



Clear. Creative. Communications.

Dr Andrea Coscelli
Executive Director, Market and Mergers Directorate
Competition and Markets Authority
Victoria House
37-63 Southampton Row
LONDON
WC1B 4AD

26th March 2015
By special delivery

Dear Dr Coscelli,

Reference: Potential merger of British Telecommunications plc (“BT”) and EE Limited (“EE”)
NON-CONFIDENTIAL

I write to you on behalf of Gamma, a group of telecommunications companies ultimately held by Gamma Communications plc, with an annual turnover of c£173m. Gamma sells almost exclusively to business end users through a wholesale channel of some 750 independent communications providers upon its own national fibre and switching network, although we are dependent upon BT for ultimate reach to our customers’ premises. Whilst this structure means that our brand is not as recognisable as others, we were disappointed to read an article in the Financial Times suggesting that the Competition and Markets Authority (“CMA”) had written to a number of other major telecommunications companies (and, understand, to some trades associations too) asking for initial input into a possible CMA investigation regarding a possible BT/EE merger.

That aside, I trust taking the liberty of writing to you directly on this matter is acceptable, as there are some very salient points we wish to make in advance of any formal inquiry.

Firstly, Gamma notes that the BT/EE news and equally reports of a Telefonica O2 and Three merger may start another round of consolidation in the market, whereby the goal is greater integration of content (television rights etc) and distribution (fixed and mobile telecommunications); so-called “quad play” offerings. The emotive subject of football rights between telecommunications companies is already known to the CMA through cases at the Competition Appeal Tribunal, for example; we do not believe that the existing news is the end of this consolidation phase and may merely mark the beginning. It is therefore difficult to take a firm position without the benefit of foresight.



Secondly, the initial focus on the potential merger appears to be on “quad play”; the first salvos have been fired in the public domain by largely residential and consumer focussed telecommunications companies. Obviously, protecting residential consumers is an extremely important part of any review the CMA undertakes, however, it cannot be at the expense of ensuring that the needs of British businesses are also met. I am sure I do not need to regurgitate the current Government mantra regarding a “long-term economic plan” or a “sustainable recovery”, but it is important to note that such policies can only be delivered with a reliable, future-proof national distribution system that is free from bias. The situation today does not appear to us to always support these policies; we have long lobbied the Office of Communications to take a greater interest in the needs of business users of telecommunications, only to see increasingly consumer and residential remedies implemented that don’t address our concerns. Undertakings given by BT pursuant to the Enterprise Act 2002, in conjunction with the prevailing regulatory regime, have not, in our opinion, addressed current concerns around what amounts to a monopolistic “bottleneck of assets”. Unless the nature of these promises or the regulation applied to monopolistic providers is also subject to change as part of any investigation, it is difficult to see how the ultimate outcome for our customers can be materially different.

Thirdly, and finally, competition in the market for the provision of mobile services is in need of review. The Department of Culture, Media and Sport recently ran a consultation on “partial not-spots” and the responses would provide the CMA, we would suggest, with a great insight into this aspect of the market. In recent years, we have gone from 5 independent mobile network operators to potentially 3. Furthermore, the recent spectrum auction and the award to BT, ironically, was meant to address, in part, the Orange and T-Mobile consolidation but there is still limited true competition; virtual network operators are, for many intents and purposes, just resellers. These concerns are compounded by the primary copper and fibre infrastructure in the UK being a monopoly (BT Openreach) and the mobile mast infrastructure being a duopoly. The potential for a merged BT/EE entity to effectively control, end to end, copper/fibre to premises and access to masts, with the moral hazard of the ability to squeeze out rivals as a result, is a worrisome prospect that warrants detailed scrutiny as part of any investigation.

We trust this was useful and are more than happy to discuss anything further at your convenience.

Yours sincerely,

Peter J Farmer, Head of Regulatory Affairs, Gamma Communications plc