

Commissioner Kroes
European Commission
1049 Brussels
BELGIQUE

21 December 2009

Dear Commissioner Kroes,

Deutsche Telekom – France Telecom merger of UK operations

The European Commission is due to examine the proposals by Deutsche Telekom and France Telecom to merge their UK operations, which currently operate under the T-Mobile and Orange brands. As UK organisations that represent the interests of consumers, we wish to make a submission to the Commission on the subject of this proposed merger.

Consumer Focus and the Communications Consumer Panel are independent organisations representing all consumers that rely on the mobile phone market in either Great Britain or the whole of the UK. Consumer Focus is the independent champion for consumers across England, Wales, Scotland and (for postal consumers) in Northern Ireland. Consumer Focus operates across the whole of the economy, persuading businesses and public services to put consumers at the heart of their work. The Communications Consumer Panel was established under the Communications Act 2003 as an independent advisory body. Its role is to influence Ofcom, Government, the EU, and service and equipment providers so that the communications interests of consumers and citizens in the UK are protected and promoted. The Panel, in its role of advising Ofcom, has also given the advice contained in this letter to the Ofcom Board.

We present this joint letter given the importance we attach to a competitive and fair market for these consumers and our concerns over the possible impact of the proposed merger.

Our submission is motivated by two issues. Firstly, we see the need for a detailed and thorough review of the proposal. We believe that this review should not be based solely on broad comparisons with other European mobile markets, but must take into account the particular characteristics of the UK mobile sector. In the absence of such a review, it is not possible to say whether the merger would have a detrimental impact on UK consumers.

Secondly, we believe that this review would be best carried out at the national level, since the impact of the merger would be felt most strongly in the UK. The relevant UK regulatory authorities would be able to apply their detailed knowledge of the particular characteristics of

the UK's mobile market, and the national and sub-national issues that affect it. We therefore think it would be appropriate for the Commission to refer the proposal for detailed examination by the UK authorities.

We would like to expand on our view that there should be a detailed review of the proposal. If approved, the merger would produce a major new player in the UK mobile sector with a powerful 37 per cent retail market share. The merged entity would have an interest in over 40 per cent of UK subscriptions, if mobile virtual network operators (MVNOs) were taken into account. Such a development would have substantial implications for consumers, which we believe must be examined carefully.

We recognise that mergers can have price and service benefits for consumers through increased efficiency, economies of scale and greater investment opportunities; however, before taking a view in this case, our overarching concern is to ensure that the potential effect on competition is fully explored. UK consumers have benefited from a competitive mobile market in recent years and we would be concerned about any reduction in this competitiveness. Market forces have exerted consistent downward pressure on prices in the UK; this is a desirable outcome from the point of view of consumers and a trend we would not wish to see interrupted. We would therefore expect that, if this proposed merger is approved, there should be consideration of the need for conditions that would ensure the maintenance of competition and choice.

Competition may be affected in a number of ways. Firstly, we are keen to see improvements in 3G coverage in the UK. Absent or poor quality mobile signal reception is a very real issue for significant numbers of UK consumers. The proposed merger could have a variety of effects on coverage. For example, the proposed combined entity would have a more extensive network footprint than Orange or T-Mobile currently have individually and so customers of the new entity would be likely to benefit. However, improvements in 3G coverage for all UK consumers will depend to a significant extent on competition between operators over the reach and quality of their infrastructure and access networks. The merger raises the possibility of a reduction in competition over coverage, since there will be fewer underlying networks in the market. This effect may be heightened if the merger encourages further market consolidation at the infrastructure level. We believe it is important, therefore, to examine in detail the potential effects of the merger on coverage, both positive and negative.

Secondly, the approval of this merger may encourage further consolidation at the customer-facing level, which could reduce competition and create an environment which does not support smaller players in the market. As the smallest network operator in the UK, Hutchison 3G would be in a particularly vulnerable position were the market to consolidate further. UK consumers have benefited from market-changing innovations introduced by H3G, such as prepay mobile broadband and free Skype calls. Without small, independent mobile operators, the competitive innovation that has been a particular feature of the UK market in recent years may be lost, to the detriment of consumers.

Thirdly, the effect on future holdings of radio spectrum must be examined, given that the merged company will hold virtually the entire allocation of 1800MHz spectrum in the UK. The implications of this scenario, and its impact on the longer-term development of the mobile market, need to be assessed both in the context of the UK Government's spectrum

modernisation programme and the wider aims of its Digital Britain initiative. We believe that the UK is at a pivotal point in building the foundations for the rollout of the next generation of mobile technology. In particular, the misallocation of spectrum at this point could harm significantly the competition required to ensure that consumers have nationwide access to mobile broadband at an affordable price within a reasonable timescale.

Fourthly, we are concerned that at the wholesale level, the proposal could have detrimental consequences for MVNOs, with knock-on effects for consumers. A reduced choice of competing networks at the wholesale level could make conditions harder for virtual operators seeking to enter the market or improve their existing arrangements. Clearly, this would also affect consumer choice at the retail level.

Consumer Focus and the Communications Consumer Panel will continue to engage closely with the merger on an ongoing basis to ensure that a thorough analysis of the proposal takes place. Where appropriate to the role of our organisations, we intend to monitor the behaviour both of the companies involved and of the other mobile operators in the market, as well as examining the effects on consumers. We will be happy to provide any further submissions to the Commission.

Finally, we reiterate the value of a detailed review of this merger and of the detailed appreciation of the UK mobile marketplace the regulatory authorities in the UK will be able to bring to any scrutiny that takes place. A decision on the referral of the merger should be taken as a matter of priority, in order to avoid slowing down the assessment process, bearing mind that an unduly slow review would not be in the interest of consumers.

Yours Sincerely,



Philip Cullum
Acting Chief Executive
Consumer Focus



Anna Bradley
Chair, Communications Consumer Panel