



DETERMINATION OF MERGER NOTIFICATION M/09/015 – VODAFONE IRELAND / BT IRELAND

Section 21 of the Competition Act 2002

Acquisition of retail and SME customers of BT Communications Ireland Limited by Vodafone Ireland Limited

21 August 2009

Introduction

1. On 22 July 2009, in accordance with section 18(1) of the Competition Act 2002 (“the Act”), the Competition Authority (“the Authority”) received a notification of the proposed acquisition by Vodafone Ireland Limited (“Vodafone Ireland”) of the retail and SME customers of BT Communications Ireland Limited (“BT Ireland”). In essence Vodafone Ireland proposed to acquire BT Ireland’s retail business of supplying various fixed-line telecommunication services to residential and low-end small and medium enterprise (SME) customers¹.
2. Both Vodafone Ireland and BT Ireland are involved in the provision of retail fixed-line access to public telephony network, and retail fixed-line voice and broadband services in the State.

The Undertakings Involved

Vodafone Ireland Limited

3. Vodafone Ireland is wholly-owned and controlled by the Vodafone Group plc. The Vodafone Group plc is mainly active in the provision of mobile voice services in a number of countries in Europe, the Middle East, Africa, Asia Pacific, and the United States of America. More recently, the Vodafone Group plc has moved into integrated mobile and PC communication services, which includes 3G and HSDPA (High-Speed Download Packet Access) wireless services, and also fixed-line voice and fixed-line broadband services.
4. In the State, Vodafone Ireland supplies the following retail services:
 - mobile voice and messaging;
 - mobile broadband;
 - fixed-line access to the telephony network;
 - fixed-line voice; and,
 - fixed-line broadband.

¹ “Low-end SME” is generally defined as a single small or medium sized enterprise with six lines or less.

5. Fixed-line voice services are provided by Vodafone Ireland under its Vodafone@Home brand and through its wholly-owned subsidiary, Perlico. The fixed-line voice services provided under the Vodafone@Home brand is offered in a product bundle comprising fixed-line access and fixed-line voice services. Perlico provides fixed-line voice services on a stand-alone basis and also in product bundles with fixed-line access and/or fixed-line broadband services. All these services provided by Vodafone@Home and Perlico use wholesale access inputs supplied by both BT Ireland and eircom Group plc ("eircom").
6. As of 31 March 2009, Vodafone Ireland had 83,188 fixed-line customers of which many purchase both voice and broadband services as a bundle.
7. Vodafone Ireland does not provide fixed-line services in any form at the wholesale level.

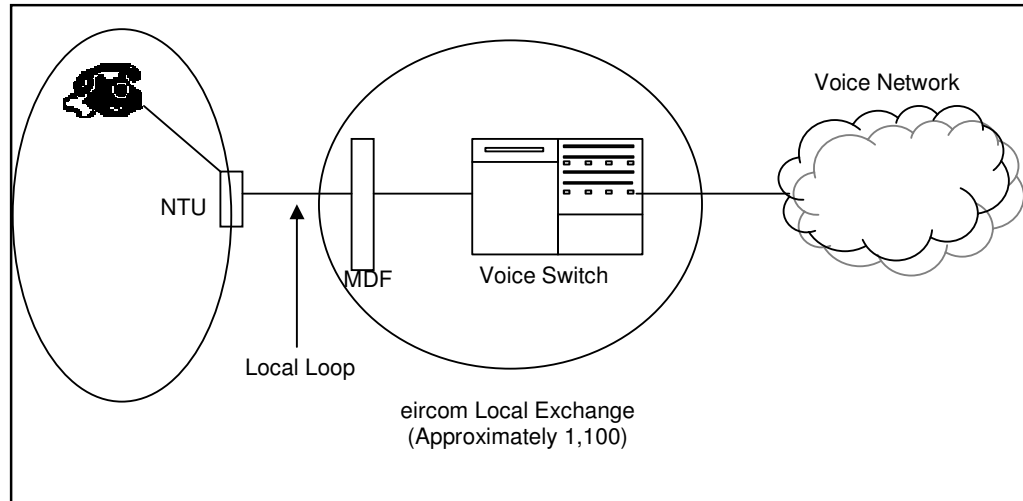
BT Communications Ireland Limited

8. BT Ireland is wholly-owned and controlled by the BT Group plc. The BT Group's operations in the State and Northern Ireland are carried out by BT Ireland. BT Ireland is an all-island telecommunications and networked IT services company. It provides a broad range of retail and wholesale telecommunication services to residential, SME and corporate customers. BT Ireland's services include: networked IT services to SME and corporate customers, residential voice and broadband, internet access, Wi-Fi and high-speed broadband.
9. The fixed-line services (voice, access and broadband) supplied to BT Ireland's customers relevant to this proposed transaction are provided in one of two ways. First, approximately 90% of these customers are supplied using the regulated wholesale access input products provided by eircom and resold by BT Ireland. Second, services are also provided to BT Ireland customers using the wholesale inputs that are further upstream from exchanges at which BT Ireland has installed the necessary equipment to provide Local Loop Unbundling (LLU).

