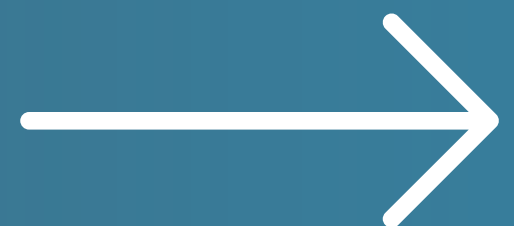


VODAFONE/3 UK: SIGNS OF A NEW PLAYBOOK FOR MOBILE MERGERS?

INTERPRETING THE CMA'S PROVISIONAL FINDINGS

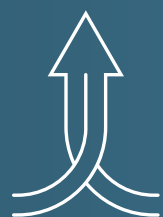


THE CMA IS CONCERNED THAT VODAFONE/3 UK WILL LEAD TO INCREASED PRICES

On 13 September, the Competition and Markets Authority (CMA) published its provisional findings relating to the proposed Vodafone/3 UK merger. The CMA finds that the merger would lead to weaker competition and “higher bills or reduced services”¹.

The CMA estimates a potential total price increase of GBP 328 -1 123 million per year, based on a merger simulation assuming differentiated Bertrand competition.²

In order to approve the merger, the CMA therefore attempts to assess whether there are any:



Merger-specific benefits that could offset this harm



Remedies that could reduce the harm and/or guarantee the benefits

1 - CMA (2024), Press notice [CMA sets out provisional view on Vodafone / Three merger](#)

2 - CMA (2024) [Provisional findings](#) (Vodafone / CK Hutchison JV merger inquiry), para. 8.313.

AUTHORITIES HAVE TRADITIONALLY FOLLOWED A CONSISTENT APPROACH

Authorities in Europe have, for at least the past decade, followed a well-established playbook when assessing 4-to-3 mobile mergers:

Efficiencies generally have not been given much weight

For example, in the 3UK/O2 case, the Commission acknowledged potential consumer benefits but noted that these benefits could not be “sufficiently verified”.³

Structural remedies are preferred over behavioural remedies

Since 2012, almost no 4-to-3 merger in Europe has been approved without a structural remedy - typically a requirement to divest spectrum (see Table on the next page). Accordingly, the CMA notes that it “generally prefers structural remedies (...) over behavioural remedies”.⁴

3 - European Commission (2016), Case M.7612 - HUTCHISON 3G UK / TELEFONICA UK, eg. para. 2466.

4 - CMA (2024), Notice of possible remedies, para. 15.

OVERVIEW OF 4-TO-3 MERGERS IN EUROPE: SPECTRUM DIVESTITURE ALMOST ALWAYS REQUIRED FOR APPROVAL

Year	Competition authority	Merging parties (country)	Outcome	Structural remedies
2012	EU Commission	Orange / H3G (Austria)	●	Yes
2014	EU Commission	Telefonica / E-Plus (Germany)	●	Yes
2014	EU Commission	O2 / H3G (Ireland)	●	Yes
2015	EU Commission	Telenor / Telia (Denmark)	●	n/a*
2016	EU Commission	Wind / H3G (Italy)	●	Yes
2016	EU Commission	Hutchinson / Telefónica (UK)	●	Yes
2018	EU Commission	T-Mobile / Tele2 (Netherlands)	●	No**
2024	EU Commission	Orange / MásMóvil (Spain)	●	Yes
2024	AdC	Vodafone / Nowo (Portugal)	●	Yes
Today	CMA	Vodafone / 3 UK	●	(?)

* The merging parties abandoned the planned merger before an official prohibition. ** Albeit not concluding on whether Tele2 would have continued operating in the market, the Commission's decision hinged on Tele2 not being an important competitive force and that its competitive strength would have likely deteriorated in the absence of the merger.

