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***Case No COMP/M.6584 - VODAFONE/ CABLE &  
WIRELESS***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 03/07/2012

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## EUROPEAN COMMISSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 03/07/2012  
C(2012) 4694

PUBLIC VERSION

MERGER PROCEDURE

### **To the notifying party:**

Dear Sir,

**Subject: Case No COMP/M.6584 – Vodafone Group/ Cable & Wireless Worldwide  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 29 May 2012, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Vodafone Group Plc ("Vodafone", the "Notifying Party") will acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, sole control over Cable & Wireless Worldwide Plc ("CWW") by purchase of shares (Vodafone and CWW hereinafter designated as the "Parties").

#### **I. THE PARTIES TO THE PROPOSED TRANSACTION**

2. **Vodafone** is the holding company of a group of companies that is involved in the operation of mobile telecommunications networks and the provision of related telecommunications services. It has wholly owned or controlled subsidiaries as well as partner networks which are mobile operators globally. Some Vodafone operating companies also provide fixed line voice and broadband services.
3. **CWW** is a global telecoms company providing a wide range of voice, data, hosting and IP-based services and applications across the EU and in particular in the UK as well as in Asia Pacific, India, Middle East & Africa and North America. Its primary business is the provision of fixed line telecommunications and related services.

#### **II. THE CONCENTRATION**

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

4. The notified transaction concerns the acquisition of sole control by Vodafone of CWW by a scheme of arrangement whereby Vodafone will become the holder of the entire issued and to be issued ordinary share capital of CWW. The transaction is therefore a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

### **III. EU DIMENSION**

5. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>2</sup> (Vodafone: EUR 53,760 million and CWW: EUR [...]). Each of them has an EU-wide turnover in excess of EUR 250 million (Vodafone: EUR 35,511 million and CWW: EUR [...]). CWW achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State (EUR [...] in the UK). However, Vodafone does not achieve more than two thirds of its aggregate EU-turnover within one Member State.
6. The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

### **IV. RELEVANT MARKETS**

7. The Parties' activities horizontally and vertically overlap in a number of markets in the fixed and mobile telecommunications sector. CWW is mainly active in relation to fixed telecoms, whereas Vodafone is mainly active in mobile telecoms.

#### **A. FIXED NETWORK MARKETS**

##### *Retail market for business connectivity*

8. Retail business connectivity services constitute the fixed telecommunications services large business, enterprise and public sector customers purchase to provide data connectivity between multiple sites.
9. The Notifying Party submits that there are three broad types of services, namely dedicated Internet access, leased lines and Virtual Private Networks ("VPNs"), and that these are all part of the wider product market for businesses connectivity services defined according to the above. The market investigation also supports this. The majority of respondents expressing a view considers that there is one overall product market for retail business connectivity services defined as the fixed telecommunications services large business, enterprise and public sector customers purchase to provide data connectivity between multiple sites.<sup>3</sup> However, the precise product market definition can be left open for the purpose of the present decision, as the transaction does not raise competition concerns under any alternative product market definition.
10. In *Carphone Warehouse / Tiscali UK*,<sup>4</sup> the Commission considered the retail provision of business connectivity services to be national in scope. The market investigation also supports this. The majority of respondents expressing a view considers the market to be national.<sup>5</sup> The Commission therefore concludes that that the geographic market for retail business connectivity services is national in scope.

##### *Retail provision of fixed voice services*

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<sup>2</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

<sup>3</sup> See question 3 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

<sup>4</sup> Case COMP/M.5532.

<sup>5</sup> See question 13 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

11. In line with previous Commission decisions, the fixed line retail telephony services comprise the provision of connection services or access at a fixed location or address to the public telephone network for the purpose of making and receiving calls and related services.<sup>6</sup>
12. The Commission has previously considered drawing a distinction between residential and non-residential customers and between local and international calls, but left the product market definition open.<sup>7</sup> The Notifying Party submits that there is no strict division in the retail fixed voice market between residential and business customers. The Commission has also considered that managed Voice over Internet Protocol (VoIP) services may be substitutable with fixed-line telephony services,<sup>8</sup> to which the Notifying Party also agrees.
13. In its previous decision *Telefonica/Hansanet Telekommunikation*,<sup>9</sup> the Commission considered the geographic market to be national in scope. However, the precise product and geographic market definition can be left open for the purpose of the present decision, as the transaction does not raise competition concerns under any alternative market definition.

*Wholesale market for termination and hosting of non-geographical numbers*

14. Fixed voice calls are not only made to geographic numbers but also to non-geographic ones. In the UK, these are numbers beginning with specific digits such as 03, 08, 09 and 118, which are used to provide single number contact centres for government and businesses as well as businesses that provide value added services paid for through call charges (service providers (“SPs”)).<sup>10</sup>
15. The Notifying Party submits that the provision of call termination for non-geographic numbers could either be considered as a separate product market where terminating communication providers (“TCPs”) compete with each other or as forming a part of the “regular” wholesale termination market where each network is its own market.<sup>11</sup> The market investigation supports the first alternative. The majority of respondents expressing a view considers that there is a separate product market for wholesale termination and hosting of non-geographical numbers in the UK.<sup>12</sup>
16. A number of respondents have indicated strongly that call termination to non-geographic numbers should not be excluded from the market definition of fixed call termination. These respondents argue that there are several externalities at play in the UK which have broken the links between the different interests of OCPs, TCPs and SPs in relation to the retail charges for call to non-geographic number and the charges for wholesale call termination to these numbers.

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<sup>6</sup> Case COMP/M.3920 (*France Telecom/Amena*).

