
Anticipated acquisition by BT Group plc of PlusNet plc

The OFT's decision on reference under section 33(1) given on 23 January 2007.
Full text of decision published 31 January 2007.

PARTIES

1. **BT Group plc (BT)** is a listed holding company for an integrated group of businesses that provides global telecommunications services, including voice calls and internet access. It comprises four lines of business: BT Retail¹; BT Wholesale²; BT Global Services³; and Openreach⁴.
2. **PlusNet plc (PlusNet)** is a UK-based Internet Service Provider (ISP) that also provides voice call services. PlusNet's UK turnover for the year ended 31 December 2005 was £35.2 million.

TRANSACTION

3. BT proposes to acquire the entire share capital of PlusNet. The parties made a submission to the OFT on 1 December 2006. The OFT's administrative deadline is 31 January 2007.

¹ Serves business and residential customers and is the prime channel to market for other BT businesses.

² Runs BT's networks and provides network services and solutions to other communication companies.

³ BT's global-managed services and solutions provider that serves multi-site organisations worldwide.

⁴ A new part of BT that has been created to own, maintain and develop the access network which links homes and businesses to the networks of Britain's communications providers.

JURISDICTION

4. As a result of this transaction BT and PlusNet will cease to be distinct. The share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met in relation to the supply of retail fixed line rental in which BT currently has a share of supply of approximately 74 per cent and the merger would increase this by less than [redacted – 0-5] per cent. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

FRAME OF REFERENCE

5. Horizontal overlaps arise between BT and PlusNet in the supply of the following services:
 - Fixed line rental and voice calls
 - Retail broadband internet access services, including
 - WiFi (wireless internet access)
 - VoIP (Voice over Internet Protocol), and
 - Retail narrowband internet access services.
6. These overlaps occur only at the retail level.

Product market

Fixed line rental and voice calls

7. Fixed line rental and voice calls are the supply and rental of telephone lines (connecting premises to a telephone exchange) and the associated facility to make and receive telephone calls over fixed (non-mobile) networks. Since PlusNet does not have its own network infrastructure it acts as a reseller of wholesale inputs from other providers including BT's Wholesale Line Rental (WLR) product.
8. In its analysis of the NTL and Cable & Wireless merger⁵, the Competition Commission identified separate markets for:

⁵ NTL Incorporated and Cable & Wireless Communications Plc: A report on the proposed acquisition. See www.competition-commission.org.uk/rep_pub/reports/2000/437ntl.htm

- Fixed and mobile line rental
 - Retail (encompassing local access) and wholesale telecommunications services
 - Local, national and international calls, with further sub-divisions for residential and business customers.
9. In a previous review⁶ Oftel (Ofcom's predecessor) defined this sector more narrowly into 17 sub-categories for different retail calls and lines markets including retail residential exchange lines⁷ and retail residential calls⁸.
10. The increment to BT's shares of supply resulting from the merger does not differ materially between the definitions above and, therefore the OFT considers it is not necessary to conclude on the precise product frame of reference. On the basis of the evidence before it, the OFT considers it appropriate to use a frame of reference that includes both fixed line rental and voice calls.

Internet

11. Broadband is the supply to users of fast (up to 8Mb), 'always-on' access to the internet and internet-based services. A variety of technologies can be used for this purpose, including cable modem, wireless technologies, and satellite and Digital Subscriber Line (DSL)⁹ technologies. Both BT's and PlusNet's standard retail broadband internet access product uses Asymmetric Digital Subscriber Line (ADSL) technology. PlusNet also purchases wholesale access products from BT.
12. Narrowband is access to the internet at lower speeds than broadband (less than 128kbit), normally requiring the user to 'dial-up' each time to activate the connection. BT offers a range of narrowband internet access services. PlusNet also provides a range of narrowband internet access services using wholesale services purchased from BT.

⁶ See Oftel Fixed Narrowband Retail Services Market report, 26 August 2003.

⁷ Further separated into (a) residential analogue exchange line services, and (b) residential ISDN2 exchange line services.

⁸ Further separated into (a) residential local calls, (b) residential national calls, (c) residential calls to mobiles, (d) residential operator-assisted calls, (e) residential IDD category A calls, and (f) residential IDD category B calls (route-by-route basis).

