

## **Anticipated acquisition by BT Group plc of EE Limited**

### **Summary of provisional findings**

**Notified: 28 October 2015**

1. On 9 June 2015 the Competition and Markets Authority (CMA) referred the anticipated acquisition by BT Group plc (BT) of EE Limited (EE) for an in depth (phase 2) inquiry. The CMA is required to address the following questions:
  - (a) whether arrangements are in progress which, if carried into effect, will result in the creation of a relevant merger situation; and
  - (b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.
2. BT is a UK company that provides telecommunications products and services to retail customers and provides wholesale voice, broadband, and data communications products and services (including backhaul) to fixed and mobile network operators.
3. EE is a joint venture between Orange (a French company) and Deutsche Telekom AG (a German company). It provides mobile and fixed communications services to retail customers and wholesale mobile services to other communications providers (CPs), as one of four mobile network operators (MNOs) in the UK.
4. BT and EE (the parties) overlap in the provision of mobile and fixed communications services to retail customers. In addition, EE provides wholesale mobile services to BT (among others) and BT provides mobile backhaul and wholesale broadband services to EE (amongst others). In addition, through its Openreach division, BT provides local loop or local access network services, regulated backhaul and leased line services to EE (amongst others).
5. BT told us that the strategic rationale for the merger was: to accelerate its mobile strategy; to provide greater end-to-end control over investment and

product innovation, by combining EE's advanced 4G network with BT's existing fixed infrastructure; and to provide cost and revenue synergies.

## **Background to our assessment**

6. We received 20 submissions from third parties providing their views on the merger. We also received a large number of responses to our information requests, and held 10 hearings with a range of interested third parties. We appreciate the level of interest and participation in this inquiry which has assisted us greatly in our consideration of the ten distinct theories of harm that we identified, of which eight were assessed in considerable detail.
7. We consider that there are several interrelated themes which have a bearing on our assessment of the merger, including technological change and regulation.
8. We have noted:
  - the dynamic and innovative nature of this complex industry with potential structural change (including the proposed acquisition of O2 by Hutchison 3G (H3G));
  - sophisticated competitors responding to opportunities in the market; and
  - significant changes in consumer demands for data.

These factors have inevitably made our forward-looking merger assessment more uncertain.

9. We have also been mindful that the role of the CMA in merger cases is to protect competition for the benefit of consumers, not the commercial interests of competitors.
10. Communications networks and services are regulated by Ofcom, which has wide-ranging powers. While we have not carried out a full assessment of the effectiveness of regulation, we have noted specific concerns by third parties in our competitive assessment, particularly over the functional separation of Openreach, and the effectiveness of the regulation of superfast broadband inputs. We have also recognised the potential constraint from the threat of responsive regulation, and note the ongoing wide-ranging consultation by Ofcom into potential changes in regulation of the sector. We have been mindful that our assessment in this inquiry is of the impact of the proposed merger, not an investigation into the industry or into the effectiveness of current regulation.

## **Market definition**

11. The purpose of market definition in a merger inquiry is to provide a framework for the analysis of the competitive effects of the merger. We provisionally concluded the need to consider relevant markets for five different services: retail mobile, wholesale mobile, mobile backhaul, wholesale broadband and retail broadband.

## **Competitive assessment: retail mobile**

12. We considered two theories of harm concerning retail mobile: unilateral effects arising from loss of potential competition, and dynamic loss of competition through the strengthening of EE.

### ***Unilateral effects arising from loss of potential competition***

13. Our provisional view is that, pre-merger, the retail mobile market is competitive, with close competition among the four MNOs and with limited additional competition from the MVNOs. We consider that the additional competitive impact in the supply of retail mobile that BT would have brought to bear as an MVNO, absent the merger, would have been limited.
14. We considered whether BT had specific strengths that suggest it would have been an important and disruptive force absent the merger, namely a fast 4G service from EE, a large fixed customer base to whom to cross-sell, ownership of spectrum, plans to develop a small cell network to offload costs and reduce wholesale costs, and an aggressive, well-funded approach. However, our provisional view is that these factors would not provide BT with a unique competitive advantage that could not be replicated by others.
15. Lastly, we considered whether the competitiveness of the retail mobile market was likely to decline absent the merger, due to possible capacity constraints of some operators, and whether BT would therefore have become a more important competitor. We considered capacity constraints in detail and our provisional view is that on balance, although some MNOs face challenges, should these constraints occur they would not be enduring, and would not therefore, in the counterfactual, cause BT to become a more important competitor.
16. Our provisional conclusion is therefore that the merger is not expected to result in an SLC in any market or markets in the UK as a result of unilateral effects arising from a loss of potential competition in the retail mobile market.