<sup>7</sup> Case COMP/M.5532 (*Carphone Warehouse / Tiscali UK*), Case COMP/M.5730 (*Telefonica / Hansanet Telekommunikation*), and Case COMP/M.3914 (*Tele2/Versatel*).

<sup>8</sup> Case COMP/M.5532 (*Carphone Warehouse / Tiscali UK*).

<sup>9</sup> Case COMP/M.5730. See also Case COMP/M.5532 (*Carphone Warehouse/ Tiscali UK*) and Case COMP/M.4442 (*Carphone Warehouse/AOL UK*).

<sup>10</sup> Terminating communications providers (“TCPs”) compete with each other as well as with resellers for the business of the SP. In addition, the TCP will often provide a range of additional services such as intelligent routing where calls can be switched to different destination at different times of day, or when traffic level exceeds the ability of the SP to receive them.

<sup>11</sup> Should the latter be the case, each player would have a share of 100% on its own network.

<sup>12</sup> See question 5 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

17. The Notifying Party submits that the geographic market would be national in scope. This is also supported by the market investigation. The majority of respondents expressing a view considers that the geographic market for wholesale non-geographic termination and hosting is national in scope.<sup>13</sup>
18. The precise product and geographic market definition can be left open for the purpose of the present decision, as the transaction does not raise competition concerns under any alternative market definition.

*Wholesale market for end-to-end calls*

19. Fixed network operators ("FNOs") package origination and termination services and provide communication providers without their own networks a package which they can use to offer retail fixed voice services to consumers without the need to invest in network infrastructure.
20. The Notifying Party submits that there is a separate product market for the supply of these packages to FVNOs (Fixed Virtual Network Operators). The market investigation also supports this. The majority of respondents expressing a view considers that there is a separate wholesale market for end-to-end calls, which is an intermediate wholesale market that sits downstream from wholesale call origination, termination and transit and upstream from retail voice.<sup>14</sup> However, the precise product market definition can be left open for the purpose of the present decision, as the transaction does not raise competition concerns under any alternative market definition.
21. The Notifying Party submits that the market is national in scope and this is also supported by the market investigation. The majority of respondents expressing a view considers the market to be national.<sup>15</sup> The Commission therefore concludes that the geographic market for wholesale end-to-end calls is national in scope.

*Wholesale provision of call termination services on fixed networks*

22. Call termination is the service provided by network operator B to network operator A in the same country whereby a call originating in operator A's network is delivered to the user in operator B's network.
23. In *T-Mobile / Orange UK*,<sup>16</sup> the Commission concluded that each individual network (both in fixed and in mobile networks) constitutes a separate market for termination. The market investigation also supports this. The majority of respondents expressing a view considers that there is no substitute for call termination on each individual network since the operator transmitting the outgoing call can reach the intended recipient only through the operator of the network to which the recipient is connected.<sup>17</sup> The Commission therefore concludes that each individual network constitutes a separate product market for termination.
24. In *Carphone Warehouse / Tiscali UK*,<sup>18</sup> the Commission considered the geographic market to be national in scope. The market investigation also supports this. The majority of respondents expressing a view considers that the market is national.<sup>19</sup> The

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<sup>13</sup> See question 15 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

<sup>14</sup> See question 7 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

<sup>15</sup> See question 17 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

<sup>16</sup> Case COMP/M.5650.

<sup>17</sup> See question 4 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

<sup>18</sup> Case COMP/M.5532.

<sup>19</sup> See question 14 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

Commission therefore concludes that the geographic market for the wholesale provision of call termination services on fixed networks is national in scope.

*Wholesale provision of domestic call transit services on fixed networks*

25. Where there is no direct connection between originating communications providers ("OCP"s) and TCPs, third party networks are typically used to carry calls between them (domestic transit services).
26. In *Telefonica/Hansenet Telekommunikation* and *France Telecom/Mid Europa Partners/On*,<sup>20</sup> the Commission found that the wholesale market for domestic transit services in fixed networks is a separate product market from the international wholesale market for voice carrier services. The market investigation also supports this. The majority of respondents expressing a view considers the wholesale market for domestic transit services in fixed networks to be a separate market.<sup>21</sup> The Commission therefore concludes that the wholesale market for domestic transit services in fixed networks constitutes a separate product market from the international wholesale market for voice carrier services.
27. In *Telefonica/Hansenet Telekommunikation* and *France Telecom/Mid Europa Partners/On*,<sup>22</sup> the Commission found that the geographic market is national in scope. The market investigation also supports this. The majority of respondents expressing a view considers that the market is national.<sup>23</sup> The Commission therefore concludes that the geographic market for the wholesale provision of domestic transit services in fixed networks is national in scope.

*Wholesale leased lines*

28. Wholesale leased lines are part-circuits that allow communication providers to connect their own networks to end user sites for the supply of business connectivity services.<sup>24</sup>
29. Telecom regulators sometimes segment the wholesale leased lines between the element that can be considered to be customer access or backhaul (terminating segments) and that which can be considered part of the core network (trunk segments). In its recommendation on market definitions in the electronic communications sector, the Commission considers a separate market for terminating segments for leased lines.<sup>25</sup>
30. The Notifying Party considers that for the purposes of merger control it is not useful to segment the market for wholesale leased lines. However, this is not supported by the market investigation. The majority of respondents expressing a view considers that it would be useful to segment the market for wholesale leased lines between trunk and terminating segments but instead to adopt a single market definition for all types of leased lines.<sup>26</sup> However, the precise product market definition can be left open for the

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<sup>20</sup> Case COMP/M.5730 and Case COMP/M.4809.

<sup>21</sup> See question 6 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

<sup>22</sup> Case COMP/M.5730 and Case COMP/M.4809.