Brief Background to the Telecommunications Industry in Ireland

10. In order to understand the proposed transaction and its impact on competition, it is necessary to provide a summary of the key features of the telecommunications industry and its regulatory framework.
11. In Ireland telephony voice services were traditionally provided by the State-owned company eircom over its network. eircom was privatised in 1999. The network is made up of a high level transmission system connecting local exchanges where local loops would connect local customer's premises to the telephone network. There are approximately 1100 eircom exchanges in Ireland covering the entire population. Typical local loop lengths are between 3 and 6km. Figure 1 below represents graphically the traditional local loop configuration.

Figure 1 - Diagram of "Traditional" Local Loop Configuration



Source: Notification Form

12. The local loop is the connection between a telephone customer's premises and the exchange from which a service is provided. Typically this connection, in the form of pairs of copper wires, can be used to provide a variety of telecommunications services other than telephony, such as broadband and leased lines. The copper pairs, running from a Network Termination Unit (NTU) inside a customer premises, are not directly connected to the equipment providing the service but are instead connected to or terminated on an intermediate piece of exchange equipment called the Main Distribution Frame (MDF).

Regulatory Framework

13. As a result of various EC Directives, the telecommunications industry has undergone a liberalization process over the years.² In each Member State, a sectoral regulator was established. The Commission for Communications Regulations ("ComReg") is the national regulatory authority in the State for the electronic communications and postal sectors. It is charged with the regulation of, amongst other things, fixed-line and mobile electronic communications service operators in the State.
14. ComReg's mandate included opening up the electronic communications sector in 1999 to potential entrants, known as Other Alternative Operators (OAOs), in order to enable them to provide voice and other services. This process has evolved from the launch of Carrier Pre-Selection to the unbundling of the local loop.

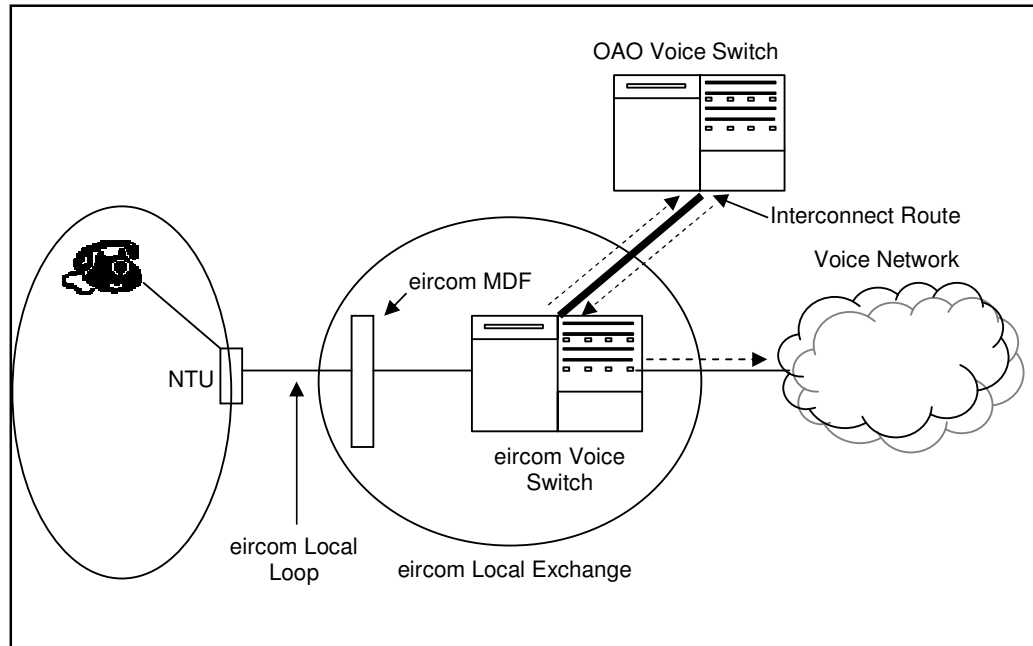
² The New Regulatory Framework consisted of directives to be applied from 25 July 2003:

- (I) Framework Directive, 2002/21/EC, on a common regulatory framework for electronic communications networks and services;
- (II) Access Directive, 2002/19/EC, on access to electronic communications networks and services, and interconnection between networks. Deals with wholesale relationships between operators of networks and services and associated facilities;
- (III) Universal Service Directive, 2002/22/EC, on universal service and users' rights relating to electronic communications networks and services; and,
- (IV) Authorisation Directive, 2002/20/EC, on the authorisation of electronic communications networks and services.

Carrier Pre-Selection (CPS)

15. CPS enabled all calls originated by a customer to be routed to an OAO. Under CPS, eircom would deliver calls over an interconnect route to the OAO and charge the OAO a regulated interconnect rate. Calls terminated to these customers as normal via the eircom network. Figure 2 illustrates the new network configuration.

