





Contrary to CMA’s provisional speculative view – the entry of a new 4th MNO – is the only effective remedy for the Vodafone / Three merger

	What CMA’s theoretical analysis and speculative views show?	Do market data & prior CMA views support CMA’s provisional view?
Will the 4 to 3 Vodafone / Three merger lead to price increases and consumer harm?	The merger will result to 7-10% average price increases. The cost to UK consumers could reach 1.12 billion per year. Low-income consumers would be hit the hardest. 	Monthly prices in 3-MNO markets are 2-3x higher than in 4-MNO markets. The merger will lead to average substantial price increases of 26% to 51%. Low-income consumers will see their monthly bills double from 10 - 15 £ to 20 - 30 £.
Will the merger improve the capacity and quality of mobile networks in the UK?	CMA provisionally concluded that the merger is likely to result in some improvement in various network quality metrics, but less than the what Vodafone and Three have claimed. 	Contrary to CMA’s speculative view, market data from 3 vs. 4-MNO markets show that the merger will most likely NOT lead to higher network capacity & quality in the UK. Network quality, reliability and speed are NOT higher in more concentrated mobile markets. Mobile mergers do NOT lead to better networks, they only lead to higher prices.
Can behavioural remedies (investment commitments, retail price caps, MVNO capacity ring-fencing) eliminate the merger competition concerns in their entirety?	CMA provisionally concluded that there are case specific facts that suggest behavioural remedies could be appropriate. 	Contrary to CMA’s current speculative view, under NO circumstances behavioural remedies can eliminate the merger long-term competition concerns. The CMA Chief Executive, Alex Chisholm, rejected outright all behavioural remedies as ineffective during the 2016 investigation of the 4 to 3 Three / O2 merger in the UK.
What is the only effective remedy that can eliminate both the short- and long-term competition concerns from the Vodafone / Three merger as required by law?	CMA provisionally concluded with regards to a partial divestiture remedy, that this remedy could enable a fourth MNO to enter the UK post-merger and proposed to explore this option further. However, CMA inexplicably noted that its initial view is that the entry of a new 4 th MNO may not be effective remedy. 	Contrary to CMA’s current speculative view – the entry of a new 4 th MNO – is the only effective remedy for the Vodafone / Three merger. The CMA Chief Executive, Alex Chisholm, categorically stated in the open letter he wrote to the European Commission during the 2016 investigation of the 4 to 3 Three / O2 merger in the UK that “Absent of a new 4th MNO entry the only option available to the Commission is prohibition.”.

Concerning the critical question on the remedies (structural divestitures vs. behavioural commitments) that can eliminate the long-term competition concerns in their entirety **Rewheel categorically disagrees with CMA's provisional speculative view.**

If we can raise one and only one point as a counterargument to CMA's inexplicable view that behavioural commitments rather than structural divestitures could be effective remedies for the proposed Vodafone / Three merger *“CMA stated in the Notice of possible remedies...With regards to a partial divestiture remedy, our initial view is that this remedy could enable a fourth MNO to enter the UK post-Merger and we therefore propose to explore this option further. However, our initial view is that it may not be effective...In the present case, our initial view is that there are case specific facts that suggest behavioural remedies could be appropriate.”* it will be the following;

Did anybody from CMA's investigation team or the panel of independent experts bothered to read CMA's view – that fully supported the European Commission's 2016 decision to prohibit the 4 to 3 Three / O2 merger in the UK – on what remedy was deemed to be the only effective remedy that could have remove the long-term competition concerns entirely from the proposed Three / O2 merger?

Alex Chisholm, the CMA Chief Executive, wrote a public letter¹² to the European Commission on the 11th of April 2016 – during the investigation of Hutchison's proposed acquisition of Telefonica O2 in the UK (4 to 3 mobile merger) – where he rejected outright all behavioural remedies as ineffective and categorically stated that the only effective remedy for the Three / O2 merger is the upfront entry of a new 4th MNO.