### ***Dynamic loss of mobile competition through a strengthening of EE***

17. We have considered a number of mechanisms, suggested by third parties, by which a strengthening of EE could lead to long-term harm to competition (even if it resulted in improvements to the merged party's retail offer). We considered that EE may be strengthened by the merger but that competition in retail mobile was strong.
18. We did not find evidence in relation to any of those mechanisms which would lead us to believe that the merged party's strengths would permanently weaken competitors and ultimately harm competition.
19. Specifically:
  - It is unlikely that any increase in the merged entity's incentives to bid strategically in the upcoming spectrum auction would lead to foreclosure of competitors.
  - The merger in itself is unlikely to cause Telefónica to switch away from its network sharing agreement with Vodafone.
  - Any effect of the merger on the use of indirect sales channels (such as a third party retailer) is unlikely to be large.
20. Our provisional conclusion is therefore that the merger is not expected to result in an SLC in any market or markets in the UK as a result of the strengthening of EE in the retail mobile market.

### **Competitive assessment: wholesale mobile**

21. We assessed whether, as a result of the merger:
  - (a) the merged entity would have the ability to harm one or more MVNOs by increasing the price or degrading the quality of wholesale mobile services provided to them;
  - (b) the merged entity would have an incentive to do so; and
  - (c) where we found that ability and incentive could be present, whether this would have an effect on competition, such that it would amount to an SLC.
22. We considered it possible that, should fixed-mobile bundles become prevalent and the mobile element become an important driver of a consumer's choice of fixed supplier (including through consumers purchasing fixed-mobile bundles), the merger might change EE's ability and incentive to harm MVNOs which

would compete with the merged entity across mobile *and* fixed services. We therefore focused our assessment on these ‘fixed-MVNOs’.

23. We considered both:
  - (a) ‘total foreclosure’, where the merged entity would refuse to supply fixed-MVNOs, which might lead to them being without a supplier or receiving significantly worse terms from an alternative MNO than in the counterfactual; and
  - (b) ‘partial foreclosure’, where the merged entity might bid more weakly to supply a fixed-MVNO or provide a worse service to it within contract.
24. Either strategy could in principle result in fixed-MVNOs offering retail mobile products at higher prices or at lower quality than they might have absent the merger.

### ***Total foreclosure***

25. In relation to our assessment of ability, we considered it likely that, were the merged entity credibly to refuse to supply fixed-MVNOs such as Sky, TalkTalk and Virgin Media, those fixed-MVNOs would still be able to secure wholesale mobile services from one of the other three MNOs remaining. However, in such a scenario, we considered it possible that the merged entity’s refusal to supply fixed-MVNOs could cause higher wholesale prices and/or lower quality services for fixed-MVNOs (although we considered the scale of price rise or quality degradation to be uncertain).
26. We considered that, if the sale of mobile and fixed services alongside each other became important, then any increase in price or degradation in quality caused by the merged entity’s withdrawal at the wholesale level could be to some extent offset by the fact that the other MNOs would have strong incentives to supply such bundles to consumers either directly or indirectly. In particular, those MNOs without their own fixed services (such as H3G and Telefónica) would be likely to seek to supply one or more fixed-MVNOs and ensure that those fixed-MVNOs could be reasonably competitive in the downstream retail market (ie by providing them with a good quality service and reasonable per-unit wholesale rates).
27. In relation to our assessment of the merged entity’s incentives, we considered that EE did not appear to have an incentive to foreclose fixed-MVNOs pre-merger. We considered that, for the merger to create this incentive, it would have to significantly increase the merged entity’s gains from foreclosure (relative to EE), given the potential wholesale revenue it would immediately forego by not bidding set against the uncertain and later gain of retail margins.