Figure 2- CPS Overview Diagram



Source: Notification Form

16. However, under the CPS system, the end-customer received two bills: one directly from the OAO for the calls made and one from eircom for the line rental. In May 2005, eircom launched Single Billing through a Wholesale Line Rental (SB-WLR) product under which the end-customer would pay the OAO for all calls and voice services including line rental, voicemail, call waiting and all other ancillary services on POTs/ISDN lines³, ending any direct relationship with eircom. This system did not support the provision of broadband services.

Bitstream

17. In order to facilitate the introduction of more innovative products over the local loop, steps were taken to open up the market for digital data transmission over the wires of the local telephone networks. With the installation by eircom of DSL technologies⁴, the Digital Subscriber Line

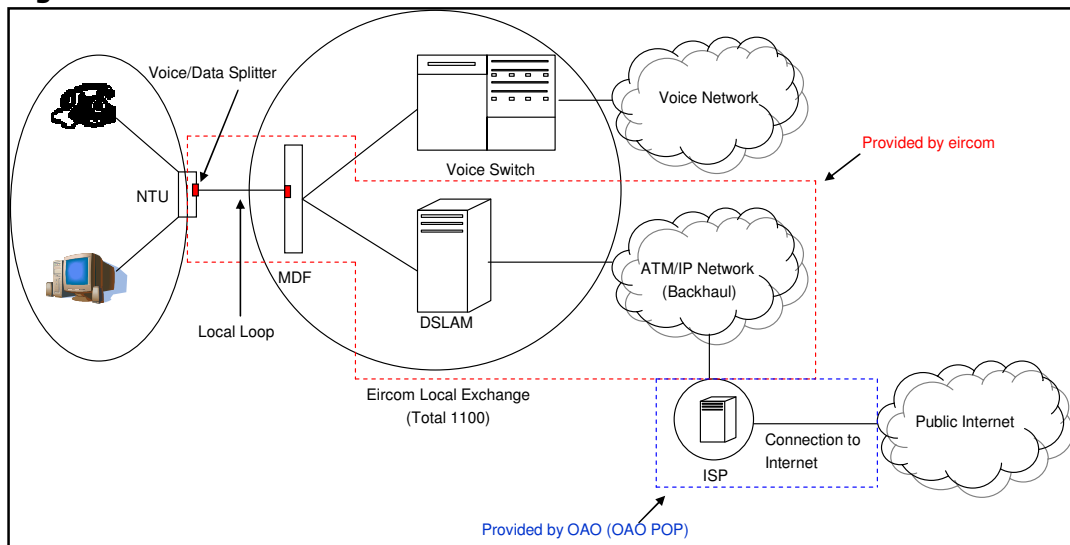
³ eircom provided Plain Old Telephony Service (POTs) and Integrated Services Digital Network (ISDN). POTs permitted voice, fax and up to 56 kb/s dial up modem-based services to the internet. ISDN is a telephone system network which integrates speech and data on the same lines, adding features that were not available in the classic telephone system.

⁴ A family of technologies generically referred to as DSL or xDSL, which are capable of transforming a normal telephone line into a high-speed digital line. These include ADSL (Asymmetric DSL), SDSL (Symmetric DSL), HDSL (High data rate DSL) and VDSL (Very high data rate DSL). DSL enabled lines are capable of supporting services such as fast internet access and video or TV on-demand. See ComReg document for a complete glossary of terms, available at

Access Multiplexer (DSLAM), broadband services⁵ were possible over the copper wires in the local exchanges of its network.⁶

18. In order to open up the market for broadband services over copper lines, ComReg imposed obligations on eircom requiring it to launch the wholesale variant of its retail product, the so-called "bitstream". Thus, eircom is obliged to offer to OAOs its wholesale bitstream products at regulated prices. This provided the first mode of access to the local loop by OAOs in order for them to provide broadband products.
19. Under the bitstream option, an OAO buys DSL services on a wholesale basis from eircom. The OAO retains the customer service and billing relationship with the end-customer and pays eircom the appropriate per customer connection and rental charges. eircom is responsible for the local loop, the local exchange and its equipments. This is illustrated in Figure 3.

Figure 3 - eircom Wholesale DSL Service Bitstream



Source: Notification Form

Local Loop Unbundling (LLU)

20. This option for access to local loop for broadband and voice services entails the following:
 - The OAO installs its DSL equipment in eircom exchanges (DSLAM, etc);
 - The local loop is "unbundled", i.e., disconnected from eircom's equipment and connected to the OAO;

http://www.comreg.ie/publications/quarterly_report_q1_2009_explanatory_memorandum.539.103401.p.html

⁵ Telecommunication in which a wide band of frequencies is available to transmit information. Because a wide band of frequencies is available, information can be multiplexed and sent on many different frequencies or channels within the band concurrently, allowing more information to be transmitted in a given amount of time.

