



Regulatory boundaries for a collaborative approach

Case study: M.6314 Telefonica UK / Vodafone UK / Everything Everywhere / JV

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Collaborative agreements and Joint Ventures

What are they from a competition law
perspective?

Depending on the nature of collaboration

(a) Collaborative agreements between competitors / non-full function JVs supporting the parents

Competition law applies (Article 101 of Treaty and national competition laws)

OR

(b) Full-functional JV

Merger control applies (EU or national depending on jurisdictional thresholds)

When is a JV "fully functional"?

"The creation of a JV performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration under the Merger Regulation."

Criteria

- sufficient resources to operate independently in market
- activities beyond one specific function of the parents
- sale / purchase relations with parents (in long term)
- operation on a lasting basis
- changes in activities of JV

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THE NOTIFYING PARTIES



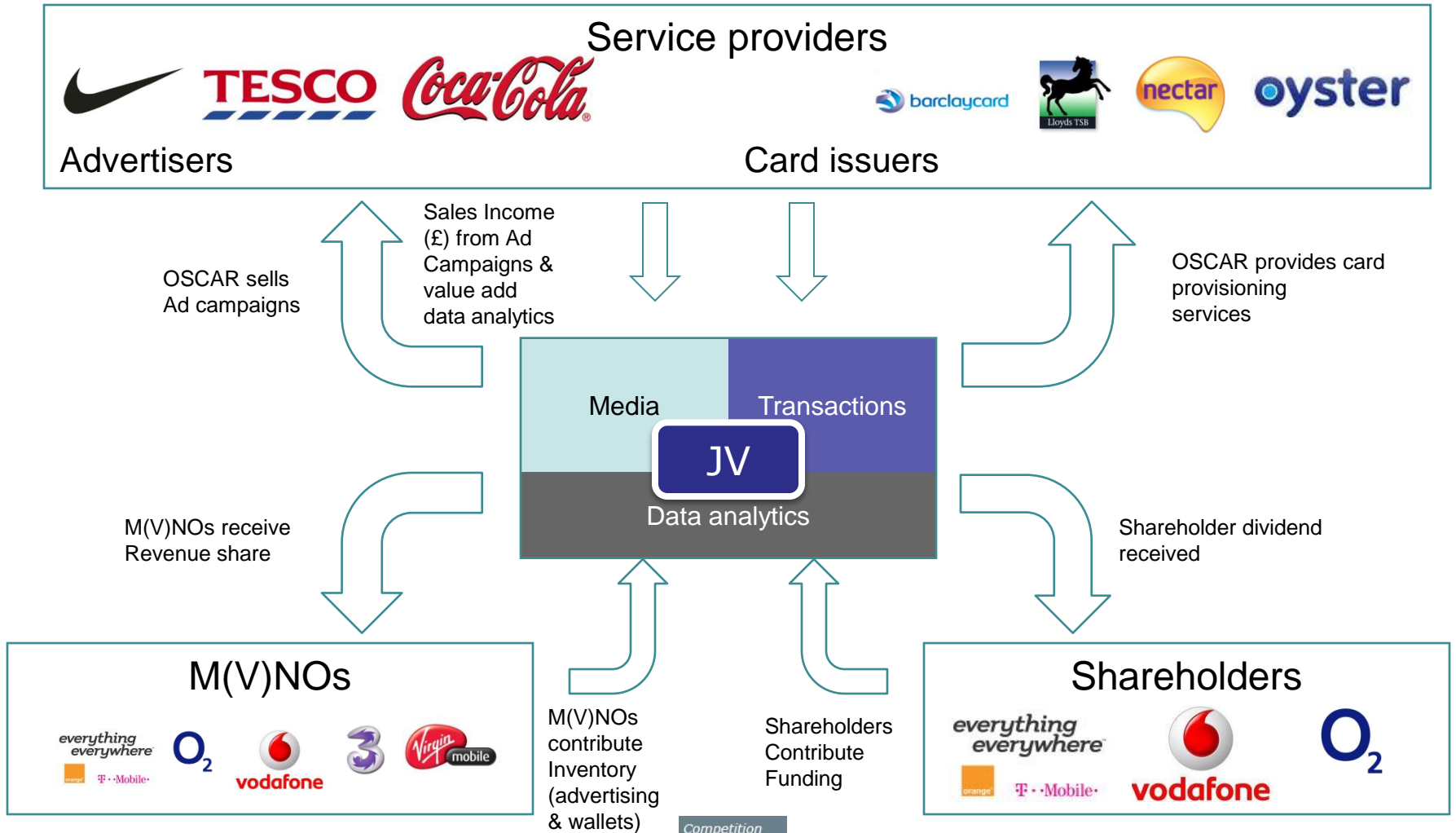
Very strong positions of NPs together on UK retail mobile telephony market

JV Co
Newly created
mCommerce services








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WHAT IS THE JV?