<sup>23</sup> See question 16 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

<sup>24</sup> In addition, wholesale leased lines are an input for the provision of retail mobile services.

<sup>25</sup> In the Recommendation on product market definition in the electronic communications sector, market 6 is defined as follows: "Wholesale terminating segments of leased lines, irrespective of the technology used to provide leased or dedicated capacity". Commission Recommendation of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (2007/879/EC), OJ L 344, 28.12.2007, p. 65.

<sup>26</sup> See question 8 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

purpose of the present decision, as the transaction does not raise competition concerns under any alternative product market definition.

31. In *Telefonica/Hansenet Telekommunikation*,<sup>27</sup> the Commission found that the wholesale market for leased lines is national in scope. The market investigation also supports this. The majority of respondents expressing a view considers that the market is national.<sup>28</sup> The Commission therefore concludes that the geographic market for wholesale leased lines is national in scope.

*Wholesale GTS: international carrier services*

32. GTS are telecommunications services linking a number of different customer locations, generally in at least two different continents and across a larger number of different countries.<sup>29</sup>
33. In *AT&T / Unisource / AUCS*,<sup>30</sup> the Commission defined the wholesale international carrier services market as comprising the lease of transmission capacity and the provision of related services to third party telecommunication traffic carriers and service providers. The market investigation also broadly supports this. The majority of respondents expressing a view considers that this definition of the market still holds today.<sup>31</sup> However, the results of the market investigation also indicate that there is uncertainty as to whether a distinction between GTS and carrier services is appropriate.<sup>32</sup> In any case, the precise product market definition can be left open for the purpose of the present decision, as the transaction does not raise competition concerns under any alternative market definition.
34. In *Verizon/MCI*,<sup>33</sup> the Commission found that the market for wholesale international carrier services is global in scope. The market investigation also supports this. The majority of respondents expressing a view considers that the market is global.<sup>34</sup> The Commission therefore concludes that the geographic market for wholesale international carrier services is global in scope.

## **B. MOBILE NETWORK MARKETS**

*Mobile telecommunication services to end customers*

35. Mobile telecommunication services to end customers, or “retail mobile services”, encompass services for national and international voice calls,<sup>35</sup> SMS (including MMS

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<sup>27</sup> Case COMP/M.5730.

<sup>28</sup> See question 18 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

<sup>29</sup> GTS is provided at a retail level to multi-national companies and government entities that have an international presence.

<sup>30</sup> Case COMP/M.1581.

<sup>31</sup> See question 9 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

<sup>32</sup> See question 10 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

<sup>33</sup> Case COMP/M.3752.

<sup>34</sup> See question 19 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

<sup>35</sup> The term “international calls” is used for calls that are made by the domestic user when in its home country, but that terminate at destinations which are abroad i.e. calls that are made by a domestic user when in its home country, if the receiving number is a foreign one.

and other messages), mobile Internet with data services, access to content via the mobile network and retail international roaming services. Retail mobile services are offered to both private and business customers.

36. In *T-Mobile/Orange UKI*,<sup>36</sup> the Commission found that there was an overall relevant market for the provision of mobile telecommunication services to end customers and did not further subdivide the market by type of customer or by technology. This is supported by the market investigation. The majority of respondents expressing a view considers that there is an overall product market as set out above.<sup>37</sup> However, the precise product market definition can be left open for the purpose of the present decision, as the transaction does not raise competition concerns under any alternative market definition.
37. In *T-Mobile/Orange UK*,<sup>38</sup> the Commission also concluded that the geographic market for mobile telecommunication services to end customers should be defined in national terms. This is also supported by the market investigation. The majority of respondents expressing a view considers that the geographic market is national.<sup>39</sup> The Commission therefore concludes that the geographic market for mobile telecommunication services to end customers should be national in scope.

#### *Pan-European mobile telecommunication services to Multi-National Corporations (MNCs)*

38. These services include pan-European mobile telephony, messaging services, mobile Internet, data and content services and wireless location services for mobile users. It also includes the possibility for roaming customers to move from country to country with no difference in the service (“virtual home environment”) and interoperability, in particular for data transfer (“seamless services”).
39. In *Vodafone / Mannesmann*,<sup>40</sup> the Commission concluded that there is a distinct market for the provision of advanced seamless pan-European mobile telecommunication services and that these services are distinct from the demand for national mobile telecommunications services due to the international reach of the large corporations' business. The market investigation supports this. The majority of respondents expressing a view considers that there is a distinct market according to the above.<sup>41</sup> The Commission therefore concludes that there is a separate product market for the provision of advanced seamless pan-European mobile telecommunication services.
40. In *Telefonica/O2*,<sup>42</sup> the Commission considered that the market had national components as far as patchwork services were concerned, but that, by their nature, pan-European offers would point towards a Europe-wide market. The results of the market investigation indeed point towards an EEA-wide geographic scope of the market, but do not decisively determine this point. However, the precise geographic market definition can be left open for the purpose of the present decision as the transaction does not raise competition concerns under any alternative market definition.

#### *Wholesale access and call origination on public mobile networks*

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<sup>36</sup> Case COMP/M.5650.

<sup>37</sup> See question 11 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

<sup>38</sup> Case COMP/M.5650.

<sup>39</sup> See question 20 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

<sup>40</sup> Case COMP/M.1797. In Case COMP/M.4035 (*Telefónica/O2*), the Commission considered the market as encompassing both alliance and non-alliance offers taking into account that non-alliance offers are only imperfect substitutes for integrated services. However the exact market definition was left open.

<sup>41</sup> See question 12 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

<sup>42</sup> Case COMP/M.4035.



