



**Clear. Creative. Communications.**

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24<sup>th</sup> April 2015  
By e-mail

**Reference: Merger Inquiry**  
**NON-CONFIDENTIAL**

Gamma Telecom Holdings Limited (“**Gamma**”) welcomes the invitation in your email dated 31<sup>st</sup> March 2015 to make representations regarding the proposed merger of British Telecommunications plc (“**BT**”) and EE Limited (“**EE**”). Our initial comments are provided below and we expect to provide you with further information and views as our investigations and yours progress. We strongly believe that both BT and EE and the parallel O2 & Three<sup>1</sup> transactions have to be considered together.

We are also increasingly concerned about the time that is being taken in your reviewing this case together with the parties without triggering the formal Phase 1 timetable. In our view there is overwhelming evidence to suggest that this transaction will substantially lessen competition and that the CMA’s duty to refer applies and it needs to conduct a full Phase 2 review. It is not a case that is suitable for undertakings in lieu of a reference, and it is only through a full second stage review that all stakeholders can be consulted, and that all the facts can be established to the satisfaction of all concerned. Public confidence in the administration of the system can only be safeguarded if a full second stage review takes place.

In our e-mail correspondence, I outlined that I have no issue with the Competition and Markets Authority (“**CMA**”) sharing our submissions with the Office of Communications (“**Ofcom**”), and, by extension, if needed, to the European Commission. [REDACTED]

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<sup>1</sup> O2, and three are the two most aggressive competitors in the UK, e.g. O2’s exclusive Iphone deal and 3’s disruptive approach to mobile package pricing.







## Executive Summary

What should be evident from our submission is that there are distinct risks of a substantial lessening of competition and the strengthening of dominance as a result of the mergers of BT & EE in its own right and these are increased in the context combination of O2 & Three. Gamma subscribes to the view that if wholesale supply and market structure can be protected, generally, retail communications markets will be vibrant and competitive as a direct result. However, the current market structure, where virtual operators compete with network operators, is fragile. Virtual operators are dependent on their competitors for critical supplies, and the market for virtual operators is likely to have been fuelled by the fact that there has been considerable competition between the 4 major mobile operators in the UK. There is no doubt that there is a significant anticompetitive risk posed by these transactions and we take the view that remedies to mitigate it are best focussed on the wholesale level.

In summary, we say;

- The BT /EE transaction, combining as it does BT's considerable and diverse range of communications and media business in the UK together with EE's mobile business, will create a significant risk of reducing competition.
- In particular the transaction risks lessening horizontal competition, between BT's mobile and Wifi business and EE's mobile business, and, through vertical integration between BT's fixed and EE's mobile businesses provides benefits to the merged entity that will be unavailable to others, as well as creating risks of foreclosure for third parties seeking to compete with the merged entity after the transaction. Of considerable concern is the fact that the merged entity will be able to offer broadband, fixed, media and mobile services using inadequately regulated monopoly assets which are currently being used to   cross subsidise BT's retail packages. The addition of mobile to the packages will make matter worse for competition and consumers.
- Horizontal competition between BT's mobile and Wifi products and EE's mobile and Wifi products will be reduced and needs to be investigated,

- We can foresee that vertical integration between BT's backhaul and its dominant position in national infrastructure and backhaul markets is likely to be enhanced through control over EE's assets in the mast infrastructure duopoly.
- The transactions need to be considered against the context of existing legal undertakings and telecoms regulation. Issues of vertical integration and the combination of BT's dominant position in UK infrastructure with downstream products and services has, in the past, been recognised as a serious competition problem. Regulation did not resolve the problem so BT provided undertakings under competition law to address this problem and to functionally separate Openreach from the rest of its business. The undertakings address, but only in part, the issue of bundling through partial unbundling and clarify the relationship between BT's upstream and downstream businesses', making them transparent such that discrimination can be understood, and policed, both by the authorities and market players. However, the existing undertakings that created BT's Openreach division allow the regulated business to recover the costs of risky capital across the whole of BT's activities and provide an underlying anticompetitive benefit to BT. The existing regulatory system and the undertakings were simply not designed to address fixed/media /mobile integration. They do not address all of our concerns regarding BT's dominance, or the increased incentives that the transaction creates to favour its own downstream business and substantially lessen competition in downstream markets. They fail to address BT's diversification at the retail level being funded by cross subsidy and could, if not revised, compound issues around service delivery and technical reliability, particularly in multiproduct offerings. Further remedies may be needed as conditions to the transaction, including revisions to the existing undertakings and enforcement regime to address these concerns. The market for Mobile Virtual Network Operators ("MVNOs") has grown rapidly over the past 10 years but is less vibrant than other markets in the EU. It is a market which is inherently dependent on the capacity and service capability of the underlying operator with which the MVNO has its agreement. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- We do not see how, without conditions being imposed on the transaction to remedy the problems identified, given the limitations inherent in communications stemming from massive capital requirements and scarcity of spectrum, that entry would be possible given the investment time horizon and the significant barriers that would be faced by any entrant.

