

Executive Summary of Vodafone's view on the draft merger guidelines consultation

Overview

We strongly support the European Commission's decision to modernise the EU merger guidelines. We particularly welcome the shift toward a more dynamic assessment of mergers. This includes greater attention to investment, innovation, quality, resilience and broader EU competitiveness objectives. However, the draft still contains significant asymmetries and structural presumptions. In practice, these would make it difficult for pro-investment, scale-enhancing mergers to be assessed fairly. This is especially true in capital-intensive and critical infrastructure sectors such as telecommunications.

The experience of consolidation in the UK, through the merger of Vodafone UK and Three UK provides an example of how competition authorities can have a fresh approach without sacrificing consumers and competition. The recent independent report from Frontier Economics provides data on how this has been achieved one year on.

The Commission's ambition on boosting the competitiveness of Europe's single market now needs to be reflected in the final text of the guidelines.

Key recommendations for the final text:

- **Make the framework genuinely symmetric between harm and benefits.** The draft rightly introduces a "theory of benefit" and says the same standard of proof should apply to harm and benefits (*efficiencies*), but this is not carried through in practice. The Commission should remove wording and evidentiary rules that set a higher bar for proving efficiencies than for proving harm, including in relation to timing, certainty, admissibility of evidence and balancing.
- **Adopt a more realistic time horizon for assessing mergers.** Despite the intent from the Commission, the draft text still favours short-term and immediate effects, while discounting benefits that arise over longer investment cycles. The Commission should ensure symmetry in the time horizon for harm and efficiencies, and avoid overly short assessment windows, particularly in sectors where benefits and competitive effects could materialise over 7–10 years or more.
- **Recognise the role of scale in capital-intensive sectors.** The current draft places too much emphasis on cross-border scale and global industries, somehow neglecting the relevance and importance of local/national scale to European competitiveness. The Commission should clarify that in-country scale can be equally pro-competitive in sectors such as telecoms, where network density, local infrastructure and the ability to recover high fixed costs drive investment incentives and long-term competitiveness.
- **Give proper weight to non-price competition parameters.** The final guidelines should clearly treat investment, innovation, quality, resilience, sustainability and security as core parameters of competition - not only secondary considerations. Stronger and more consistent recognition should be given so these factors can be decisive in markets where long-term consumer outcomes depend on infrastructure investment and service quality rather than short-term price effects alone.
- **Remove structural presumptions based on market shares and concentration levels.** Several parts of the draft create presumptions of market power, harm or

even “Significant Impediment of Effective Competition” (SIEC test in the EU – whereas in the UK the test is Significant Lessening of Competition) based on market shares, HHI thresholds or oligopolistic market structures. We challenge these presumptions as they are not well anchored in case law and risk prejudging mergers in concentrated but still competitive markets. The Commission should revert to a genuinely case-specific, effects-based assessment.

- **Allow more practical and credible evidence for efficiencies.** The draft is too restrictive on what can count as evidence of efficiencies, particularly business plans, synergy assessments and post-announcement internal documents. The Commission should recognise these as legitimate evidence where relevant, and not to assume that dynamic or qualitative efficiencies are inherently less reliable than quantified price effects.
- **Rebalance the treatment of investment and innovation competition.** The draft assumes that fewer firms mean less investment or innovation. The Commission should clarify and recognise that in some markets, consolidation can increase the ability and incentive to invest, improve network quality and trigger stronger competitive responses from rivals. This is particularly important in telecoms, where sub-scale operators may lack the means to sustain effective long-term competition.
- **Give fuller recognition to resilience, security and out-of-market benefits.** We expect the Commission to treat resilience and security more prominently in the main text, not relegated to footnotes or narrow examples. The Commission must allow appropriate recognition of wider consumer and societal benefits (*out-of-market benefits*) - such as cybersecurity, infrastructure robustness and continuity of service - rather than limiting consideration only to effects internalised by the exact same customer group in the relevant market.

Why this matters for Vodafone

This consultation is strategically important because the final merger guidelines will shape how the European Commission assesses consolidation in Europe for years to come. If the current asymmetries and presumptions remain, the guidelines could continue to constrain efficient consolidation in telecoms and other infrastructure sectors, even where such transactions would strengthen investment incentives, improve quality and resilience, and support Europe’s broader growth agenda. It is therefore critical that EU merger control reflects the realities of sectors where scale, long investment cycles, resilience and network quality are essential to consumer welfare and European competitiveness.