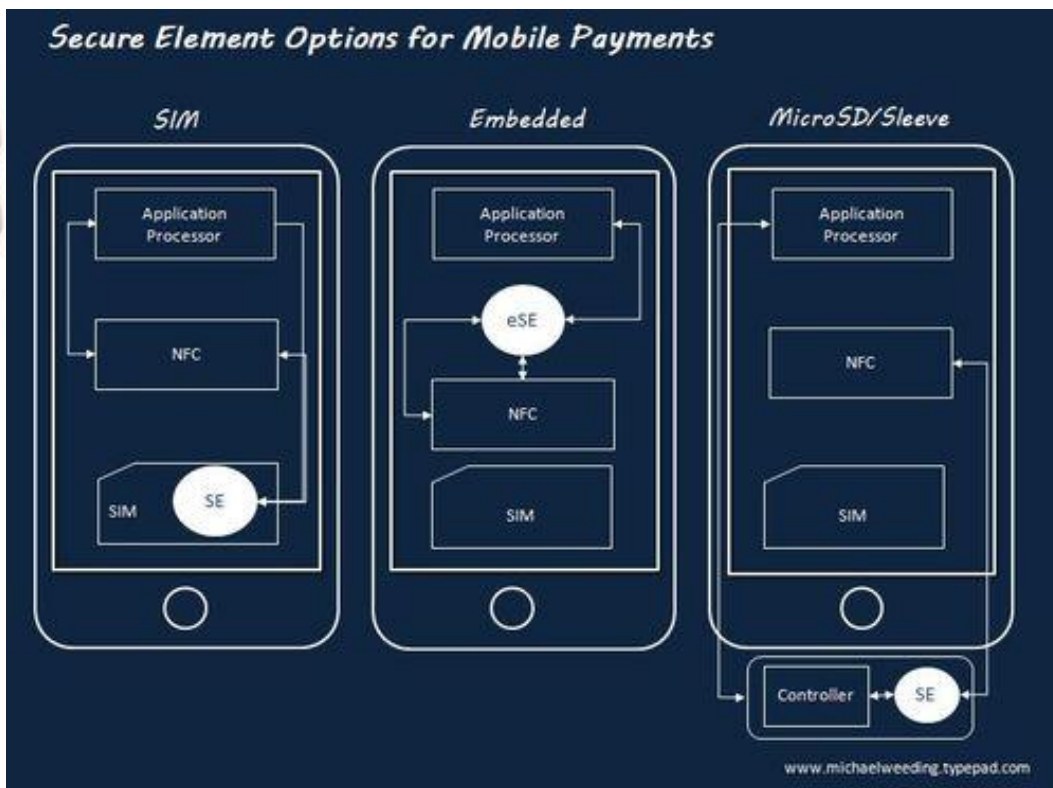


Market Participants (source O2 presentation)