Commissioner Margrethe Vestager
European Commission
1049 Bruxelles/Brussels
BELGIQUE/BELGIE

Alex Chisholm
Chief Executive
Competition and Markets Authority
United Kingdom

11 April 2016

Dear Margrethe,

Case M.7612 Hutchison 3G UK / Telefonica UK

As you are aware, the Competition and Markets Authority (CMA) has serious concerns regarding the proposed merger between Hutchison 3G UK and Telefonica UK. We believe this merger would give rise to a significant impediment to effective competition in retail and wholesale mobile telecoms markets in the United Kingdom. This letter briefly sets out our concerns regarding the merger and proposed remedies, which have also been thoroughly detailed by the CMA in a number of formal submissions to the Commission's case team.

While I appreciate the considerable efforts made by the Commission to explore remedies with the merging parties that seek to eliminate the adverse effects identified, it is clear that the remedies offered fall well short of what would be required to meet the relevant legal standard, as detailed in our case submissions.

The proposed remedies are materially deficient as they will not lead to the creation of a fourth Mobile Network Operator (MNO) capable of competing effectively and in the long-term with the remaining three MNOs such that it would stem the loss of competition caused by the merger. In addition, they fail to address concerns arising from the presence of the merged entity in both the network sharing arrangements, including the greater risk of coordination that this brings.

The only appropriate remedy that would meet the criteria that the Commission is bound to apply (ie that the remedies eliminate the competition concerns in their entirety, are comprehensive, effective and capable of ready implementation) is the divestment – to an appropriate buyer approved by the Commission – of either the Three or O2 mobile network businesses, in entirety, or possibly allowing for limited 'carve-outs' from the divested business. The divestment would need to include the mobile network infrastructure and sufficient spectrum to ensure a commercially viable fourth MNO in the UK. Absent such structural remedies, the only option available to the Commission is prohibition.

The CMA urges the Commission to act to prevent the long-term damage to the UK mobile telecoms market, and therefore to the interests of UK consumers, that both of our authorities have predicted will result from this merger.

Yours sincerely

Alex Chisholm
Chief Executive

The CMA Chief Executive emphatically stated in 2016 *“The only appropriate remedy...that...eliminate the competition concerns in their entirety... is the creation of a fourth Mobile Network Operator (MNO) capable of competing effectively and in the long-term with the remaining three MNOs...Absent such structural remedies, the only option available to the Commission is prohibition.”*

What changed? Why such change of heart from the CMA?

¹<https://www.gov.uk/government/publications/proposed-hutchisontelefonica-merger-cma-letter-to-european-commission>

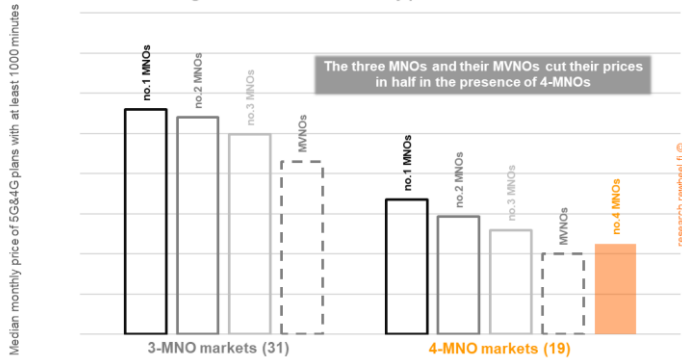
²https://assets.publishing.service.gov.uk/media/5a816cebe5274a2e87dbd8f6/CMA_letter_to_Commissioner_Margrethe_Vestager.pdf

MVNO prices are dependent on MNO prices which in turn are determined by the market structure: the number of MNOs (3 vs. 4) present in mobile markets

Consumers pay 2x higher monthly prices in 3-MNO vs. 4-MNO mobile markets for 2x fewer gigabytes, same download speeds and same network quality & reliability.