⁶ DSLAM aggregates the higher frequency signals for data which are then handed over to other equipment (ATM/IP network) that encodes them for transmission on the internet network.

- The OAO pays eircom a local loop rental which is regulated by ComReg;
 - The OAO retains responsibility for the customer side from exchange side of MDF to the internet; and,
 - eircom retains responsibility from customer side of MDF to NTU at the customer's premises.
21. When availing of LLU, an operator has the option to rent either the entire loop ("full unbundling" or "full LLU") to provide voice and data services via the same switch or, alternatively, to rent only the high capacity frequencies within the loop (aggregated by the DSLAM equipment) which are then used to provide broadband services ("LLU Line Share").
22. In summary, DSL broadband services are provided to retail consumers by operators using three alternative methods of access:
- by eircom through direct access to its network;
 - by OAOs using the wholesale bitstream products of eircom, in effect, reselling eircom's DSL service; and,
 - by alternative operators of DSL-based broadband using LLU from eircom on a regulated basis.
23. The wholesale LLU products are at the highest level of the supply chain. Unbundling an exchange requires significant investment by the access seeker (e.g., BT Ireland), but offers the access seeker greater control over its product development and specifications. Typically demand to unbundle a given exchange arises where the access seeker anticipates a high level of demand from downstream customers (either end-users or wholesale customers) within the exchange service area, in order to justify recouping the cost of deploying equipment and backhaul connections etc.
24. Down the value chain, OAOs could get access by purchasing from eircom its wholesale bitstream products. This still involves installing customer premises equipment and interconnecting with the access operators network (where traffic is handed over), but the level of investment compared to LLU is much lower. Examples of operators include BT Ireland and Perlico. However, an operator with no network presence can still purchase what is essentially equivalent to a retail broadband product, rebranding the product and selling to retail customers. This is known as 'white label' end-to-end virtual access product or 'reselling'.
25. Finally, it should be noted that broadband services could be provided by other fixed networks, based on technologies other than DSL, such as fibre, cable, satellite and fixed wireless access (FWA), and mobile broadband platforms.

The Proposed Transaction

26. Under the proposed transaction, Vodafone Ireland will take over from BT Ireland the supplying of retail fixed-line telecommunications services to approximately 84,000 residential customers and

approximately 3,000 low-end SME customers in the State.⁷ The network assets used by BT Ireland to supply these customers are not being sold to Vodafone Ireland. BT Ireland will continue to offer retail fixed-line services to high-end SME and corporate customers in the State.

27. As part of the proposed transaction, Vodafone Ireland and BT Ireland entered into a number of agreements relating to the supply of services by BT Ireland to Vodafone Ireland.
28. Under a wholesale managed services agreement, BT Ireland will supply to Vodafone Ireland: wholesale broadband services over LLU, voice services as a reseller for WLR and CPS, and international direct-dialled traffic services.
29. Vodafone Ireland would commit to purchase wholesale broadband services over LLU only from BT Ireland for a period of seven years. BT Ireland in exchange agreed to provide wholesale broadband services to Vodafone Ireland on an exclusive basis for a period of one year at each LLU unbundled exchange operated, or to be operated, by BT Ireland. This exclusivity period of one year will apply to the existing 22 unbundled exchanges and to any of the additional [...] exchanges that BT Ireland are committed to roll-out in the next two years, as they become available for use.
30. The additional [...] exchanges will be rolled-out in accordance with an agreed plan between BT Ireland and Vodafone Ireland⁸. At the end of this two year programme, more than 60% of the available market for fixed-line broadband will be covered by the geographic footprint of BT Ireland's roll-out of LLU-based services. In order to ensure appropriate utilisation of the unbundled exchanges and facilitate customer uptake, Vodafone Ireland will also commit to meeting agreed volume targets of retail broadband customers.
31. For fixed-line voice services as reseller of WLR and CPS, Vodafone Ireland would commit to a [...] purchase of such services from BT Ireland on a minimum revenue basis⁹.
32. Vodafone Ireland will cease to purchase the wholesale bitstream and wholesale voice WLR product from eircom in those exchange areas where BT Ireland provides wholesale broadband services over LLU.
33. [...].
34. [...] ¹⁰. [...] ¹¹.

Rationale for the Proposed Transaction

35. Vodafone Ireland currently offers fixed-line broadband services to customers on the basis of a wholesale bitstream product that it purchases from eircom. Vodafone Ireland is of the view that the use of

⁷ "Low-end SME" is generally defined as a single small or medium sized enterprise with six lines or less.

⁸ [...].

⁹ In other words, Vodafone Ireland is committed at a minimum level of spend in relation to the contract.

¹⁰ [...].

¹¹ [...].

the eircom bitstream product limits its ability to provide innovative services to its customers. In order to offer innovative and differentiated services to its customers, Vodafone Ireland wants to buy inputs from a more upstream level than bitstream, that is, at the LLU base level by either building its own LLU infrastructure or procuring wholesale LLU-based services from an LLU operator.