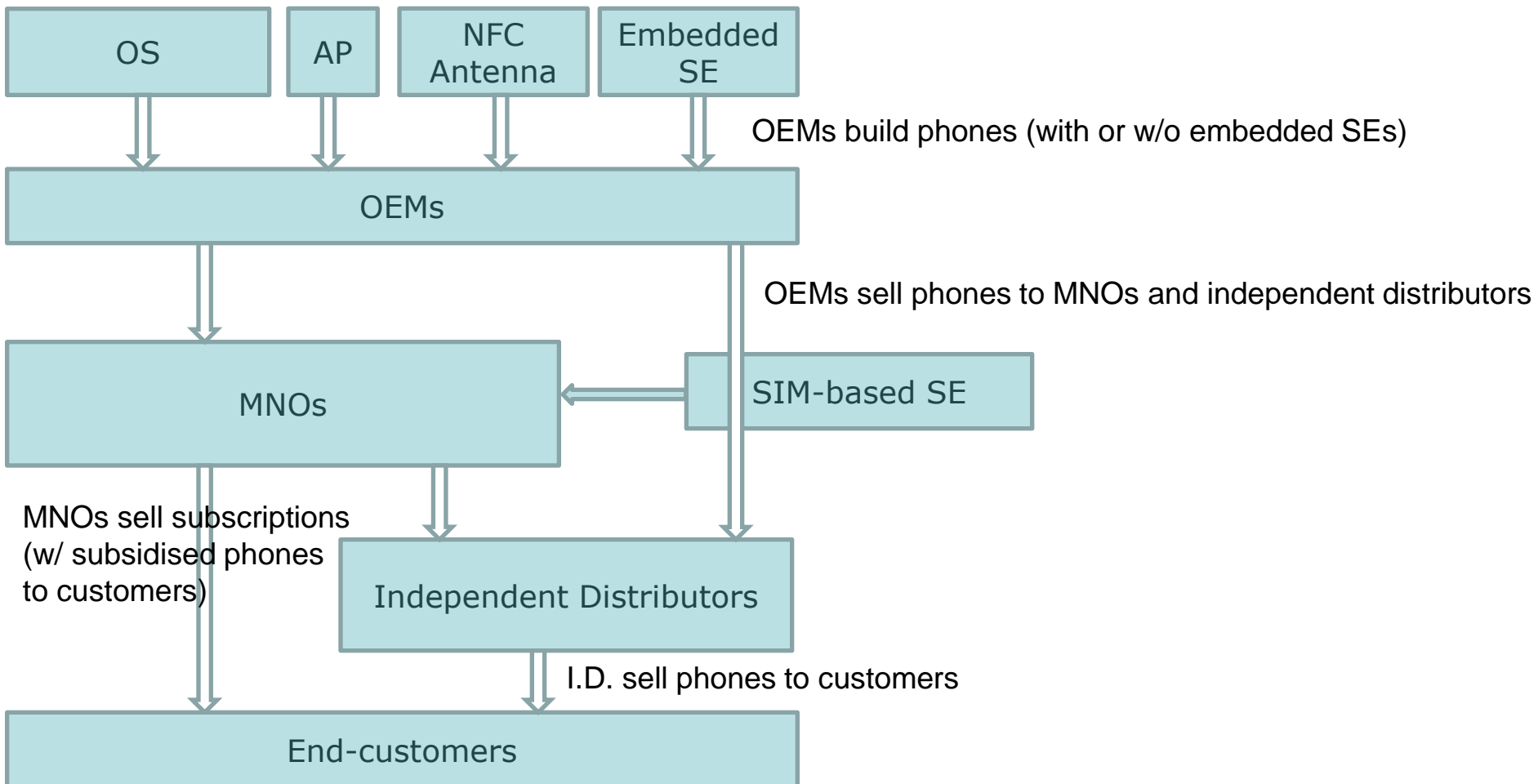
Player	Advantages	Disadvantages	Likely Focus
	<ul style="list-style-type: none"> + Trusted brand + Bank integration 	<ul style="list-style-type: none"> – Bank ownership is a strategic constraint – Developing skills in VAS¹ 	Payments
	<ul style="list-style-type: none"> + Best-in-class search + Advanced capabilities 	<ul style="list-style-type: none"> – “Black box” business model worries banks & merchants 	Shopping
	<ul style="list-style-type: none"> + Online acceptance + Open platform, developers 	<ul style="list-style-type: none"> – No bricks & mortar network (but developing quickly) 	Shopping
	<ul style="list-style-type: none"> + Payments relationships + Potential plug-ins to V.me 	<ul style="list-style-type: none"> – Limited breadth² – Limited capability in VAS 	Money Management
	<ul style="list-style-type: none"> + Shared Oscar resources + Control of secure element 	<ul style="list-style-type: none"> – Lag O2 in m-marketing – New to payments & VAS 	Total NFC Ecosystem

Shopping is likely to be a competitive hot spot. But it is still very early in the market's evolution & therefore speed to market will be an important success criteria.

