



Anticipated acquisition by BT Group plc of EE Limited

EE Limited's initial Phase II submission to the
Competition and Markets Authority

30 June 2015

Non-confidential version

1. Introduction

EE Limited ("EE") welcomes this opportunity to set out our views on BT's proposed acquisition of EE (the "**Transaction**") and the concerns raised in the CMA's Phase I reference decision (the "**Decision**").

In this submission we provide a brief overview of our activities in the relevant markets and set out the reasons for our view that the Transaction will not have a negative impact on competition in these markets and will result in significant benefits for consumers, businesses and the overall UK economy.

2. Background on EE

EE was established as a joint venture in April 2010, combining the UK businesses of Orange S.A. and Deutsche Telekom A.G.. Initially operating under the Orange and T-Mobile brands, we launched the "EE" brand in September 2012, to coincide with our launch of the UK's first 4G commercial services using our existing 1800 MHz spectrum following liberalisation of the spectrum licence by Ofcom.¹

Since then, as a result of continued and extensive investments that were directly attributable to the combination of the Orange and T-Mobile businesses in the UK, EE has been able to establish the fastest and most reliable mobile network in the country. It is now one of the most advanced digital communications companies in Britain, serving more than 30 million customers across our mobile, fixed and wholesale businesses.

EE's 4G network now covers more than 90% of the UK population, making our 4G roll out one of the fastest across Europe, and in May 2015 we announced that we are the first European operator to surpass the 10 million 4G customer landmark.

In February 2015 EE announced a commitment to invest a further £1.5 billion by 2017 as part of a new network manifesto ("**Signalling the Future**")², including plans to:

- Enable Wi-Fi calling on a range of iOS, Microsoft Windows and Android devices to enable mobile calls and texts for every home, office and recreational venue with broadband from 2Mbps (launched in April 2015³).
- Introduce 4G voice – or VoLTE – to enable phone calls over 4G data services to thousands of homes and businesses that have never been covered by EE before.
- Expand voice and 4G data coverage across 90% of the UK's geography.

¹ See <http://stakeholders.ofcom.org.uk/consultations/variation-1800mhz-lte-wimax/statement>.

² See <http://ee.co.uk/our-company/newsroom/2015/02/11/ee-commits-to-new-network-investment-plan>.

³ See <http://ee.co.uk/our-company/newsroom/2015/04/07/ee-launches-wifi-calling-to-make-calls-and-texts-available-in-every-home>.

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- Deploy low frequency 800MHz spectrum across the EE rural network to expand EE's reach by more than 1,500 square miles.
 - Roll out "double speed" 4G to 90% of the UK population, enabling data speeds up to 60Mbps to smartphones and tablets, and our "4G+" service to twenty of the UK's busiest cities, doubling capacity for every user and enabling 150Mbps speeds to customers with the latest devices.
 - Achieve a call completion rate of 99.6% as the network carries more than 150 million calls per day.
 - Provide a foundation for technology and research leadership to position EE and the UK as global leaders in the 5G future.

In addition to its retail mobile business, EE provides mobile services to additional subscribers by making its network available to a number of MVNOs on a wholesale basis. EE currently hosts more than 30 MVNO brands, amongst which is the second largest MVNO in the UK (Virgin Mobile) as well as other major brands such as ASDA Mobile and the Post Office. Like EE's retail subscribers, these MVNOs and their customers benefit from the investments which EE has made to enhance the capability and coverage of our network.

EE also provides retail fixed broadband services to customers under the EE brand, including "superfast" fibre broadband in certain areas, based on a wholesale arrangement with BT.

3. The benefits of the Transaction for the UK market and consumers

In the same way that the T-Mobile/Orange merger established a company which had the ability and ambition to make the investment that has put the UK ahead of other countries in Europe when it came to 4G roll out, we believe that the merger of BT and EE will deliver substantial benefits to UK citizens, consumers and businesses.

Specific efficiencies and benefits which we foresee include, among others:

- Establishing a combined organisation that will develop innovative converged services across fixed and mobile networks that deliver cost and experience benefits for consumers and enterprises alike.
- Creating a world-leading "infrastructure of innovation" that can deliver major productivity benefits through stimulating the development of rapidly digitising adjacent industries and ecosystems (e.g. media, gaming).
- Forming a new challenger in enterprise and business markets which will drive innovation and enhanced competition.
- Creating a UK leader in the "Internet of Things" space, leveraging the best of both organisations to drive the development of this nascent opportunity and accelerate adoption of new technologies.
- Creating the UK's third largest corporate investor in R&D which will lead investment in the development and deployment for 5G, accelerating its introduction into the UK and Europe.

It is clear from the Decision that the CMA has received numerous submissions from third parties listing purported anti-competitive effects that might arise as a result of the Transaction. It is hardly surprising that a merger of two successful and ambitious companies such as BT and EE will generate opposition from competitors. However, it is vital to separate the "noise" from rivals looking to use the regulatory process to promote their own agendas which are unrelated to the Transaction, from understanding the impact of the merger on the future competitive dynamics in the affected markets.

This is something which we experienced when we required permission from Ofcom to use our 1800 MHz spectrum to bring 4G services to the UK market in 2012. However, as Ofcom recognised, enabling one company to take the lead in investing in the marketplace is entirely consistent with the normal evolution of competition.

The reality is that our investment in 4G services, enabled by the merger and Ofcom's subsequent liberalisation decision, has driven our competitors to respond by bringing forward their own investments, to the benefit of all mobile consumers in the UK. We believe that a merger of BT and EE will bring similar benefits, helping to kick start a new cycle of investment across the market.