41. Multinational organisations provide wholesale access and origination services which enable operators without their own networks *i.e.* mobile virtual network operators (“MVNOs”) to provide their own retail mobile services.
42. In *Vodafone/Tele2 Italy/Tele2 Spain*,<sup>43</sup> the Commission considered wholesale access and call origination to belong to the same relevant product market. The Commission also concluded that the geographic market is national in scope.<sup>44</sup>
43. However, the precise product and geographic market definition can be left open for the purpose of the present decision, as the transaction does not raise competition concerns under any alternative market definition.

#### *Wholesale market for international roaming*

44. For a provider of retail mobile services to be able to provide its end customers with telecommunication services outside their home countries, it enters into wholesale roaming agreements with providers of wholesale international roaming on other national markets.<sup>45</sup> Wholesale international roaming services are regulated.<sup>46</sup>
45. The Commission has previously considered that there could be distinct wholesale markets for international roaming. The Commission also considered that the relevant geographical scope of the wholesale market for international roaming is national in scope.<sup>47</sup>
46. However, the precise product and geographic market definition can be left open for the purpose of the present decision, as the transaction does not raise any competition concerns under any alternative market definition.

#### *Wholesale termination on mobile networks*

47. In *T-Mobile/Orange UK*,<sup>48</sup> the Commission concluded that each individual network (both in fixed and in mobile networks) constitutes a separate market for termination. The market investigation also supported this.<sup>49</sup> The Commission therefore concludes that each individual (mobile) network constitutes a separate product market.

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<sup>43</sup> Case COMP/M.4947. See also Case No COMP/M.5650 – *T-Mobile/Orange*.

<sup>44</sup> Case COMP/M.4947 – *Vodafone/Tele2 Italy/Tele2 Spain*; Case No COMP/M.5650 – *T-Mobile/Orange*.

<sup>45</sup> Roaming consists of both terminating calls and originating calls.

<sup>46</sup> Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services; Regulation (EC) No 717/2007 of the European Parliament and of the Council on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC.

<sup>47</sup> Case COMP/M.5650 – *T-Mobile/Orange*; Case COMP/M.2726 – *KPN/E-PLUS*; Case COMP/M.2469 – *Vodafone/Airtel*; Case M.1863 – *Vodafone/BT/Airtel*; and Case COMP/M.4748 – *T-Mobile/Orange Netherlands*.

<sup>48</sup> Case COMP/M.5650 – *T-Mobile/Orange United Kingdom*

<sup>49</sup> See question 4 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

48. In line with its previous decisions,<sup>50</sup> the Commission considers the market to be national in scope.

## V. COMPETITIVE ASSESSMENT

49. The Parties' activities horizontally and vertically overlap in a number of markets in the fixed and mobile telecommunications sector. Moreover, post-transaction, Vodafone will seek to use CWW's assets in delivering fixed-mobile combined services to end-users. The transaction may therefore also give rise to conglomerate effects.

### V.1 HORIZONTAL ASSESSMENT

50. CWW and Vodafone have overlapping activities in a number of markets:

- i. Fixed retail business connectivity in the UK and, should the IP-VPN services form a separate market, possibly also in Ireland;<sup>51</sup>
- ii. Wholesale non-geographic termination & hosting in the UK; and
- iii. Mobile telecommunication services to end customers or "retail mobile services" in the UK.

#### *Fixed retail business connectivity in the UK*

51. With regard to the retail market for business connectivity in the UK, CWW appears to be a relatively significant competitor on the market (with a [20-30]% market share by value). However, Vodafone's market share is negligible (less than [0-5]% by value) and BT is by far the biggest player (with a [50-60]% market share by value). In addition, at least three other competitors with a non-negligible share of the market remain, namely Virgin Media ([10-20]% by value), Level3 ([5-10]% by value) and Colt ([5-10]% by value).

52. The same reasoning applies should the IP-VPN services form a separate market in the UK, i.e. the increment created by the transaction would be insignificant (less than [0-5]% by value). BT would remain as the by far biggest player (with a [50-60]% market share by value) in addition to at least three other competitors with a non-negligible market share.<sup>52</sup>

53. The retail IP-VPN services market in Ireland would only be horizontally affected when market shares based on number of connections are considered. In such a case, CWW would have market share of [20-30]%. In any event, the increment of the transaction would in any case remain small ([0-5]%).<sup>53</sup>

54. The market investigation supports that the impact of the transaction is likely to be small on this market, independently of whether the IP-VPN services are included in the market. The majority of respondents expressing a view considers that Vodafone and CWW are not close competitors on the retail market for business connectivity and, in particular, does not consider that Vodafone is a significant competitor on this market, nor on the IP-VPN submarket.<sup>54</sup>

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<sup>50</sup> Case COMP/M.5532. *Carphone Warehouse/Tiscali UK*

<sup>51</sup> Should the IP-VPN services form a separate market, the Irish and UK IP-VPN markets are horizontally affected. The retail IP-VPN services market in Ireland would only be horizontally affected when market shares based on number of connections are considered.

<sup>52</sup> Virgin Media ([10-20]% by value), Level3 ([5-10]% by value) and Colt ([5-10]% by value).

<sup>53</sup> Vodafone would have a market share of [20-30]% and CWW a market share of [0-5]%.