Key for our assessment: access to the Secure Element



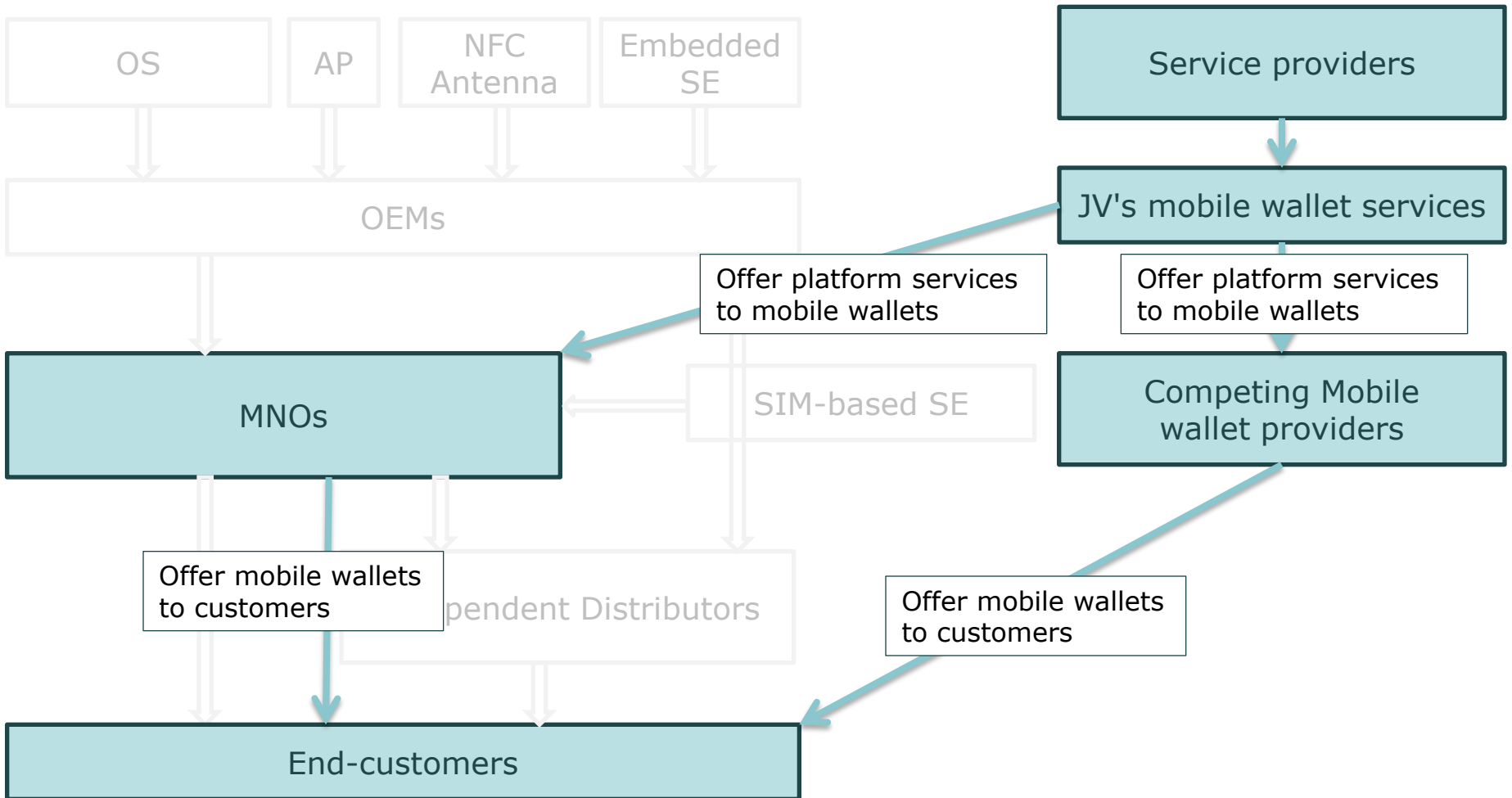
The Mobile Phones Value Chain





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The Mobile Wallet Value Chain



Competition

PRODUCT MARKET DEFINITION

Market	Product scope	Geographic scope
Wholesale supply of mobile wallet platform services	Open	At least national (open)
Secure storage	Open	At least national (open)
Retail distribution of mobile wallet services to customers	Open	At least national (open)
Mobile advertising services (intelligent SMS, coupons, vouchers)	Open	National (open)
Mobile advertising intermediation services	Open	National (open)
Retail and wholesale bulk SMS services	Open	Possibly wider than national (open)
Data analytics services	Open	At least national (open)
Retail mobile telephony services	Open	National



COMPETITIVE ASSESSMENT OVERVIEW

Non-horizontal effects:

Vertical: Wholesale supply of mobile wallet platform services - MNO parents use strong collective position in retail mobile telephony to foreclose mobile wallet competitors' access to essential inputs (SE and Apps))

Conglomerate: Retail mobile telephony services - offer of mobile wallet as must have factor to compete in retail mobile telephony?