36. Vodafone Ireland does not consider the building of an LLU-based service to be commercially attractive due to the length of time and amount of investment needed to build such infrastructure. By increasing its base of fixed-line and broadband customers through the proposed transaction, it will be able to achieve scale economies that make it economically viable to move to an LLU-based wholesale service provided by BT Ireland. According to Vodafone Ireland, this will lead to a reduction of its overall cost base and the ability to offer innovative and differentiated products to its customers at a lower cost.
37. BT Ireland submitted that the proposed transaction would on the one hand reduce the disproportionately high costs associated with a small residential and low-end SME customer base and, on the other hand, enable a significant expansion of its wholesale business. BT Ireland submitted that such an expansion of its wholesale business using inputs such as LLU would enable greater innovation and consumer choice. To be successful, however, an LLU-based service requires scale and this proposed transaction will help BT Ireland achieve greater scale.
38. The expansion of BT Ireland's wholesale broadband business will effectively deliver a platform in Ireland which will compete against the copper wire network of eircom and the cable network of UPC Broadband ("UPC").

Third Party Submissions

39. During the investigation period, the Authority received a submission from a third party. This third party noted that the proposed transaction reflects the accelerating trends of consolidation and convergence in the telecommunications sector that is happening not just in the State but throughout the EU. In general these trends are reflected in platform operators, e.g., mobile or cable companies, entering what had been traditionally different markets either through resale/wholesale arrangements or through acquisitions. In general the benefits of such trends accrue to consumers in the form of increased investment and more competition through price reductions and product innovation in the services concerned. [An example was the acquisition by eircom of Meteor which resulted in reduced mobile retail prices and new innovative services from both Meteor and from other mobile operators in the market who responded to the new competitive dynamic.]
40. Therefore, in the third party's view the proposed transaction has the potential to deliver investment and competition benefits. The third party noted [the parties' position] that the synergies created by the proposed transaction will provide sufficient market scale to justify BT Ireland investing in the unbundling of copper line facilities in a wide range of eircom exchanges. Using the LLU facilities of BT Ireland, Vodafone Ireland and its wholly owned reseller, Perlico, [intend to]

resell a portfolio of voice and broadband services to an expanded fixed-line and mobile customer base.

41. While the third party believes the proposed transaction is, in principle, a positive development which reflects market dynamics and competition between fixed and mobile platforms for voice and data services, it also raises concerns as to whether other operators, including eircom, would be able to compete given the business arrangements between BT Ireland and Vodafone Ireland. Specifically, the third party submitted that eircom's ability to respond to this type of rapidly emerging competition has been and remains constrained by the asymmetric application of competition law rules and regulation within the telecommunications sector. As a consequence, eircom is not currently in a position to compete with Vodafone Ireland, who can offer bundles in the market using eircom's infrastructure which eircom cannot make available to customers, even at higher prices. [A continuation of this situation would mean that the potential for increased competition and investment, both by the parties and by other network platforms competing with them in the market, would not be realised.]
42. In the course of its investigation, the Authority also sought the opinion of ComReg, the sectoral regulator. [Having regard to the information made available to it by the Authority,] ComReg expressed the view that [while welcoming the positive development of more infrastructure based competition,] concerns might arise in relation to the exclusivity agreements in relation to the [supply of broadband services by BT Ireland to Vodafone Ireland using wholesale LLU-based services]. ComReg submitted that the one year exclusive supply of BT Ireland to Vodafone Ireland of LLU [based] services on an exchange-by-exchange basis may reduce the competitive market dynamic across a number of wholesale markets and, given the nature of the proposed arrangement, its impact will likely occur over a number of years.

Analysis

43. The parties submitted that the result of the proposed transaction will not be to substantially lessen competition in any market for goods or services in the State due to the minimal increase in market shares resulting from the proposed transaction and the existence of sufficiently strong competitors in the provision of services where their activities overlap.
44. In order to determine whether the proposed transaction is likely to raise any competition concerns and therefore result in a substantial lessening of competition in any market for goods or services in the State, the Authority examined the degree of overlap between the activities of the parties in the State and the competitive landscape in the areas of overlap.

Overlaps

45. Table 1 below shows the area of horizontal and vertical overlap of the activities of the parties in the State.

Table 1: Overlapping Activities of the Parties

| Product | Vodafone Ireland | Residential and low-end SME customers | BT Ireland |
|----------------------------------|-------------------------|--|-------------------|
| Retail Fixed-line broadband | √ | √ | √ |
| Mobile Broadband | √ | | |
| Retail Fixed-line voice services | √ | √ | √ |
| Mobile Voice services | √ | | |
| Wholesale Inputs | | | √ |
| Source: Notification Form | | | |

46. Table 1 shows that there is horizontal overlap in the activities of the parties in respect of the provision of:

- retail fixed-line broadband services; and,
- retail fixed-line voice services.

