Anticipated acquisition by BT Group plc of EE Limited

Summary of final report

15 January 2016

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 communications providers (CPs).

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 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 have received a large volume of evidence in this inquiry. For example, we received around 50 submissions during phase 2 from third parties providing their views on the merger. We also received around 20 responses to detailed questionnaires, over 50 responses to our information requests, and held ten hearings with a range of interested third parties. In addition, we received 18 responses to our provisional findings.

7. We appreciate the level of interest and participation in this inquiry which assisted us in our consideration of the ten distinct theories of harm that we identified, of which eight were assessed in considerable detail.

8. There are several interrelated themes which have a bearing on our assessment of the merger, including technological change and regulation.

9. We have noted:

- the dynamic and innovative nature of this complex industry;
- potential structural change in the industry (including the proposed acquisition of O2 by Hutchison 3G (H3G));
- sophisticated competitors responding to opportunities in the market;
- Ofcom’s strategic review, which is in progress; and
- expected increases in consumer demand for data.

10. We have sought to take into account these factors where relevant although they have inevitably made our forward-looking merger assessment more challenging. For example, we discuss concerns regarding the capacity of certain MNOs to respond to increasing data demands (and the opportunities to address such concerns) in relation to our assessment of the retail mobile and wholesale mobile markets.

11. We were 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. For example, the merger control regime is not designed to prevent merging parties from becoming stronger as a result of a merger unless that increased strength harms the competitive process.

12. 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 relating to 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 or future regulation.

13. This report applies the balance of probabilities test to the existence of an SLC. We first considered whether an SLC was likely in relation to each theory of harm, and then considered the various theories of harm in the round. However, we also noted that, where a particular theory of harm depended on the existence of a number of necessary cumulative conditions, and there was significant uncertainty in relation to a number of those conditions, then the probability of all of the necessary elements being present would be lower than the probability of each element individually.

Market definition

14. 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 concluded that we needed to consider relevant markets for five different services: retail mobile, wholesale mobile, mobile backhaul, wholesale broadband and retail broadband.

Competitive assessment: retail mobile

15. 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

16. Our 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 mobile virtual network operators (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.

17. 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 view is that these factors would not provide BT with a unique competitive advantage that could not be replicated by others.

18. We also 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 view is that, although some MNOs face challenges, it is unlikely that they would individually or in combination be sufficiently and enduringly weakened by any potential capacity constraints to the extent that the loss of BT from the retail mobile market is expected to lead to an SLC.

19. We received several submissions questioning these findings, particularly concerning our assessment of opportunities to increase capacity, the potential use of small cells, and the importance of MVNOs in the retail mobile market. We considered these submissions carefully and they are discussed in more detail in our report. We remain of the view that our findings are appropriate.

20. Our 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

21. We 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).

22. We did not find evidence in relation to any of those mechanisms which would lead us to believe that the merged party's strengths is likely to permanently weaken competitors and ultimately harm competition.

23. Specifically:

- It is not evident that the merger is likely to lead to higher prices for spectrum in upcoming auctions sufficient to cause substantial harm to rivals.

- The merger in itself is unlikely to cause Telefónica to switch away from its network sharing agreement with Vodafone.

- The merger is unlikely to result in a reduction in the use of indirect sales channels (such as a third party retailer).

- The merged entity's rivals would have a range of counter strategies to respond to any increased strength which would allow them to compete for customers.

24. We received several submissions questioning these findings, particularly concerning our assessment of opportunities to increase capacity, the importance of small cells and BT's spectrum holding, and the potential for strategic bidding in spectrum auctions. We considered these submissions carefully, but are of the view that our findings are appropriate.

25. Our 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

26. EE supplies BT with wholesale mobile services that it resells at the retail level on a stand-alone basis and as part of fixed-mobile bundles. We found that the addition of BT's small share in retail mobile would be unlikely to materially change the merged entity's behaviour towards MVNOs that do not also sell fixed services. However, given that the merged entity will be a much larger supplier of fixed-mobile bundles than EE in the counterfactual, we assessed whether the merger would lead it to foreclose rivals that rely on wholesale mobile services to also offer fixed-mobile bundles (ie fixed-MVNOs).

27. We identified four potential ways in which the merged entity could harm fixed-MVNOs: not bidding for a future contract (ie refusing to supply); bidding for a future contract, but offering worse terms than EE would have in the counterfactual (ie bidding weakly); bidding and winning a future contract but then providing a worse service than EE would have in the counterfactual; or providing a worse service under an existing contract (ie with Virgin Media).