Horizontal effects:

Loss of competition in market for wholesale supply of mobile wallet platform services and secure storage?

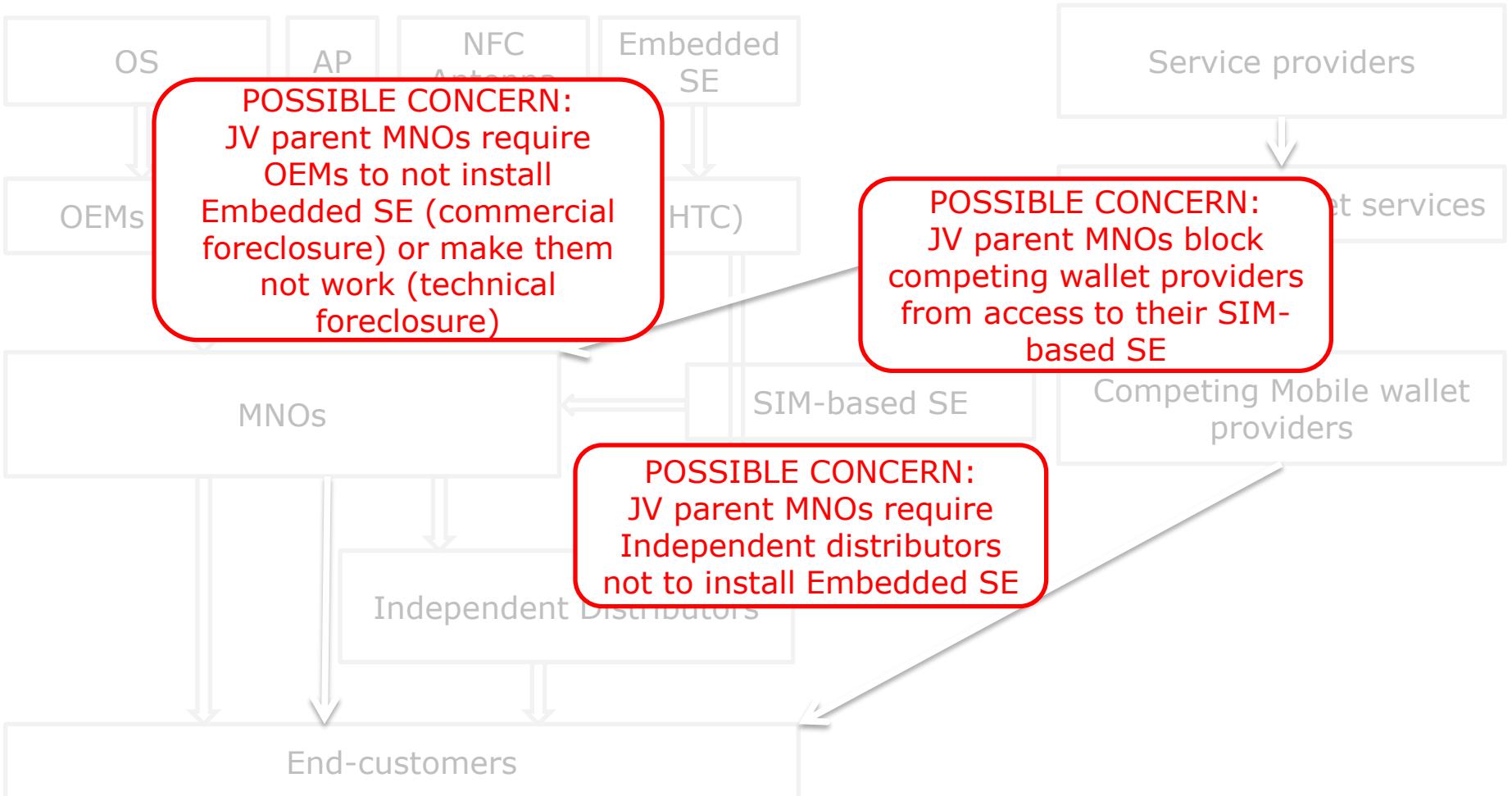
Loss of competition in market for data analytics services?