28. We considered that this incentive could arise if fixed-mobile bundles become prevalent, mobile services become a major driver of customers' choice of fixed service provider (eg customers buying fixed-mobile bundles do not to a large extent 'unbundle' the mobile component by switching it to an alternative supplier in response to a price rise or quality degradation in the mobile element), and the merged entity recaptures a high proportion of the customers lost by the fixed-MVNO. However, it would require considerable speculation on our part to accept that all these future developments would occur.
29. We considered that there were significant counter-arguments against the merger creating or enhancing the ability and/or incentive to harm fixed-MVNOs through total foreclosure. These included:
- (a) Although we thought the merged entity would be able to cause some price increase or quality degradation in the wholesale supplies by other MNOs to fixed-MVNOs, the level of that price increase or quality degradation was uncertain. In particular, it was not clear whether the merged entity would be able to cause an increase that would lead to a sufficient number of the fixed-MVNOs' retail customers switching their fixed and mobile to the merged entity for the strategy to be profitable.
  - (b) While the number of customers buying fixed-mobile bundles may grow, there was uncertainty over the likelihood, speed and extent of the increase.
  - (c) It was not clear that mobile services would drive consumers' choice of fixed-service supplier to a sufficient extent for the strategy to be profitable.
  - (d) Even if a large enough proportion of customers of fixed-MVNOs did not choose to unbundle, the merged entity would face competition from other providers of fixed-mobile bundles that were not affected by the foreclosure strategy, meaning that the merged entity would not necessarily recapture a high enough proportion of bundled customers for the strategy to be profitable.
30. Considering the above, we provisionally conclude that it is more likely than not that the merger will not create or enhance the merged entity's ability and incentive to engage in a strategy of total foreclosure against fixed-MVNOs.
31. Therefore, we provisionally find that the merger is not expected to result in an SLC in any market or markets in the UK as a result of a total foreclosure strategy by the merged entity in the wholesale mobile market.

### ***Partial foreclosure***

32. We considered three types of partial foreclosure: the merged entity bidding more weakly than in the counterfactual; harming the interests of Virgin Media under its current contract with EE; or harming the interests of fixed-MVNOs under hypothetical future wholesale mobile contracts with the merged entity.
33. We considered that the merger was unlikely to lead to the merged entity bidding more weakly than it would have absent the merger. This was because if the merged entity wanted to host a given fixed-MVNO it would prefer to bid strongly (as otherwise it would risk losing the bid altogether). If its strategy was to harm the fixed-MVNO by bidding weakly and thereby causing other MVNOs to also bid more weakly because they perceive less competitive pressure from the merged entity, it could do so more effectively by refusing to bid. This more effective strategy of refusing to bid has already been discussed under total foreclosure.
34. We considered partial foreclosure of Virgin Media under its current contract with EE. The evidence we reviewed suggested that EE may already have some ability to degrade the quality of wholesale mobile services provided to Virgin Media or to delay its transition to a full MVNO.
35. We then considered whether the merged entity would have a greater incentive, post-merger, to foreclose Virgin Media. Our provisional view is that:
  - (a) In line with our assessment of total foreclosure, the merger could only create such an incentive if we believed that fixed-mobile bundles would become important in the market and mobile would become an important driver of the choice of fixed services.
  - (b) If the merged entity wished to supply fixed-MVNOs (consistent with our provisional conclusion above), and if harming Virgin Media could damage its reputation as a host and cause it to lose other wholesale contracts, that would restrict its incentive to harm Virgin Media.
  - (c) Any harm that a strategy of partial foreclosure could cause to Virgin Media would be temporary and its impact on retail competition would likely be limited since the merged entity would face competition from other providers of fixed-mobile bundles that were not affected by the foreclosure strategy.
36. Taking into account all of these factors, our provisional conclusion is that the merger would not be expected to result in an SLC as regards the foreclosure of Virgin Media under its current contract.

37. Finally, we considered partial foreclosure of fixed-MVNOs under hypothetical future contracts with the merged entity. We thought that the incentives would be similar to those discussed for Virgin Media's current contract, but that the merged entity would have less ability to harm than under that contract. This is for two reasons:

- because fixed-MVNOs would likely be affected less than Virgin Media; and
- because fixed-MVNOs would be aware of the merged entity's possible incentives and seek greater contractual protection.

Hence, our provisional view is the same as for Virgin Media's current contract.

38. Therefore, we provisionally find that the merger is not expected to result in an SLC in any market or markets in the UK as a result of a partial foreclosure strategy by the merged entity in the wholesale mobile market.

### **Competitive assessment: mobile backhaul**

#### ***Input foreclosure***

39. We identified a number of different foreclosure strategies that the merged entity (BT Wholesale, Openreach or the merged entity as a whole) could in principle pursue against operators which it would compete with in the downstream supply of retail mobile services. We considered in each case whether the merged entity would have the ability and incentive to engage in these strategies.