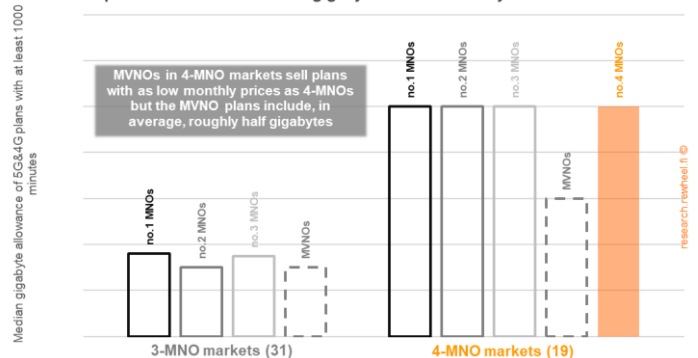
- In 3-MNO markets MNO and MVNO monthly prices are, in average, 2x higher than in 4-MNO markets while the gigabyte allowances sold by MNOs and MVNOs in 3-MNO markets are, in average, 2x smaller than in 4-MNO markets.
- The MNOs and their MVNOs cut their prices in half and double the gigabyte allowances in the presence of no.4 MNOs.
- In 4-MNO markets MVNOs match the monthly prices of no.4 MNOs but MVNO plans include in average, 2x fewer gigabytes at 2x slower download speeds.
- In the presence of no.4 MNOs incumbent MNO network capacity miraculously increases by 4-fold yielding a 4x drop in both their retail and wholesale (MVNO) gigabyte prices.
- All things considered, consumers pay 2x higher monthly prices in 3-MNO vs. 4-MNO mobile markets for 2x fewer gigabytes, same download speeds and same network quality & reliability.

Monthly prices of the three MNOs and of their MVNOs in 3-MNO markets are 2x higher than no.4 MNO monthly prices in 4-MNO markets...



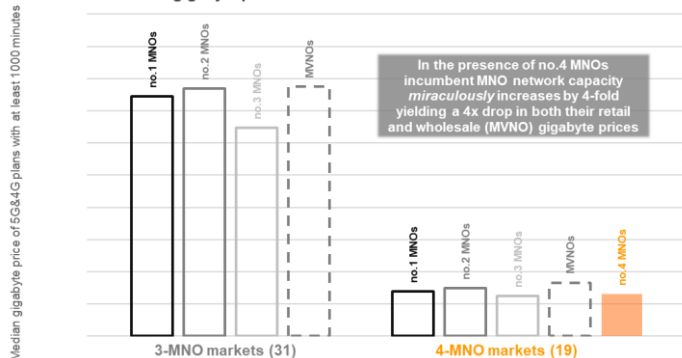
Mobile network operators and MVNOs from 50 EU & OECD markets. The bars depict the median value among all plans included in each group. For MNOs, plans from main and sub-brand/s are included.

...and on top of that, consumers in 3-MNO markets pay 2x higher monthly prices for less than half the gigabytes consumers buy in 4-MNO markets



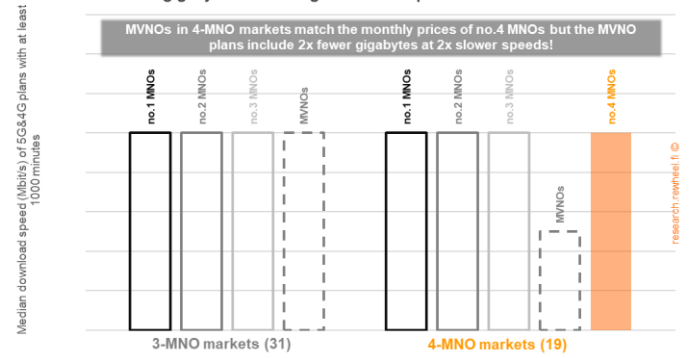
Mobile network operators and MVNOs from 50 EU & OECD markets. The bars depict the median value among all plans included in each group. For MNOs, plans from main and sub-brand/s are included.