47. As stated earlier, in order for Vodafone Ireland to provide these services it purchases wholesale fixed-line inputs from BT Ireland¹². Therefore, it would be necessary to examine whether or how, post-transaction, the vertical relationship between BT Ireland and Vodafone Ireland is likely to affect any market for goods or services in the State. We discuss the horizontal effects and any vertical effects that are likely to result from the proposed transaction in turn.

Horizontal Effects

48. The key question here is whether the proposed transaction is likely to result in unilateral or co-ordinated effects in the affected markets.

Retail Fixed-Line Broadband services

49. The parties suggested that, for purposes of assessing the proposed transaction, the relevant retail markets are the retail markets set out in the European Commission’s Recommendation of 11 February 2003 on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC (“Commission Recommendation”) which has been consistently followed by the European Commission (“the Commission”) in its merger control decisions¹³. The Commission Recommendation states that the market for fixed-line broadband internet access does not include fixed-line dial-up internet services but does include broadband internet services provided over the copper local loop, fibre, cable, fixed wireless access (FWA) and other

¹² Post transaction, Vodafone Ireland will continue to buy wholesale fixed-line inputs from BT Ireland.

¹³ COMP/M.3914 – Tele2/Versatel of 7 September 2005 and COMP/M.4947 – Vodafone/Tele2 Italy/Tele2Spain of 27 November 2007.

technology platforms (with the exception of the mobile broadband platform).

50. The parties also submitted that previously the Commission considered that residential and business customers had different requirements and therefore sub-division of the market might have been appropriate. According to the Commission, developments in the markets have, however, meant that the demands of residential customers and business customers are converging and therefore a distinction between the two categories is no longer appropriate¹⁴.
51. It is clear from the parties' submission on the relevant product markets that the relevant product markets could be defined in terms of platform (DSL, cable etc.) and or by customer type (residential, business etc.). The Authority, however, does not need to come to a definitive view on the precise relevant product markets because its conclusions concerning the competitive effects of the proposed transaction, described below, will be unaffected regardless of whether the product markets are defined in terms of the platform type or customer type.
52. The parties submitted that the proposed transaction is unlikely to substantially lessen competition in the provision of retail fixed-line broadband services due to the small increase in market share that will result from the transaction and the availability of competitors both on the copper loop and other platforms. The parties submitted quarterly data on market shares supplied by ComReg's publications, *The Irish Communications Market Quarterly Key Data Report Q1 2009* of 17 June 2009 ("ComReg Document 09/50")¹⁵ and customer switch of operators of retail fixed-line broadband services to support their claim.
53. The Authority assessment of data published in ComReg Document 09/50 confirms the parties' claims. First, there are several operators of retail fixed-line broadband services in the State, ranging from operators on DSL platform to other platforms and they all compete for residential and non-residential customers albeit to different degrees. Second, the majority of customers being supplied are residential customers and this holds true both across all platforms and within each platform (99% of cable customers are residential). However, there are no available market share figures by customer type. Figures published by ComReg only show market shares across all types of customers, residential and non-residential. The market shares of operators of retail fixed-line broadband services are presented in Table 2 below.
54. The table shows that eircom is the main operator of fixed-line broadband services with 53% while UPC has 13%. Post transaction, as BT Ireland's retail customers migrate to Vodafone Ireland, Vodafone Ireland will be in a position to account for 15% share of subscribers to retail fixed-line broadband services in the State.

¹⁴ COMP/M.3914 – Tele2/Versatel of 7 September 2005 and COMP/M.4947 – Vodafone/Tele2 Italy/Tele2Spain of 27 November 2007.

¹⁵ Available at: http://www.comreg.ie/publications/quarterly_key_data_report.539.103400.p.html
See Figure 3.1.1 and Figure 3.1.2 of ComReg Document 09/50.

Table 2: Market Shares of Fixed-Line Broadband Services Operators (Q1 2009)

| Operator | Pre transaction | Post transaction |
|--|------------------------|-------------------------|
| <i>eircom</i> | 53% | 53% |
| <i>UPC (cable)</i> | 13% | 13% |
| <i>BT Ireland</i> | 9% | - |
| <i>Perlico (Vodafone Ireland)</i> | 6% | 15% |
| <i>Access Telecom (FWA)</i> | 8% | 8% |
| <i>Digital Web</i> | 3% | 3% |
| <i>Clearwire (FWA)</i> | 2% | 2% |
| <i>OAOs</i> | 6% | 6% |
| Total | 100% | 100% |
| <p>Notes: Market shares are based on total broadband subscriptions (residential and non-residential). DSL, cable modem, FWA, satellite and FTTX subscriptions are all included in the total broadband subscriptions figure which is used to calculate market shares. Operators with a share of 2% or more are shown in the ComReg Document 09/50. All those operators with less than 2% of total fixed-line broadband subscriptions are then grouped together under OAOs.</p> <p>Source: ComReg's Document 09/50, Figure 3.3.9</p> | | |

55. Furthermore, the Authority requested the parties to provide data on the percentage of their customers that switched to other operators. Table 3 below shows that for the month of May 2009, residential and non-residential customers switched from both BT Ireland and Perlico to other operators. *eircom* attracted the majority of customers that switched, followed by *UPC (cable platform)*. The parties also provided June 2009 annualised churn rate¹⁶ figures showing that in the year ended 31 May 2009 [...] % of BT Ireland subscribers switched away to other operators. Figures for *Vodafone@Home* and *Perlico* were [...] % and [...] % respectively.