**Background to Gamma**

Gamma is a full service wholesale telecommunications network selling through a channel of some 750 independent resellers of communications services (2 of which are wholly owned subsidiaries) primarily to the UK business market. Our turnover is £173m per annum, network capacity is [REDACTED] and we are noted as being one of the largest suppliers in the UK of competitive products to traditional BT offerings. That said, we are wholly dependent upon BT for the “final mile” to customer premises in many cases as well as on them for other parts of national infrastructure (e.g. backhaul, call origination, end to end connectivity). Gamma was founded in 2002 by venture capital from the assets of the defunct Atlantic Telecom; therefore we have a collective experience in developing and growing in an adverse economic climate against an entrenched monopolistic duopoly of BT and Cable and Wireless as well as creating two mobile virtual network operator/aggregator agreements – [REDACTED]

**Introduction: the need to consider the BT/EE and O2/Three transactions together.**

We do not consider that it is possible to consider the BT/EE transaction in isolation from the proposed O2 and Three transaction. Both mergers, if allowed, create substantial risks to competition and a combination of pockets of dominance in the value chain that require, *prima facie*, different remedies to the individual mergers in isolation. Gamma cannot stress enough that the CMA needs to ensure that these transactions are considered together.

**Business Users**

In correspondence between Gamma and the CMA, the question was posed by the CMA on what business users want. In our experience, we can articulate it relatively quickly below:

1. Uptime
2. Dimensions of a service that suits their needs; for example, businesses generally require more symmetric broadband (more upload speed relative to download) compared to consumers which generally require a greater download speed (i.e. for streaming), static IP addresses and quality of service (i.e. protection of mission critical services)<sup>2</sup>.
3. Certainty of timings, be that installation date, fix resolution times etc, all of which generally are more critical for businesses to operate and can be on difference timescales and dependencies than those expected domestically.

In our experience, there are far more vertical markets for business users than domestic users. Generally, domestic users can be grouped into a handful of markets, by way of illustration these can be based on download speed (for streaming v browsing) and latency (for certain applications, such as gaming) and reliability (home workers and students versus silver surfers). However, there are hundreds of forms of businesses, often requiring a bespoke total communications service and integrated solution to meet their needs. This is why there are 750 independent resellers to communications services to business *alone* as Gamma wholesale customers, with a greater market out there. Protecting this “middle layer” from abuses of wholesale competition (such as that alleged to have been engaged in by BT historically in the Competition Act 1998 case brought by Gamma with Vodafone’s fixed line predecessor entity Thus plc<sup>3</sup> regarding the sale of BT’s wholesale calls product to Gamma’s customers at a price less than Gamma could purchase on a regulated basis to BT, and the long-standing debate on “net neutrality” where there was cross party support to deal with the issue of EE and Vodafone blocking over the top services) is critical to ensure the specific needs of the plethora of business niches are met.

There are also two types of business consumer; those that like a one-stop shop, which are generally smaller, and there’s already a market for them that is potentially enhanced by the proposed mergers, and those that like to multi-source for resilience – the consolidation proposed constrains that market as a result of reducing choice to diversify.

Businesses depend on technology for productivity gains and greater use of the latest generation of technologies are essential to the improvement of productivity and GDP growth. Current failures to address constraints on the deployment and diversity of technology by businesses have a very significant effect on the economy.<sup>4</sup> These will

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<sup>2</sup> Gamma has previously provided the Office of Communications with a detailed view of this for broadband services and would be happy to supply a copy to the CMA

<sup>3</sup> [http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw\\_988/](http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw_988/)

<sup>4</sup> For Example Neelie Kroes when Commissioner for DG Infosoc stated in 2010 that 50% of all productivity growth was dependent on the use of technology see [europa.eu/rapid/press-release\\_SPEECH-10-203\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-10-203_en.htm).

be exacerbated by the transaction. Unless appropriate remedies to secure competition at an infrastructure level are enacted in mobile, commensurate with those that exist in the fixed market.

