

Why the BT-EE merger challenges Ofcom's wholesale remedies



Following a nine-month investigation, the UK's Competition and Markets Authority (CMA) has now given **unconditional approval** to BT's acquisition of EE. **Tom Evens**, Senior Researcher at the University of Ghent and Visiting Fellow at LSE, analyses the merger and asks what impact it will have on the UK telecoms market, particularly in terms of competition and consumer choice.

The £12.5 billion acquisition of EE by the BT Group brings together the UK's largest fixed telecoms business and the UK's largest mobile telecom business. Both the CMA and **Ofcom** claim that the controversial merger will not result in a substantial lessening of competition in mobile and broadband markets, and that consumers will not be worse off after the deal. However, the acquisition is still expected to have a substantial impact on the UK communications landscape.

The deal reinforces the strong market position of BT in both the broadband and mobile market, and puts BT in the driver's seat to conquer the emerging market of bundled services, where a single provider supplies a household with broadband, mobile, TV and phone (also known as quadruple play services). As a result, the merger could potentially have significant implications for Ofcom's **upcoming broadband and mobile**.

International consolidation hits the UK telecoms market

The BT-EE merger is part of a wave of **international consolidation** that has been hitting the media, telecoms and technology industries since 2013. The fragmentation of the European market, with over a hundred fixed and mobile operators, provides plenty of opportunities for further consolidation. Moreover, the European Commission is pushing for a **Digital Single Market strategy** that encourages cross-border consolidation. One structural driver which underpins this consolidation is the accelerating convergence between fixed and mobile networks, enabling operators to anticipate the on-going shift towards mobile communications, and bet on offering quadruple, or even quintuple, service packages.

The pre-emptive move by BT, which will now become the UK's largest mobile operator, will kick off further activity in the market. The planned merger of Three and O2 – sold, perhaps ironically, by BT to Telefónica in 2005 – will consolidate the market further, and induce other providers of fixed lines, including Sky, to look for strategic partnerships with mobile operators. Vodafone has a strategy of adding fixed network assets to its mobile footprint whereas cable giant Liberty Global, which owns Virgin Media in the UK, has started embracing mobile as part of its core strategy. **Merger rumours** between both groups continue to rumble.

Change in competitive balance of UK communications market

Apart from further industry consolidation, there are reasons to expect that the BT-EE merger will change the competitive balance of the UK communications landscape. The argument, made by CMA and Ofcom, that the merger will not harm competition in the mobile and broadband market, and therefore will not affect consumers, is questionable to some extent. It is true that this deal, in contrast to the anticipated Three-O2 merger, will not reduce the number of mobile operators in the market and, hence, consumer choice. However, the enlarged footprint will put BT in a very strong position in both the broadband and mobile market: **40% of revenues for fixed and mobile revenues** sold to consumers, and up to 70% of the wholesale market.

The strong presence in both markets, combined with the company's strong growth in TV, will give BT the lead in the emerging market for service packages. The uptake of quad-play services has so far been limited to only 2% of the UK households, clearly lagging behind **France (where the**

figure is 43% of households). But BT is determined to conquer the market for bundled services, where households take all services – broadband, mobile, TV and phone – from a single provider, and raise revenues by selling convenient, yet more expensive, bundles to its consumers. More importantly, BT is able to pursue this bundling strategy independently and run all services over its own network. This is a huge competitive advantage, both strategically and financially, compared to BT's main rivals Sky, Virgin, Vodafone and TalkTalk who all depend on Spectrum and/or wholesale access from another network provider, which in most cases is BT.

Secure remedies for wholesale access

The acquisition of EE secures BT's control over 40% of the retail broadband and mobile market – a threshold often triggering regulatory action – which, together with its dominant position in the wholesale market, may raise competition concerns. Sharon White, Chief Executive of Ofcom, earlier complained that the specialist European framework governing the communications sectors sets **too high a bar for regulatory intervention**, and does not always provides regulators with the tools to effectively guarantee competition in a highly concentrated market.

It is vital for the UK communications industry that other operators retain access to EE's mobile infrastructure, based on reasonable and non-discriminatory terms, in order to promote competition in the mobile market. Not only is wholesale access crucial for bundled service competition, but mobile virtual network operators have historically been new challengers in the market, devising new business models and/or introducing competitive pricing to consumers. However, the regulator's new approach may include structural remedies that go further than the existing wholesale remedies.

The merger might influence Ofcom's decision about the future of BT's Openreach, which grants broadband access to most of BT's competitors. Now that BT becomes the only operator in the UK market that controls both fixed and mobile infrastructure, Ofcom could propose remedies that prevent BT's competitors from becoming overly dependent on the goodwill of a dominant operator that controls the gateways to consumers and businesses. Against this backdrop, there might be a strong argument from the regulator to separate Openreach from BT.

Finally, the unprecedented move of bringing the largest broadband and mobile operator under one roof could expand BT's dominant position to the emerging market of multi-play services. Given the limited uptake of quadruple play services so far, and the fact that other operators are also active in this promising business area, Ofcom has no reasons yet to intervene in this market. However, the implications of BT's strategic ownership of both fixed and mobile network infrastructure could induce the regulator to broaden the scope of its review and define multi-play services as a relevant market.

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