40. We first considered whether the merged entity would have the ability to foreclose MNOs by increasing the price of Openreach Ethernet products. We provisionally find that this is unlikely given the constraints imposed by Ofcom's charge control, the small proportion that backhaul represents of MNOs' costs, and the lack of a clear link in the short-run between the actual price paid by MNOs for backhaul and the prices of the Openreach products.

41. We then considered whether Openreach could discriminate on the quality of Openreach Ethernet leased lines. We noted that Openreach is subject to regulation overseen by Ofcom which is designed to prevent such discrimination. We found no evidence to support third party concerns that BT had, in the past, circumvented this regulation. We therefore provisionally find that it is not likely that the merged entity would, in the future, have the ability to engage in this foreclosure strategy.

42. We considered whether the merged entity could discriminate against rival MNOs through innovation or its investment decisions, focusing on those



technologies that would have to be developed by Openreach – specifically looking at the development of small cells, Cloud-RAN, and the development more generally of new Openreach products. We provisionally find that it is unlikely that the merged entity would have the ability to harm rival MNOs by pursuing these foreclosure strategies.

43. We considered whether the merged entity could discriminate against rival MNOs through other strategic decisions taken by Openreach. We provisionally find that, whilst the merged entity might have the ability to pursue this strategy, it would be unlikely to have the incentive to do so.
44. We considered a potential foreclosure strategy that involved the merged entity foreclosing rival MNOs' access to managed backhaul services at contract renewal, considering both total and partial foreclosure. We provisionally find that, while the merged entity might have the ability to engage in a total foreclosure strategy (that is, withdrawal of supply), it was unlikely that it would have the incentive to do so. Our assessment of a partial foreclosure strategy with respect to managed backhaul services suggested that MNOs will have the ability to protect themselves against most material risks through commercial negotiations, and BT Wholesale's ability to impose a service deterioration is in any event limited. We provisionally find therefore that the merged entity would not have the ability to partially foreclose MNOs in the event of new backhaul contracts between them and BT Wholesale.
45. We considered whether BT could follow a strategy of foreclosure by increasing the price or reducing the quality of BT Wholesale's managed backhaul services under the current contracts through, in particular:
  - a denial of access by MNOs to innovations; and/or
  - through an increase in the price or reduction in quality of the services offered to each MNO.

We provisionally find that the merged entity is unlikely to have the ability to increase the prices or reduce the quality of the managed backhaul products sold to Telefónica and Vodafone under the current contracts between the MNOs and BT Wholesale. We also provisionally find that, in the case of H3G, even if it is possible that the merged entity might delay the delivery of circuit upgrades, it would be unlikely to have an incentive to do so.

46. Lastly, we considered whether the merged entity as a whole could pursue a margin squeeze strategy (setting the difference between the wholesale prices of its backhaul inputs and its retail prices so low that rival MNOs would be unable to make a positive margin in the downstream markets). Our assessment suggested that the efficiencies generated by the merger would be

very small as compared with the overall costs that a company such as EE sustains. We therefore provisionally conclude that the reduction in EE's backhaul costs would not be so large as to allow a reduction of retail prices that would give rise to a margin squeeze. We also looked at the possibility of margin squeeze through the deployment of more fibre backhaul, which would be expensive for MNOs to replicate. We considered that the speed and quality of service that EE currently offered was not strongly influenced by the cost of backhaul. Consequently, we provisionally conclude that any increase in the quality of EE's retail services post-merger following from the reduction in the cost of EE's backhaul would not be so significant to result in margin squeeze.

47. In light of our assessment, we provisionally find that the merger is not expected to result in an SLC in any market or markets in the UK as a result of an input foreclosure strategy by the merged entity in the market for managed fibre mobile backhaul services.