<sup>54</sup> See questions 22-24 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

55. One respondent in the market investigation raised a concern that the merged entity may have the potential to offer rates that its competitors will not be able to match. The respondent argues that the merged entity should be required not to discriminate between the prices it charges its downstream business versus the price it charges to its external wholesale customers.
56. The Commission has examined this argument. Firstly, a potential retail price reduction would not necessarily cause competition concerns and could possibly have a pro-competitive effect. Secondly, the Commission notes that CWW's market share is fairly low and Vodafone's increment would not increase significantly its market power. On this basis, it is not clear that any incentive of CWW to reduce its retail pricing would be merger-specific. Finally, and most importantly, the Commission considers that the market for wholesale business connectivity is regulated and reviewed on a periodic (3 year) basis. On this basis, if the national regulatory authority were to find that the merged entity had significant market power ("SMP)", it will be in its power to impose the necessary conditions (such as a non-discrimination obligation) on the merged entity.
57. In view of the above, the transaction does not give rise to serious doubts as to the compatibility with the internal market with regard to fixed retail business connectivity in the UK or IP-VPN services in Ireland.

*Wholesale non-geographic termination & hosting in the UK*

58. With regard to wholesale non-geographic termination & hosting in the UK, there are two ways in which shares can be measured.
59. When looking at wholesale non-geographic termination and hosting across networks, CWW appears to be a relatively significant competitor on the market (with a [20-30]% market share). However, the increment created by the transaction is negligible (Vodafone has a market share of less than [0-5]%). Moreover, BT remains by far the biggest player (with a [40-50]% market share) and at least four other competitors with a non-negligible ([5-10]%) share of the market remain on the market.<sup>55</sup>
60. When on the other hand each terminating network is considered a separate market, each player will have a share of 100%. However, the impact of the transaction remains small as, in the UK, Vodafone supplies NTS termination for the 080 number ranges, [...].<sup>56</sup> [...]<sup>57</sup>
61. The market investigation supports that the impact of the transaction is likely to be small on this segment of the market. None of the respondents consider that Vodafone would be one of the main competitors on this market. Moreover, the majority of respondents expressing a view consider that Vodafone is not a significant competitor on this market in the UK and moreover that the transaction would not impact other players on this market.<sup>58</sup>
62. In view of the above, the transaction does not give rise to serious doubts as to the compatibility with the internal market with regard to the market for wholesale non-geographic termination & hosting in the UK.

*Retail mobile communication services in the UK*

63. With regard to retail mobile communication services in the UK, Vodafone appears to be a relatively significant competitor on the market (with a [20-30]% market share by value

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<sup>55</sup> Namely TalkTalk, Virgin Media, KCOM and Verizon.

<sup>56</sup> [...].

<sup>57</sup> See the Form CO, pages 62-63 and pages 110-111.

<sup>58</sup> See questions 28-30 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

and a [20-30]% market share by subscribers). However, the increment created by the transaction is negligible (CWW's market share is less than [0-5]% by value and subscribers). Moreover, two bigger players than the combined entity remain on the market post-transaction, namely O2 (with a [20-30]% market share by value and a [20-30]% market share by subscribers) and Everything Everywhere (with a [30-40]% market share by value and a [30-40]% market share by subscribers). In addition, one other competitor with a non-negligible share of the market remains.<sup>59</sup>

64. The market investigation supports that the impact of the transaction is likely to be small on this segment of the market. The majority of respondents expressing a view consider that CWW is not a significant competitor in this market.

65. In view of the above, the transaction does not give rise to serious doubts as to the compatibility with the internal market with regard to retail mobile communication services in the UK.

#### Conclusion

66. In view of the above, the transaction does not give rise to serious doubts as to the compatibility with the internal market with regard to any horizontally affected markets.

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<sup>59</sup> Namely 3UK ([5-10]% by value and [5-10]% by subscribers).

## V.2 VERTICAL ASSESSMENT

67. The transaction gives rise to numerous vertically affected markets with regard to:
- i. Retail fixed voice services (UK and Ireland);
  - ii. Wholesale termination on fixed networks (UK);
  - iii. Wholesale non-geographic termination and hosting (UK);
  - iv. Wholesale domestic call transit services (UK and Ireland);
  - v. Wholesale market for end-to-end calls (UK);
  - vi. Wholesale leased lines (UK);
  - vii. Wholesale international voice market (global);
  - viii. Retail mobile communication services (UK);
  - ix. Pan-European mobile communication services (EEA, Worldwide); and
  - x. Wholesale access and call origination on mobile networks (UK).

*Wholesale termination on fixed and mobile networks (upstream) and retail fixed voice services (downstream)*

68. The markets for retail fixed voice services in the UK and Ireland are vertically related to the upstream markets for fixed and mobile termination. As each party will have 100% on its own network, all related markets will be vertically affected regardless of the low shares in retail fixed voice services.
69. The Commission considers that the transaction will not give rise to input foreclosure, because regulatory remedies are already in place in the fixed and mobile termination markets (price caps and non-discrimination obligations). The market investigation supports that the combined entity will not be able to leverage its position in the wholesale provision of call termination services on fixed or mobile networks to foreclose access in the market for retail fixed voice services. In particular, a majority of respondents expressing a view consider that the regulation of fixed and mobile termination rates (price caps and non-discrimination obligations) provides sufficient protection from any potential competitive harm arising.<sup>60</sup>
70. Finally, the majority of respondents expressing a view consider that the combined entity would not have sufficient market power to be able to foreclose the downstream markets and moreover, would face competitive constraints from other competitors.<sup>61</sup>
71. The Commission also considered whether the merged entity could use its position on the downstream market for fixed voice services in the UK and Ireland to foreclose the upstream termination markets. Due to the nature of call termination, it is impossible to terminate a call on anyone else's network. Therefore, no upstream foreclosure can occur.