28. In each case, we considered whether and to what extent the merged entity could have the ability to cause harm to the fixed-MVNO and whether it would have the incentive to do so. We also considered where relevant the potential effect of such a strategy on competition, if pursued.

29. We first looked at refusal to supply. We found that, if the merged entity did not bid for a future contract with a fixed-MVNO, that fixed-MVNO would still be likely to secure wholesale mobile services from another MNO but this could be at a higher price or a lower quality. Given the limited past bidding data available and the non-transparent nature of competition, the scale of this harm was not possible to quantify, although it would be limited by the competitive constraint imposed in the round by the other three MNOs.

30. We found that the merged entity would be unlikely to have a sufficient incentive to seek to foreclose fixed-MVNOs, if fixed-mobile bundles continued to be constrained by consumers' willingness to purchase the two services separately. We therefore considered whether, for the foreseeable future, this would remain the case or if the conditions of competition in the supply of retail mobile services were likely to change in a way that would increase the retail gains to the merged entity from harming fixed-MVNOs. The evidence in general supported the view that fixed-mobile bundles would grow in prevalence, but we found that they would likely continue to be constrained by a consumer's willingness to purchase the two services separately.

31. In light of the uncertainties around the ability of the merged entity to harm fixed-MVNOs by not bidding, and given our view that market conditions were unlikely to change in such a way as to significantly increase the benefits to the merged entity of doing so, we found it unlikely that the merger would give the merged entity a sufficient incentive (compared to EE in the counterfactual) to refuse to bid for future contracts with fixed-MVNOs.

32. We then assessed weak bidding. We found that the merged entity could cause some harm to fixed-MVNOs by weakening its bid. The scale of harm was again uncertain although it would be less than the harm caused by not bidding and limited by the competitive constraint imposed by the other MNOs in the round. Whilst other MNOs might consider it possible that the merged entity would bid in a different way from EE, it would be difficult for them to discern the extent to which they could weaken their own bid and still retain a high chance of winning against the merged entity. Given these uncertainties, MNOs would be likely to be cautious in weakening their own bids.

33. We found that any weakening would sharply increase the risk to the merged entity of losing the contract to one of the other three MNOs and that this would likely outweigh any benefit to the merged entity that foreclosure of the fixed-MVNO could cause at the retail level. In light of this, we found it unlikely that the merged entity would substantially worsen its bid, relative to EE in the counterfactual, for any future contracts with fixed-MVNOs.

34. In relation to foreclosure under future contracts, we found that a fixed-MVNO would be likely to seek contractual protection to mitigate any perceived merger-specific risk that the merger would create. We found that if this was not achieved, the fixed-MVNO could gain a contract with an alternative MNO, in line with our findings in relation to refusal to supply. We therefore found it unlikely that the merger would result in foreclosure of a fixed-MVNO within a hypothetical future contract.

35. We concluded that the merger was not likely to lead to foreclosure of fixed-MVNOs in general and thus not likely to lead to an SLC in one or more markets.

36. We also considered the effects of the merged entity seeking to foreclose one or more fixed-MVNOs (other than Virgin Media). Even if the merged entity did so, despite our view that it would be unlikely to have the incentive to do so, fixed-mobile bundles would continue to be constrained by the supply of stand-alone fixed and mobile services in which multiple suppliers compete. We therefore considered it unlikely that the effects of a foreclosure strategy, if pursued, would amount to an SLC.

37. Finally, we assessed whether the merged entity might provide a worse service to Virgin Media. EE may already have some ability and incentive to degrade service to Virgin Media under its current contract and we therefore assessed whether the merged entity would have a greater incentive do so. We found that such an incentive would only arise if a strong link developed between consumer demand for mobile and fixed services which, as we explain above, we found unlikely. In addition, we found that the merged entity would be less likely to harm Virgin Media if it wanted to supply fixed-MVNOs in future (since this could damage its reputation as a host). Lastly, we found that any harm caused to Virgin Media would in most cases be temporary and its impact on retail competition limited since the merged entity would face competition from other providers of fixed-mobile bundles that were unaffected by the foreclosure strategy.

38. Taking into account all these factors, we concluded that the merger would not be expected to result in an SLC as a result of potential foreclosure of Virgin Media under its current contract.

39. We received submissions questioning these findings, in particular concerning our approach to assessing partial foreclosure (weak bidding). Third parties also provided additional information, including in relation to the capacity of MNOs to compete for new MVNO contracts and Virgin Media's contract with EE. We considered these submissions carefully and carried out additional analysis, which is reflected in our competitive assessment, but are of the view that our findings remain appropriate.