### ***Customer foreclosure***

48. MNOs are able to use a number of different suppliers and technologies for mobile backhaul, including third parties supplying dark fibre. We considered whether, as a result of the merger, the merged entity might have an incentive to self supply (ie source EE's and, if it were able to influence Mobile Broadband Network Limited (MBNL)<sup>1</sup> sufficiently, MBNL's mobile backhaul requirements from BT to a greater extent than in the counterfactual), and whether in turn this would impede the rollout of fibre networks competing with BT and thereby lead to less competition. We focused on dark fibre, and assessed the merged entity's incentive and ability to foreclose other actual and potential suppliers of dark fibre.
49. There is significant uncertainty as to how the market for dark fibre will develop both in the counterfactual and post-merger. It is possible that, absent the merger, EE and/or MBNL would have purchased more backhaul from independent fibre networks. However, there was no such commitment, and Ofcom's dark fibre proposal in its Business Connectivity Market Review has created significant uncertainty and reduced the attractiveness of independent dark fibre options for EE and MBNL (and other buyers).
50. Therefore, the scale and timing of any such purchases is uncertain. It is particularly uncertain whether EE or MBNL would have the appetite, absent the merger, to be such a significant customer in the foreseeable future that it would significantly affect the roll-out of fibre networks. We also note that there

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<sup>1</sup> MBNL is EE's networking sharing arrangement with H3G.

are other customers available to independent fibre networks which could play the same role.

51. Our provisional view is that, while the merged entity would have the incentive to cease purchasing mobile backhaul from third parties, the merged entity is unlikely to have the ability to foreclose independent fibre networks as a result of the merger. We therefore provisionally conclude that the merger is not expected to result in an SLC in any market or markets in the UK as a result of the foreclosure of dark fibre operators by the merged entity.

### **Competitive effects: wholesale broadband**

52. BT supplies wholesale broadband services to communication providers that supply broadband at the retail level, enabling them to connect their core network with the customers' premises.
53. CPs can do this by using their own access network, unbundling BT's local exchanges and using Openreach's wholesale inputs (local loop unbundling (LLU) for standard broadband (SBB) or virtual unbundled local access (VULA) for superfast broadband (SFBB)), or by using wholesale broadband access (WBA) products sold by BT Wholesale. Ofcom regulates the terms on which LLU and VULA are supplied, and for WBA products in selected areas where there is limited competition.
54. As BT is also a retail broadband supplier, the CPs purchasing inputs from BT also compete with BT at the retail level.
55. We considered a theory of harm by which, as a result of the merger, the merged entity would have both the ability and incentive to increase the price or degrade the quality of the fixed wholesale broadband access that rival communication providers need to provide SBB or SFBB at the retail level.
56. One concern was that the merger could give BT the ability to foreclose SFBB inputs by increasing the price of VULA (or reducing its retail SFBB price while leaving the wholesale price unchanged) which would foreclose competing SFBB providers. BT's pricing of VULA is currently regulated by Ofcom using the VULA margin test, and third parties had suggested that this regulation would not be effective after the merger.
57. When testing the effectiveness of existing and future regulation, we must take account of all aspects of that regulation, including guidance that may accompany the regulation and any flexibility that the regulation and/or the guidance provide to the regulator to amend it.

58. Based on our discussions with and written evidence from Ofcom, our provisional view is that it is unlikely that the VULA margin test was materially ineffective in the counterfactual in preventing BT's ability to foreclose. We looked at the impact that the merger may have on the effectiveness of Ofcom's regulation of VULA. We consider it likely that Ofcom will have to adapt its implementation of the VULA margin test to address new issues that may arise as a result of the merger. However, our provisional view is that Ofcom has the flexibility to deal with merger-specific effects on the effectiveness of the regulation of VULA and that it is not likely that any such reduction will require a material change to the regulation of VULA.
59. We therefore provisionally find that the merger does not decrease the effectiveness of the regulation of VULA to such an extent that it creates or enhances the merged entity's ability to foreclose its rival CPs.
60. Another potential concern was that the merger could give BT the ability to foreclose SBB inputs by favouring products used by its own downstream division over (different) products used by rival CPs who are active in retail broadband.
61. However, the prices of these products are the subject of well-established charge control regulation. Ofcom told us that the charges for the key rental and connection products are individually charge-controlled to prevent BT from acting on incentives to favour the products it uses. Our provisional view is that it is unlikely that BT has the ability to reallocate costs in a way that would affect prices, or that its incentives would change in a sufficiently material way to affect its actions.
62. Our provisional conclusion is that the merger does not create or enhance an ability or incentive for BT to foreclose SBB inputs, and it therefore would not be expected to result in an SLC in any market or markets in the UK as a result of SBB input foreclosure.
63. We investigated suggestions by third parties that BT already prioritised investment in fibre over copper, and would have a greater incentive to do so post-merger. It was also suggested to us that Openreach, as part of BT, prioritised new products and services to favour BT operations rather than those of its rivals.
64. Our provisional view is that these concerns are not caused or exacerbated by the merger.