In 3-MNO markets the three MNOs and their MVNOs charge 4x higher gigabyte prices than no.4 MNOs in 4-MNO markets



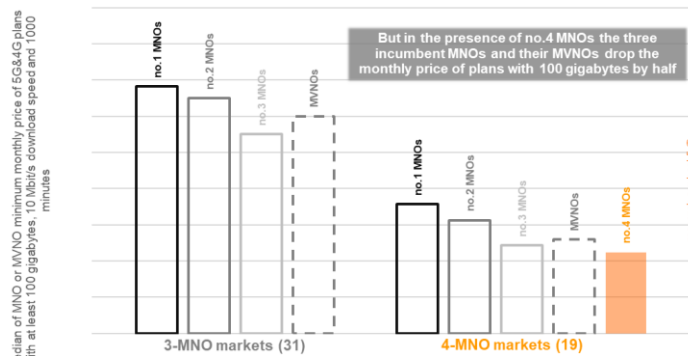
Mobile network operators and MVNOs from 50 EU & OECD markets. The bars depict the median value among all plans included in each group. For MNOs, plans from main and sub-brand/s are included.

In 3-MNO markets consumers pay 2x higher monthly fees for less than half the gigabytes...and still get the same speeds as in 4-MNO markets



Mobile network operators and MVNOs from 50 EU & OECD markets. The bars depict the median value among all plans included in each group. For MNOs, plans from main and sub-brand/s are included.

In 3-MNO markets the three incumbent MNOs and their MVNOs charge consumers 2x higher monthly prices for plans with 100 gigabytes



Mobile network operators and MVNOs from 50 EU & OECD markets. The bars depict the median value of the minimum monthly price for each MNO or MVNO included in each group. For MNOs, plans from main and sub-brand/s are included.

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1 Study context, structure & findings

Are MVNO prices competitive and can MVNOs or other behavioural commitments fully substitute the competitive pressure exerted by no.4 MNOs and remedy the competition concerns in their entirety in 4 to 3 mobile mergers?

MVNOs (Mobile Virtual Network Operators) are providers of 5G or 4G mobile data and voice services that do not hold spectrum licenses and do not own or operate radio network infrastructures like MNOs (Mobile Network Operators) but obtain bulk access to network services of MNOs through wholesale access agreements at wholesale rates or simply by retailing MNO services at discounted (e.g., retail minus) rates.

The competitiveness of MVNOs resurfaces periodically and becomes a focal point when competition authorities are presented with remedies for countervailing the established competition concerns (anti-competitive effects) in 4 to 3 mobile mergers.

Most recently, CMA, the UK's Competition and Markets Authority issued its provisional findings³ on the proposed Vodafone / Three 4 to 3 mobile merger in the UK.

CMA provisionally concluded that the “[Merger could lead to tens of millions of mobile customers having to pay more.](#)” and that the “[Merger could improve the quality of mobile networks...CMA currently considers that these claims are overstated...but incentives to follow through on the investment once deal is complete are uncertain.](#)”. CMA welcomed third party responses to its provisional findings and its notice of possible remedies to be considered in its final merger report.

The first part of this study, which is publicly available, forms Rewheel's response to CMA's Vodafone / Three merger provisional findings and its notice of possible remedies.

Rewheel analysis shows that indeed the proposed Vodafone / Three 4 to 3 mobile merger will most likely lead⁴ to substantial 26% to 51% monthly price increases in the UK mobile market but contrary to CMA's speculative view, Rewheel concludes that the merger will most likely NOT significantly improve⁵ the quality of mobile networks in the UK.