¹⁶ Churn rate, when applied to a customer base, refers to the proportion of contractual customers or subscribers who leave a operator during a given time period.

Table 3: - Residential and Non-residential Customer Switch from BT Ireland and Perlico to Other Service Operators (May 2009)

| Switched To | Switched From | |
|-------------------------------|----------------------|-------------------|
| | BT Ireland customers | Perlico customers |
| <i>eircom (DSL)</i> | [...]% | [...]% |
| <i>UPC (cable)</i> | [...]% | [...]% |
| <i>Perlico (DSL)</i> | [...]% | Not applicable |
| <i>MOLO (3G mobile)</i> | [...]% | |
| <i>Vodafone@Home (DSL)</i> | [...]% | [...]% |
| [...] | | [...]% |
| [...] | | [...]% |
| <i>BT Ireland (DSL)</i> | Not applicable | [...]% |
| <i>Other</i> | [...]% | [...]% |
| Notes: [...]. | | |
| Sources: Parties' Submission. | | |

56. On the basis of the above information, the Authority considers that the proposed transaction is unlikely to result in Vodafone Ireland having the ability or incentive to unilaterally exercise market power in the provision of fixed-line broadband services due to its low market share and the ability of customers to switch to an alternative services operator¹⁷.
57. The Authority also notes that retail fixed-line broadband services in the State are increasingly being supplied by operators from platforms other than DSL. Any attempts by Vodafone Ireland to raise the prices of its services (especially for residential customers) are likely to cause switching of customers to operators of broadband services in other platforms.
58. The asymmetry in market shares of the operators, the uptake of broadband services on other platforms and the ease at which customers can switch make it unlikely that co-ordinated effects will result from the proposed transaction in the provision of retail broadband services.

Retail fixed-line voice services

59. Both parties provide a range of fixed-line voice services offerings to their retail customers delivered via the copper local loop using wholesale access product inputs provided on a regulated basis by eircom, the fixed-line incumbent operator.

¹⁷ Generally, customers give a month notice to terminate their service with a particular operator.

60. The parties submitted that the proposed transaction is unlikely to substantially lessen competition in the provision of retail fixed-line voice services due to the small increase in market share that will result from the proposed transaction and the availability of competitors both on the copper loop and other platforms.
61. The parties submitted that, on the basis of an overall market of 2,039,000 fixed-line direct and indirect access paths¹⁸, their market shares for retail fixed-line voice services is approximately 4% each. Table 4 below presents the market shares of operators of fixed-line call services for residential and non-residential customers. Post transaction, Vodafone Ireland's market share will double, from 4% to 8%, if all the BT Ireland customers who are subject to the proposed transaction migrate to Vodafone Ireland. eircom is by far the main operator in this market with a market share of 70%.

Table 4: Market Shares of Operator of Fixed-Line Voice Services (2008)

| Operator | Pre transaction | Post transaction |
|-------------------------|------------------------|-------------------------|
| <i>Vodafone Ireland</i> | 4% | 8% |
| <i>BT Ireland</i> | 4% | - |
| <i>eircom</i> | 70% | 70% |
| <i>Other</i> | 12% | 12% |
| Total | 100% | 100% |

Notes: Market shares are based on 2,039,000 fixed-line direct and indirect access paths.
Source: Notification Form.

62. The Authority notes that voice traffic originating on a fixed-line network accounted for 47% of all voice minutes in the Q1 2009¹⁹. In addition, the majority of customers, including the parties' customers, now subscribe to product bundles that include fixed-line access, fixed-line voice services, fixed-line broadband, and other elements. Furthermore, fixed-line voice services can also be supplied by other means such as broadband.
63. The Authority considers that the proposed transaction is unlikely to result in unilateral and coordinated effects in the provision of retail fixed-line voice service in the State due to the small increase in Vodafone Ireland's market share and availability of other competitors on DSL as well as cable platform.

¹⁸ Indirect access paths relate to telephone lines provided to customers by means of CPS only or WLR. These paths are usually used for voice services and dial-up internet access. As noted above, CPS allows the user to receive all or a portion of calls from one operator and line rental from another operator (usually eircom). WLR (also known as single billing) allows the user to receive every aspect of telephone service, including all calls and line rental from one single operator. It should be noted that access paths are not equal to access lines as for example in the case of ISDN paths, there may be more than one path provided via a single ISDN line.