Of course, the issues raised by the CMA will need to be assessed in detail during the Phase II investigation, and we are in full support of the submission being made in parallel by BT, which responds in greater detail to those concerns. In addition to that submission, we have set out a few points below based on EE's own recent experience in the markets concerned:

- In relation to **mobile backhaul**, the Decision sets out the CMA's view that BT may face inadequate competition to prevent it from acting against the interest of other MNOs. Concerns have in the past been raised in a regulatory context about a lack of competition in this area. However, there is a clear trend of increasing competition, in particular in the shape of dark fibre providers such as CityFibre and Zayo.
- For example we, together with Three (as part of the MBNL network sharing joint venture), announced a dark fibre roll out in partnership with CityFibre in Hull in November 2014, and [X] [EE **CONFIDENTIAL**]. This option is and will continue to be available to other parties acquiring BT's backhaul services.
- The emerging competitors referred to above, as well as other backhaul providers using either their own network infrastructure⁴ or Openreach regulated products, will act as a significant competitive constraint on BT Wholesale, preventing it from imposing material price increases in relation to its backhaul products or deteriorating the quality of the services it supplies to other MNOs.
- We also do not consider that there is a credible basis for the suggestion that Openreach could discriminate in favour of EE over other MNOs, as suggested in the Decision⁵, given the regulation and oversight to which

⁴ E.g. Virgin Media, Vodafone's Cable & Wireless operation, and TalkTalk (including through its recently announced planned fibre roll-out).

⁵ Paragraph 149 of the Decision.

Openreach is subject and the standardised nature of its backhaul services. To the extent that the merger results in improvements to Openreach's backhaul services, the benefits will therefore be shared by all MNOs which continue to utilise the BT 21CN network, and their customers.

- Furthermore, irrespective of BT's ability to foreclose, we believe that in evaluating the extent of any incentive to engage in a foreclosure strategy, and its potential competitive effect, it is vital for the CMA to focus closely on the position of each of the relevant MNO customers of BT, i.e. Vodafone, O2, and MBNL (which procures backhaul on behalf of both EE and H3G) rather than considering the theories of harm set out in the Decision in the abstract.
- [X] [EE CONFIDENTIAL].
- In relation to *wholesale mobile*, the Decision sets out a theory of harm that the merged entity may have both the ability and an incentive to foreclose MVNOs which supply fixed-mobile bundles post-merger. Given the competitive nature of the wholesale market today, and that the Transaction will not result in any change to the existing number of wholesale providers, we strongly disagree that there will be any ability to foreclose.
- In particular, we reject the suggestion that Three is not an active wholesaler.⁶ Several recent announcements demonstrate that Three has been both aggressive and successful in winning MVNO business. This includes the launch of its global enabler platform for MVNOs (Hue), as well as the decisions by Carphone Warehouse and FreedomPop to launch new MVNOs on Three's network.
- There is also no question of O2 and Vodafone's commitment to offer wholesale access to MVNOs. In the last year, O2 has reached agreement to host MVNOs with both TalkTalk and Sky, whilst Vodafone has recently launched a new enabler service in partnership with Digitalk to host its range of MVNOs.⁷ The market for wholesale mobile services remains highly competitive and there are no indications that it will become less so in the future.
- It should be noted that, pre-merger, [X] [EE CONFIDENTIAL].
- Given the lack of ability to foreclose, we also do not believe that the Transaction will give rise to a change in incentives to do so post-merger, regardless of the identity of the MVNO or the retail services it offers. A refusal to provide services would have no impact on the relevant MVNO's ability to enter and compete in the retail market (i.e. by securing a deal with another MNO), meaning the merged entity would simply be foregoing potentially significant wholesale revenues without any offsetting benefit in the retail market. The merged entity

⁶ Paragraph 96 of the Decision.

⁷ See <http://www.mobilenewscwp.co.uk/2015/06/25/vodafone-partners-with-digitalk-for-mvne-business/>.

will therefore continue to have the same strong economic incentives to offer wholesale access as we have today.

- In relation to **retail mobile**, we would note that in the context of an intensely competitive UK mobile market, with growing competition from, among other things, the regular market entry of new MVNOs and technology shifts such as voice over internet protocol (VoIP) and so called “over the top” platforms (such as iMessage, Facetime, Blackberry Messenger, WhatsApp, Google and Facebook), BT's pre-merger plans as a MVNO should not be regarded as particularly significant. It is certainly not the case that BT would have been able to offer an "unmatchable mobile service".⁸ Even under the most optimistic assumptions, in our view, absent the Transaction BT would not have been able to obtain any greater proportion of the retail mobile market than other significant MVNOs have to date.
- We also do not consider BT's femtocell strategy to be novel or especially innovative. For example, TalkTalk has also announced plans to begin deploying femtocells in 2015 to establish a converged fixed-mobile offer using its 4G spectrum⁹, and 3G femtocells have been available for a number of years. Furthermore, MNOs are using different technical solutions to deliver improved in-home mobile coverage all of which can be used by consumers as an alternative to femtocells. As noted above EE launched Wi-Fi Calling in April 2015, enabling customers to make calls over unlicensed Wi-Fi spectrum even where there is no mobile coverage, without the need to install new equipment in their homes.

We look forward to engaging further with the CMA on these and the other issues raised in the Decision during the Phase II process.

⁸ Paragraph 137 of the Decision.

⁹ See <http://www.talktalkgroup.com/~media/Files/T/TalkTalk-Group/pdfs/reports/2015/preliminary-results-12-months-to-31-march-2015.pdf>.