Concerning the critical question on the remedies (structural divestitures vs. behavioural commitments) that can eliminate the long-term competition concerns in their entirety **Rewheel categorically disagrees with CMA's provisional speculative view.**

If we can raise one and only one point as a counterargument to CMA's inexplicable view that behavioural commitments rather than structural divestitures could be effective remedies for the proposed Vodafone / Three merger “[CMA stated in the Notice of possible remedies...With regards to a partial divestiture remedy, our initial view is that this remedy could enable a fourth MNO to enter the UK post-Merger and we therefore propose to explore this option further. However, our initial view is that it may not be effective...In the present case, our initial view is that there are case specific facts that suggest behavioural remedies could be appropriate.](#)” it will be the following:

Did anybody from CMA's investigation team or the panel of independent experts bothered to read CMA's view – that fully supported the European Commission's 2016 decision to prohibit the 4 to 3 Three / O2 merger in the UK – on what remedy was deemed to be the only effective remedy that could have removed the long-term competition concerns entirely from the proposed Three / O2 merger?

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The proposed remedies are materially deficient as they will not lead to the creation of a fourth Mobile Network Operator (MNO) capable of competing effectively and in the long-term with the remaining three MNOs such that it would stem the loss of competition caused by the merger. In addition, they fail to address concerns arising from the presence of the merged entity in both the network sharing arrangements, including the greater risk of coordination that this brings.

The only appropriate remedy that would meet the criteria that the Commission is bound to apply (ie that the remedies eliminate the competition concerns in their entirety, are comprehensive, effective and capable of ready implementation) is the divestment – to an appropriate buyer approved by the Commission – of either the Three or O2 mobile network businesses, in entirety, or possibly allowing for limited 'carve-outs' from the divested business. The divestment would need to include the mobile network infrastructure and sufficient spectrum to ensure a commercially viable fourth MNO in the UK. Absent such structural remedies, the only option available to the Commission is prohibition.

³<https://www.gov.uk/government/news/cma-sets-out-provisional-view-on-vodafone-three-merger>

⁴https://research.rewheel.fi/downloads/Predicted_price_increases_Vodafone_Hutchison_4_to_3_UK_mobile_merger_PUBLIC_VERSION.pdf

⁵https://research.rewheel.fi/downloads/Mobile_network_quality_reliability_speed_NOT_higher_concentrated_markets_PUBLIC_VERSION.pdf

⁶⁷<https://www.gov.uk/government/publications/proposed-hutchison-telefonica-merger-cma-letter-to-european-commission>

⁷https://assets.publishing.service.gov.uk/media/5a816cebe5274a2e87dbd8f6/CMA_letter_to_Commissioner_Margrethe_Vestager.pdf

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What changed? Why such change of heart from the CMA?

Is the proposed 4 to 3 Vodafone / Three mobile merger less anti-competitive than the 2016 proposed 4 to 3 Three / O2 mobile merger? No, it is not. The opposite is true. Given that Vodafone and Three are more close competitors than Three and O2 were back in 2016 and given that Vodafone and Three as the no.3 and no.4 MNOs respectively offer the lowest prices in the market today their combination would lead to higher market symmetry and give rise to more serious competition concerns compared to the 2016 proposed Three / O2 merger.

Surely, the question on whether behavioural commitments (investment commitments, time limited retail protections, pre-agreed wholesale access terms and MVNO network capacity ring-fencing) constitute an effective remedy in 4 to 3 mobile mergers should not depend on who is heading the CMA (Mr. Chisholm or Ms. Cardell) or on who is heading the European Commission Directorate for Competition (Mr. Almunia or Ms. Vestager).

Mr. Almunia approved the Austrian, Irish and German 4 to 3 mobile mergers with behavioural MVNO access remedies while Ms. Vestager ruled out behavioural commitments as ineffective and requested structural divestitures for the UK (fully supported by CMA), Italian and Spanish 4 to 3 mobile mergers.

Politics aside, the UK merger regulations requires that remedies must eliminate all (short- and long-term) competition concerns in their entirety and as CMA has categorically argued, structural divestitures (i.e., the entry of a new 4th MNO) is the only effective remedy that can eliminate the long-term competition concerns in 4 to 3 mobile mergers.