¹⁹ Figure 1.3.1 of ComReg's Document 09/50.

Vertical Effects

64. There are already vertical links between the parties. BT Ireland currently resells fixed-line wholesale services to Vodafone Ireland. As discussed in paragraphs 29 to 30 the proposed transaction will result in a number of supply and purchase agreements in relation to LLU-based broadband services between Vodafone Ireland and BT Ireland that may raise foreclosure concerns because of their exclusivity nature.
65. In determining whether the exclusivity agreements created as a result of the proposed transaction are likely to give rise to competition concerns in the State, the key question is whether or not the proposed transaction will result in input foreclosure to competitors of Vodafone Ireland and customer foreclosure to competitors of BT Ireland. Each of this type of foreclosure is discussed in turn.

Input Foreclosure to Competitors of Vodafone Ireland

66. The key question is whether the one-year exclusive agreement envisaged by the proposed transaction will foreclose competitors of Vodafone Ireland to wholesale fixed-line broadband services in a manner that will substantially lessen competition in the State.
67. The parties submitted that the vertical links created by the proposed transaction will not be to substantially lessen competition in any markets for goods or services in the State for the following reasons:
 - First, the one year exclusive supply to Vodafone Ireland of BT Ireland's LLU exchanges is a very limited period that should not raise any competition concerns.
 - Second, competitors of BT Ireland such as eircom, provides bitstream which is a wholesale DSL service that is available to all competitors of Vodafone Ireland. The wholesale services provided by eircom are also available to any OAO who wish to provide the fixed-line services offered by Vodafone Ireland. Vodafone Ireland, itself, is an example of a firm which successfully used the eircom fixed-line wholesale services to enable it to provide retail fixed-line broadband and voice services.
68. The Authority considers that the proposed transaction is unlikely to be able to foreclose access by competitors of Vodafone Ireland to fixed-line wholesale services for the following reasons.
69. First, the Authority agrees with the points made by the parties that the one year exclusivity on the BT Ireland's LLU exchanges are limited in nature and are necessary for the implementation of the proposed transaction. The Authority considers that the one year exclusivity is necessary to enable BT Ireland procure from Vodafone Ireland the required investments in order to enable it unbundle and upgrade its exchanges. This will enable BT Ireland to provide wholesale services in competition with eircom.
70. Second, the Authority considers that the one year exclusivity on the BT Ireland exchanges is unlikely to result in Vodafone Ireland acquiring a significant degree of market power. eircom is the main operator of fixed-line wholesale services as it owns and controls the local loop

network and exchanges. Currently, mainly four operators, including BT Ireland, purchase LLU services in 77 eircom exchanges across the State. Competitors of Vodafone Ireland could avail of the fixed-line wholesale services provided by eircom and any of the other three competitors of BT Ireland and/or they could purchase LLU services in the eircom exchanges across the State from the other three LLU operators.

71. Third, the proposed transaction does not preclude BT Ireland from currently continuing to supply bitstream and other wholesale products to its wholesale customers either at the existing 22 exchanges that BT has currently unbundled or at the additional exchanges that are to be unbundled under the proposed transaction.
72. Finally, the Authority notes that as Vodafone Ireland migrates from eircom's wholesale services onto the BT Ireland exchanges, this will create a capacity on the eircom network for competitors of Vodafone Ireland.

Customer Foreclosure to BT Ireland's Competitors

73. Customer foreclosure could arise where, as a result of the seven-year exclusive purchase by Vodafone Ireland of BT Ireland's broadband wholesale services, on the unbundled exchanges, competitors of BT Ireland are foreclosed to customers.
74. The Authority considers that competitors of Vodafone Ireland purchase broadband wholesale services in order to enable them compete in the provision of retail fixed-line broadband services. The Authority considers that the purchase by Vodafone Ireland of BT Ireland's wholesale broadband services on the BT Ireland unbundled exchanges may only result in at most 15% of retail fixed-line broadband services customers been foreclosed to other competitors (see Table 2 above). Given, the ease at which customers could switch between operators, this implies that at least between 85% and 100% of the retail fixed-line broadband customers are available to competitors of BT Ireland.
75. The Authority therefore considers that the result of the exclusive purchase by Vodafone Ireland of BT Ireland's broadband wholesale services, on the unbundled exchanges, will not be to foreclose competitors of BT Ireland to customers.

Ancillary Restraints

76. Clause 14 of the Business Purchase Agreement between the parties provides BT Ireland will not compete with any part of the business that is being acquired by Vodafone Ireland for a period of two years. The Authority considers that this restriction is directly related and necessary to the implementation of the proposed transaction.

Determination

77. The Competition Authority, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed acquisition by Vodafone Ireland Limited of the retail and SME customers of BT Communications Ireland Limited will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, the acquisition may be put into effect.

For the Competition Authority

Dr Stanley Wong

Member of the Competition Authority