

CMA inquiry into proposed merger of BT and EE

About Arqiva

Arqiva is a communications infrastructure and media services company operating at the heart of the mobile and broadcast communications industry. Arqiva provides much of the infrastructure behind television, radio, mobile and other wireless communication in the UK. We are at the forefront of network solutions and services in an increasingly digital world. We provide much of the infrastructure behind television, radio and wireless communications in the UK and have a growing presence in Europe.

We are active in the telecommunications sector, providing access to over 8,000 sites and infrastructure for mobile phone operators. We are building and running a national Internet of Things ("IoT") network, which is now live, starting with 10 of the UK's largest cities. In addition, our smart metering communications service, connecting 10 million homes using long-range radio technology, will be one of the UK's largest machine-to-machine deployments. This will require sites across northern England and Scotland.

Arqiva is a founder member and shareholder of Freeview. We broadcast all eight Freeview multiplexes and are the licensed operator of four of them. We also own Connect TV, the first company to launch a live IP streaming channel on Freeview. Arqiva is the licensed operator of Digital One – the national commercial DAB digital radio multiplex. In terms of radio delivery, we are the licensed operator of Digital One – the national commercial DAB digital multiplex.

Arqiva is a major player in the UK's satellite communications business, operating over 80 antennas to geostationary satellites, providing telemetry, tracking and command support services to some of the leading satellite operators. We are a major provider of permanent satellite services to both Freesat and Sky customers. We also provide global satellite based services to the broadcast, communications, security, oil/gas, and exploration sectors, using our five UK teleports as well as facilities in the Middle East, Asia and the Americas.

Our major customers include EE, BT, H3G/Three, Telefónica/O2, Vodafone, BBC, ITV, Channel 4, Five, Sky, Classic FM, Airwave, Heathrow and Premier Inn.

Arqiva is owned by a consortium of long-term investors and has its headquarters in Hampshire, with major UK offices in London, Buckinghamshire and Yorkshire and operational centres in Greater Manchester, West Midlands, and Scotland.

A. Overview

Arqiva is a key infrastructure provider for the telecoms sector through its provision of mobile site services. As such, we are at the forefront in the UK for, amongst other things, the ongoing roll-out of 4G mobile services. This roll-out is taking place now with increasing speed to ensure that UK consumers can enjoy the full benefit offered by high speed mobile data services. Moreover, our Wi-Fi and small cell solutions are delivering capacity to meet customer demand across urban locations.

With that in mind, we have a clear interest that any significant changes in the UK telecoms sector do not undermine the development of mobile and fixed services and the incentive for the sector to innovate.

At its most fundamental level, the market for mobile voice and data services should always be open for new entrants, allowing new and innovative approaches to service provision. A pre-requisite for this to happen is that potential operators will need to have opportunities to gain access to both suitable spectrum and to infrastructure.

With specific reference to the BT/EE merger, we consider the following principles are of particular importance in ensuring the best outcome for consumers and industry:

- Fixed backhaul/transmission provision should be made available to all wireless services on terms which do not distort, discourage or prevent competition;
- A diversity of competing infrastructure providers (such as Arqiva, WIG and Shere) should be supported, underpinning competitive access to mobile sites both for existing and potential new entrant mobile operators; and
- Consistent with the previous point, the presence of two competing national passive RAN shares should be preserved as this is the *minimum* required to retain competition across the layers of the value chain for the benefit of consumers.

We make additional observations below and will, in due course, provide a more detailed submission as part of our engagement in this Phase 2 process.

B. Potential areas of concern arising from the proposed merger

There may be an incentive for BT and EE to discourage or slow down national MNO market entry by reducing the ability to access sites

The CMA has recognised in its section 33(1) reference decision that the proposed merger of BT and EE gives rise to a realistic prospect of a substantial lessening of competition (SLC) for fibre mobile backhaul services to MNOs in the UK. We agree with this assessment. However, we would also add to this that BT currently facilitates access to some of its properties to mobile operators who have installed base stations on them.

The CMA needs to consider whether this merger provides an incentive for BT to withdraw access to these sites, thereby potentially reducing the ability for MNOs (existing and potential) to roll-out networks. In that respect, we are conscious that potential national MNOs would need access to a significant geographical network and that the withdrawal of access to BT infrastructure alone could act against those ambitions.

All companies deploying network infrastructure, whatever its nature (macro-sites, small cells, Wi-Fi, internet of things) should benefit from the same access rights as MNOs to its fibre or ducts

The CMA has identified a potential SLC for fibre mobile backhaul services to MNOs. Again, we agree with this assessment. However, such an SLC may apply more widely than just the mobile sector. Other (if not, all) wireless backhaul/transmission services could be subject to an SLC if they required or sought access to unregulated BT backhaul/transmission services.

In particular, the importance of public Wi-Fi and small cell solutions to meet high capacity demand for mobile data is growing significantly. Meeting this demand is a challenge for infrastructure and service providers, including Arqiva. It delivers significant benefits for both consumers and businesses. BT is currently active in this nascent market and supplies backhaul inputs to other market participants at the same time.

The CMA, therefore, needs to consider the broader issue of wireless services access to backhaul/transmission services alongside the MNO concern it has already identified. The CMA should also consider whether incentives to innovate in the development of backhaul solutions could be reduced by this merger (e.g. in the context of emerging distributed RAN architectures and 5G technologies).

There may be a risk of further consolidation in mobile site share agreements

In paragraph 144 of the CMA's reference decision, it states that some third parties were concerned that a strengthened MBNL (EE/H3G) sharing agreement, with the closer connection to related BT inputs such as backhaul, could lead to the marginalisation of CTIL

(O2, Vodafone) – the other main UK joint network site sharing venture in this industry. We share this concern.

As we state above, we consider that the principle of competitive site provision with a diversity of providers with meaningful portfolios is one of the key requirements for enabling market access for new MNO entrants (the other being access to suitable spectrum). Any development which saw one of the two major network sharing organisations in the UK exercising significantly increased market power (as MBNL undoubtedly would) would seem to run counter to this.

We share the concerns raised in the reference decision that CTIL would exert a weaker competitive constraint in the event that further consolidation were to emerge. **Accordingly, the CMA needs to consider the risk of further site sharing consolidation as part of this investigation.** Indeed, a consequence of this merger could be that BT and EE invite additional MNOs to share in their existing infrastructure. This could create risks to existing (non-MBNL) contracts, such as those held with Arqiva.

In that respect, we note the finding of the Office of Fair Trading's reference decision of 2012 when it considered the issue of buyer power of the proposed joint venture between Vodafone and O2:

Post-transaction, it is likely that the remaining MNOs will be Everything Everywhere (EE) and Hutchinson 3G (H3G). EE provides access to a number of base station sites to the parties, and vice-versa. As a result of this reciprocity, it is likely that EE could use its negotiating strength to limit the ability of Towerco [i.e. CTIL] to raise prices. [para 64]

Clearly, at that point the OFT derived comfort that the existence of two counterbalancing network agreements was an important factor in minimising the risk of distortions in the market. We still consider this to be the minimum requirement for a competitive market servicing the needs of end users.