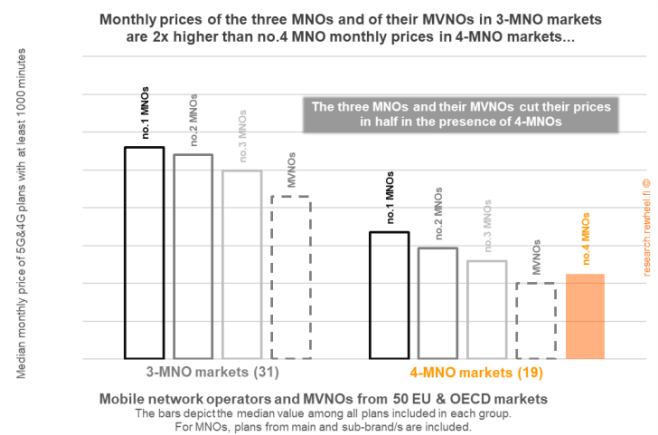
Rewheel 4 to 3 mobile merger assessment studies in Germany⁸, the UK⁹ and Italy¹⁰ have shown beyond any doubt that under no circumstances MVNOs can fully substitute the competitive pressure exerted by no.4 MNOs and remedy in their entirety the long-term competition concerns from 4 to 3 mobile mergers.

The only effective remedy¹¹¹² that can eliminate the competition concerns entirely from the 4 to 3 Vodafone / Three merger, as required by law, is the upfront entry of new 4th mobile network operator.

The upfront entry of a new 4th mobile network operator in the UK requires the divestiture of substantial low frequency (sub 1 GHz), mid-band (1800-2100 MHz) and high frequency 3.6 MHz TDD spectrum coupled together with site divestitures and/or site collocation agreement/s and time-limited future-proof national roaming agreement/s at competitive wholesale rates.

The second part of this study, which is available to subscribers of Rewheel’s research PRO reports, presents an analysis that examines the dependency of MNO and MVNO prices upon MNO market position and market (3 vs. 4-MNOs) structure.

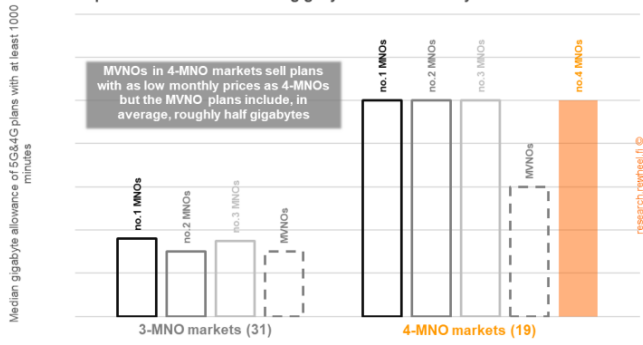
Our analysis shows that MVNO monthly prices and gigabyte allowances are dependent on MNO monthly prices and gigabytes allowances which in turn are determined by the market structure i.e., the number of MNOs (3 vs. 4) present in mobile markets.



⁸https://research.rewheel.fi/insights/2015_may_premium_drillisch/
⁹https://research.rewheel.fi/downloads/Effectiveness_MVNO_wholesale_access_remedies_25012016_PUBLIC.pdf
¹⁰https://research.rewheel.fi/downloads/Hutchison_WIND_merger_Italy_remedies_01092016_PUBLIC.pdf

¹¹https://research.rewheel.fi/downloads/T-Mobile_Tele2_4_to_3_mobile_merger_effective_remedies_REDACTED_PUBLIC.pdf
¹²https://research.rewheel.fi/downloads/1&1_Drillisch_4th_MNO_entry_Germany_PUBLIC_VERSION.pdf

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2 Rewheel's response to CMA's provisional findings and notice of possible remedies

CMA invited interested parties to respond to its provisional merger review findings and its notice of possible remedies. Section 2 below, which is publicly available, forms Rewheel's detailed response to CMA's Vodafone / Three merger provisional findings and its notice of possible remedies. We have complimented our detailed response presented herein with an open letter that criticizes CMA's provisional speculative view that behavioural commitments could be an effective remedy to the Vodafone / Three merger.