⁹ Digital Subscriber Line can either be asymmetric (faster download than upload speeds – more suited to residential customer use) or symmetric (similar download and upload speeds – more suitable to business customer use).

- 13 In both [redacted]¹⁰ and its Wholesale Broadband Market Access Review¹¹ (2006), Ofcom did not consider that narrowband and broadband supply were in the same relevant market, because end-customers do not consider them to be substitutable on the demand side. Also, Ofcom concluded that in the retail market for broadband internet access service, there are separate product markets for asymmetric and symmetric broadband internet access. This is due to different customer needs between these two types of access and the technology required to supply the services. Ofcom considered the market for asymmetric retail broadband internet access to cover both residential and business customers.
14. On the basis of the evidence before it, the OFT considers it appropriate, in particular given the small increment to BT's shares of supply, to limit its analysis in this case to retail internet access examining narrowband and broadband separately. Within retail broadband, while the OFT is mindful of Ofcom's distinction between asymmetric and symmetric, on the basis of the evidence before it the OFT considers that such a separation in this case will not affect the conclusions and thus the OFT considers it is unnecessary to conclude on the exact frame of reference.

Geographic market

15. In [redacted]. Furthermore, on the basis of the evidence before the OFT, both BT and PlusNet supply retail internet access products on a UK-wide basis and pursue a national retail pricing policy. Similarly, recent OFT and European Commission telecommunications cases have used a UK-wide market for analysis of fixed lines and voice calls.¹² The OFT has not found any evidence in this case to indicate a different approach to geographic market would be appropriate and therefore considers that the appropriate frame of reference for its analysis of this transaction is the UK.

¹⁰ [redacted]

¹¹ Ofcom's Review of the wholesale broadband access markets 2006/07. Identification of relevant markets, assessment of market power and proposed remedies. Consultation 21 November 2006.

¹² For example the mergers between CPW/Onetel (OFT, ME/2256/06), NTL/Telewest (OFT, (ME/2033/05) and AOL/CPW (EC, M.4442).

HORIZONTAL ISSUES

Market shares

Fixed line rental and voice calls

16. Of the 33.8 million fixed lines in the UK, PlusNet currently has less than [redacted] lines, representing a share of around [redacted – 0-5] per cent. Based on this same measure, BT's current share of supply is 74.4 per cent. The only other major player in this market is NTL/Telewest, with a share of 13.2 per cent.¹³ BT's share in this market has been declining recently and has fallen by over 5 percentage points in the last year. A measure, combining line rental and voice call revenues, shows BT to have a share of supply of approximately 66.3 per cent, with PlusNet's share estimated to be around [redacted – 0-5] per cent.¹⁴ On this basis NTL/Telewest's share is 13.1 per cent. Other suppliers include Tiscali and Carphone Warehouse (CPW).

Retail broadband internet access

17. PlusNet currently has approximately [redacted] broadband customers and at March 2006 there were 11.1 million broadband connections to homes and smaller businesses indicating a share of supply no higher than [redacted – 0-5] per cent.¹⁵ This gives a combined share of supply of retail broadband internet access services of around [redacted – 20-25] per cent, although on the basis of the evidence before it, the OFT considers that a current estimate of this share would be slightly lower than this as the number of broadband connections is likely to have increased since March 2006¹⁶, in particular as a result of recent market entry by BSkyB and CPW. Other retail broadband internet access suppliers include Tiscali, Orange and NTL/Telewest.

¹³ Ofcom, Telecommunications Market Data Tables, Q1 2006, (Ofcom) published 3 October 2006.

¹⁴ Ofcom, Telecommunications Market Data Tables, Q1 2006, (Ofcom) published 3 October 2006.

¹⁵ Ofcom, the Communications Market 2006 (p.108).

¹⁶ For example, in the three months to March 2006, total retail broadband connections increased from 10 million to 11.1 million. Source: Ofcom, the Communications Market 2006 (p108).

