serious concerns about the robustness and predictive value of these models, and therefore we do not put any weight on these models or their claims.

55. However, we do currently consider that the Parties have the ability to, and are likely to, deliver some of the claimed network improvements efficiencies. In particular, we consider that based on the evidence we have seen thus far, the Merged Entity would have the incentive (and ability) to deliver the so-called 'Day 1' benefits of a combination of multi-operator core network arrangement (**MOCN**), and deployment of additional spectrum through sharing of the Parties' combined holdings (for example in relation to 1,800 MHz spectrum). In addition, we also consider that some degree of site densification relative to either Party's standalone networks is likely, particularly given the inevitability of network integration,

although it is not possible to quantify precisely the likely extent (for example in terms of the Merged Entity's site numbers or the level of spectrum deployed).

56. The combination of these factors is likely to result in some improvement in various network quality metrics in ways that affect consumer experience, but less than the Parties have claimed.

57. Firstly, we consider that MOCN and spectrum sharing will have some impact on capacity and congestion. Specifically, MOCN will help address congestion in areas where VUK is congested but 3UK is not and vice versa and deployment of VUK's 1,800 MHz spectrum on 3UK sites will help alleviate congestion on 3UK's 4G network. We also consider that over time integration of the networks and deployment of spectrum through that process will increase network capacity, further reducing congestion. We consider that – without the Merger – both of 3UK and VUK, on a standalone basis, are incentivised to continue to manage congestion at least as effectively as they do at the moment. In addition, it does not appear that the additional capacity that would be delivered by the Merger (in the Parties' modelling) is necessarily well targeted to meet future demand for usage, as the modelling implies that capacity at some sites would be expanded despite there being no foreseeable prospect of congestion at those sites.

58. We also consider that the Merger is likely to potentially improve reliability, particularly in rural (but populated) areas and in buildings as a result of the greater number of combined sites. Even in areas where there is technically coverage the distance from the site and obstacles such as buildings, trees and hills can affect the quality of the signal that the customer gets. The benefits of MOCN on reliability will reduce over time as the combined grid is rationalised. The impact of densification (ie the number of sites) in the longer term will depend on how many sites the Merged Entity retains, and we consider that the Merged Entity may have incentives to reduce the number of planned sites post-Merger, particularly in low to mid traffic areas.

59. While we understand that MOCN (and subsequently network integration – depending on the number of sites retained) would lead to some increase in geographic coverage (ie removal of 'not-spots'), given the existing and future projected coverage of the Parties' standalone networks, we note this is likely to be in areas where there is limited use of mobile connectivity.

60. Finally, while the Parties claim that the Merger will lead to a significant improvement in network latency and average speeds relative to the standalone scenarios, we note that the Parties' forecasts suggest that their standalone networks will deliver high speeds and low latencies by reference to current measures of high performance. We therefore consider that the value to customers of some of these technical improvements (especially speed and latency) is likely to depend to a significant extent on the emergence and adoption of new applications

that require very high speeds and low latencies. We also note that these KPIs depend on the full implementation of the JNP and as set out above, we currently do not consider that the Merged Entity would be likely to deliver the full JNP.

61. We currently consider that these overall network quality improvements would in turn likely lead to some competitive response (for example, by way of further network investment) from BTEE and VMO2 to also improve their respective network quality, increasing the extent of network quality competition in the retail market.

62. As noted above, on a number of measures and according to competitor views, VMO2 has the lowest network quality of the UK MNOs. We therefore consider that the spectrum transfer to VMO2 agreed through Beacon 4.1 would provide a notable and rapid increase in network quality for its wholesale and retail customers which would further increase network quality competition.

About the overall impact on competition in the retail market

63. The greater the expected adverse effect of a merger, the greater the expected efficiencies must be to offset overall the adverse impact on competition. For the reasons set out below, we do not currently consider that, by themselves, the efficiencies that we provisionally find are likely to result from the Merger (which are more limited than what would be delivered under the JNP) would be sufficient to outweigh the adverse competitive effects identified. In reaching this provisional conclusion we have had regard to several factors.

64. Firstly, we consider the likely price increases for retail customers resulting from the Merger to be particularly significant given that the Parties collectively have over 27 million subscriptions in the UK who would be directly affected by any price rises. We also predict some level of price increase likely to affect the retail market as a whole, which in 2023 comprised almost 90 million mobile subscriptions.