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<sup>60</sup> See questions 27 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

<sup>61</sup> See questions 31 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

*Wholesale non-geographic termination and hosting (upstream) and fixed voice services and retail mobile telecommunications services (downstream)*

72. If a separate non-geographic termination and hosting market in the UK were to be defined, this market would be vertically related to the downstream markets for fixed voice services and retail mobile telecommunications services. The markets would be vertically affected because of CWW's [20-30]% market share in the upstream market for wholesale non-geographic termination and hosting.
73. Mixed views are raised from competitors and customers about the combined entity's ability to leverage its position in the wholesale termination and hosting of non-geographic numbers to foreclose access in the market for retail fixed (and mobile) voice services.
74. One respondent to the market investigation argued that it would be possible for the merged entity to engage in pricing discrimination by reducing the price of mobile calls when they terminate only on the merged company's fixed network, whilst maintaining or increasing the price of mobile calls when they terminate on third parties' networks.
75. The Commission notes that there are other strong competitors with significant market shares providing non-geographic termination and hosting services, including the fixed incumbent BT.
76. CWW's [20-30]% market share on the wholesale market for non-geographic termination and hosting is too small to provide the merged entity the ability to foreclose the downstream mobile and fixed telecommunications markets. BT continues to be the largest player in this area with a market share of more than [40-50]%. Other competitors are Talk Talk with [5-10]%, Virgin Media with [5-10]% and KCom again with [5-10]%. CWW's customers in fixed and mobile telecoms would be able to switch to one of these alternative providers.<sup>62</sup>
77. The Commission also examined whether the merged entity would be able to exert its power in fixed voice services and retail mobile telecommunications services to foreclose the upstream market for wholesale non-geographic termination and hosting.
78. In relation to fixed voice services, the merged entity has [0-5]% market share in the fixed voice services in the UK and [10-20]% in Ireland. Under all possible sub-segmentations, the merged entity would not have over [10-20]% in the UK or [10-20]% in Ireland. The merged entity would continue to compete in the market with strong competitors such as BT Retail, Virgin Media, Talk Talk, BskyB in the UK, as well as Eircom and UPC in Ireland. BT Retail has [40-50]% of the UK market and Eircom [60-70]% of the Irish market for retail fixed voice services.
79. In relation to mobile telecommunications services, the merged entity will have [20-30]% market share. Other strong competitors in the market are O2 with [20-30]%, EE with [30-40]% and 3UK with [5-10]%.
80. The Commission concludes that the above market shares are too low to give the merged entity the ability to foreclose either the upstream or the downstream markets.

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<sup>62</sup> See questions 31 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

*Wholesale provision of domestic call transit services on fixed networks and retail mobile communication services*

81. Vodafone is active in the market for retail mobile communication services with [20-30]% of revenue in the UK, which is a downstream market of domestic call transit where CWW is active with [20-30]% market share in the UK.<sup>63</sup>
82. The Commission considers that the merged entity will not have the ability or incentive to foreclose competitors on the downstream market for retail mobile communication services.
83. The UK market for domestic call transit services is competitive with BT being by far the largest player ([70-80]%) and other players, including Colt, Gamma Telecom, TalkTalk and Virgin Media, also being present on the market. There are therefore sufficient providers post-transaction to supply Vodafone's mobile retail competitors. Moreover, there is no incentive to foreclose as [...].
84. The market investigation supports that the combined entity would neither have the incentive nor the ability to foreclose competitors on the downstream markets related to wholesale provision of domestic call transit services on fixed networks. This was confirmed by a majority of respondents expressing a view which consider that a combination of Vodafone's retail mobile business and CWW's domestic transit business in the UK would not create a risk of foreclosure.<sup>64</sup>
85. In relation to the merged entity's ability to foreclose competitors in the upstream market for transit services, the Commission notes that [...]. More importantly, any elimination of competition for Vodafone's contract for domestic call transit will not be of sufficient magnitude to foreclose the upstream market.

*Mobile and fixed call termination (upstream) and wholesale market for end-to-end calls (downstream)*

86. Both mobile and fixed call termination are upstream markets to wholesale end-to-end calls and they are markets where the Parties have 100% market share. However, because of the *ex ante* regulatory conditions the Parties do not consider that there is a risk of foreclosure. The market investigation confirmed that the combined entity will not be able to leverage its position on wholesale provision of call termination services on fixed and mobile networks to foreclose access in the market for end-to-end calls in the UK. In particular, a majority of respondents expressing a view consider that the regulation of fixed termination rates (price caps and non-discrimination obligations) provides sufficient protection from any competitive harm rising.<sup>65</sup>
87. In addition, the Commission notes that and there is strong competition in the downstream market for end-to-end calls, where BT has approximately [60-70]% (as compared to CWW's [10-20]%) market share.

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<sup>63</sup> In Ireland, Vodafone has a [40-50]% share of the market for retail mobile communication services, but CWW only has a negligible share of wholesale domestic call transit services in this country.

<sup>64</sup> See question 32 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

<sup>65</sup> See question 33 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

*Wholesale leased lines (upstream) and mobile retail communications services (downstream)*

88. The wholesale leased lines market is an upstream market to the mobile retail communications services market in the UK, in which the merged entity will have [20-30]%.  
89. The Notifying Party submits that the UK market for wholesale leased lines is competitive. BT has by far the largest market share ([50-60]%) and Virgin Media is a second large competitor ([20-30]%). There will continue to be several alternative wholesale leased lines providers available in the UK post-transaction, most importantly BT. Moreover, wholesale leased lines offering is regulated. Therefore, the merged entity will not have the ability to foreclose Vodafone's retail mobile competitors such as EE, O2 and 3UK who are sophisticated purchasers. The market investigation supports that the combined entity will not be able to leverage its position in wholesale leased lines services to foreclose access in the markets for mobile retail communications services. The majority of respondents stated that BT would continue to be the strongest competitor in the UK.<sup>66 67</sup>  
90. More importantly, there are no incentives to foreclose the Parties' networks post-transaction. Vodafone's and CWW's networks joined together will create additional capacity. CWW would still have sufficient capacity to continue to supply Vodafone's competitors.  
91. The Commission also examined whether the merged entity could exercise its position in the downstream mobile retail communications services market to foreclose the upstream market of wholesale leased lines. The Commission considers that the relatively low market share and the presence of a number of potential leased lines customers, both in fixed and mobile communications services renders it impossible for such foreclosure to occur.