Our Operations Director, Andy Morris, has led an industry task force which has worked with BT to attempt to correct some of these issues voluntarily; as the process evolves, we will produce a paper detailing these matters in more depth as appropriate.

### **Fixed Infrastructure, backhaul and current remedies and regulation as part of the factual matrix against which the merger has to be considered.**

In this section we describe the factual situation in the market for fixed communication network infrastructure in the UK. I have also covered the BT undertakings since those remedies and telecommunications regulation represent part of the factual matrix against which the transaction has to be assessed.

BT owns the vast majority of the access network in the UK; others have some infrastructure in and between major cities, such as the network owned by Vodafone and the network owned by Arquiva, but, in access, BT faces limited competition and then only in certain local areas from Virgin Media with some additional local competitors, such as KCOM in Hull, or COLT in London.

In fact, backhaul (the product by which packets of data are moved from the initial aggregation point to the infrastructure of the service provider in question, e.g. from Gamma's equipment in a BT exchange building to one of our national switching centres) is only found by the Office of Communications to be competitive in some areas of London, and not nationally<sup>5</sup>.

This means that BT has a monopoly on access and backhaul and controls a significant "bottleneck of assets" that has led to numerous remedies; notably the continuing Significant Market Power obligations imposed under EU law and policed by the Office of Communications or the Undertakings BT gave pursuant to the Enterprise Act 2002 in 2005.

The current package of competition undertaking and regulation is, however, only partly effective. It has long been Gamma's concern that the regulatory regime and competition law undertakings that are intended to address a vertically integrated access and downstream business, were designed at a time before sophisticated mobile services were developed and do not address the needs of business customers, who have very different needs to

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<sup>5</sup> Ofcom's most recent Business Connectivity Market Review concluded this, for example. <http://stakeholders.ofcom.org.uk/consultations/business-connectivity-mr/final-statement/>

residential consumers. We have suggested already that the remedy is out of date, and below, that the remedy requires considerable improvement because of the changes that the transaction creates to competition and to

## **BT's incentives and ability to discriminate.**

### **Horizontal overlaps**

BT supplies mobile services as does EE; there is likely to be a reduction of horizontal competition between BT and EE that arises as a consequence of the transaction which needs to be investigated.<sup>6</sup>

There is also the development of voice over Wi-Fi technologies which may help extend mobile coverage through existing Wi-Fi networks without the need to deploy femtocell and commensurate technology; this may be a concern given that BT has built, in no small part by virtue of default configuration of the routers it supplies to business and home users and its payphone network, a substantial national Wi-Fi network. The transaction may result in a competitive distortion as we are unaware of O2 or Three having equivalents. It is also not something, in our experience, that features in MVNO negotiations – in fact, when it comes to matters such as femtocell, we find it difficult to gain any access to the technology which hands the MNO an advantage.

This would be less of a concern if the mobile services market in the UK was truly competitive. Whilst this may hold true in international comparisons based on current residential consumer prices, it does not hold true at a wholesale level.

### **Vertical integration and coordinated effects**

Before the transaction BT had an incentive to prefer and discriminate in favour of its downstream business. Following BT's acquisition of EE, the post-merger entity will have an increased incentive to prefer and discriminate in favour of its own downstream businesses and provide products through improving and integrating its own systems to businesses and consumers that foreclose competition from parties that need to use BT's access systems, in order to compete in downstream markets.

These increased incentives put pressure on the existing regulatory regime and raise questions about the existing capability of the competition undertakings to operate as an effective remedy. At present, absent the transaction, the undertakings are regarded as an ineffective by many including Gamma. One of the ways that has been

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<sup>6</sup> We would have thought that upward pricing pressure would be expected post consolidation from each of BT/EE and O2/Three. This should be modelled, along the lines of the EU Commission investigation of EPlus/Telefonica referred to at footnote 11 below .

canvassed in regulatory discussions to resolve the current issue of the monopolistic nature of the BT Access Network would be to structurally separate of the Openreach division from BT plc and more particularly from the BT downstream business. However I believe that this would not necessarily resolve the issues identified as arising on the transaction. Indeed it could be said that:

**“Separating the ineffectively regulated monopoly from the mothership still leaves you with an ineffectively regulated monopoly.”**

The issue now is that an ineffectively regulated monopoly is entering a transaction that substantially lessens competition and put more simply, makes matters worse. Granted, the current system of functional separation does deal with the hazard to competition of BT creating combinations of wholesale products to price squeeze its competitors out of downstream markets; but it does not deal at all well with quality of service and non-price factors of competition that are important to business customers.