## **Competitive effects: retail fixed broadband**

65. We considered two theories of harm concerning retail fixed broadband: loss of competition in the areas defined by Ofcom as Market A (generally rural areas with limited competition to BT) in both SBB and SFBB, and loss of potential competition in SFBB across the UK.

### ***Loss of competition in Market A***

66. To investigate this theory of harm, we considered to what extent EE was a constraint on BT in Market A, and the likelihood of new entrants (or expansion) in retail fixed broadband in Market A.
67. Our assessment indicated that EE has a small retail customer base in SBB and SFBB compared to BT and other competitors, and although there are a small number of exchanges where both EE and BT have significant shares of supply, these represent a very small proportion of UK exchanges.
68. EE does not market broadband actively in Market A, nor does it price competitively for SBB, and its SFBB pricing does not appear particularly aggressive compared to its competitors. We saw no evidence that EE is a stronger competitive constraint than its share of supply suggests.
69. While large CPs have little current appetite for providing broadband in off-net areas (that is, where they have not unbundled the exchange), there are no material technical or other obstacles to entry if prices were to rise. Any CP would be able to buy a wholesale product from BT, and provide a broadband service which would be the same as BT's in terms of speed and consistency of service.
70. Our provisional view is therefore that the merger is not expected to result in an SLC in any market or markets in the UK as a result of the loss of competition in the supply of retail broadband (SBB and SFBB) in Market A.

### ***Loss of superfast broadband competition***

71. In this theory of harm, we considered whether EE was a significant competitive constraint on BT in the retail supply of SFBB across the UK as a whole, or was likely to be so in the near future, taking into account EE's own strengths and those of other competitors.
72. We note that the SFBB segment has recently been rapidly growing, and is expected to expand further. Competition is strong, particularly for SFBB entry-level products, and those consumers considering switching to SFBB continue to be highly price sensitive.

73. While we observe that EE is one of a few competitors to BT in SFBB, it has a small share of supply and does not achieve a substantial share of customer acquisitions. While EE has a large number of mobile phone customers to which it seeks to cross-sell SFBB, we have not seen evidence that it has translated this into a higher number of SFBB acquisitions than other competitors, or that this is likely to make it a significant competitive constraint in the future absent the merger.
74. On the evidence provided to us, our provisional conclusion is that the merger is not expected to result in an SLC in any market or markets in the UK as a result of the loss of competition in SFBB.

### **Competitive effects: other**

#### ***Coordinated and conglomerate effects***

75. We stated in our issues statement of July 2015 that it appeared unlikely to us that the merger would be expected to result in an SLC as regards coordinated or conglomerate effects. We invited interested parties to provide us with evidence of any such effects. We have seen no evidence to suggest that the merger would increase the possibility of coordinated effects in any market we considered.
76. We usually have more concerns about coordinated effects where a merger increases symmetry in an affected market, which in turn may align the interests of competitors to coordinate rather than compete. We consider that, if anything, the merger will increase asymmetry between the rivals in the retail supply of either mobile services or fixed services.
77. Our provisional view is that any conglomerate effects would be closely linked with the issue of fixed mobile bundling. For conglomerate effects to exist, there would need to be an incentive to foreclose in one market to harm a rival primarily active in a different product market, on the basis that an increased propensity for bundling will lead to some additional conversion of sales to the merged entity. To the extent this effect exists, it has been covered by our assessment of the other theories of harm.

#### ***Interrelated effects***

78. As well as our assessments of the individual theories of harm, we also looked at whether any potential interaction between each theory of harm would give rise to an SLC, or whether the overall effect of the merger on players in the UK telecoms market would give rise to competition concerns. Our provisional view is that all relevant concerns were fully addressed under the approaches

we took to individual theories of harm, where we were cognisant of this possibility, and no additional theories of harm apply.

### **Provisional findings**

79. We provisionally find that the merger is not expected to result in an SLC within any market or markets in the UK, including the retail mobile, wholesale mobile, mobile backhaul, wholesale broadband and retail mobile markets which have formed the focus of our inquiry.
80. The group was unanimous in finding no SLC in all but one market. The inquiry group is currently evenly divided over whether there is an SLC in the UK wholesale mobile market. The law states that for an SLC to be found, there must be a two-thirds majority of the group in favour of an SLC. It follows that we have therefore arrived at a provisional decision that there is no SLC in any market or markets in the UK as a result of this merger.