65. Most customers told us that they would not be willing to pay more for better quality. We therefore have significant concerns about the impact of the Merger on the large number of retail customers who might have to pay more for improvements in network quality they do not value.

66. Our analysis also suggests that the customers who will see a particularly large fall in consumer welfare from higher prices have the lowest disposable incomes. We have particular concerns about the impact of the Merger on those customers least able to afford mobile services.

67. Secondly, we consider that the likely level of network quality absent the Merger would be higher than the Parties have claimed, and – conversely – that the network investments that the Merged Entity would make and the impact of those on customer experience would be more limited than the Parties have claimed. This

reduces the likely scope of the network quality competition improvements that we consider are specific to the Merger.

68. For these reasons, we have provisionally concluded that the Merger may be expected to result in an SLC in the retail market.

69. For completeness, we also have some doubts as to whether the full JNP would – if delivered – be sufficient to offset the adverse effects on competition in the retail market provisionally identified. We invite submissions from the Parties and third parties in this respect. But we do not need to conclude on that question in these provisional findings given our provisional conclusion that delivery of the full JNP is not likely.

… about the effects on competition in the wholesale market of the Merger?

In terms of what matters to MVNO customers

70. As we did in considering the retail market, we sought to understand the key factors that matter to MVNO customers when choosing an MNO, so as to better assess how the Merger (through its impact on competition) would affect the commercial terms that they would be able to obtain and, in turn, their offering to retail customers. We found that both price and network quality are important to MVNOs, although there may be some differences between MVNOs in the relative importance that they attach to each, particularly depending on their own competitive positioning in the retail market.

About the market positions of the Parties and their rivals

71. Agreements for MVNOs to access an MNO’s network can be negotiated through formal tender processes or informal negotiations. Formal tender processes are more likely to be used by larger MVNOs than smaller MVNOs and may involve multiple rounds of bidding and negotiations. Although a very large number of MVNOs operate in the market, a small number of MVNOs comprise a very large proportion of the overall subscriber base served by MVNOs. The five largest MVNOs collectively accounted for almost 60% of all subscribers served by MVNOs in 2023 and the ten largest MVNOs accounted for over 90% of all MVNOs’ subscribers in 2023.

72. As there are only four MNOs in the UK, at most four MNOs compete for any given wholesale opportunity. The evidence also suggests that MNOs have incumbency advantages, and that the intensity of competition between MNOs has varied over time and by type of MVNO. We therefore provisionally consider that there is currently limited competition in the supply of wholesale mobile services.

73. We consider that VUK and 3UK are close competitors in the supply of wholesale mobile services and that both are credible choices for potential MVNOs. 3UK’s

recent improvements in network quality (particularly in 5G roll out) have been recognised by MVNOs.

74. Moreover, we found that the Parties competed directly against one another for a number of large MVNO opportunities, including the Sky Mobile opportunity, by far the largest independent MVNO opportunity, which saw particularly close competition between the Parties. We consider it likely that the Parties will both compete for large MVNO opportunities that may be up for renegotiation in the near future.

75. There are only two alternative suppliers of wholesale mobile services to the Parties in the UK: BTEE and VMO2. It appears that both MNOs exert a competitive constraint on the Parties, although we note that they do not necessarily compete in all opportunities, even where invited.

About the overall impact on competition in the wholesale market

76. We note that the market will be highly concentrated post-Merger with at most only three options for MVNOs. The Merged Entity would be the second largest supplier of wholesale mobile services by subscribers and revenue, after VMO2. A significant majority of the MVNOs we spoke to considered that the Merger would worsen competition.

77. We currently consider that the Merged Entity would have a reduced incentive to compete for MVNO opportunities than the Parties individually because the Merger will lead to the removal of the competitive constraint which the Parties currently exert on each other. We also consider that there may be an indirect effect resulting from the fact that the Merged Entity will have an expanded presence in the supply of retail mobile services, which may mean it may have less of an incentive to bid for wholesale business. If the Merged Entity were to act on these incentives by bidding less or offering less competitive terms, its rivals would experience an increase in demand for their services. This increase in demand may also provide rivals with incentives to compete less aggressively.