It also carries the consequence that alleged supernormal profits<sup>7</sup> are being used to cross-subsidise packages of retail products, such as television rights, that are not capable of being replicated. The wholesale regulation of price allows technical replicability of components, but does not create economic replicability because BT can still exclude competition through package bundling.

One consequence of the current system is that it provides an incentive to “cash cow” BT’s assets and provide a dividend stream at the expense of providing a service orientated infrastructure, such as is needed by business customers. Even with the layers of “equivalence” imposed under the Undertakings, the Openreach business has a separate P&L and, as with all monopoly, an incentive to increase its profitability and reduce risk rather than invest to meet the needs of its customers. The wholesale contracts limit risk and provide no basis for service improvements. The model that BT has adopted only provides limited solace to competitors in the fact that Openreach is owned by its largest customer, so has something of an incentive to invest and upgrade eventually, to fulfil the needs of BTs semi-detached downstream businesses. In practice this does not appear to have adequately met the needs of business customers: BT’s decisions<sup>8</sup> appear to favour residential consumers over business customers.

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<sup>7</sup> Gamma has raised the fact with Ofcom that the Weighted Average Cost of Capital used by Ofcom takes into account an increasing beta of equity and a gearing that increasingly reflects a quad play operator and not a utility monopoly and thus results in an anticompetitive cross subsidy of television rights from ineffective competition remedies.

<sup>8</sup> It is understood that Openreach prioritises the delivery of fibre to the cabinet in residentially dense areas to prevent cannibalisation of traditional business product revenues.



We believe that business customers in particular gravitate to BT as a service provider because they think, in no small part because of co-branding, that BT's retail divisions can make Openreach deliver a better service to them. Better services in the terms outlined above of uptime, the dimensions of service and certainty of timings are vital for business customers. This objection would be far less problematic if BT offered far more rigorous terms and conditions to meet business users' needs and it has been noted by Ofcom that there is an expectation gap in this area. This issue is exacerbated by the transaction because the combined entity will be able to obtain quality of service defined by the underlying engineering and economics rather than the weak terms and conditions offered by BT to its competitors.

It is also likely that the acquisition of a predominantly consumer orientated mobile network operator, such as EE, by an increasingly consumer orientated fixed operator by virtue of its move into "quad play" and content, such as BT, increases the risk that BT will improve the quality of service, service delivery and performance within its integrated organisation for its consumers and limit or foreclose competitors in downstream business markets. The likely consequence being that use of BT's infrastructure by third party business oriented communications companies will become use of a consumer optimised BT infrastructure, with UK business customers being forced to operate sub-optimally on a consumer oriented infrastructure monopoly.

We would suggest that the opportunity should be taken in the CMA's and Ofcom's review of the transaction to correct the historical anomalies within the existing Undertakings, i.e. for BT to promise markedly better quality of delivery for its customers (differentiating between business and residential where appropriate) and the complete brand decoupling of Openreach or any commensurate Mobile Access Network equivalent.

### Mobile Infrastructure

The mast infrastructure in the UK is a duopoly, with O2 and Vodafone having entered into a joint venture in the form of Cornerstone Telecommunications Infrastructure Limited ("**CTIL**") and EE and Three doing the same through Mobile Broadband Network Limited ("**MBNL**"). We understand that the joint ventures are balanced with no entity having an outright controlling stake.

The relative sizes of these networks, expressed in their published financials, is a cause for concern

|              | <b>CTIL</b> | <b>MBNL</b> |
|--------------|-------------|-------------|
| Turnover     | £303m       | £76m        |
| Assets       | £1,223m     | £366m       |
| Market Share | 50%         | 50%         |

|  |     |     |
|--|-----|-----|
| Spectrum Share (inc BT)                          | 43% | 57% |
| <i>Table 1 – Mobile infrastructure companies</i> |     |     |

Both have a ratio of turnover to assets of between 4 and 5 fold, however, both are allegedly supporting the same amount of customers. This leads to the obvious question of what assets CTIL operate to support this that MBNL don't, or, in other words, what, potentially, is EE in full control of that BT will ultimately end up in full control of? It is also apparent that there is a bottleneck of spectrum, relative to market share, in the combined O2/Three entity versus BT/EE which may give rise to a competitive distortion by virtue of the mergers alone. It is also possible there is a disproportionate split of low-frequency ranges which gives one entity a competitive advantage in "in building" coverage. This will require intervention to ensure a level playing field.