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Source: Copenhagen Economics

**HAS THE CMA
FOLLOWED THE
STANDARD
PLAYBOOK IN
RELATION TO
VODAFONE/3 UK?**

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THERE ARE SIGNS
THAT THE CMA IS
TAKING A NEW
APPROACH IN
TWO RESPECTS

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CE

FIRST, THE CMA SEEMS MORE OPEN TO CONSIDERING THE BENEFITS OF THE MERGER

The CMA appears increasingly receptive to considering the potential benefits of the merger:



- The CMA acknowledges that it could “improve the quality of mobile networks and bring forward the deployment of next generation 5G networks”⁵
- The CMA states that the parties are “(...) likely to, deliver some of the claimed network improvements efficiencies (...)”⁶

However, the CMA is sceptical about whether the expected benefits sufficiently outweigh the anti-competitive effects:

- “(...) claims [of improved quality] are overstated (...)”⁷
- The CMA explains that it cannot assign much value to potential quality benefits when “Most consumers also told us that they would not be willing to pay more for better quality.”⁸

Furthermore, there is not a clear framework regarding whether/how the CMA should account for broader societal benefits (e.g. productivity impacts) beyond the kind of short-run price and quality impacts that are internalised by individual users.

5 - CMA (2024) Provisional findings (Vodafone / CK Hutchison JV merger inquiry), para. 6.

6 - Ibidem, para. 55.

7 - Ibidem, para. 6

8 - Ibidem, para. 6.

MANY CHALLENGES ARE ASSOCIATED WITH MEASURING THE EXPECTED BENEFITS

Stated vs revealed preferences

Consumers may have trouble reliably reporting their willingness to pay for increased quality of mobile networks (stated preferences). In some cases, more can be learned from historical behaviour (revealed preferences).

What is the counterfactual?

Consumers may not know whether they want to pay more for improved quality in a market where quality has steadily improved over time whilst prices have mostly remained stable or declined.

Endowment effect

While consumers may not be willing to pay significantly more for improved quality, they may require substantial compensation to accept a reduction in quality.

Externalities

The societal value of improved telecom infrastructure may exceed the sum of individual user benefits. For example, the UK government estimates that widespread 5G adoption could yield GBP 159 billion in productivity benefits by 2035.⁹

9 - UK Department for Science, Innovation & Technology (2023), [UK Wireless Infrastructure Strategy](#).

SECOND, THE CMA SEEMS MORE OPEN TO CONSIDERING BEHAVIOURAL REMEDIES

- While the parties have already offered to divest spectrum to VMO2, the CMA plans to explore the option of additional structural remedies (such as further spectrum divestiture) that “could enable a fourth MNO to enter the UK post-merger”.¹⁰
- However, the CMA speculates that such a spectrum transfer or “any structural remedy could remove or reduce the value of relevant customer benefits” otherwise caused by the merger.¹¹
- Interestingly, the CMA therefore acknowledges that:

“

In the present case, (...) there are case specific facts that suggest behavioural remedies could be appropriate¹²

”

10 - CMA (2024), Notice of possible remedies, para. 23

11 - Ibidem, para. 24

12 - Ibidem, para. 27.

THE CMA IS OPEN TO CONSIDERING SEVERAL TYPES OF BEHAVIOURAL REMEDY



INVESTMENT COMMITMENT

First, the CMA is open to considering an investment commitment remedy, in line with the recent Draghi report's recommendation of "increasing the weight of innovation and investment commitments" in [...] "clearing [telecoms] mergers"¹³. However, the CMA also notes that an Investment Commitment may not by itself address the competition concerns identified.¹⁴



TIME-LIMITED RETAIL MARKET PROTECTIONS

Second, the CMA states that it could consider temporary price caps or other retail market protections, such as guaranteeing that existing customers can "'roll over' their existing contract terms".¹⁵



WHOLESALE MARKET REMEDIES

Third, the CMA states that it could consider wholesale remedies that i) guarantee favourable access terms for MVNOs and/or ii) ring-fence some capacity for MVNOs, thereby supporting increased/continued retail market competition.

The CMA considers how the combination of several behavioural remedies may address both short term and long term competitive concerns.

13 - Draghi, Mario (2024), The future of European competitiveness, pp. 75

14 - CMA (2024), Notice of possible remedies, para. 34

15 - Ibidem, para. 39.

WANT TO DISCUSS?
GET IN TOUCH!



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