78. Against these findings, we have carefully considered the impact of those efficiencies which we consider are likely to result from the Merger. A number of the same considerations outlined above in relation to the Parties' claimed efficiencies in the retail market are also applicable to the wholesale market. In particular, we consider that, in light of our provisional conclusions about the overall reduction of rivalry in the wholesale market from the Merger, pricing terms offered to MVNOs are likely to be less competitive, and that while some network quality improvements will result these are more limited than is claimed by the Parties.

79. We also specifically asked MVNOs who expressed concerns about the Merger whether Beacon 4.1 (including the spectrum divestment to VMO2) changed their views about the likely overall impact of the Merger. Almost all said it did not.

80. For these reasons, we have therefore provisionally concluded that the Merger may be expected to result in an SLC in the wholesale market.

81. For completeness, as for the retail market, we have some doubts as to whether the full JNP would – if delivered – be sufficient to offset the adverse effects on competition in the wholesale market provisionally identified. As above, we invite submissions from the Parties and third parties in this respect.

… about the competitive impact of the Merged Entity's participation in both network sharing arrangements?

82. We considered the impact of the Merged Entity's participation in both network sharing arrangements on MNOs' collective incentives to invest and compete. In this context, we 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.

83. As noted above, in the absence of the Merger, the Parties are each participants in one of the two network sharing arrangements, MBNL and Beacon. 3UK therefore has access to certain commercially sensitive information pertaining to BTEE through MBNL. Whilst certain teams within VUK have access to commercially sensitive information pertaining to VMO2, this information is ring-fenced from the retail, wholesale and strategy teams in particular.

84. Given there is already a certain level of information sharing pre-Merger between BTEE and 3UK, on the one hand, and VUK and VMO2, on the other hand we have focused on the potential Merger impact, ie whether the Merged Entity will have an incentive to combine the commercially sensitive information received through MBNL with the commercially sensitive information received through Beacon. Given the Merged Entity would only be able to share VMO2's information with its retail, wholesale and strategy teams by breaching the Beacon information sharing safeguards, we have considered whether post-Merger, the Merged Entity would have the incentive to breach the Beacon safeguards.

85. To assess this, we first considered the importance of the information shared within MBNL to the Merged Entity's investment plans. We found that given its position in MBNL, the Merged Entity may have some visibility as to certain types of information relating to BTEE's network, including its current configuration of sites, forecast rollout plans and high-level technology upgrade plans.

86. However, we provisionally consider that it is unlikely that this information shared via MBNL would be useful to informing the Merged Entity's investment plans given

its limitations (including, for example, how far in advance the information is shared and the scale of information shared). It is therefore unlikely to lead to the Merged Entity reducing or postponing its investments.

87. Therefore, we consider that the potential benefit from combining the information the Merged Entity would receive on the MBNL side and the Beacon side is limited. Accordingly, we do not consider that the Merged Entity would have an increased incentive to breach the Beacon information sharing safeguards in order to share VMO2's information with its retail, wholesale and strategy teams compared to VUK's current incentives in the counterfactual. Given this, we have not needed to assess the usefulness of the information currently being shared via Beacon.

88. For these reasons, we provisionally consider that the Merger does not give rise to an SLC resulting from the sharing of commercially sensitive information via the Merged Entity's participation in both network sharing arrangements.

… about any entry and expansion?

89. The CMA has seen no evidence of any scope for entry by MNOs due to high costs and the availability of spectrum. As regards MVNOs, the CMA currently believes that there are barriers to entry and/or expansion for MVNOs, including the high costs involved and challenges with negotiating and obtaining competitive commercial terms from MNOs. In any case, the CMA has not received evidence to indicate that any entry or expansion in response to the Merger would be timely, likely and sufficient to prevent the SLCs from arising.

PROVISIONAL CONCLUSIONS

90. We have provisionally concluded that the Merger constitutes arrangements in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

91. We have provisionally concluded that there is scope for an SLC as a result of the creation of that situation in each of:

(a) the national (UK) market for the supply of retail mobile telecommunications services; and

(b) the national (UK) market for the supply of wholesale mobile telecommunication services.

92. We have also provisionally concluded that the Merger does not result in REEs that would offset the anticompetitive effects in either of these markets and that the Merger may therefore be expected to result in an SLC in each of these markets.