Above, we intimated that BT was dominant in backhaul; this means that regardless of BT not having a stake in CTIL, CTIL itself is dependent upon BT – the combined BT/EE entity can be expected to exercise its control on upstream products to commercially disadvantage CTIL relative to itself, offset by whatever benefit the comparatively immaterial Three component of a O2/Three merger may enjoy as a result. Equally, a merged O2/Three entity has a de facto right of veto on both mast infrastructure entities which may be a barrier to innovation or could be used to "game play" to the detriment of the other joint venture entities and to third parties dependent upon it.

**Mobile Virtual Network Operator ("MVNO") services.**

As recently as 2014, one third party market research organisation wrote that:

*"Over 240 MVNOs and sub-brands now exist in the UK, with nearly every year since 1999 having seen new MVNOs launch. Today customers of MVNOs represent nearly 16% of the total market and MVNOs serve many different sectors, brands and markets. Low barriers to entry, a vibrant set of enablement providers, willing mobile network operators and a desire to strengthen relationships with customers has created many more MVNOs than I could ever have imagined."*<sup>9</sup>

The reality today is that the MVNO market is fragile and dependent for its existence on the willingness of the mobile network operators, who have more recently been restricting their development and actively reducing the number of MVNOs.

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<sup>9</sup> Piran 2014

Following the BT/EE transaction it can be expected that further reduction and restriction of competition in the MVNO market will occur with the combined and vertically integrated fixed and mobile entity having an increased incentive to reduce third party opportunity to replicate fixed and mobile bundles and packages.

All MVNOs in the UK will depend on a proposed 3 MNOs, two of which will be vertically integrated with fixed network organisations and all of which will have increased incentive to reduce competition at the retail level. As noted by the European Commission in the E Plus/Telefonica merger the risk of coordinated effects is especially high in oligopolistic mobile communications markets.<sup>10</sup> Further, it was noted in that case that MVNO competition is likely to be controlled by the MNOs on which the MVNOs depend and operates as an insufficient competitive constraint on mobile markets.

Our experience of being such an MVNO with [REDACTED] underscores this finding. For example,

[REDACTED]

This is an example of MNOs limiting retail competition with MVNOs through their control of their terms and conditions of supply. The transaction will give rise to a likely increase in the merged entity's incentive to prefer itself, and discriminate in favour of its own downstream mobile offerings. Furthermore, it can be expected that fixed mobile converged packages of services will be offered by the merged entity using BT's infrastructure, facilities, systems and capabilities that will be, or become, unavailable to third parties such as Gamma.

Given the fact that the market is consolidating the above is an example of increased risks from vertical integration and of coordinated effects in an increasingly oligopolistic market.

The combination of this behaviour and potential detriment alongside similar simultaneous adverse behaviours through packages of products in fixed voice, data and content (i.e. aggressively leveraging quad play offerings) is a matter of considerable concern.

### **Mobile Alternatives and current wholesale regulation**

Firstly, we note the presence of some small local operators, such as UK Broadband's Relish, offering in London, but that none of these entities are relevant in addressing national dominance. Secondly, the issues identified with

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<sup>10</sup> [http://ec.europa.eu/competition/mergers/cases/decisions/m7018\\_20140702\\_20600\\_4149735\\_EN.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m7018_20140702_20600_4149735_EN.pdf)

relation to BT/EE are exacerbated when the overall markets structure is considered following the proposed further concentration in the MNO market with the O2/Three merger.

As described above there is a significant bottleneck of assets in a merged BT/EE entity and increasing restrictions in the wholesale market which will affect retail market competition. We would compare this to the situation at the start of the BT privatisation in 1984 and through the duopoly days to the market for fixed line telephony we see today. One of the most crucial remedies that transformed a state monopoly into one of the most competitive telecommunications markets in the world was wholesale call origination, which manifested itself as two products from BT – indirect access (“**IDA**”) and carrier preselect (“**CPS**”). Essentially, those products allowed end users to select who they wanted to carry their calls and used the existing monopoly BT infrastructure to facilitate it.