Loss of competition in market for mobile advertising services?



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The Competition Concerns





INPUT FORECLOSURE (1) – TECHNICAL ABILITY

Access to SE appears fundamental for functioning of mobile wallets.

Support by Ofcom (provided independent technical expertise).

NPs have technical ability to foreclose competing mobile wallet providers by foreclosing access to the SE put in the SIM-card.

However, alternatives may exist:

Embedded SE – most probable alternative (smartphones with dual architecture)

SEs inserted in an external device tagged onto the handset

SE stored in the cloud (less secure and too slow).

INPUT FORECLOSURE (2) – TECHNICAL ABILITY

Technical ability to block / degrade competing mobile wallet app requiring embedded SE from being downloaded, installed and/or updated on handset operating on networks of NPs => NO

Technical ability to block / degrade / deactivate an installed embedded SE => NO

Technical ability to confer automatic preference to SIM-based SE / NPs wallet => NO

Create *de facto* standards/specifications that no other market participant could use, hereby foreclosing competing mobile wallet Providers => NO

CONCLUSION: Technical ability to foreclose access to SIM-based SE, but no technical ability to foreclose access to embedded SE or apps or to create *de facto* standards

INPUT FORECLOSURE (3) - COMMERCIAL ABILITY

Commercial pressure on OEMs not to install, or block, pre-installed embedded SE => NO

Influence OS developers or OEMs to block/remove preloading of mobile wallet apps => NO

Disadvantage or delist of handsets capable of supporting rival mobile => NO

Incentivise independent retailers to market handsets that do not contain rival wallets or to set default settings which favour JV's mobile wallet => NO

CONCLUSION: unlikely that NPs have ability or incentive to engage in commercial foreclosure.



CONGLOMERATE EFFECTS – RETAIL MOBILE TELEPHONY MARKET

How important for competing M(V)NO to offer mobile wallet to remain credible competitor in retail mobile telephony market?

Majority of respondents: mobile wallet not key differentiating factor in short-term. Three UK considers the opposite ("must-have").

In any event, Three UK able to propose own mobile wallet to customers, possibly partnering with third parties (Google, financial institutions).

CONCLUSION: likely that no competition concern would arise from conglomerate effects induced by creation of JV Co.



HORIZONTAL EFFECTS (1)

Wholesale supply of mobile wallet & secure storage

JV new entrant; NPs either new entrants or potential entrants (left open if NPs able or not to launch mobile wallets w/o JV?)

Not able to block competitors from entering market.

CONCLUSION: JV not likely to significantly impede effective competition, as would face competition from a variety of other market participants

Data Analytics

JV new entrant; NPs not present pre-JV (left open if NPs able or not to provide data analytics w/o JV?)

JV able to collect broad range of consumer information - very valuable for own (mobile) data analytics services and advertising services.

However, many other strong established players also able to offer comparable solutions (Google, Apple, Facebook, card issuers, etc).

CONCLUSION: no foreclosure and no negative effect on competition on market for (mobile) data analytics, as well as for market research services or marketing information services.



HORIZONTAL EFFECTS (2) – MOBILE ADVERTISING SERVICES

JV will act as intermediary in mobile advertising; NPs do not offer intermediation services for any form of digital advertising. Each only active in sale of own inventory.

Strong global competitors established: Google, Apple, Yahoo!, Microsoft, AOL, WPP and Millennial Media.

Concerns with respect to targeted marketing messaging; however, insignificant (in particular push SMS and intelligent bulk SMS) vs. mobile advertising.

CONCLUSION: operation not likely to significantly impede effective competition on any possible relevant markets related to JV's activities in advertising services.



CONCLUSION

MCommerce nascent sector with different technologies emerging.

JV Co will neither have technical or commercial ability, nor incentive, to substantially foreclose entry or hinder expansion by competitors in relation to wholesale / retail mobile wallet platform services, advertising services or data analytics.

Sufficient number of competitors emerging / very likely to emerge in near future (some competitors with significant market power, customer base and expertise in their field).

Even with creation of JV, sufficient competition and JV will not likely be able to stifle innovation.



Competition