*Wholesale fixed and mobile termination markets (upstream), wholesale GTS voice services (intermediary) and mobile retail communications services and fixed voice services (downstream)*

92. There is a vertical relationship between wholesale GTS voice services and the downstream retail fixed and mobile services. Further the GTS voice services market is vertically related to the wholesale termination markets on which Vodafone and CWW are active. There are a number of competitors active on the wholesale GTS voice services market, such as France Telecom, Telecom Italia and KPN. The merged entity will have less than [0-5]% market share in the wholesale GTS market. The market investigation supports that a company without significant market power in the wholesale GTS market is unlikely to have the ability to engage in anti-competitive foreclosure strategies on the downstream markets. A majority of respondents support that there are multiple providers available on the global market and that customers readily can switch from one supplier to another.<sup>68</sup>  
93. The Commission also examined whether the merged entity could exert its power in mobile retail communications services and fixed voice services to foreclose the market for wholesale GTS voice services. The Notifying Party submits that any risk of

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<sup>66</sup> See question 34 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

<sup>67</sup> See question 34.2 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.

<sup>68</sup> See questions 35-37 in Q1 – questionnaire to competitors – and Q2 – questionnaire to customers.



customer foreclosure is purely hypothetical. [...] There are other strong customers, including Vodafone's competitor mobile network operators. The Commission concludes that the merged entity will not have the ability to foreclose the market for wholesale GTS voice services.

*Wholesale market(s) for internet connectivity and wholesale GTS (upstream) and mobile telecommunications services and Pan-European mobile telecommunications services (downstream)*

94. The markets for retail mobile telecommunication services and Pan-European mobile telecommunication services are vertically related to the upstream wholesale markets for internet connectivity<sup>69</sup> and wholesale GTS services on which CWW is active.
95. The merged entity will have [20-30]% in the market for retail mobile telecommunication services and [30-40]% in the market for Pan-European mobile telecommunication services. The Notifying Party submits that post -transaction the merged entity will have neither the ability nor the incentive to engage in an input foreclosure strategy. In internet connectivity, CWW with a market share of less than [0-5]% does not have sufficient market power to foreclose access to IP transit services by either price increases or degradation in transmission quality. CWW faces significant competition from a range of Tier 1 and Tier 2 internet connectivity providers, such as Inteliquent, Cogent, Level 3 / Global Crossing, Tata Communications and Telecom Italia, many of whom are significantly larger than CWW. Secondly, CWW's actual and potential customers are telecoms networks and operators, both mobile (for example EE, O2, 3UK) and fixed. These operators are sufficiently sophisticated to render any foreclosure strategy ineffective. Finally, there would be no incentive for Vodafone to foreclose, as this would carry the risk that the merged entity would lose customers and traffic volume. Foreclosure risks arising from wholesale GTS can also be excluded on the basis of the merging entity's low market power in the wholesale GTS market as described above.
96. The market investigation supports that the combined entity will not be able to leverage its position on the markets for internet connectivity and international carrier services to foreclose access in the markets for mobile telecommunications services to end-customers and pan-European mobile telecommunications services. These markets are competitive and for the majority of competitors and customers in post-merger scenario there still will be sufficient alternative providers of pan-European mobile telecommunication services.
97. The Commission also examined whether the merged entity will be able to exercise its power in mobile telecommunications services and Pan-European mobile telecommunications services to foreclose the upstream markets in wholesale GTS or wholesale internet connectivity. The Commission considers that such foreclosure will not be possible, given the variety of different customers for both those markets, including the competing mobile network operators.

*Wholesale call origination and access*

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<sup>69</sup> Market for wholesale internet connectivity comprises both IP Peering (settlement-free) and IP Transit (fee-based) agreements for connectivity between network providers.

98. Wholesale call origination and access service is a necessary input for MVNOs to provide retail mobile services. As Vodafone's market share in this upstream market as well as in the UK retail mobile communications services market exceeds 25%, this market is vertically affected.
99. The Notifying Party argues that the transaction would not lead to input foreclosure because post-transaction the MVNOs will continue to have the choice between four viable alternative networks (EE, O2, Vodafone and 3UK) and the merged entity would continue to face intense competition from them. In addition, MVNOs are sophisticated customers who tend to engage in discussions with a number of MNOs and give consideration to network quality and price before making their decision.
100. The market investigation supports that the merged entity will not be able to leverage its position in the market for wholesale access and call origination to foreclose access in the retail market for mobile telecommunications services. The market is competitive and for the majority of competitors and customers in a post-merger scenario there will be sufficient alternative providers of wholesale call origination and access.

### Conclusion

101. In view of the above, the transaction does not give rise to serious doubts as to the compatibility with the internal market with regard to any vertically affected market overlaps.