Retail narrowband internet access

18. BT has a [redacted – 15-20] per cent share of supply of retail narrowband internet access services. Based on its subscriber base of [redacted] PlusNet has a [redacted – 0-5] per cent share.¹⁷ The parties combined share is therefore around [redacted – 15-20] per cent, making it the fourth largest supplier of narrowband internet access services. Other retail narrowband internet access suppliers include Tiscali, AOL/CPW, Orange and NTL/Telewest.

Barriers to entry and expansion

19. In order to provide retail broadband internet access services, an operator requires access to appropriate network facilities. Such access could be provided on a wholesale basis by the cable companies, BT¹⁸ or other suppliers.
20. On the basis of the evidence before the OFT, there has recently been entry at the wholesale level by vertically integrated suppliers of retail internet access and telecommunication services through Local Loop Unbundling (LLU)¹⁹ (e.g. Orange²⁰ and AOL UK²¹) and BT now offers WLR and Carrier Pre-Selection (CPS). All of which, BT submitted, has facilitated entry at the retail level in fixed line rental, voice calls and internet access services. There has been significant recent investment by suppliers in retail broadband internet access services. In April 2006, before the AOL acquisition, CPW announced that it would be prepared to run free broadband at a loss, with the aim of having 3.5m residential UK customers

¹⁷ Based on data supplied by the parties.

¹⁸ BT is subject to regulatory obligations to provide various relevant network components under specified conditions.

¹⁹ Local Loop Unbundling ('LLU') is a process by which BT's local loops (from the home to the local exchange) are physically disconnected from BT's network and connected to the network of another supplier. This process enables competing suppliers to bypass BT's wholesale services and exercise a greater degree of control over the provision a wide variety and differentiation of services, including broadband services. PlusNet does not own any LLU infrastructure, but does make use of LLU services provided by both BT and Tiscali.

²⁰ In December 2005, Orange (then branded as Wanadoo) announced that they would be making 'substantial and significant investments in LLU in the UK'

http://www.theregister.co.uk/2004/12/13/wanadoo_france_llu/

²¹ In January 2006, AOL UK (since acquired by CPW as noted above) announced that it proposed to invest up to £120 million in the development of an LLU network

<http://www.cpwplc.com/cpw/media/press/2006/2006-04-11>

by March 2009.²² In July 2006, BSkyB announced that it would be investing about £400 million over the next three years in the development of its broadband business.²³

21. The emergence of new technologies, such as LLU, 3G (third-generation mobile telephony) and wireless internet access as mechanisms for providing internet access services has widened the field of viable competitors.

VERTICAL ISSUES

22. One third party raised concerns that, through its acquisition of PlusNet, BT may be limiting customer choice at the downstream level, as well as reducing the pool of potential wholesale customers for LLU-based suppliers. However, the OFT considers, on the basis of the evidence before it, that the potential for future entry at the retail level for suppliers of telecommunication services means that this pool of potential wholesale customers can grow. Several other third parties raised this as a potential concern if BT made a series of similar acquisitions.

THIRD PARTY VIEWS

23. Other than the concerns raised regarding potential vertical issues set out above, no other concerns were raised by third parties.

ASSESSMENT

24. The increment to BT's shares of supply resulting from the merger are very small at [redacted – 0-5] per cent, [redacted – 0-5] per cent and [redacted – 0-5] per cent in fixed line rental and voice calls, retail narrowband internet access and retail broadband internet access respectively. This has meant that it has not been necessary to conclude on precise market definitions and the OFT considers the appropriate frames of reference in this case to be fixed line rental and voice calls, retail broadband internet access and retail narrowband internet access. Based on these small increments and the presence of other suppliers in each of the sectors in

²² www.cpwplc.com/cpw/media/press/2006/2006-04-11

²³ http://media.corporate-ir.net/media_files/irol/10/104016/broadband_presentation.pdf

which the parties activities overlap the OFT believes that this transaction does not give rise to any horizontal or vertical concerns.

25. There has been recent investment by third parties in retail broadband access services. Furthermore, the recent investment at the wholesale level and BT's WLR and CPS have facilitated entry into the retail supply of fixed lines and voice calls, and internet access markets. The emergence of new technologies (e.g. wireless, 3G mobile and LLU) has further lowered potential barriers to entry and also widened the field of viable competitors.
26. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

27. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.