The precise commercial terms upon which a competing operator to BT could collect calls from end users was a function of how deep and efficiently they built out their own network and infrastructure into BT’s local exchange network. Those that invested in building infrastructure to all the exchanges enjoyed the best comparative regulated pence per minute rate, versus those that only built to one or two main switching centres.

In terms of comparison, we do not see a substantial difference in the problem of the bottleneck of assets;

| <b>Wholesale Call Origination (Fixed)</b>                                 | <b>Mobile Network Equivalent</b> |
|---|----------------------------------|
| “Openreach Master Socket” / Network Terminating Equipment on the premises | Mobile Handset                   |
| Primary Connection Point  | Mast                             |
| Local Exchange/Concentrator   | Mobile Switching Centre          |
| Main Switching Unit / Tandem Switch                                       | National Switching Centre        |
| <i>Table 2 – Wholesale Call Origination and Mobile Equivalent</i>         |                                  |

We have spoken at length herein that the consolidation of the market through the proposed transactions poses significant risk to competition and ultimately consumers; the dominance in radio access enjoyed as a result creates an oligopolistic environment, akin in our view, to that enjoyed by BT immediately post privatisation. Aside from the incongruity that CPS/IDA didn’t allow the competing operator to deal with incoming calls, due to the technical limitations of the day, it should be clear that a wholesale call origination remedy, whatever it might look like technically in the 21<sup>st</sup> century, including guarantees on a cost orientated price and capacity, on a dominant MNO to protect MVNOs that invest and innovate with their own network infrastructure (and potentially spectrum) as opposed to those that just resell a rebranded service (like Tesco Mobile) has a very successful historical

equivalent. Any remedy must have a mind to the future have to be based upon the transmission of packets of data from the handset to a deep point of interconnection in the MNO's network, as opposed to just considering increasingly legacy voice signalling.

If such a remedy were combined with the continued facilitation of a competitive process for acquiring spectrum, such as that which allowed BT and Three historically to gain shares, it is a powerful way of ensuring that, regardless of how many MNOs there are or are not, that there is a competitive market for the provision of service to end users. In other words, allowing true MVNOs to vertically integrate on regulated and certain terms with their own spectrum, it acts as a significant competitive barrier to abuses by MNOs; it creates an environment where there can be investment in effective substitution and disruptive innovation, such as we would say has been created in Ireland and Germany, and is somewhat independent of how many MNOs there are.

**[REDACTED] and other barrier to entry miscellanea**

Gamma is not currently a competitor in the market for television rights and content distribution. However, we note much of what we have said here can be read across into that market and assume the CMA will conduct a review of it as needed as part of understanding the competition which is emerging for multiproduct offerings and the regulatory distortions that are driving inefficient competitive processes. As described above, the weaknesses in the current regime insulate BT from competition and the transaction will create an ineffectively regulated competitor with inherent advantages over third parties. These can be seen as foreclosure risks or barriers to entry enhancing benefits for BT/EE

There is also the risk that either of the merged entities becomes another utility (with the natural incentive to charge the maximum regulated rate with the minimal service delivery) with substantial foreign ownership and control; the role of telecommunications as a critical national infrastructure and in disaster planning cannot be understated. In the forthcoming process, this should be a consideration and we would appreciate a view as to how the CMA expects to assess and remedy such issues.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



## Conclusions

If the BT/EE merger is allowed to proceed without conditions, then BT will remain in control of the copper and fibre access to the vast majority of premises in the UK, and will augment its dominant position with significant control over a significant part of the mast duopoly in the UK and increase its control over backhaul along with significant spectrum access. Direct competition between BT and EE in mobile and Wifi will be eliminated and this will be at a time where, the two mobile operators with the reputation for disruptive competitive behaviour are both merging, further reducing competition. It can be expected that prices will rise.

The BT/EE transaction mainly involves vertical integration and takes place in the context of being an ineffectively regulated dominant operator. BT, at a retail and wholesale level, has increased control over backhaul and has in the past combined products at a price point to prevent competition, e.g. Gamma's own allegation of a margin squeeze and TalkTalk re VULA. The transaction thus presents a significant hazard to competition at a time where our experience is that the MNOs are limiting the wholesale market to competition from MVNOs.

As ever, we trust that this submission was useful and we would appreciate an audience at the appropriate time in the process to discuss these issues, and more that arise.

Yours sincerely,

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Gamma Telecom Holdings Limited