## **VI. CONGLOMERATE EFFECTS**

102. As mentioned, CWW is mainly active in relation to fixed telecoms, whereas Vodafone is mainly active in mobile telecoms. Post-Transaction, Vodafone will seek to use CWW's assets in delivering fixed-mobile combined services to end-users. Such combined services could for example emerge through the further development of a Unified Communication ("UC") or Fixed Mobile Convergence ("FMC") product, or through cross-selling of fixed and mobile products into respective accounts ("Multiple-play strategies").
103. To establish possible conglomerate leveraging, the Commission must show the presence of each of the following elements, in accordance with the Non-Horizontal Merger Guidelines: (i) that the merged entity would have the ability to foreclose its rivals; (ii) that it would have the economic incentive to do so and, (iii) that a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers.<sup>70</sup> For the reasons set out below, the Commission concludes that the proposed transaction does not raise serious doubts as to conglomerate effects.
104. The market investigation gives a strong indication that the transaction would not result in any anti-competitive conglomerate effects. The Notifying Party submits and the market investigation supports that joint purchasing of mobile and fixed as one package has been the exception rather than the rule up to now, both for MNCs and for national customers. Both integrated fixed and mobile network operators (such as France Telecom/Orange France, Deutsche Telecom/T-Mobile Germany, Telefonica/Movistar, Vodafone Germany, SFR) and non-integrated operators via fixed or mobile resale

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<sup>70</sup> Non-horizontal Merger Guidelines, paragraph 94, OJ C265, 5.2.2008.

agreements or partnerships (Vodafone UK, CWW, BT) sell bundled fixed and mobile services.

105. In particular, the Parties will be able to offer bundled solutions, which involves fixed and mobile integration but also the integration of real-time communication services such as instant messaging (chat), presence information, telephony (including IP telephony and mobile), video conferencing, data sharing, call control and speech recognition (UCs).
106. With regard to customers that may require a combined solution, such as MNCs and government customers, the Notifying Party submits that post-transaction it would still have sufficient buyer power to be able to discriminate between providers and/or to choose separate providers for their communication needs.<sup>71</sup> Although some responses to the market investigation indicate that Unified Communications services (UCS) could be considered as a distinct offer from offers of single services, there are many other competitors offering such services.<sup>72</sup>
107. In terms of both national and international network infrastructure, the Notifying Party submits that the merged entity will not have control of significant levels of capacity that would prevent competing converged offerings from continuing or being launched. [...].<sup>73</sup>
108. First, the Commission finds that the merged entity does not hold a significant degree of market power to have the ability to foreclose competitors and in addition that there are several alternatives available on the market to the Parties' products.<sup>74</sup> Moreover, as single service purchases currently are the norm,<sup>75</sup> it appears that demand for the individual products is therefore unlikely to be affected through the combined service offering. Finally, foreclosure seem unlikely as there are effective and timely counter-strategies that the rival single-product firms may deploy, such as combining their offers in order to make them more attractive or pricing more aggressively to maintain market shares.<sup>76</sup>
109. In addition, the Commission finds that the incentive of the merged entity to foreclose its competitors is low as it simply would not be profitable for the merged entity to do so through its combined service offerings. As single service purchases still is the norm, the possible gains achieved from reducing price of either fixed or mobile services in the combined offers remain uncertain. With regard to UC services, the market investigation

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<sup>71</sup> The Parties also note that enterprise customers in particular are able to exert pricing pressure to drive down prices and that a competitive environment would be maintained e.g. as a result of procurement processes most often take place through tenders. In addition, it appears that Vodafone would not be able to impose bundled packages on its customers on a lasting basis, as combined services are characterised by relatively short term contracts. [...].

<sup>72</sup> BT, IBM, Avaya, Microsoft, Cisco, HP, Verizon, ATT.

<sup>73</sup> [...].

<sup>74</sup> With regard to a combined fixed mobile service offering, both integrated fixed and mobile network operators (such as France Telecom/Orange France, Deutsche Telecom/T-Mobile Germany, Telefonica/Movistar, Vodafone Germany, SFR) and non-integrated operators via fixed or mobile resale agreements or partnerships (Vodafone UK, CWW, BT) sell bundled fixed and mobile services. Moreover, there are many competitors offering UC services, e.g. BT, IBM, Avaya, Microsoft, Cisco, HP, Verizon, ATT.

<sup>75</sup> See question 44 in Q2 – questionnaire to customers.

<sup>76</sup> In the UC segment particularly, single play providers usually compete by partnering with others to be able to provide the other elements.

confirms that customers of such solutions typically have buyer power<sup>77</sup> and that there are many other competitors offering such services.<sup>78</sup> Customers of such solutions may therefore decide to purchase the bundle offered by rivals or no longer to purchase at all.

110. Finally, if the merged entity were to have the ability and incentive to engage in a foreclosure strategy, the Commission finds that such strategy would not be likely to result in anti-competitive effects. First, a sufficiently large fraction of market output would not be affected by foreclosure, as there remain effective single-product players in both the mobile and fixed telecommunications market post-transaction. As mentioned, there are and will also remain a number of other competitors offering UC services on the market.<sup>79</sup> Moreover, procurement processes are most often made through tenders, especially in the public sector, which ensures that a competitive environment will be maintained post-transaction.<sup>80</sup>

### Conclusion

111. In view of the above, the transaction does not raise serious doubts as to its compatibility with the internal market with regard to conglomerate effects.

## **VII. CONCLUSION**

112. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission  
(Signed)  
Joaquín ALMUNIA  
Vice-President*

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<sup>77</sup> See question 46.4 in Q1 – questionnaire to competitors – and question 45.7 in Q2 – questionnaire to customers.

<sup>78</sup> BT, IBM, Avaya, Microsoft, Cisco, HP, Verizon, ATT.

<sup>79</sup> BT, IBM, Avaya, Microsoft, Cisco, HP, Verizon, ATT.

<sup>80</sup> See question 48 in Q1 – questionnaire to competitors – and question 47 in Q2 – questionnaire to customers.