40. We concluded 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 wholesale mobile services market.

Competitive assessment: mobile backhaul

Input foreclosure

41. 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.

42. We first considered whether the merged entity would have the ability to foreclose MNOs by increasing the price of Openreach Ethernet products. We 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 most MNOs for backhaul and the prices of the Openreach products.

43. 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. In our assessment, we recognised that there may in principle be minor impact actions of which the cumulative effect might still be significant. However, we found that on balance the overall impact on rival MNOs would not be large enough to significantly reduce their competitiveness. We therefore find that it is not likely that the merged entity would, in the future, have the ability to engage in this foreclosure strategy.

44. 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 find that it is unlikely that the merged entity would have the ability to harm rival MNOs by pursuing these foreclosure strategies.

45. We considered whether the merged entity could discriminate against rival MNOs through other strategic decisions taken by Openreach. We 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.

46. 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 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 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.

47. 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.

48. We 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 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.

49. 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 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 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.

50. Some third parties challenged our assessment of foreclosure, including our reliance on the regulation of Openreach backhaul products and the Statement of Requirements process. We also received further information in relation to cloud-RAN, high capacity circuits, fibre roll-out, phase synchronisation and small cells. We considered these submissions carefully and carried out additional analysis, which is reflected where relevant in our competitive assessment. However, we are of the view that our findings remain appropriate.

51. Finally, we considered whether the combined adoption of these strategies would increase the merged entity's incentive to foreclose rival MNOs. We concluded that for the strategies where the regulation to which BT is subject would make it unlikely that MNOs could be harmed, or where ability was absent for other reasons, our assessment would not change if these strategies were considered cumulatively. In the strategies where we found that ability to cause harm could be present, our conclusion that the merged entity did not have the incentive to engage in these strategies did not change when assessing their potential cumulative effect.

52. In the light of our assessment, we 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

53. 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)[1] 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.

54. 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

[1] MBNL is EE's networking sharing arrangement with H3G.

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).

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

56. Our 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.

57. We received a submission questioning these findings, and considered this and recently announced changes in fibre network ownership, but concluded that our findings are appropriate.

58. We therefore 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

59. 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.

60. 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.

61. As BT is also a retail broadband supplier, the CPs purchasing inputs from BT also compete with BT at the retail level.

62. 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 CPs need to provide SBB or SFBB at the retail level.

63. 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.

64. 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.

65. Based on our discussions with and written evidence from Ofcom, our view is that it is unlikely that the VULA margin test was ineffective in preventing BT from foreclosing its rival CPs to a material extent in the counterfactual. 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 how it currently applies the VULA margin test to address new issues that may arise as a result of the merger. However, our 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.

66. We therefore conclude 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.

67. 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.

68. 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 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.

69. We received submissions questioning these findings, and in particular how we should view the Ofcom regulation of VULA. We considered these submissions carefully, but are of the view that our findings are appropriate.

70. Our conclusion is that the merger does not create or enhance an ability or incentive for BT to foreclose SBB or SFBB 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 or SFBB input foreclosure.

71. We also 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. Our conclusion is that these concerns are not caused or exacerbated by the merger.

Competitive effects: retail fixed broadband

72. 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 where BT faces limited competition) in both SBB and SFBB, and loss of potential competition in SFBB across the UK.

Loss of competition in Market A

73. 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.

74. 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.

75. 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.

76. 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.

77. We did not receive any additional evidence or arguments in response to these findings on retail fixed broadband and we remain of the view that they are appropriate.

78. Our 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 loss of competition in the supply of retail broadband (SBB and SFBB) in Market A.

Loss of superfast broadband competition

79. 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.

80. 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.

81. 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.

82. We did not receive any additional evidence or arguments in response to these findings and we remain of the view that they are appropriate.

83. Our 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 loss of competition in SFBB.

Competitive effects: other

Coordinated and conglomerate effects

84. 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.

85. 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.

86. Our conclusion 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

87. As well as our assessments of the individual theories of harm, we also considered whether any potential interaction between individual theories 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. We received several submissions arguing that we should find an SLC as a result of these issues.

88. We did not reach a different conclusion on whether the merger is expected to result in an SLC as a result of the interaction between the various theories of harm we considered.

Our findings

89. We 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 broadband markets which have formed the focus of our inquiry.

90. In our provisional findings, the group was evenly divided on whether the merger was expected to result in an SLC in the wholesale mobile market (and was unanimous that it was not in any other market). Following further assessment of all the relevant evidence, the group is now unanimous in its findings.