

Communications Consumer Panel and ACOD response to the CMA's preliminary invitation to comment in relation to the anticipated acquisition by BT Group plc of EE

Introduction

The Communications Consumer Panel (the Panel) and the Advisory Committee for Older and Disabled People (ACOD) welcome the opportunity to respond to the CMA's preliminary invitation to comment in relation to the anticipated acquisition by BT Group plc of EE.

The Panel works to protect and promote people's interests in the communications sector. We are an independent body set up under the Communications Act 2003. The Panel carries out research, provides advice and encourages Ofcom, government, the EU, industry and others to look at issues through the eyes of consumers, citizens and microbusinesses. The Panel pays particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of micro businesses, which have many of the same problems as individual consumers. There are four members of the Panel who represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively. They liaise with the key stakeholders in the Nations to understand the perspectives of consumers in all parts of the UK and input these perspectives to the Panel's consideration of issues.

There is also cross-membership with Ofcom's Advisory Committee on Older and Disabled People. This means that Members, in their ACOD capacity, provide advice to Ofcom on issues relating to older and disabled people including television, radio and other content on services regulated by Ofcom as well as about issues concerning the postal sector.

Response

The Panel's response to the invitation to comment is as follows:

- Prior to the merger between T-Mobile and Orange in 2010 to create EE, the UK had five major mobile network operators (MNOs). There is now a risk of even fewer providers offering services to consumers, with a possibility of just three MNOs. The consumer should be at the heart of competitive market and the Panel is concerned that such a reduction of players in the communications market risks diminishing

competition and consumer choice. As such, it is vital that the potential impact of the anticipated acquisition on the consumer is made a top priority.

- We are aware that consumers have experienced significant price increases in other European markets where there has been a reduction in the number of MNOs in the market. This is of significant concern to us. We would encourage a detailed and thorough exploration of what safeguards might be necessary to protect consumers; and an acknowledgement that the assessment of any such price increases should be made according to the range and price of tariffs available in the marketplace - not just the price per unit. (For example, price per Mb, which may appear to fall in relative terms but may only be offered in amounts that are more than a consumer may require, forcing them to pay for more than they need.
- We would urge that full consideration is given to the needs of different constituencies of consumer, including older or disabled people. Older people particularly are more likely to take only a single service from their communications provider - for example, a fixed line - and are less likely to switch. Prices of fixed line services have been the subject of considerable increase in recent years. Such consumers should not suffer detriment as a result of the revenue they provide being used to subsidise services offered by a business to attract other consumers.
- We would encourage the full consideration of the needs of microbusinesses, which often behave in the market in the same way as individual consumers and have a limited choice of services in the market.
- If there is less differentiation between providers as a result of the anticipated merger, there is a risk of there being less impetus to improve customer service. Customer service and complaints handling are already problematic within the telecommunications sector so we are concerned about any developments that might militate against improvements.
- In relation to added value provided by the companies, we are aware that some products/services are the subject of differing policies between the two companies. For example, BT charges for caller line identification while EE provides it free. It is vital that any combined entity does not exploit its market power in such areas to the detriment of the consumer. In this example, that detriment could be EE customers finding themselves worse off if BT applies its policy to the business it is hoping to acquire - because those people will have to pay for a hitherto free service that helps to combat nuisance calls.
- We have some concern that the anticipated merger might lead to greater tie-ins or hard to exit contracts - especially if quad play is offered; will deals be more complex and harder to change/exit, thus further stifling switching? We are conscious of the need to protect consumers from the potential downside of an amalgamation of the largest fixed broadband provider and largest mobile provider forcing the market towards bundles. In other words, consumers who don't want to buy all elements from the same provider should not be disadvantaged; and they should be able to unbundle

without disadvantage. If competition is to drive improvements for consumers then a reduction in competition and consumer choice requires some other mechanism to keep providers on their toes - improving the ease of switching and greater rights to cancel contracts could be that mechanism.

- In terms of prices and affordability, we are concerned that the anticipated acquisition does not further exacerbate the issue of the poverty premium - where those who cannot afford a bundle in effect pay a premium for a single service. We would urge that the position of those people on low incomes is taken into account when assessing the anticipated acquisition.
- Openreach is the infrastructure division of the BT Group; it is a BT business that reports directly into the BT chief executive. We are aware that the separation arrangements in Northern Ireland differ from those in the rest of the UK. Openreach also manages the backhaul which is vital for the UK communications industry. We would encourage the CMA to closely consider the implications of the proposed transaction not only from the point of view of infrastructure repair and maintenance, but also any potential implications of Openreach's position in relation to the backhaul infrastructure.
- We are conscious of the network sharing agreements that the MNOs have already undertaken. We would encourage the CMA to fully examine the implications of these arrangements and the potential impact of any mergers on consumers and citizens - from not only a financial perspective but also considering the effect on mobile voice and data coverage available to consumers. The UK has a problem with partial "not spots". We would be anxious to avoid any unintended consequences that might result in this being exacerbated in any of the nations.
- To ensure that consumers' interests remain central to the operation of a successful competitive market, this anticipated acquisition cannot be viewed in isolation. We would therefore urge the CMA to take a holistic view of the market and its consumers and to work closely with the European Commission so that this transaction can be fully considered in the light of the other proposed merger. The implications of both, we believe, need to be analysed comprehensively as part of the same process.

In summary, the Panel is concerned that the position of all UK telecommunications consumers is not weakened in any way by the anticipated acquisition. For the reasons outlined above, we believe that there may be a prima facie case to investigate a potential Significant Lessening of Competition that may be detrimental to consumers.